IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.3784/Del/2024, A.Y. 2021-22

P D Memorial Trust D-5/2, Sector-15 Near Manav Chowk, Rohini, New Delhi PAN: AADTP0721G	Vs.	Income Tax Officer, Ward Exemption- 2(4), Civic Centre, Minto Road, New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Neeraj Jain, CA Sh. P K Mishra, CA
Respondent by	Sh. Jitender Singh, CIT-DR

Date of Hearing	15/10/2025
Date of Pronouncement	30/10/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal for the Assessment Year ('AY') 2021-22 filed by the assessee is directed against the order dated 24.06.2024 of the Additional/Joint commissioner of Income Tax (A), Madurai ['Addl./JCIT(A)'].

2. The assessee has raised following grounds of appeal:

"1. That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals), has erred in rejecting the claim made by the appellant that the action of CPC in recomputing the returned income without giving any intimation/deficiency *under section 139(9) of the Income Tax Act, 1961 is illegal, unjust and against the facts of the case*

3. *That the learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the CPC of not allowing the benefit of section 11 r.w.s 12A of the Act.*

4. *That the learned Commissioner of Income Tax (Appeals), has erred in not allowing revenue expenditure of Rs. 24,47,44,963/- and capital expenditure of Rs. 22,05,47,867/ as application of income.*

5. *That the learned Commissioner of Income Tax (Appeals), has erred in not adjudicating the ground nos. 3 and 4 raised before him.*

6. *That the learned Commissioner of Income Tax (Appeals), has erred in not allowing revenue expenditure of Rs. 45,14,02,644/- while disallowing the benefits of section 11.*

7 *Computing total income which is illegal, unjust and against the facts of the case i*

8. *The above grounds of appeal are without prejudice to each other.*

9. *The Appellant craves leave to add, alter, amend and/or modify the above grounds of appeal."*

3. The relevant facts giving rise to this appeal are that the assessee, a trust engaged in providing education services to students and running various educational institution, registered under section 12A of the Act, filed its Income Tax Return ('ITR') of the relevant year on 31.03.2022. The Assessing Officer (CPC), Bangalore processed the ITR under section 143(1) of the Income Tax Act, 1961 ('Act'), wherein the claim of exemption under section 11 of the Act was rejected on the reasoning that the audit report in Form No. 10B had not been filed one month before the filing of the ITR under section 139(1) of

the Act. After rejection of the claim of exemption under section 11 of the Act, the Assessing Officer (CPC) taxed the entire gross receipts of Rs.40,06,33,279/- as income. Aggrieved, the assessee filed appeal before the Ld. Addl. CIT(A), who dismissed the appeal by holding that the denial of claim of exemption under section 11 of the Act in processing of the ITR under section 143(1) of the Act was justified as there was a delay in filing/uploading the audit report in form 10B. The relevant finding of the Ld. CIT(A) is reproduced hereunder:

> *"5.1 The CPC has issued a communication to the appellant on 06-Oct-2022 stating that*
>
> > *The Trust or Institution registered u/s 12A/12AA/12AB has not E-fled the Audit Report in Form 108 one month prior to the due date for furnishing return u/s 139(1). Hence the exemption claimed in Sr.no. 2 (exemption claimed u/s 11(1)(d)) and Sr.no. 4i to 4viii of Part B-TI is not allowable in accordance with the provisions of Section-12A(1)(b) of the Income tax Act.*
>
> *The appellant has claimed in ground 1 that*
>
> > *CPC in recomputing the returned income without giving any intimation/deficiency under section 139(9) of the Income Tax Act, 1961 is illegal, unjust and against the facts of the case*
>
> *The letter of CPC is still available in the e filing portal of the appellant and hence the claim of the appellant is not correct and ground 1 is dismissed.*

5.2 The intimation mentions that the return was filed on 31-03-2022 well after the and Extended Due Date for Filing Original Return: 15-03-2022 and form 10B is not filed within time.

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5.3 The appellant is admitting that the return was filed on 31-03-2022 and the audit report in Form 10B was also filed late on 23-03-2022 only.

……….

5.13 Section 12A (ba) clearly states that the appellant is not eligible for exemption u/s 11 and 12 if the form 10B and return not filed within the to be allowed u/s 139. CPC has corrected this technical mistake which is apparent on records. The appellant is a trust registered and has taken new registration/approval u/s 12A/12AA on 24-Sep-2021 by number AADTP0721GE20216. The appellant has quoted various case laws to prove its case. But the reason for an institution with such well-studied legal advisors not mentioning the audit details in the second return also is mysterious. The appellant has not made any submissions that it has knowledge about the CBDT circulars u/s 119(2)(b) and whether any condonation petition is filed or not. The appellant has alternate remedy and will be eligible for exemption if the two reasons stated by CPC late filing of form 10B and ITR is relaxed by PCIT Exemptions. Hence decision on the other legal issued raised by the appellant are not considered and decided as the appellant is eligible for exemption if all other conditions are fulfilled.

6. In the result, the appeal is dismissed"

4. At the outset, the Ld. Authorized Representative ('AR'), drawing our attention to the CBDT Circular No. 10/2019 dated 22.05.2019, submitted that the filing of the audit report in Form No. 10B was directory in nature and not

mandatary; hence, the same was condonable in view of the provisions of section 12A of the Act and that was why the CBDT condoned the delay in filing the audit report in Form No. 10B for AYs 2016-17 and 2017-18 even without filing the condonation petition. However, in cases for the AY 2018-19 onward, the Circular was silent. The Ld. Counsel submitted that the filing of audit report in Form 10B online one month before filing the ITR under section 139(1) of the Act was one of the requirements to avail the benefit under section 11 and 12 of the Act. The requirement of filing of Form No. 10B online one month before filing the ITR under section 139(1) of the Act was directory in nature and thus, was curable defect. The Assessing officer ('AO') should have accepted the uploaded audit report in Form No. 10B at the time of processing the ITR under section 143(1) of the Act as the said audit report was available on the Income Tax Portal. It was contended that the AO, at most, had treated the said ITR as a defective ITR under section 139(9) of the Act if the audit report was not available online along with the ITR on the Income Tax Portal and the assessee should have been provided an opportunity to rectify the said defect/deficiency in the ITR. However, the AO did not do the needful. The Ld. Counsel, in view of above-mentioned Circular and following judicial decisions, submitted that the AO was not justified in rejecting the claim of exemption under section 11 of the Act:

(i) Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825, (Cal)
(ii) Calcutta Management Association 42 ITD 62

(iii) Sankulp Welfare Society 303 ITR 64

(iv) National Horticulture Board 176 taxman.167

(v) Sahja Nand Charity Trust 228 ITR 292

4.1 Alternatively, the Ld. AR submitted that after rejection the claim of exemption under section 11 of the Act, at most the income as per the Income & Expenditure account of the assessee would have been taxed instead of the gross receipts of Rs.40,06,33,279/-.

5. On the other hand, the Ld. CIT-DR, placing reliance on orders of the Authorities below, prayed for dismissal of the appeal on the reasoning that filing of the audit report in Form No. 10B online one month before filing of ITR under section 139(1) of the Act was mandatory and not directory in nature.

6. We have heard both parties and have perused the material available on the record. We find merit in the contention of the Ld. AR that failing in filing the audit report in Form NO. 10B online on or before the filing of ITR under section 139(1) of the Act is a curable defect which gets buttressed by the above-mentioned case laws and the intent of the above-mentioned Circular issued by the CBDT. Further, we are of the considered view that the denial of the claim of exemption under section 11 of the Act due to delay in filing the audit report in Form No. 10B online one month before filing of ITR under section 139(1) of the Act is a debatable issue as evident from various case laws and such delay is condonable too as the CBDT, vide the above-mentioned

Circular has already condoned the delay for two AYs. Thus, keeping in view the above, we hereby hold that the denial of claim of exemption under section 11 of the Act while processing the ITR under section 143(1) of the Act is not justified. Consequentially, we condone the delay in filing the audit report in Form No. 10B online and direct the AO to allow the benefit of section 11 of the Act in this case. The assessee gets consequential relief accordingly.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in open Court on 30th October, 2025

Sd/-	Sd/-
(C. N. PRASAD) **JUDICIAL MEMBER**	**(AVDHESH KUMAR MISHRA)** **ACCOUNTANT MEMBER**

Dated: 30/10/2025
Binita, Sr. PS

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT/PCIT
4. JCIT(Appeals)
5. CIT-DRT

ASSISTANT REGISTRAR
ITAT, NEW DELHI