

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 695/Ahd/2023

निर्धारण वर्ष/Assessment Year: 2021-22

Anjana Foundation Vadodara, "Gurukrupa", Laxminarayan Appt., Opp. Patel Colony, Shidhhanath Road, Vadodara-390001 PAN : AAFTA 8799 K	Vs.	The A.O., C.P.C., Bangalore (Present ITO, Ward Exemption, Vadodara)
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Dileep K. Vaidya & Ms. Anjana, ARs	
Revenue by :	Shri Sudhendu Das, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 16.01.2024

घोषणा की तारीख /Date of Pronouncement: 07.02.2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:**

Present appeal has been filed by the assessee against order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 09.08.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2021-22.

2. The grounds raised by the assessee are as under:-

*"1. The Learned CIT(A) has grievously erred in law and on facts in upholding the income of Rs. 16,40,93,967/- computed in the intimation u/s. 143(1) by the AO without properly appreciating and considering the facts that it is not the amount receipt but the land received as gift in kind by the assessee-trust, which does not fall under purview of income, so not liable to tax, as it is a capital receipt.*

2. The assessee has received the Gift in kind i.e. land from trustee, duly registered gift deed with the sub-registrar, without any consideration and the same could not be applied, accumulated or invested, therefore, it cannot be treated as income.

The gift received in kind- land should not have been treated as income of the assessee trust, as it will not come under the definition of income u / s 2(24) of the act, therefore, it will not be the income of the trust u / s 12(1) of the act, that includes the income from voluntary contribution and the acceptance of gift in kind will not come under the purview of income u/s 2(24)(iia) for the purpose of section 11 of the act, that includes the income of corpus donations - exempted u/s 11(1)(d).

The assessee has not received any corpus donation, but received a gift in kind - land, from trustee, for the purpose of to carry out trust charitable object purpose activities. Which is irrevocable, Gift in nature. It should have been held to be the capital receipt, so not liable to tax.

3. Rs.70,60,000/- is contribution received from the trustee in trust fund (capital account), who has gifted the Land to the trust. This amount has been used for stamp duty, for registration of gift deed, so it is an inbuilt- inter related, irrevocable, non separatable part of Land-Gift, hence it is a capital receipt and does not fall under the purview of income.

4. The Learned CIT(A) has erred in law and facts in upholding the adjustment made by the AO, based on the information indicated in the ITR filed by the appellant, as the inadvertent mistake made in the return cannot be upheld factually as well as legally.

5. The learned CIT(A) has erred in relying on the issue of belatedly filling of Audit report - form 10B, which is not relevant and not applicable to the facts of capital receipt -gift in kind (immovable property) and as the assessee had already paid the tax on gross annual income of Rs.22967/- Also the assessee trust had the income below the taxable limit, so there was bonafide belief that form no 10B is not required to be filed.

6. The learned CIT(A) has erred in law and facts in relying upon the decision of Balraj Singh Jagjit Singh ITAT (Mum) dated 07-06-23, being not applicable to the facts of the assessee trust.

7. The Learned CIT (A) has erred in law and facts in not appreciating the fact that when the land has been gifted to the trust without any consideration and duly registered with the sub-registrar, the value adopted (Rs.15,70,11,000/-) for paying stamp duty cannot be treated as income of the trust, also it does not fall under purview of income.

8. *On the facts of the assessee, the mistake committed in the return should not have been taken as advantage, keeping in the principle of natural justice, and the Circular 14 (XL - 35) dated 11/04 /1955 issued by the Government ought to have been applied to the facts of the assessee providing that the department must not take advantage of ignorance of the assessee to collect more tax out of him, then is legitimately due.*

9. *On the facts of the assessee, the Nil income ought to have been accepted.*

10. *The income of Rs. 16,40,93,967/- computed in the intimation, deserves to be deleted along with consequent demand of Rs. 8,59,78,930/-."*

3. We have heard both the parties. The issue before us relates to the adjustment made to the income returned by the assessee in the intimation made by the CPC u/s 143(1) of the Act. The adjustment relating to entire income of the assessee trust including corpus donation, voluntary donation and other income, amounting in all to Rs.16,40,71,000/- being denied exemption claimed u/s 11/12 of the Act to the assessee and treated as entirely taxable in the intimation u/s 143(1) of the Act. This adjustment to the total income of the assessee was confirmed by the ld. CIT(A).

4. A perusal of the intimation u/s 143(1) of the Act reveals that the assessee had disclosed voluntary contribution forming part of corpus to the tune of Rs.16,40,71,000/- along with voluntary contribution other than corpus funds amounting to Rs.14,000/-. The assessee had also shown other income of Rs.8,967/- in its return of income filed. Against the same, the assessee had shown application of income to the tune of Rs.74,061/-. The same are reflected at page No.14 of the intimation as under:-

Sl. No.	Particulars	Reporting Heads	Amount	
			As provided by Taxpayer	As computed u/s 143(1)
01	Income Details	Voluntary Contributions other than corpus fund (Sr. No. Aii+Bii of Schedule VC)	14,000	14,000
02		Voluntary contribution forming part of corpus (Sr. No. 2a-2b of Part B-TI)		
		(a) Voluntary contribution received (Sr. No. (Ai+Bi) of Schedule VC)	16,40,71,000	16,40,71,000

		(b) Voluntary contribution exempt u/s 11(1)(d)	N/A	0
03		Aggregate of income referred to in sections 11, 12 and sections 10(23C)(iv), 10(23C)(v), 10(23C)(via) derived during the previous year excluding voluntary contribution included in 1 7 2 above (Sr. No. 10 of Schedule AI)	8,967	8,967
04	Exemption u/s 11/10(23C)(iv) /10(23C)(v)/ 10(23C)(vi)/ 10(23C)(via)	Application of income for charitable or religious purposes or for the stated object of the trust / institution.	0	0
		(i) Amount applied during the previous year – Revenue Account [Excluding application from borrowed fund, deemed application, previous year accumulation upto 15% etc, i.e. not from the income of prev. year] [Sr. No. F from Schedule ER]	74,061	0
		(ii) Amount applied during the previous year- Capital Account [Excluding application from Borrowed Funds, deemed application, previous year (ii) accumulation upto 15% etc ie, not from income of the prev. year] [Sr.no. B of Schedule EC]	0	0
		(iii) Amount applied during the previous year- Revenue/ Capital Account (iii) (Repayment of Loan)	0	0
		(iv) Amount deemed to have been applied during the previous year as per (iv) clause (2) of Explanation to section 11(1) (a) If (iv) above applicable, whether option in Form No. 9A has been furnished to the Assessing Officer (b) If yes, date of furnishing Form No. 9A (DD/MM/YYYY)	0 N	0 N
		(v) Amount accumulated or set apart for application to charitable or religious purposes or for the stated objects of the trust/institution to the extent it does not exceed 15 per cent of income derived from property (v) held in trust/ institution under section 11(1)(a) / 11(1)(b) or in terms of third proviso to section 10(230) [restricted to the maximum of 15% of (1+3) for 12A/12AA/12AB and (1 + 3) for 10(23C)(w) / (v) / (vi) / (via) ]]	0	0
		(vi) Amount in addition to amount referred to in (iv) above, accumulated or (vi) set apart for specified purposes if all the conditions in section 11(2) and 11(5) or third proviso to section 10(23C) are fulfilled	0	0
		(vii) Amount eligible for exemption under section 11(1)(c) (c) Approval number given by the Board (d) Date of approval by board	0	0
		(viii) Total [4i+4ii+4iii+4iv+4v+4vi +4vii]	74,061	

5. The assessee was denied the application of its funds as above in the intimation made u/s 143(1) which is evident from a bare perusal of page no.14 of the intimation which is reproduced above; also its entire income including corpus donation, voluntary contribution and other income amounting in all to Rs.16,40,93,967/- was subjected to tax and treated as its total income while the assessee had claimed the entire amount as exempt. Assessing its total

income at Rs.16,40,93,967/-, tax demand of Rs.8,59,78,930/- was raised thereon in the intimation made u/s 143(1) of the Act. Thus, in effect, while the assessee had claimed its entire income exempt in terms of Sections 11 & 12 of the Act, the intimation made u/s 143(1) denied the assessee's claim of exemption subjecting its entire income of Rs.16.40 crores to tax.

6. The reasons for the denial of exemption in the intimation find mention in the column "incorrect claim" of the intimation, as the non-furnishing of Audited Report in Form 10B, at least one month prior to the due date of furnishing return of income. The contents of the same are reproduced hereunder:-

*"Incorrect Claim u/s 143(1)(a)(ii)*

Sl. No.	Schedule	Error Description	Amount in Rs.		
			In Income Tax Return	As computed	Variance
1	Part B-TI / Part A-General Information	The Trust or institution registered u/s 12A/12AA/12AB has not E-filed the Audit Report in Form 10B atleast 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	74,061	0	74,061

7. Thus, what transpires from scrutiny of the intimation made on the assessee u/s 139(1) of the Act is that its claim of exemption of its entire income including voluntary donation, corpus donation and other income amounting in all to Rs.16.40 crores was denied on the ground that the assessee had failed to furnish the necessary Form 10B one month prior to the due date of filing of return of income u/s 139(1) of the Act.

8. A perusal of the order of the ld. CIT(A), where the assessee filed appeal against this intimation made, reveals that the assessee had pleaded before him that the requisite Form 10B had been prepared much in advance i.e. 70 days prior to the filing of the return, but had not been filed by the assessee since its

income was below the taxable limit. This finds mention at paragraph no. 6.1 of the Id. CIT(A)'s order which is reproduced hereunder:-

*"6.1 The appellant has also stated that the audit of the appellant was completed 70 days prior to the filing of the ITR (audit report signed on 19/10/2021\* with UDIN: 21035601AAAAGJ6460 and ITR filed on 28/12/2021) but form 10B was not uploaded as trusts income was only Rs. 22,967/- (below 2,50,000/- without claiming any deduction). The appellant has further contended that it could have very well revised the ITR and corrected the mistake but the appellant got to know of the mistake only after receiving the intimation under section 143(1) on 20/9/2022 from CPC and by that time the last due date for filing revised return for F.Y. 2020-21 had already lapsed."*

9. Before us, it was pointed out that the copy of Form 10B was filed to the Id. CIT(A) and our attention was drawn, in this regard, to the submissions made before the Id. CIT(A) reproduced at page no.10, paragraph no. 4.3, as under:-

*"4.3 The appellant Trust's Audit report was signed on 19/10/21 with UDIN: 21035601AAAAGJ6460 along with it, auditor has prepared the balance sheet, income expenditure statement of income, as per Trust act, also 70 days prior to filing the ITR.*

*The appellant Trust's ITR was filed on 28.12.2021, i.e. well within the due date of 31.12.2021 as prescribed u/s 139(1).*

***Audit Report form 10B was filed on 10/10/2022, ack. No. 630549040101022 for AY 2021-22 which was attached with Auditors certified balance sheet, income & expenditure schedule IX-C & Audit report dated 19/10/2021.***

***Annexure (1) for Audit Report, 10 B and certified balance sheet, income & expenditure schedule IXC, auditor's certificate dtd. 12/10/22 are included for your kind reference."***

10. In view of the above, it is evident that the assessee had demonstrated to the Id. CIT(A) that the necessary Form 10B had been prepared much in advance before the due date of filing of return of income and had been filed before the Id. CIT(A) also.

11. In the light of the above facts, we hold that since the failure to file Form No.10B was the only reason for the adjustment made to the return of income of the assessee subjecting its entire income to tax on the filing of the Form 10B to the Id. CIT(A), the assessee ought to have been allowed its claim of exemption to its entire income. The Hon'ble jurisdictional High Court in the case of Association of Indian Panelboard Manufacturer v Deputy Commissioner of Income Tax [2023] 157 taxmann.com 550 (Gujarat), has categorically held that filing of Form 10B alongwith the return of income is only a procedural requirement and cannot be treated as mandatory requirement for the purpose of claiming exemption u/s 11 & 12 of the Act and even if filed at a later stage the assessee is entitled to exemption claimed. The ITAT Mumbai Bench in the case of Shree Bhairav Seva Samiti vs Income Tax Officer (2023) 149 taxmann.com 478( Mumbai-Trib) allowed assessee's claim to exemption u/s 11 of the Act, denied in identical circumstances by the CPC in adjustment made u/s 143(1) of the Act for non-filing of form 10B alongwith return of income, but which was subsequently filed by the assessee, following the decision of the Hon'ble Bombay High Court in the case of CIT vs Xavier Kalavani Mandal (P) Ltd which held that even if form 10B is filed at a later stage exemption cannot be denied u/s 11 of the Act. The relevant portion of the order is as under:-

