

**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.2238/Del/2025, A.Y. 2014-15

Goswami Bhagwan Lal Education Society, 1866 Sanjay Gandhi Memorial Nagar, NIT, Faridabad 121101 PAN: AAABG0208L (Appellant)	Vs.	Income Tax Officer, Exemption Ward, Aayakar Bhawan, Faridabad (Respondent)
Appellant by	Sh. Alok Kumar Gupta, CA	
Respondent by	Sh. Arijit Chakraborty, Sr. DR	
Date of Hearing	14/10/2025	
Date of Pronouncement	27/11/2025	

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal filed by assessee for Assessment Year ('AY') 2014-15 is directed against the order dated 10.01.2025 of the Additional/Joint commissioner of Income Tax (A)-7, Kolkata ['Addl./JCIT(A)'].

2. The core issue raised in this appeal is denial of exemption under section 10(23C)(via) of the Income Tax Act, 1961 ('Act') and chargeability of entire gross receipts as income instead of taxing the surplus as per Income & Expenditure Account.

3. The relevant facts giving rise to this appeal are that the assessee filed its Income Tax Return ('ITR') on 19.09.2015 declaring NIL income after claiming exemption under section 10(23C)(via) of the Act. The audit report uploaded on the Income Tax Portal/annexed with the ITR was in Form No.10BB of the Income Tax Rules. The Ld. Assessing Officer (CPC), while processing the said ITR under section 143(1) of the Act, denied the claim of exemption under section 10(23C)(via) of the Act on reasoning that the appellant assessee was not eligible for exemption under section 10(23C)(via) of the Act. Further, in absence of the audit report in Form No. 10B of the Income Tax Rules for claiming exemption under section 11 of the Act, the Ld. AO (CPC) also denied the alternative claim of exemption under section 11 of the Act. After denial of claim of exemption under section 10(23C)(via) and 11 of the Act, the Ld. AO (CPC) taxed the entire gross receipts of Rs.1,18,22,502/- as income instead of surplus of Rs.23,47,095/- as per the Income & Expenditure Account.

4. Dissatisfied with the processing of ITR under section 143(1) of the Act, the appellant assessee filed appeal before the Ld. CIT(A)/Addl. CIT(A); who, vide impugned order dismissed the appeal as under:

"5.2 Grounds of appeal number 1 and 3 are against the adjustment made over and above the returned income which the appellant claimed was beyond the scope of mandate given as per sec. 143(1) of the Act. In this regard it is to be stated that as per sub-clause (ii) of sec. 143(1)(a) of the Act, the assessing officer is authorized to carry out adjustment against some incorrect claim, if such incorrect claim is apparent from any information in the return. Facts involved in this issue is that the appellant filed return of income (ITR) claiming itself to be a charitable organization and claiming exemption of its income u/s 11 of the Act. On the other hand,

the appellant has filed audit report in Form 10BB which Form is required to be submitted by a university or an educational institute claiming exemption under clause (iv) or (v) or (vi) or (via) of sec. 10(23C). Sr. no. 5 of the said Form 10BB in fact reflects that the appellant is claiming exemption u/s 10(23C)(via) of the Act. The claims made in ITR and Form 10BB are therefore contradictory to each other. AO, CPC therefore rightly disallowed the claim of deduction u/s 11 made in ITR as per sec. 143(1)(a)(ii) of the Act. These grounds of appeal are therefore dismissed.

5.3 Ground number 2 is against charging the entire income / receipts of the appellant to tax. Facts involved in this issue is that the appellant had filed ITR claiming exemption of its income u/s 11. Gross receipts disclosed was Rs.1,18,22,502/- and after claiming expenses on various heads, disclosed income over expenditure at Rs.23,47,095/-. While processing the ITR u/s 143(1) of the Act, CPC taxed the entire receipts of Rs.1,18,22,502/- . On the other hand, the appellant claimed that benefit of expenses should have been given and only the profit amount of Rs.23,47,095/- should have been charged. In this regard, I would like to highlight the heading of chapter III of Income Tax Act. It is "Incomes which do not form part of total income." Both sections 10 and 11 are included within this chapter. Moreover, section 10(230) starts with the words "any income received by any person on behalf of..... Intention of the legislature is clear. **If the conditions of sec. 10(23C) are satisfied, then the entire income or receipts of the Institute or the Organisation will be exempt. Vice-versa if the conditions are not satisfied then the entire income or receipts shall be taxed. Similar is the case with the provisions of sec. 11, which starts with-income derived from property held under trust..... Here I would also like to highlight the distinction between Chapter III and Chapter VIA of the Act. Chapter III as already stated above is regarding 'exemption of incomes' whereas Chapter VIA is regarding 'deductions in respect of certain payments / incomes'. In Chapter VIA, all the sections are related to deductions against income / receipts of an assessee. The difference is clear. Chapter III does not mention anything about expenses incurred against income whereas Chapter VIA is solely in respect of expenses incurred against income. I am therefore of the opinion that AO, CPC rightly brought to tax the entire receipts after claim of exemption u/s 11 claimed in ITR was denied. This ground of appeal is therefore dismissed."**

[Emphasis supplied]

5. At the outset, the Ld. Authorized Representative ('AR'), submitted that the Ld. AO (CPC), at most, had treated the said ITR as a defective ITR under section 139(9) of the Act, if the requisite approval and audit report was not available on the Income Tax Portal/annexed with the ITR of the assessee and thereafter an opportunity to rectify the said defect/deficiency in the ITR should have been provided to the appellant assessee. However, the Ld. AO (CPC) did not do the needful in accordance with the provisions of section 139(9) of the Act. Further, he contended that the Ld. AO (CPC), after rejection the claim of exemption under section 10(23C)(via) and 11 of the Act, at most had taxed the surplus of Rs.23,47,095/- as per the Income & Expenditure Account of the assessee instead of the gross receipts of Rs.1,18,22,502/- as the Act is for charging tax on income and not on the receipts. It was contended that the income embedded in the gross receipts required to be taxed. He argued that the finding of the Ld. Addl. CIT(A) that the entire gross receipts, in case the assessee failed terms and conditions of section 10(23C) of the Act, taxable was contrary to the law as the heading of Chapter III was "*Income which do not form of part of total income.*" and the income had been defined in section 2(24) of the Act. Further, the Ld. AR argued, placing on emphasis on the above-highlighted part of the order of Ld. Addl. CIT(A), submitted that the Ld. Addl. CIT(A) had erred in comparing allowability of expenditure with deductions under Chapter VIA of the Act. Neither the ITR was held defective nor expenditure against the said gross receipts were allowed. He therefore,

prayed for remanding matter back to the Ld. CIT(A)/Addl. CIT(A) to decide the issue afresh as neither the Ld. AO bothered to comply with the provisions of section 139(9) of the Act nor the Ld. section 139(9) of the Act allowed the alternate claim under section 11 of the Act.

6. The Ld. 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 mandatory; hence, the same was condonable in view of the above contentions/arguments/submissions 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, the Circular was silent for other AYs. The Ld. AR further submitted that the filing of audit report in Form 10B was one of the requirements to avail the benefit under section 11 of the Act. The requirement of filing of Form No. 10B was directory in nature and thus, was curable defect. The Ld. AR, in view of above-mentioned Circular and following judicial decisions mentioned below, submitted that neither the Ld. AO was justified in not affording opportunity of being heard under section 139(9) of the Act nor the Ld. Addl. CIT(A) in rejecting the alternate 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 and (v) Sahja Nand Charity Trust 228 ITR 292.

7. The Ld. AR further submitted that the Ld. AO had erred in disallowing the expenditure (revenue & capital expenditure), in entirety, claimed in the ITR which had been incurred exclusively to earn income. Such disallowance under section 143(1) of the Act was not warranted as such disallowances, being disputable as non-prima facie adjustments, could not be disallowed in the processing of return under section 143(1) of the Act. It was admitted by the Ld. AR that the appellant/assessee was a registered Trust under the Act; hence the appellant assessee put forth the alternate claim under section 11 of the Act. The Ld. AR prayed that the income of the appellant/assessee, at most, should have been assessed under the head 'Income from Other Sources' and consequential deductions should have been allowed in accordance with the provisions of section 57 of the Act. In support of the argument, the Ld. AR placed reliance on the decision of the Hon'ble Delhi High Court in the case of Petroleum Sports Promotion Board, 362 ITR 235.

8. On the other hand, the Ld. Senior Departmental Representative (Sr. DR), placing reliance on orders of the Authorities below, prayed for dismissal of the appeal.

9. We have heard both parties and have perused the material available on the record. We find merit in contentions/arguments/submissions of the Ld. AR that failing in filing the audit report in Form No. 10B online within the stipulated time 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 alternate claim of exemption under section 11 of the Act due to non-filing of the audit report in Form No. 10B, without affording an opportunity under section 139(9) of the Act, is a debatable issue and therefore, the same cannot be done under section 143(1) of the Act. We also hold that the denial of alternate claim of exemption under section 11 of the Act by the Ld. Addl. CIT(A) in absence of audit report is curable.

10. We also find merit in the arguments of the Ld. AR that the disallowance of entire expenses in processing under section 143(1) of the Act is not only against the accounting principle but also against the provisions of the Act. We are of the considered opinion that the disallowance of entire expenses in processing under section 143(1) of the Act is also not justified. We are of the considered view that the finding in the impugned order that the appellant assessee is not eligible to claim exemption under section 11 of the Act does not mean that the appellant assessee is not eligible to claim revenue expenditure incurred exclusively to earn income. We are of the firm view that at most, in this case, the income embedded in the gross receipts can be taxed and not the entire gross receipts as such and that too under the head 'Income from Other Sources' in accordance with the provisions of sections 56 and 57 of the Act. Consequentially, the revenue expenditure incurred exclusively to earn income along with the depreciation on assets have to be allowed as expenditure in accordance with the provisions of section 57 of the Act.

11. Keeping in view the facts in entirety, we set aside the impugned order and remit the matter back to the Ld. AO to afford opportunity(ies) to the appellant assessee of being heard under section 139(9) of the Act and decide the fate of the ITR. The appellant assessee, in view of the above observations that the delay in filing Form No. 10B is a curable defect, may consider filing Form No. 10B and gets the condonation of delay in filing Form No. 10B decided by the concerned Income Tax Authority and the issue of allowability of alternate claim of deduction under section 11 of the Act. Accordingly, we order so. The matter is therefore, restored back to the AO for doing needful as above.

12. In view of the above, the appeal of assessee is allowed for statistical purposes.

Order pronounced in open Court on 27th November, 2025

Sd/-

**(C. N. PRASAD)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated:27/11/2025
Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI