IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
& SMT. RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 2690/MUM/2025 (AY : 2018-19)
(*Physical hearing*)

New Bombay Merchants Educational Foundation, The Sugar Market Assc. 1st floor, Central Facility Bldg Fam Market 1, Phase 2, Turbhe Navi Mumbai, Maharashtra-400703. [PAN No. AAATN2984J]	Vs	ACIT (E),-2(2), Mumbai
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Pradeep Kapasi CA
Revenue by	Ms. Sujatha Iyangar, Sr. DR
Date of institution of appeal	18.04.2025
Date of hearing	02.06.2025
Date of pronouncement	11.06.2025

<u>Order under section 254(1) of Income Tax Act</u>

<u>PER PAWAN SINGH, JUDICIAL MEMBER;</u>

1. This appeal by assessee is directed against the order of NFAC/ ld. CIT(A) dated 18.02.2025for A.Y. 2018-19.The assessee has raised the following revised grounds of appeal:

"Ground No. 1 : Ex-parte Order
The ld. CIT(A) erred in law and on facts in parting an ex-parte order without;
a. Considering the written submissions furnished in appeal.
b. Affording an opportunity of hearing as was requested in writing.
c. Adjudicating all the grounds being Ground No. 1 to 4 contested before him.
Ground No. 2: Dismissal of appeal by CIT(A) without adjudicating Ground no. 2 to 4
The ld. CIT(A) erred in laws and facts in passing the order u/s 250 dt. 18.02.2025 and dismissing the appeal without adjudicating ground no. 1 to 4 contested before him in an appeal filed u/s 246A before him which ground were duly raised, contested and the fact relating to which were recorded in the statement of facts. Your appellant prays that the said ground of appeal 1 to 4 be adjudicated and allowed after hearing your appellant.
1(a) Denial of exemption u/s 11 of the Act.

(b) Unauthorised adjustments u/s 143(1) and making such adjustment without issue of notice u/s 143(1)(a) before making adjustments to the returned income.
© Disallowance of expenditure of Rs. 4,08,93,344 incurred in computing the total income brought to tax.
2. Assessment of total income at Rs. 3,56,62,789 without issue of notice u/s 143(2).
3. Serious violation of natural justice.
4. Levy of interest u/s 234B of the Act.
5. Your appellant craves for leave to add, alter modify, amend and delete any of abovementioned grounds."

2. Rival submissions of both the parties have been heard and record perused. The Learned Authorised Representative (ld. AR) of the assessee submits that assessee is a charitable trust registered with Charity Commissioner under Bombay Public Trust Act. The assessee is also having registration under section 12A/AB as well as approval of funds under 80G of Income Tax Act. The assesse is engaged in imparting education within the meaning of charitable purpose under section 2(15) of Income Tax Act. The income of assessee is only on account of receipt of school fees of about Rs. 3.56 crore, which is spent on running and maintenance of school. The main expenses of assessee are salary of teachers and other staff of school. The assessee spent almost similar amount of total receipt and a little surplus of Rs. 32,541/-, before exemption of 15% under section 11(1)(a). The assessee trust full fills all criteria for eligibility of exemption under section 11. The assessee filed its return of income within due date for A.Y. 2018-19 i.e. on 26.09.2018. The assessee also filed audit report under Bombay Public Trust Act and in Form 10B dated 25.09.2018. The facts regarding audit report in Form 10B was disclosed in part A of ITR-7 filed on 26.09.2018. The audit report was uploaded digitally on ITBA portal on 27.06.2019. The assessee also filed

application under Rule 17B to CIT(E) on 12.12.2019 for condonation of delay, if any, in uploading Form 10B. Report in Form 10B was also filed with the Assessing Officer/ Central Processing Centre (CPC) at the time of processing return of income of assessee. The CPC determined total income of Rs. 3.56 crore without issuing mandatory notice as required under section 143(1)(a) of proposed adjustment and seeking no objection of assessee. On downloading the order of CPC, the assessee realised that exemption/application under section 11 was denied to the assessee on the ground that audit report in Form 10B was not digitally uploaded on portal in time. Application filed under section 154 was also rejected. The ld. CIT(A) also upheld the action of Assessing Officer/CPC. The ld CIT(A) simply dismissed the appeal on the ground that assesse failed to furnish audit report / Form 10B in time.

3. The ld. AR of the assessee submits that audit report was obtained on 25.09.2018 and was filed along with return of income. The said report was uploaded digitally on 27.06.2019. The assessee also filed application to CIT(A) on 12.12.2019 for condoning the delay. The ld. AR submits that in a series of decision including the decision of Gujarat High Court Sarvodaya Charitable Trust Vs ITO (E) (2021) 125 taxmann.com 75 (Gujarat) held that has held that where the assessee-trust for past many years had substantially satisfied conditions for claiming exemption under section 11, same could not be denied for non-filing of Form No. 10 in time. Further, in CIT Vs Mayur Foundation (2005) 274 ITR 562 (Gujarat) held that Form No.10 for exercising option under section 11(2) of the Act can be submitted at the time of assessment proceedings and accepted the contention of the assessee that proceedings before the Income Tax Appellate Tribunal is a continuation of an

assessment proceedings and submission of Form No.10 before the Tribunal can be treated as sufficient compliance under the provision of section 11(2) of the Act. The ld AR of the assessee submit that uploading Form 10B before return of income is merely procedural defect which is rectifiable and in case such audit report was available with the assessing officer at the time of assessment the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible for such claim. But ld. CIT(A) simply dismissed the appeal of assessee by holding that application of assessee for condonation of delay in filing audit report is pending before CIT(E) and in absence of order of condoning delay he has no option to uphold the adjust made by CPC. The ld. AR of the assessee submits that assessee is having registration under section 12A/AB and approval under section 80G(5) and there is no impasses for allowing application of income / exemption under section 11 of the Act and non-filing / uploading Form-10B is the only ground for denial of exemption under section 11. He submit that Central Board of Direct Taxes (CBDT) in it various Circular in 03/ 2020 has directed to condone such delay upto 365 days, copy of which is filed on record. To support his submissions, the ld AR of the assessee also relied on the following case laws;

- Borivali Education Society Vs CIT(E) (2025) 9 NYPCTR 248 (Bom),
- SAU Dwarkabai Tai Karwa Charitable Trust Vs CIT (E) (2025)11 NYPCTR 411 (Bom),
- Savitri Foundation Vs ITO (2022) 36 NYPTTJ 1358 (Mumbai),
- Al Jamia Mohammeditah Education Society Vs CIT(E) & other (2024) 339 CTR 572 (Bom).

4. On the other hand, ld. Sr. DR for the Revenue supported the order of lower authorities. She submits that admittedly the assessee has not uploaded Form-

10B before filing return of income and in absence of condonation of delay by ld. CIT(A) in upload of such Form 10B, the lower authorities have no option except to deny application of income under section 11 of Income Tax Act.

5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that assessee has filed return of income on 26.09.2018. The assessee obtained report in Form 10B on 25.09.2018, however form 10B was uploaded on ITBA system only on 27.06.2019. The assessee filed application for condonation of delay before CIT(E) on 12.12.2019. At the time of hearing, it was disclosed by ld. AR of the assessee that application for condonation of delay in filing Form 10B still has not been decided by CIT(E). We find that CBDT in its Circular No. 3 of 2020 directed that where there is delay upto 365 days in filing Form No. 9A and Form 10 for A.Y. 2018-19 or for any subsequent assessment year, the Commissioner of Income Tax were authorised to admit such belated applications of condonation of delay. We find that co-ordinate benches of Tribunal and High Courts in a series of decision has held that uploading of Form 10B belatedly is a merely regulatory and in case the audit report was available at the time of filing return of income and was not filed due to bona fide reasons, the benefit of section 11 cannot be denied, if otherwise assessee is eligible for such claim. We find that Hon'ble Gujarat High Court in in CIT Vs Mayur Foundation (2005) 274 ITR 562 (Gujarat) held that Form No.10 for exercising option under section 11(2) of the Act can be submitted at the time of assessment proceedings and accepted the contention of the assessee that proceedings before the Income Tax Appellate Tribunal is a continuation of an assessment proceedings and submission

of Form No.10 before the Tribunal can be treated as sufficient compliance under the provision of section 11(2) of the Act. Further in Sarvodaya Charitable Trust Vs ITO (E) (2021) 125 taxmann.com 75 (Gujarat) held that where the assessee-trust for past many years had substantially satisfied conditions for claiming exemption under section 11, same could not be denied for non-filing of Form No. 10 in time. Therefore, considering the aforesaid factual and legal position, delay in filing Form 10B is allowed. The assessing officer is directed to allow exemption under section 11 of Income Tax Act. Considering the facts that we have directed the assessing officer to allow exemption/ application of income under section 11 of the Act, therefore, other grounds of appeal raised by the assessee have become academic.

6. In the result, the appeal of assesseeis allowed.

Order pronounced in the open Court on 11/06/2025.

Sd/- - Sd/-

RENU JAUHRI
ACCOUNTANT MEMBER

PAWAN SINGH
JUDICIAL MEMBER

MUMBAI, Dated: 11/06/2025

Biswajit
<u>Copy of the order forwarded to</u>:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai