

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No. 4569/Del/2024
(Assessment Year:2018-19)**

Income Tax Officer, Exemption, Ward-1(3), Room No.2419, 24 th Floor, E-2 Floor, Civic Centre Delhi – 110001	Vs.	Dogra Educational Society Ground Floor, 416 Bhera Enclave, Pachim Vihar Delhi – 110058
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAATD4135D		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	07.01.2026
Date of Pronouncement	16.01.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 06.08.2024 of the Ld. National Faceless Appeal Centre (NFAC) (hereinafter referred as Ld. First Appellate Authority or in short Ld. ‘FAA’) in DIN

&Order No : ITBA/NFAC/S/250/2024-25/1067372748(1)arising out of the order dated 21.04.2021 u/s 143(3) r.w.s 144B of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) passed by the Faceless Assessing Officer, National e-Assessment Centre, Delhi for AY: 2018-19.

2. None appeared for the assessee at the time of hearing while notice have been repeatedly issued thus no more opportunity is justified. The ld. DR was heard who has also filed written submissions.

3. The assessee is an educational trust filled its return of income u/s 139(4) for the A.Y. 2018-19 on 30.03.2019 with NIL income. The case was selected for Complete Scrutiny assessment under the e-assessment Scheme, 2019 on the issue- "Expenditure for Charitable or Religious Purposes". The assessment in the case was completed assessing income at Rs.3,39,71,372/- .During the assessment proceedings the AO denied the claim of exemption u/s 11 of the Act for the reason that the assessee failed to satisfy condition of applicability of section 11 and 12 laid down in section 12A(1) (ba) of the Act viz.,(i) The person in receipt of the income has furnished return of income for the previous year in accordance with the provisions of subsection (4A) of

section 139, within the time allowed under that section and (ii) The appellant also failed to furnish Form No 10B as stipulated u/s 12A(b) of the Act along with the return of income as the same was filed on 06.04.2019 which was filed even beyond the time limit specified u/s 139 of the Act.

4. Aggrieved with the aforesaid order, the assessee filed an appeal before the Ld.CIT(A).The Ld. CIT (A) vide it's order dated 06.08.2024 partly allowed the appeal of the assessee by relying upon the decisions of this Tribunal by stating that the appellant is eligible for exemption u/s 11 of the Act and directed to the AO to allow the exemption of u/s 11 to the appellant.The Ld. CIT (A) has partly allowed the appeal of assessee by stating that on the issue of filling of audit report in Form No. 10B belatedly, This Tribunal in the decision of Bangarh Educational Welfare Trust v. ITO (Exemptions), Ward-2(2), Siliguri (ITA No. 496/Kol/2021) has referred to the decision of the Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust vs. ITO (Exemption). [2021] 125 taxmann.com 75(Gujarat) dated 09.12.2020 wherein Para 32 of the judgment it has held as follows:-

- (i) The provision regarding furnishing of audit report with the return has to be treated as a procedural proviso.
- (ii) It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment.
- (iii) The benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-tax officer or before the appellate authority by assigning sufficient cause.

5. Ld. DR in the submissions however asserts as follows;

“In view of the above facts and circumstance of the case and as per section 12A (1) (b) of the Income Tax Act, read with the Proviso to Rule 12(2) of the Income Tax Rules, the audit report Form 10B has to be E-filed along with return of income, statutorily. Assessee has not E-filed the Audit Report in Form 10B along with the return of income or before filing the return of income. Hence exemption under section 11 &

12AA is not allowed, CBDT has authorized CIT(E) to Condone delay in filing audit report u/s 119(2)(b) of the Act in the case of charitable organization.

8. As per details furnished in return, appellant is registered u/s.12A and claiming exemption u/s 11. As per section 12A (1) (b) of the Income Tax Act, read with 1st Proviso to Rule 12(2) of the Income Tax Rules, the audit report in Form 10B has to be e-filed along with return of income. Appellant has neither e-filed the Audit Report in Form 10B along with the return of income nor before filing the return of income. Hence exemption under section 11 is not allowed. The return of income was filed on 30.03.2019 whereas audit report was filed on 06.04.2019 which was filed after filing the return of income. Hence in this case, the audit report has neither been filed along with the return of income nor filed within the stipulated time prescribed by CBDT. Here it is relevant to mention the CBDT Circular No.2/2020 dated 3rd January, 2020, wherein it has been mentioned that, the failure to furnish such report in the prescribed form along with the return of

income results in disentitlement of the trust or institution from claiming exemption under sections 11 and 12 of the Act.

The relevant extract of para 2 of CBDT Circular No. 2/2020 dated 3rd January, 2020, is reproduced verbatim hereunder: -

“As per Rule 17B of the Income-tax Rules, 1962 (hereafter 'Rules) the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. Further, as per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust or institution from claiming exemption under sections 11 and 12 of the Act.”

Since in this case, the Audit report in Form 10B has not been filed along with the return of income, the assessee was required to file application of condonation of delay u/s 119(2) of the Act before the CIT. (Exemption) in accordance with the CBDT Circular No. 02/2020. However as per the information available, no such application for condonation of delay u/s 119(2) of the Act has been filed before the

CIT (Exemption), New Delhi. Hence as per the CBDT Circular No. 02/2020 dated 3rd January, 2020, the assessee is not eligible for claiming exemption under sections 11 and 12 of the Act."

6. We are of the considered view that contentions of ld. DR have no force as the compliance with regard to furnish Form No. 10B has been consistently held to be a directory provision by various decision of this Tribunal and Hon'ble High Court, of which some are relied by the ld. CIT(A), then without citing any law or judicial precedent to the contrary, the bench cannot intervene to hold the impugned order as erroneous. **Thus, ground raised have no substance and the appeal of the revenue is dismissed.**

Order pronounced in the open court on 16.01.2026

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 16.01.2026
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI