

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.625/DEL/2024
(Assessment Year: 2016-17)**

Puran Chand Arora Charitable Trust,
2325/1, 1st Floor, Bahadurgarh Road,
Sadar Bazar,
Delhi – 110 006.

vs.

ITO, Exp. 2 (4),
Delhi.

(PAN : AAATP0295N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Pradeep Kapoor, CA
REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing : 12.11.2024
Date of Order : 22.01.2025

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)-5, Mumbai (hereinafter referred to as 'Id. CIT (A)') dated 19.12.2023 for the assessment year 2016-17.
2. Brief facts of the case are, assessee filed its return of income for Assessment Year 2016-17 on 28.07.2016. Due to non-filing of Form 10B along with return of income, the claim of the assessee in proceedings u/s 143(1) of Income-tax Act, 1961 (for short 'the Act') for the claim of

exemption u/s 11 of the Act was rejected and the receipts declared by the assessee of Rs.15,69,680/- brought to tax and no other deductions were allowed.

3. Aggrieved, assessee preferred an appeal before the ld. CIT (A)-5, Mumbai and assessee has raised the issue of condonation of filing of Form 10B before the ld. CIT(A) and made a detailed submissions. It was submitted that the Form 10B was issued by the auditor on 16.06.2016 and ITR was filed by the assessee on 28.07.2016 declaring nil income after claiming deduction u/s 11(1)(a) to the extent of Rs.13,38,326/- being income applied for charitable purpose and balance amount of Rs.2,31,334/- was claimed as deduction. It was submitted that Form 10B could not be filed along with return of income due to technical glitches/issues at on IT Portal for online filing of form and relied on several decisions. After considering the submissions of the assessee, ld. CIT (A) rejected the plea and sustained the addition made by the AO u/s 143(1)(a) of the Act.
4. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“1. A). The LD CTT(A) has erred in law and on the facts in denying the application of funds application towards the objects of the trust amounting to Rs13,38,326/- u/s 11 being Form No.10B ignoring the fact that Form No.10B could not be filed before filing of return due to glitches/issues at the IT portal. The issue at IT portal was acknowledged by the

department and therefore allowing condoning of filling Form 10B late by issuing Circular No.10/2019 dated 22.05.2019, 28/2019 dated 27.09.2019 and 2/2020 [F No.197/5512018-ITA-I] dated 03.01.2020. The Form No.10B was filed online and also before the Hon'ble CIT(E) on 20.03.2020 within the time prescribed by Circular 0 10/2019 dt. 22.05.2019 and 28/2019 dated 27.09.2019 (copies enclosed).

B). The LD CIT(A) has erred in law and on the facts in denying the application of funds application towards the objects of the trust amounting to Rs 13,38,326/- u/s 11 being amount applied for charitable activities in India for public at large out of the gross revenue, since the e-filing of Form 10B was not filed before the due date of filing of return though the audit report on Form No.10B was obtained from the CA on 16th June 2016, much before the filing of return & assessment proceedings u/s 143(1)1154 were completed and was filed before CIT(A) at the time of appeal proceedings.

2. The LD CIT (A) has erred in denying the accumulation of Rs.2,31,354/- u/s 11 of the IT Act even though the amount accumulated or set a part was less than 15% of the gross receipts and this amount was invested in the modes specified in sub section 5 of section 11 of the Income Tax Act.”

5. At the time of hearing, ld. AR of the assessee raised the issue of non-filing of Form 10B due to technical glitches and submitted that assessee has obtained audit report before filing the return of income. Relevant income of the Trust was applied for charitable purpose. Further he submitted that the trustees of the firm at that time realised that Form No.10B was not filed online in time for the AY 2016-17 by the main trustee who expired in 2019. He submitted that the assessee had filed Form No.10B on 20.03.2020 immediately after realising this mistake and also filed an application before CIT(E) with condonation request for late

filing of Form 10B online. He referred to the CBDT circular for late filing of the Form no 10B with condonation application before CIT(A) for the AY 2016-17 to 2018-19 as per circular No.3/2020 [F No 197/55/2018-ITA-I] dated 03.01.2020 and Circular No 28/2019 dated 27.09.2019 which was extended upto 31.03.2020 which was subsequently further extended upto 30.09.2020.

- 5.1 He further submitted that assessee is registered trust with CIT(E) for the last more than 50 years and the assessee is always regular in filing the Form 10B and the ITR in time and always abide by law. There could not be any intention to follow incorrect procedure for AY 2016-17, when the assessee followed the correct procedure in earlier years and in the subsequent years.
- 5.2 He submitted that there are number of judicial pronouncements by various High Courts and Tribunals on this issue that belated form 10B can also be filed and the exemption u/s 11 should not be denied to the public charitable trust on account of late filing of Form 10B and relied on plethora of judgements.
- 5.3 The assessee further submitted that the CBDT has issued a Circular No.10 (F.No.197/55/2018) dated 22.5.2019, condoning the delay in filing the audit report provided the same is filed before the due date for filing the return of income u/s 139(1) of the Act. Accordingly, the assessee

submitted before the Id. CIT(A) that the assessee should be allowed deduction towards application and accumulation of funds as claimed.

5.4 He further submitted that the copy of Form No 10B obtained from the auditors of the trust was received on 16.06.2016 and reliance is placed on the decisions of CIT vs. Shahzedanand Charity Trust, 228 ITR 292 (P&H); CIT vs. Jayant Patel, 248 ITR 199 (Mad) and CIT vs. Magnum Exports Pvt. Ltd., 262 ITR 10 (Kol) and submitted that Form No. 10B can be submitted before the appellate authority and it is sufficient compliance since the requirement is directory and not mandatory. In this connection, the assessee also relied upon the decision in the case of CIT vs. Hardeodas Agrawal Trust, 198 ITR 511 (Cal). He submitted that the powers of CIT(A) are coterminous with those of the AO and it is sufficient compliance if the audit report in the prescribed form is submitted before the CIT(A).

5.5 Alternatively, it was submitted that this view is found support from the decision of CIT Vs. Shahzedanand Charity Trust 228 ITR 292 (P& H) wherein it was held that exemption under section 11 may not be denied merely on account of delay in furnishing the auditor's report by showing sufficient cause, the auditor's report can be filed at any stage either before the A.O. or before the appellate authority. The same view has been taken in Magnum Export (P) Ltd. (Cal) and Jayant Patel (Mad) cited supra. In

Hardeodas Agarwalla Trust (Cal) and it has been held that trust can file auditor's report before the appellate authority and the appeal being a continuation of assessment proceedings the appellate authority has the power to accept the audit report and the appellate authority can do what the A.O. can do and direct him to do what he has failed to do. He submitted that in these decisions it has been held that requirement of filing audit report is directory and not mandatory.

- 5.6 He brought to our notice Circular dated February 9, 1978 of the CBDT and submitted that according to said circular, it is not mandatory under section 12A (b) to file the audit report along with the return of income. He submitted that normally, a charitable or religious trust or institution is expected to file the auditor's report along with the return but in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report, the Income-tax Officer, for reasons to be recorded, has been authorized to condone the delay in furnishing the auditor's report and accept the same at a belated stage and it has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor's report.
- 5.7 He further submitted that in the case of the assessee, it is not in dispute that the audit report in prescribed form was obtained prior to filing of the

return on 28.07.2016, therefore, there was no reason for the assessee to keep the audit report with it in order to loose the exemption. He further submitted that the assessee in the earlier as well as in the subsequent assessment years filed the audit report and got the exemption. He submitted that the conduct of the assessee in earlier year and subsequent years would prove that due to the facts stated above, there was delay in filing the audit report and the contention of the assessee is duly supported with the medical records of the main trustee filed with his submissions and on proper appreciation of the facts and material on record in the light of the decisions of the Hon'ble High Courts, the AO may be directed to accept the audit report of the assessee and grant exemption u/s 11 of the Act.

- 5.8 He further submitted that the Hon'ble Bombay High Court in case of CIT Vs Sakai Relief Fund 2017 (4) TMI 772 held that Tribunal justified in holding that Form 10 prescribed in terms of Rule 17 of Income Tax Rules for the purpose of Section 11 of the Act would be valid even if filed during the Assessment Proceedings, consequent to a reopening notice under Section 148 of the Act, even if not filed with the return of income. Further, the Hon'ble Gujrat High Court in case of CIT Vs Mayur Foundation 274 ITR 562 (2005) also held that belated Form 10 can be filed.

- 5.9 He further submitted that the CBDT vide circular no 273 (F.No 180/57/80-IT(A-I)), dated 03.06.1980 authorised the Commissioner for condoning the delay in filing of Form 10 and directed him to admit belated application u/s 11 (2) read with rule 17 and to dispose of the same after satisfying itself. He submitted that also, recently vide Circular no.3/2020 dated 03.01.2020 has directed the assesses to file condonation request for delay in filing of Form 10B before the CIT(E).
- 5.10 He pleaded that considering all the above facts, judicial pronouncements and the past history of the public charitable trust for the last more than 50 years, it is requested to allow the exemption u/s. 11 and relief be given to the trust to keep on serving the poor and needy persons of all religion and caste.
6. On the other hand, ld. DR of the Revenue relied on the orders of the lower authorities and in particular brought to our notice page 12 of the appellate order and he brought to our notice that ld. CIT (A) has observed that the assessee had not filed Form 10B along with the return but has subsequently separately filed Form 10B on 20.03.2020 after the due date prescribed u/s 139 (1) of the Act. The assessee has filed Form 10B only on 20.03.2020 only, therefore the exemption claimed u/s 11 cannot be granted and the relevant period to condone the delay of filing the Form

10B beyond the period is only with CIT (Exemption). Therefore, ld. CIT (A) is not competent authority to condone the delay.

7. Considered the rival submissions and material placed on record. We observed that assessee has obtained audit report in Form 10B before filing the return of income, however filed the same only on 20.03.2020. We observed that audit report date is prior to the date of filing of return of income and it is a procedural lapse on part of the assessee and it has filed Form 10B before its assessment completed u/s 143(1) of the Act. The claim of the assessee u/s 11(1)(a) of the Act was denied with the reason that it has filed Form 10B after filing the return of income.
8. We have gone through the decisions relied upon by the assessee. In this regard, we observed that the ITAT, Delhi, on the same facts, in the case of ACIT vs. Green Dot Health Foods Pvt. Ltd. in ITA No.8414/Del/ 2019 dated 06.02.2023 decided the issue in favour of the assessee relying on the decision of Hon'ble Delhi High Court in the case of CIT vs. Contimeters Electrical (P) Ltd. (2009) 178 taxman 422 (Delhi). We also find that in the case of Green Dot Health Foods Pvt. Ltd. (supra), the coordinate Bench has considered the exact similar case and allowed the claim by observing as under :-

"7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is about the denial of claim of deduction u/s 80IC of the Act by AO but allowing the claim of the assessee by CIT(A). The only reason for denying the claim of deduction u/s 80IC of the Act by AO was that the Form 10CCS was uploaded by the assessee on the website of the Income-tax Department on 10.11.2017 whereas the return of income was filed on 24.10.2017 and

the return of income was processed u/s 143(1) of the Act on 30.10.2018. We find that CIT(A) while deciding the issue in favour of the assessee has given the finding that though there was delay in upholding Form 10CCB but the same was uploaded before the return of income was processed u/s 143(1) of the Act. For allowing the ground of assessee, CIT(A) had relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Contimeters Electricals (P.) Ltd. [2009] 178 Taxman 422 (Delhi) and other decision We find that Hon'ble Apex Court in the case of CIT vs. G Knitting Industries (P.) Ltd. (2017) 71 taxmann.com 35 (SC) has held even though Form 10CCB was not filed along with the return of income but when the same was filed before the final order of assessment was made, assessee was entitled to claim deduction. Before us, Revenue has not pointed to any contrary binding decision in its support nor has pointed to any fallacy in the findings of CIT(A). We, therefore, find no reason to interfere with the order of CIT(A) and thus the ground of Revenue is dismissed."

We find that as per the above findings, coordinate Bench has allowed the claim of the assessee for the reason that the assessee has filed Form 10CCB before completion of the 143(1) proceedings.

9. The facts in the present case are exactly similar and the filing of Form 10B is directory to facilitate the assessment and not mandatory. The assessee is running charitable trust and carried on charitable activities over the years, mere non-filing of Form 10B which is directory in nature cannot be the reason to deny the benefit extended by the statute, therefore, we are inclined to allow the claim of the assessee by relying on the findings of coordinate Bench of the Tribunal in the case of Green Dot Health Foods Pvt. Ltd. (supra).
10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 22nd day of January, 2025.

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 22.01.2025
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-19, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI