

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

**ITA No. 669/SRT/2018 (A.Y:- 2014-15)**

*(Hearing in Virtual Court)*

Trinity Education Trust, 1C-4, Row House, Muktanand Nagar, Sardar Bridge, Adajan, Surat. PAN: AABTT4722H	Vs	The Income Tax Officer, Exemption Ward, Surat.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Sapnesh Sheth – CA
Revenue by	Shri Ritesh Mishra – CIT(DR)
Date of hearing	28/02/2022
Date of pronouncement	28/02/2022

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the Assessee is directed against order of ld.Commissioner of Income Tax (Appeals)-3, hereinafter referred as “ld CIT(A)” Surat dated 21.08.2018, which in terms arises from order passed under section 154 of the Act dated 19.02.2017. The Assessee raised following grounds of appeal:-

*“1.On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax(Appeals) has erred in confirming the action of assessing officer in rejecting the rectification application u/s 154 of the Act made by assessee.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of assessing officer in not giving deduction towards application of income of Rs. 22,74,373/- claimed by assessee even through form 10B was e-filed before filing the rectification request u/s 154 of the Act.*

*3. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

*Appellant craves leave to add, alter or delete any grounds either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee is a charitable trust and engaged in imparting education. The assessee filed its return of income for the assessment year (AY) 2014-15 on 16.03.2015, declaring total income of Rs. 24,48,705/-. In the computation of income the assessee deduction of Rs. 22,74,373/- under section 11 of the Act. The return of income was processed under section 143(1) by Central Processing Centre (CPC) /Assessing Officer on 16.03.2016. The Assessing Officer/CPC while passing the assessment order disallowed deduction under section 11, as the assessee has not furnished its audit report in Form 10B. The assessee filed application under section 154 of the Act and submits that in Form 10B (audit report) has been furnished by the assessee on 24.12.2016. The application of assessee was rejected by Assessing Officer/CPC vide order dated 19.02.2017 with the observation that no prima facia error in the order which is sought to be rectified.
3. Aggrieved, by the order of AO/CPC the assessee filed an appeal before Learned CIT(A). Before the Learned CIT(A) the assessee submitted that assessee is a charitable trust and having registration under section 12A of the Act. The assessee is running school and income derived from school fees. The

Assessing Officer disallowed the exemption under section 11 of the Act on the basis that the audit report has not been furnished. The assessee submitted that audit report could not be uploaded due to oversight however, the same was filed e-electronically on 24.12.2016 and rectification application was made on 03.01.2017 i.e. after uploading audit report. The application of the assessee was rejected in mechanically way and without giving any reason. It was reiterated that due to human error the audit report could not be filed with the original return the same was filed before filing application under section 154.

4. The assessee further submitted that procedural provision, ordinarily should not be considered as mandatory, if the defect in the act done in pursuance of it can be cured by permitted appropriate rectification to be carried out at a subsequent stage. In other alternative submission the assessee submitted that even if exemption is not allowed for any reason only net income after allowing expenses of Rs. 22,74,373/- against the total receipt of Rs. 24,48,705/- ought to have been taxed.
5. The ld. CIT(A) after considering the submissions of the assessee held the assessee has not filed audit report and Form 10B hence, rectification application of the assessee was rejected. The Assessing Officer/ CPC was justified in rejecting the application under section 154 as the required audit

report was not filed by the assessee to enable the AO/CPC to examine the rectification application. Further aggrieved, the assessee has filed present appeal before this Tribunal.

6. We have heard the submissions of Learned Authorised Representative (ld.AR) of the assessee and ld. Commissioner of Income tax-departmental representative (CIT-DR) for the Revenue and perused the orders of Lower Authorities. The ld.AR of the assessee submits that due to omission the assessee failed to upload the audit report and in Form 10B at the time of filing the return of income. The assessee realise its mistake on receipt of intimation under section 143(1) of the Act dated 16.03.2016. The assessee uploaded the audit report in Form 10B on 24.12.2016 and filed application under section 154 for correcting/rectification in the intimation under section 143(1) of the Act. The application of the assessee was rejected by AO/CPC mechanically. The assessee against, before the ld. CIT(A) urged that they have uploaded audit report and in Form 10B before passing the order of application under section 154 of the Act. This fact was brought in the notice of ld. CIT(A) instead of granted relief in the assessee confirmed the order of AO/CPC. The ld. AR of the assessee submitted that Hon'ble Gujarat High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. reported in (2014) 41 taxmann.com 184 (2014) held that in order to claim exemption under section 11, the

assessee can file audit report in Form 10B even at later stage either before the Assessing Officer or before appellate authority by showing a sufficient cause. Further, Hon'ble jurisdictional High Court decision in case of Sarvodaya charitable Trust vs. ITO (Exemption) reported in (2021) 125 taxmann.com 75 (Gujarat) also held that where the assessee is a public charitable trust registration 12A of the Act and substantially satisfied condition for availing benefit of exemption as a charitable could not be denied exemption, the assessee merely on bar of limitation in furnishing audit report in Form 10B. The ld. AR of the assessee reiterated that assessee trust is having registration is not in dispute. The assessee has shown its bonafide that due to accidental omission the audit report could not be uploaded, though it was prepared before filing of return of income i.e. 15.03.2015.

7. On the other hand, the ld.CIT-DR for the Revenue submits that assessee has itself submitted uploaded audit report was not furnished in time and the same was filed belatedly. The ld. CIT-DR submits that assessee has failed to show sufficient cause as per binding precedent the Hon'ble jurisdictional High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. (Supra).
8. We have considered the rival submissions both the parties and perused the order of lower authorities carefully. We find that there is no dispute that at the time of filing of return of income, the audit report has required under Form

10B was not uploaded once uploaded on the system consequently the AO/CPC not allowed the exemption claimed under section 11, Assessing Officer/CPC brought the entire receipt as taxable income. On receipt intimation under section 143(1) of the Act the assessee uploaded in Form 10B and filed application for rectification under section 154 of the Act. The application of the assessee was rejected on the ground report in Form 10B was not furnished before due date of return of income. The ld. CIT(A) dismissed the appeal of the assessee by taking view the audit report in Form 10B was not uploaded before due date of return of income.

9. We find that the Hon'ble jurisdictional High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. (supra) held that in order to claim exemption under section 11, the assessee can file audit report in Form 10B even at later stage either before the Assessing Officer or before appellate authority by showing a sufficient cause. Further, Hon'ble jurisdictional High Court decision in case of Sarvodaya charitable Trust vs. ITO (Exemption) (supra) also held that where the assessee is a public charitable trust registered under section 12A of the Act and substantially satisfied condition for availing benefit of exemption as a charitable could not be denied exemption, the assessee merely on bar of limitation in furnishing audit report in Form 10B. Considering the aforesaid and legal discussion, we find that though the assessee has not filed any return

of income at the time, however, it was available before the Id. CIT(A) as it was uploaded much before filing application under section 154. Therefore, respectfully following the decisions of Hon'ble jurisdictional High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. (supra) and in Sarvodaya charitable Trust vs. ITO (Exemption) (supra), we find that the assessee has complied the procedural requirement, therefore, the Assessing Officer/CPC is directed to verify the claim of the assessee and grant necessary deduction under section 11 of IT Act. In the result, the appeal of the assessee is allowed for statistical purposes.

10. In the result, appeal of the Assessee is allowed for statistical purposes.

Order announced on 28<sup>th</sup> February, 2022 in the open Court and by placing the result on the notice board.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 28/02/2022 /SKM\*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

Sr.Pvt. Secretary, ITAT, Surat

		Date	Initial	
	Draft order verbally dictated by author (JM)	28/02/2022		
	Draft placed before author	28/02/2022		
	Draft proposed & placed before the second member	28 /02/2022		
	Draft discussed/approved by Second Member.	28 /02/2022		
	Approved Draft comes to the Sr.PS/PS	28 /02/2022		
	Kept for pronouncement on	28 /02/2022		
	File sent to the Bench Clerk	/02/2022		
	Date on which file goes to the AR	/02/2022		
	Date on which file goes to the Head Clerk.			
	Date of dispatch of Order.			
	Draft dictation sheets are attached			