*"9. In the present case, it is undisputed that the assessee trust is registered under section 12AA of the Act for the past 40 years and the said registration is still in existence. It is also not the case of the Revenue that the assessee has ceased to be a religious or charitable institution. Further, it is also not the case of the Revenue that the accounts of the assessee have not been audited by an accountant, and an audit report in Form 10B has not been obtained. Only on the technical aspect that Form 10B was not filed along with the return of income for the relevant assessment year, the exemption claimed under section 11 of the Act has been denied to the assessee without going into the merits. Further, no relief was granted to the assessee even when the assessee filed the application under section 154 of the Act. We find that while dealing with similar facts the Co-ordinate Bench of the Tribunal in Trinity Education*

*Trust v. ITO [IT Appeal No. 669 (Srt.) of 2018, dated 28-2-2022], decided the issue in favour of the taxpayer by observing as under:*

*"8. We have considered the rival submissions both the parties and perused the order of lower authorities carefully. We find that there is no dispute that at the time of filing of return of income, the audit report has required under Form 10B was not uploaded once uploaded on the system consequently the AO/CPC not allowed the exemption claimed under section 11. Assessing Officer/CPC brought the entire receipt as taxable income. On receipt intimation under section 143(1) of the Act the assessee uploaded in Form 10B and filed application for rectification under section 154 of the Act. The application of the assessee was rejected on the ground report in Form 10B was not furnished before due date of return of income. The Id. CIT(A) dismissed the appeal of the assessee by taking view the audit report in Form 10B was not uploaded before due date of return of income.*

*9. We find that the Hon'ble jurisdictional High Court in case of CIT v. Xavier Kalavani Mandal (P.) Ltd. (supra) held that in order to claim exemption under section 11, the assessee can file audit report in Form 10B even at later stage either before the Assessing Officer or before appellate authority by showing a sufficient cause. Further, Hon'ble jurisdictional High Court decision in case of Sarvodaya charitable Trust v. ITO (Exemption) (supra) also held that where the assessee is a public charitable trust registered under section 12A of the Act and substantially satisfied condition for availing benefit of exemption as a charitable could not be denied exemption, the assessee merely on bar of limitation in furnishing audit report in Form 10B. Considering the aforesaid and legal discussion, we find that though the assessee has not filed any return of income at the time, however, it was available before the Id. CIT(A) as it was uploaded much before filing application under section 154. Therefore, respectfully following the decisions of Hon'ble jurisdictional High Court in case of CIT v. Xavier Kalavani Mandal (P.) Ltd. (supra) and in Sarvodaya charitable Trust v. ITO (Exemption) (supra), we find that the assessee has complied the procedural requirement, therefore, the Assessing Officer/CPC is directed to verify the claim of the assessee and grant necessary deduction under section 11 of IT Act. In the result, the appeal of the assessee is allowed for statistical purposes."*

**10.** *As in the present case also the assessee has complied with the procedural requirement of obtaining and filing Form 10B, therefore, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal, the Assessing Officer is directed to decide the claim of the assessee under section 11 on merits,*



*after accepting the Form 10B filed by the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes."*

Since the issue is directly covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court and the ITAT, we have no hesitation in holding that the assessee's claim of exemption to its entire income u/s 11 of the Act is to be allowed. The AO/CPC is accordingly directed to delete the adjustment made in the intimation u/s 143(1) of the Act. The appeal of the assessee is allowed in above terms.

12. In effect, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 07/02/2024 at Ahmedabad.**

**Sd/-**

**(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad; Dated 07/02/2024

\*\*/

**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad