

**IN THE INCOME TAX APPELLATE TRIBUNAL  
 DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER**

**ITA No. 2026/DEL/2021**  
**[Assessment Year: 2017-18]**

<b>Ram Sharan Khajani Devi Memorial Charitable Society, H.No. 377, VPO Ghoga, Delhi.</b>	<b><u>Vs</u></b>	<b>Income-tax Officer, Ward-35(1), New Delhi.</b>
<b>PAN- AABAR3549M</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Sh. Parikshit Aggarwal, CA</b>	
<b>Respondent by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>29.03.2022</b>	
<b>Date of pronouncement</b>	<b>08.04.2022</b>	

**ORDER**

**PER RAMA KANTA PANDA, AM:**

This appeal, filed by the assessee, is directed against the order dated 02.12.2021 of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre(NFAC),Delhi, relating to the assessment year 2017-18.

2. Facts of the case, in brief, are that the assessee is a registered charitable society. It filed its return of income on 30.03.2018. The return was processed u/s 143(1) on 25.03.2019, wherein the Assessing Officer, CPC determined the total income at Rs. 41,24,865/- against the 'Nil' total income declared by the assessee, by making adjustment of Rs. 20,60,000/- on account of donation received; and of Rs. 20,64,885/- by disallowing claims for deduction of Rs. 20,12,451/- towards the amount applied to charitable or religious purpose; and Rs. 52,414/- towards the amount accumulated or set apart for application to charitable or religious purposes to the extent it does not exceed 15% of income derived from property held in trust/institution u/s 11(1)(a)/11(1)(b). The Assessing Officer while processing the return disallowed both these claims by invoking the provisions of Section 12A(1)(b) on the ground of not furnishing the audit report in form No. 10B along with return of income filed by the assessee.

3. In appeal it was submitted that audit report in form no. 10B was filed belatedly on 27.2.2020 but the Assessing Officer did not act upon it so as to allow its claim u/s 11. It was also argued that there was inaction on the part of the Assessing Officer in not allowing its claim u/s 11 based upon belated presentation of Audit Report in Form 10B before the Assessing officer, in violation of CBDT Circular no. 10/2019.

4. Based on the various arguments advanced by the assessee, learned CIT(Appeals) gave part relief to the assessee by deleting the addition of Rs. 20,60,000/-, but sustained the addition of Rs. 20,12,451/- and Rs. 52,414/- respectively.

5. Aggrieved with such order of the learned CIT(Appeals), the assessee is in appeal before the Tribunal by raising following grounds of appeal:

*“1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A), NFAC in Appeal No. CIT(A)/Delhi-12/10034/2020-21 has erred in passing the order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*

*2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO by not allowing application of income of Rs. 20,12,451/- for charitable purposes u/s 11 on the allegation that Form No. 10B has not been filed in time even when the appellant had made the desired compliance in this regard.*

*3. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in not allowing the exemption u/s 11(1) amounting to Rs.52,414/- claimed by the appellant to the extent it does not exceed 15% of the income derived from property held under trust.*

*4. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.”*

6. Learned counsel for the assessee vehemently challenged the order of the learned CIT(Appeals) that the assessee has not filed Audit Report in form no. 10B,

although the assessee has duly filed the same and only because of technical latches on the part of website of the Income-tax Department the same could not be verified by the lower authorities. Learned counsel for the assessee drew the attention of the Bench to the ITR filed on 30.03.2018 for A.Y. 2017-18, copy of which is placed at pages 3 to 29 of the paper book. Referring to page 7 of the paper book the learned counsel for the assessee drew the attention of the Bench to the date of audit; name of the Auditor; Membership no. of the auditor; name of the audited firm; date of audit report; and date of furnishing of the audit report, which is dated 05.06.2017. He submitted that all these relevant dates clearly indicate that the assessee has filed the audit report within prescribed time and along with the return of income. Referring to decision of Hon'ble Delhi High Court in the case of CIT Vs. Web Commerce (India)(P) Ltd. 318 ITR 135, he submitted that the Hon'ble Delhi High Court in the same decision has held that provisions of Section 10B(5) are directory and not mandatory. Once the audit report is filed before the framing of the assessment, the requirement of the provisions stands complied.

7. Referring to the decision of the Hon'ble Punjab & Haryana High Court in the case of National Horticulture Board Vs. CCIT (2009) 319 ITR 74(P&H), learned counsel submitted that the Hon'ble High Court in the said decision has held that exemption u/s 10(23)(iv) could not be denied solely on the basis of hyper-technical ground that audit report in Form 10BB was not filed along-with return

but was filed later.

8. Referring to the decision of Hon'ble Calcutta High Court in the case of CIT Vs. Hardeodas Agarwalla Trust 198 ITR 511, learned counsel submitted that the Hon'ble High Court in the said decision has held that filing of audit report u/s 12A(b) along with return is only directory and not mandatory and it is sufficient if assessee filed the audit report before completion of assessment.

9. Learned Counsel also relied on the following decisions:

- (a) Com of Customs vs. Dilip Kumar & Co. Civil Appeal No. 3327/2007 dtd. 30.07.2018 (SC);
- (b) Govt. of Kerala & Anr. Vs. Mother Superior Adoration Convent (SC) Civil Appeal No. 202/2012 dtd. 01.03.2021.

10. Learned counsel accordingly submitted that the learned CIT(Appeals) was not justified in holding that form No. 10B has not been filed in time even though the assessee has made the desired compliance. So far as the order of the CIT(Appeals) in holding that the assessee is not entitled to claim exemption u/s 11(1)(a) amounting to Rs. 52,414/- is concerned he submitted that the same is also not correct. He, accordingly, submitted that the grounds raised by the assessee should be allowed.

11. Learned DR, on the other hand, strongly relied upon the order of the learned CIT(Appeals) NFAC.

12. I have heard the rival arguments made by both the sides, perused the orders

of the authorities below and the paper book filed on behalf of the assessee. I have also considered the various decisions relied upon by the assessee in the case laws compilation. I find the grievance of the assessee in the instant case is that although assessee has filed form no. 10B in time, the learned CIT(Appeals) was not justified in holding that the same has not been filed in time. A perusal of the return of income filed by the assessee shows that the assessee under column no. M2 of the ITR has given following details:

M2	Are you liable for audit under the Income-tax Act?	Yes
Section under which you are liable for audit (specify section) please mention date of audit report (DD/MM/YY)		
Sl.	Section	Date of Audit (DD/MM/YYYY)
1	12A(1)(b)	05/06/2017
	A	Name of the auditor signing the tax audit report
	b	Membership No. of the auditor
	c	Name of the auditor (proprietorship/firm)
	D	Permanent Account Number (PAN) of the proprietorship/firm
	E	Date of audit report
	f	Date of furnishing of the audit report (DD/MM/YYYY).
N	If liable to audit under any Act other than the Income-tax Act, mention the Act, section and date of furnishing the audit report?	No

13. A perusal of the above shows that assessee has got its accounts audited by the Audit Firm ATUL K GUPTA & ASSOCIATES on 05/06/2017 and the same was furnished along with the return of income. Even otherwise also, the Hon'ble

Delhi High Court in the case of CIT Vs. Web Commerce (India) (P) Ltd. (supra), has held that provisions of Section 10B(5) are directory and not mandatory and once the audit report is filed before the framing of the assessment, requirement of the provision stands complied. Relevant observation of the Hon'ble High Court reads as under:

*“In the present appeal the appellant seeks to raise the question of interpretation with regard to the provisions of s. 10B(5) of the IT Act, 1961 (hereinafter referred to as the ‘said Act’). The said provision is virtually identical to the provisions of s. 80-IA(7) as also s. 80HHB(3)(ia). It is also identical to the erstwhile provisions of s. 80J(6A) of the said Act.*

*This Court has already interpreted the latter provisions and has held the same to be directory and not mandatory. The contention of the Revenue was that unless and until the audit report is filed along with the return, the benefit of s. 10A(sic – 10B) cannot be available to the assessee. Recently, we have considered the identical provisions of s. 80-IA(7) in the case of CIT vs. Contimeters Electricals (P) Ltd. (IT Appeal No. 1366 of 2008, decided on 2<sup>nd</sup> Dec., 2008) and held that as long as the audit report is filed before the framing of the assessment, the provisions of s. 80-IA(7) would be complied with inasmuch as the same are directory and not mandatory. A similar view would have to be taken in the present case also inasmuch as the provisions are the same. Consequently, we do not find any fault with the conclusions arrived at by the tribunal. No substantial question of law arises for our consideration. The appeal is dismissed.”*

14. I find the Hon'ble Calcutta High Court in the case of CIT Vs. Hardeodas Agarwalla Trust (supra) has held as under:

*“15. In our view, having regard to the object of s. 12A, it cannot be said that the legislature intended that, even where the trust has got its accounts*

*audited and the certificate obtained in Form No. 10B before the assessment is completed, merely because such report could not be filed in the course of the assessment proceedings, it would deprive a trust of getting the exemption if it is otherwise entitled to it in law. As we have already indicated, in this case, the audit report had been obtained before the assessment was completed. The ITO, before completion of the assessment, did not allow any opportunity to the assessee to furnish the audit report. The direction that the audit report should accompany the return is not mandatory as the omission to do it may be rectified by filing the report at a later stage before the assessment is completed. We have considered this question in ITR No. 26 of 1990 (CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 195 ITR 825 (Cal) : TC23R.1471, where the judgment was delivered on 22nd April, 1991. There, it was held that, if the audit report is not filed with the return, the return becomes defective and the ITO should give an opportunity to the assessee to submit the audit report to rectify the defect before completion of the assessment. Where an assessee, in compliance with the provisions of the Act, cures the defect in the return by filing the audit report before the completion of the assessment, the Assessing Officer cannot ignore such audit report or the return in completing the assessment.*

*16. In our view, the result of ignoring such return or the audit report will be denial of exemption to the trust although the income has been spent for charitable or religious purposes. This was not intended by the legislators. If an assessee fails to obtain the audit report in the prescribed form before the assessment is completed, he may not, ordinarily, be entitled to get the benefit of exemption. In this case, however, as we have indicated, the assessee was not given an opportunity to file the audit report in the prescribed form which was available with the assessee before the assessment was completed. In such a case, the appeal being a continuation of the original proceedings, the appellate authority has the power to accept the audit report and direct the Assessing Officer to redo the assessment. The appellate authority has plenary powers in disposing of an appeal and the scope of his power is coterminous and co-extensive with that of the Assessing Officer. He may, therefore, consider and decide any matter arising out of the proceedings in which the order appealed against is passed. He can do what the Assessing Officer can do and direct him to do what he has failed to do. Such powers are, however, subject to the*



*limitation that what an Assessing Officer could not do validly, the first appellate authority also cannot do in appeal. This question, however, does not arise in this case as the assessee was entitled to file the audit report before the completion of the assessment with or without a revised return for the purpose of curing the defect in the original return filed without the audit report.*

*17. For the reasons aforesaid, we are of the view that, on the facts of this case, the Tribunal came to a correct conclusion.*

*18. We, therefore, answer the question in the affirmative and in favour of the assessee.”*

15. Similar view has been taken in various other decisions relied upon by the learned counsel for the assessee which are filed in the case law compilation. Since the assessee in the instant case has got its accounts audited before the due date and has undisputedly filed the same before the completion of the assessment, therefore, I am of the considered opinion that the learned CIT(Appeals) is not justified in denying the claim of exemption u/s 11 on the allegation that form No. 10B has not been filed in time. Accordingly, order of the learned CIT(Appeals) is set aside and the grounds raised by the assessee on this issue are allowed.

16. In view of my above finding in ground no. 2, I hold that the learned CIT(Appeals) was not justified in confirming the action of the Assessing Officer in not allowing exemption u/s 11(1) amounting to Rs. 52,414/-.

17. Accordingly, appeal filed by the assessee is allowed.

Order pronounced in open court on 08/04/2022.

**Sd/-**  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

**Dated: 8/4/22.**

**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**