

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA ‘e-COURT’, KOLKATA
[Hybrid Court Hearing]**

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 336/PAT/2025
Assessment Year: 2018-19**

Gram Nirman Mandal	Vs.	DC/AC Exemption, Circle, Patna
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AAAJG2045D		

Appearances:

Assessee represented by : N o n e

Department represented by : Shri Rajat Datta, CIT (DR)

Date of concluding the hearing : 18-September-2025

Date of pronouncing the order : 27-November-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Id. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 10.06.2025.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1) for that, As one of the oldest and pioneer organizations of Bihar, Gram Nirman Mandal (GNM) organised by LOKNAYAK JAI PRAKASH NARAYAN in the year 1954 and runs various programs like Krishi Vigyan Kendra for maximum agriculture yields, organizing various types of training and seminars, arrangement of improved seeds, soil testing, animal husbandry, production of vermin compost and using the garden resources, etc., together with the works related to the production and sale of Khadi cotton cloths, silk cloths, bed sheets, towels, blankets, sweaters, soaps, e.t.c.



2) For that, assessee has filed original return on 29/10/2018 along with income and expenditure Account & balance sheet but form 108 could not filed by C.A, because Chartered accountant's wife suffering from cancer and in the meantime due to severe health issue in his wife and slip of mind of C.A, form 10B could not filed timely.

3) For that the assessee had no knowledge about this fact and after knowing the fact assessee Filed a petition before C.I.T(Exemption) Patna & Chaiman, C.B.D.T through registered post. For condone the delay of form no 10B.

4) For that, as per record delay of 1260 days and due to this reason, petition was rejected by authority

5) For that, in this year assessee has filed form no 10B electronically on 13/04/2022

6) For that, due to unavailability of electronically filed 10B, during assessment process, Ld. A.O. has disallowed every claimed exemption of RS 3,16,98,714 under section 11, 12& 10(23B).

7) For that, as per assessment order u/s 143(3) assessed income is Rs 3,16,98,714/-and Gross tax liability is Rs 30,09,194/-

8) For that, delay of filling of 10B, was caused due to the negligence of the of the chartered Accountant, assessee should not be punished for mistake.

9) For that, Allahabad High Court held in the case of C.I.T vs Kesar Enterprises Ltd(2010) 325 ITR 713 (ALL) that Delay was caused due to the negligence of the chartered Accountant the Court condone the delay, holding that assessee should not be punished for the mistake of his consultant In case of C.I.T vs A.C.I.T (2011) THE Bombay High Court held that the taxpayers cannot penalized Solely because of procedural mistake provided the taxpayers acted in good faith.

The supreme court of India has also laid down principles of natural justice. In situation of negligence by a C.A, court have often been in considering the genuine circumstances of the Tax payers, such as medical issue, provided there is no mala fide intent.

10) For, that the impugned assessment order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

11) For that, the assessment order is based on speculative finding and does not reflect a Fair evaluation of the facts or the law.

12) For that, appellant assessee craves leave to add/alter any/all grounds of appeal Before or at the time of hearing of the appeal.

13) For that, other grounds if any would be urged at the time of hearing”

3. None appeared on behalf of the assessee at the time of hearing of the appeal, therefore, we have decided to dispose of the same after



hearing the ld. Departmental Representative and perusing the material available on record.

4. Brief facts of the case are that the assessee is an Artificial Juridical Person, which filed its return of income on 29.10.2018 for the AY 2018-19 declaring ₹NIL income. The case was selected for complete scrutiny assessment under the e-Assessment Scheme, 2019 on the issue of business income of Trust. Statutory notices were issued to the assessee. The assessee had claimed to be engaged in the business of Khadi and claimed exemption under section 10(23B) of the Income Tax Act, however, Form No. 10B was not filed by the assessee along with the return of income. It was submitted by the assessee vide its reply dated 28.01.2021 that “due to technical problem my auditor could not file Form 10B, which was necessary for assessment. Permission Application filed before CIT(Exemption), Patna on 23.09.2020. But permission awaited up till now”. Since the assessee had not filed the audit report in Form No. 10B, the ld. AO considered the provisions of section 11 and after perusing the Manufacturing and Income & Expenditure account, made an addition of ₹3,16,98,714/- to the total income of the assessee after disallowing various expenses from the business income and adding income from house property. The total income was assessed at ₹ 3,16,98,714/-.

5. Aggrieved with the assessment order, the assessee filed an appeal before the ld. CIT(Appeals), who considered the facts of the case and noted that despite issuing four notices for hearing, no reply was filed, therefore, the appeal was dismissed on account of non-prosecution.

6. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

7. The Ld. DR informed that there was a Circular of CBDT bearing No. 2 dated 03.01.2020 for AY 2018-19, as per which the delay in filing Form No. 10B could be condoned. The ld. D.R. though supported the order of ld. CIT(A), but had no serious objection if the matter is remanded to the ld. AO. The assessee has also mentioned the statement of facts, which are as under:-

- “1) That the assessee is very old and reputed voluntary Organization, which is registered under Society Registration Act 1860.*
- 2) That Lok Nayak jai Prakash Narayan (J.P) & Vinoba Bhave was founder of the Organization and in the year 1954 they established organization at interior village Shokhodeora in Nawada District(Bihar).*
- 3) That, assessee has filed original return on 29/10/2018 along with income and expenditure Account& balance sheet but form 10B could not filed by C.A., because Chartered accountant's wife suffering from cancer and in the meantime due to severe health issue in his wife and slip of mind of C.A, form 10B could not filed timely.*
- 4) That, assessee had no knowledge about this fact and after knowing the fact assessee Filed a petition before C.I.T(Exemption)Patna & Chairman, C.B.D.T through registered post for condone the delay of form no 10B.*
- 5) That as per record delay of 1260 days and due to this reason, petition was rejected by authority.*
- 6) That, in this year assessee has filed form no 10B electronically on 13/04/2022.*
- 7) That, due to unavailability of electronically filed 10B, during assessment process, Ld. A.O has disallowed every claimed exemption of Rs.3,16,98,714 under section 11,12& 10(238).*
- 8) That, as per assessment order u/s 143(3) assessed income is Rs.3,16,98714 /- and Gross tax liability is Rs 30,09,194/-*
- 9) That, delay of filling of 10B was caused due to the negligence of the of the chartered Accountant, assessee should not be punished for mistake.*
- 10) That, very early time, assessee had declared all facts before income tax authority.*
- 11) That, in the appellate order passed u/s 250 of I.T. Act, 1961, authority cannot decide the main issue of case filed by the assessee.”*

8. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The assessee has claimed to file 10B after the completion of the assessment proceeding. On account of delay in filing the appeal, the same was not considered in the appeal was dismissed on account of non-prosecution.



It is stated in Ground No. 3 that an application for condonation of delay in filing Form No. 10B has been filed before the Ld. CIT(Exemption) for condoning the delay and the order in that regard is apparently awaited.

9. It is noted that Form No.10B had not been uploaded within the due date, which is claimed to be unintentional on the part of the assessee and on account of personal problems of the tax consultant. The filing of Form No.10B has been held to be a procedural requirement and directive in nature and not mandatory. It has been held in the case of Commissioner of Income Tax Exemptions Kolkata vs M/s Indian Sugar Mills Association in ITAT/270/2023 IA No: GS/1/2023, GA/2/2023 order dated 10/01/2024 of the Hon'ble High Court of Calcutta that the filing of the auditor's report along with the return of income has to be treated as a procedural provision and therefore, directory in nature. The relevant extract from the order is as under:

“The short question falls for consideration in the instant case is whether the Principal Commissioner of Income Tax (Appeals), NFAC was justified in allowing the appeal filed by the assessee thereby condoning the delay in filing the Form 10B of the Act. The learned Tribunal after going through the facts of the case took note of the latter circular issued by the Board in Circular No. 16 of 2022 dated 19-07-2022 issued under Section 119(2)(b) by which the powers delegated to the Principal Chief Commissioner of Income Tax/ Commissioner of Income Tax to condone the delay in filing Form 10B beyond 365 days up to 3 years from the assessment year 2018-19 or for subsequent year. Applying the said circular the learned Tribunal affirmed the order passed by the CIT (Appeals) in grounds before us in this appeal.

The revenue has not dealt with the said circular nor anything has been brought on record to show that Circular No. 16 of 2022 dated 19-07-2022 cannot be applied to the case on hand. The Commissioner of Income Tax (Exemptions) while rejecting the application for condonation of delay by order dated 17-08-2020 has referred to the Circular No. 2 of 2020 dated 3.1.2020 which admittedly gives power to condone the delay in filing



Form 10B up to a period of 365 days. The CIT (Appeals), NFAC also took note of a decision of the High Court of Gujarat in Commissioner of Income Tax Vs Gujarat Oil and Allied Industries reported in 1993 ITR (201) 325 wherein it was held that the filing of the auditor's report along with return of income has to be treated as procedural provision and therefore, directory in nature. Thus we find that there is no error committed by the learned Tribunal in dismissing the appeal filed by the revenue.

Accordingly, the appeal is dismissed. Substantial questions of law are answered against the revenue."

10. We have perused the judgment of the Hon'ble Calcutta High Court, wherein it was held that filing in Form 10B is procedural requirement and not mandatory. Therefore, the order of the Id. CIT(Appeals) is hereby set aside as the same was not being made as per section 250(6) of the Act and the appeal was dismissed merely on account of non-prosecution. By considering the totality of the facts and circumstances of the case, we remit the matter to the file of Ld. AO who shall examine the requisite Form No. 10B duly filled in by the assessee as per law after the delay in filing Form No. 10B is considered and the application for condoning the delay is decided by the Ld. CIT(E). Thus, the grounds raised by the assessee are partly allowed for statistical purposes.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 27th November, 2025.

Sd/-

Sd/-

[Sonjoy Sarma]
Judicial Member

[Rakesh Mishra]
Accountant Member

Dated: 27.11.2025



Copy of the order forwarded to:

1. **Gram Nirman Mandal, Sarvodaya Ashram, Sokhodeora, Nawada-805106, Bihar**
2. **DC/AC, Exemption, Circle, Patna, CIT(Appeal), Income Tax Deptt., Patna-800001, Bihar**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata

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