आयकरअपीलीयअधिकरण 'बी' न्यायपीठ,चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'B' BENCH: CHENNAI** **श्री इंतूरी रामा राव लेखासदस्य एवं श्री मनु कुमार गिरि, न्यायिक सदस्य** **BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**		
आयकर अपील सं./**ITA No. 1421/Chny/2026** निर्धारण वर्ष/**Assessment Year: 2018-19**		
Nesamony Memorial Trust, No. 1, Nadutheri Colachel Road, Karungal, Tamil Nadu-629157	**v.**	The CIT (Exemptions), Chennai, May Flower Mid City Building, 1510, Trichy Road, Coimbatore-641018, T.N
[**PAN: AAATN 9306 N**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr. Y. Sridhar, F.C.A
प्रत्यर्थी की ओर से /Respondent by	:	Mr. S. Sundar Rajan, CIT
सुनवाई की तारीख/Date of Hearing	:	25.08.2026
घोषणा की तारीख /Date of Pronouncement	:	05.10.2026

आदेश **/ O R D E R**

PER MANU KUMAR GIRI, JM:

The captioned appeal filed by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Exemption), Chennai, [CIT(A)] dated 20.02.2025 for Assessment Year 2018-19.

2. In the instant appeals, the registry has noted the delay of 316 days in filing the captioned appeal. We have gone through the condonation petition along with affidavit filed, we find that

the reasons given by the assessee are sufficient cause for delay in filing the captioned appeal. Hence, we condone the delay and admit the appeals for adjudication.

2.1 Brief facts of the case are that the assessee, M/s. Nesamony Memorial Trust, a charitable trust registered u/s. 12AA, did not file its return of income for AY 2018-19 within the prescribed time u/s. 139. During the relevant year, the assessee had substantial financial transactions, including cash deposits of Rs.8.11 crore and Rs.10.54 crore in its TMB accounts, TCS on sale of a motor vehicle exceeding Rs.10 lakh, and interest income reflected through TDS credits from TNPFC, TMB and SBI.

2.2. Consequently, the assessment was reopened by issuing notice u/s. 148 dated 31.03.2022. In response, the assessee filed its return of income and audit report in Form 10B belatedly on 29.04.2022, as against the due date of 31.10.2018.The assessee declared total income of Rs.25,00,74,795, claimed accumulation of 15% u/s. 11(1) amounting to Rs.3,75,11,219 and claimed application of Rs.21,25,63,576 towards charitable/religious purposes, thereby returning its taxable income at Nil. The Assessing Officer completed the reassessment u/s. 147 read with sections 144 and 144B on 20.03.2023, accepting the returned income and allowing the exemption u/s. 11.

2.3. Subsequently, it was noticed that the return of income and Form 10B had been filed beyond the prescribed time. The assessee's subsequent petition u/s. 119(2)(b) seeking condonation of delay was also rejected by the CBDT on 10.01.2024.

3. The CIT held that the assessee had filed its return of income and Form 10B belatedly on 29.04.2022, whereas the due date was 31.10.2018. The assessee's application u/s. 119(2)(b) for condonation of the delay was subsequently rejected by the CBDT on 10.01.2024.According to the CIT, in view of the failure to comply with the prescribed requirements for claiming exemption u/s. 11, the assessee was not eligible to claim exemption u/s. 11 for AY 2018-19. The Assessing Officer, while completing the reassessment, had accepted the returned income and allowed the exemption without properly examining the issue relating to the belated filing of the return and Form 10B.The CIT, relying upon the principles laid down by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v. CIT, 243 ITR 83 (SC), concluded that the assessment order dated 20.03.2023 was erroneous insofar as it was prejudicial to the interests of the Revenue.Accordingly, exercising powers u/s. 263, the CIT set aside the assessment order dated 20.03.2023 passed u/s. 147 read with sections 144 and 144B and directed the Assessing Officer to undertake the assessment afresh after properly examining the assessee's eligibility for exemption u/s. 11.

4. Issue before us is whether the Assessing Officer was justified in allowing exemption u/s. 11 to the assessee trust despite the belated filing of the return of income and Form 10B, when the delay was subsequently not condoned by the CBDT, and whether the assessment order dated 20.03.2023 was therefore erroneous and prejudicial to the interests of the Revenue so as to warrant revision u/s. 263.

5. Before us, the assessee's submissions, in brief, can be culled out as follows:

i. Status and objects of the assessee: The assessee is a charitable trust registered u/s. 12AA and subsequently u/s. 12AB of the Income Tax Act, established for imparting education and has consistently pursued its charitable objects.

ii. Reason for delay in filing return and Form 10B: During November 2017, Cyclone Ockhi caused extensive damage in Nagercoil and surrounding areas, resulting in loss of the server containing the assessee's accounting data for the period 01.04.2017 to 29.11.2017, with the backup also getting corrupted. Further, the Chief Accountant left service in June 2018 due to ill health. Reconstruction of the books of account with the assistance of the staff took considerable time. Consequently, the accounts could not be audited within the prescribed time and the return could not be filed within the statutory period.

iii. Filing pursuant to reopening: Since the return for AY 2018-19 could not subsequently be filed after 31.03.2019, the assessee, on receipt of notice u/s. 148, filed the audit report in Form 10B along with ITR-7 on 29.04.2022.

iv. Scope of reopening: The reopening proceedings were initiated on the basis of specific information relating to cash deposits, TDS on interest and TCS on purchase/sale of motor vehicle. According to the assessee, the reasons recorded for reopening were confined to these

transactions and did not raise any issue regarding the procedural compliance for claiming exemption u/s. 11.

v. Full compliance during reassessment: During the reassessment proceedings, the AO issued notices u/s.143(2) and 142(1), pursuant to which the assessee furnished complete details and supporting documents explaining the transactions forming the basis of reopening. The AO, after examining the submissions and accounts, accepted the returned income without making any addition or adverse inference.

vi. Validity of the original assessment order: The assessee contended that the AO had consciously examined the relevant issues and accepted the claim of exemption u/s. 11. Therefore, the assessment order could not be regarded as erroneous merely because the CIT(E) subsequently took a different view.

vii. Form 10B is procedural/directory: The assessee argued that filing Form 10B is a procedural requirement and not a mandatory condition for denial of exemption u/s. 11, particularly when the audit report was furnished before completion of the reassessment proceedings. Reliance was placed on CIT(E) v. Anjana Foundation [2025] 178 taxmann.com 658 (SC) and Chandraprabhuji Maharaj Jain v. DCIT (Exemptions) [2019] 110 taxmann.com 11 (Madras).

viii. AO adopted a possible and legally sustainable view: The assessee submitted that the AO's decision to allow exemption u/s. 11 was a plausible view supported by judicial precedents. Where two views are possible and the AO adopts one permissible view, the order cannot be revised u/s. 263 merely because the CIT prefers another view.

ix. No lack of enquiry: The assessee contended that there was neither lack of enquiry nor inadequate enquiry. The AO had specifically examined the transactions that formed the basis for reopening and had called for and considered the relevant books and supporting documents. The CIT(E), according to the assessee, failed to identify any specific error in the AO's examination of those issues.

x. Reliance on Malabar Industrial Co. Ltd.: Referring to Malabar Industrial Co. Ltd. v. CIT, 243 ITR 83 (SC), the assessee submitted that every loss of revenue does not automatically make an assessment order erroneous and prejudicial to the Revenue. If the AO adopts one of the courses permissible in law, or where two views are possible and the AO adopts one such view, section 263 cannot be invoked unless the view taken is unsustainable in law.

xi. Effect of subsequent CBDT rejection: The assessee disputed the implication of the subsequent rejection of its condonation petition u/s. 119(2)(b), contending that the AO had allowed exemption after considering the Form 10B furnished before completion of assessment and that the subsequent rejection could not retrospectively render the original assessment order erroneous.

xii. Genuine hardship and unblemished record: The delay was attributed to genuine circumstances arising from Cyclone Ockhi, loss of accounting data and the departure of the Chief Accountant. The assessee emphasized that it had an otherwise unblemished record of compliance and that no discrepancy or irregularity was found even during detailed scrutiny.

xiii. Subsequent denial of exemption: Pursuant to the section 263 order, the AO passed the giving-effect order dated 15.01.2026 and determined taxable income at Rs.6,58,87,700 by denying exemption u/s. 11. The assessee contended that this demand resulted solely from a technical lapse and was unjustified.

The assessee therefore prayed that the Tribunal may annul the order passed u/s. 263 by the CIT(E) and restore/uphold the original assessment order allowing exemption u/s. 11.

6. Per contra, ld.DR for the revenue relied upon the impugned order prayed for the dismissal of the appeal.

7. We have heard the rival submissions and carefully perused the material available on record. We have also considered the assessment order passed under section 147 read with sections 144 and 144B, the impugned order passed under section 263, and the various judicial precedents relied upon by the assessee. The short controversy before us is whether the Assessing Officer's action in allowing exemption under section 11, in the reassessment completed on 20.03.2023, rendered the assessment order "erroneous insofar as it is prejudicial to the interests of the Revenue" within the meaning of section 263 merely because Form 10B had been filed belatedly and the assessee's subsequent application under section 119(2)(b) was rejected by the CBDT.It is settled law that exercise of jurisdiction under section 263 requires the Commissioner to satisfy both the conditions, namely, that the assessment order is erroneous and that it is prejudicial to the interests of the Revenue.

8. The Hon'ble Supreme Court in Malabar Industrial Co. Ltd. v. CIT, 243 ITR 83 (SC) held that an incorrect assumption of facts or an incorrect application of law may render an order erroneous, but where the Assessing Officer adopts one of the courses permissible in law, or where two views are possible and the Assessing Officer has taken one such view, the order cannot be treated as erroneous merely because the Commissioner does not agree with it, unless the view taken by the Assessing Officer is unsustainable in law.

9. The same principle was reiterated by the Hon'ble Supreme Court in CIT v. Max India Ltd., 295 ITR 282 (SC), wherein it was held that where two views are possible and the Assessing Officer has adopted one permissible view, the Commissioner cannot invoke section 263 merely because he prefers another view.

Therefore, the first question to be examined is whether the view adopted by the Assessing Officer in the present case was an impermissible or unsustainable view in law.

10. From the material placed before us, it is evident that the reassessment was initiated on the basis of information relating to cash deposits, TDS/TCS and interest income. After the return was filed pursuant to notice under section 148, the case was subjected to further proceedings. Notices under sections 143(2) and 142(1) were issued and the assessee furnished explanations and supporting material concerning the transactions which constituted the basis of reopening. The Assessing Officer thereafter completed the reassessment under section 147 read with section 144B on 20.03.2023, accepting the returned income. More importantly, Form 10B had already been furnished on 29.04.2022, nearly eleven months before the assessment was completed. Thus, this is not a case where the audit report was wholly absent from the record when the assessment was finalized. The mere fact that the assessment order does not contain an elaborate discussion on every aspect

examined by the Assessing Officer cannot, by itself, establish non-application of mind.

11. The principle laid down by the Bombay High Court in CIT v. Gabriel India Ltd., 203 ITR 108 (Bom.) is apposite. The Court held that where the Assessing Officer had made enquiries, obtained an explanation and thereafter accepted the claim, the assessment could not be regarded as erroneous merely because the order did not contain an elaborate discussion of the issue.

12. Likewise, the Delhi High Court in CIT v. Sunbeam Auto Ltd., 332 ITR 167 (Delhi) has drawn a distinction between 'lack of enquiry' and 'inadequate enquiry', holding that where enquiry has actually been made, the Commissioner cannot exercise revisionary jurisdiction merely because he considers the enquiry to be inadequate.

13. In the present case, therefore, the allegation that the assessment order was passed without proper verification cannot be accepted in its broad form.

14. The next and more important question is whether the Assessing Officer's acceptance of the exemption under section 11 despite the delayed filing of Form 10B was an entirely unsustainable view. In our considered opinion, it was not. The issue regarding the consequence of delayed filing of Form 10B has been the subject matter of considerable judicial consideration. The Hon'ble Jurisdictional High Court in Chandraprabhuji Maharaj Jain v. DCIT (Exemptions), [2019]

110 taxmann.com 11 (Madras) considered the effect of procedural compliance in the context of charitable exemption and emphasized that a substantive statutory benefit should not be foreclosed merely on technicalities. The Hon'ble Jurisdictional High Court at para 8 of its judgment held as under:

> 8. As noted by us earlier, the assessee filed the return of income for the assessment year under consideration on 02.04.2009, which was processed and intimation under Section 143(1) of the Act was issued on 21.01.2011. Thus, there was no assessment under Section 143(3) of the Act. The assessee, while filing the petition under Section 154 of the Act, on 22.03.2011, pointed out that the assessee filed the Form No.10 along with the Board Resolution along with the covering letter dated 01.04.2019. However, the mistake done by the assessee was to file hard copies before the Assessing Officer, and not filing the same along with the return of income, which they filed on 02.04.2019. Thus, on the date when the return was taken up for assessment, there was record to show that the assessee had intimated the department about the resolution passed by the Board of the assessee Trust and the statutory Form No.10. Admittedly, the assessment was not completed under Section 143(3) of the Act and therefore, there would have been no error had the assessing officer taken up the copy of the Board Resolution and Form No.10. Thus, on the date when the return was filed, the assessee had separately filed Form No.10 along with the Board Resolution along with a covering letter dated 01.04.2009. Thus, in our considered opinion, when the assessee was entitled to a statutory benefit, it would be incumbent upon the concerned authority to examine the admissibility of the benefit than to foreclose the assessee on technicalities.

The Court also referred to the CBDT's circulars at para 11 of its judgment concerning condonation of delay in filing Form 10B.

More recently, the Bombay High Court in Al Jamia Mohammediyah Education Society v. CIT(E) (2024) 298 Taxman 650 /339 CTR 572 (Bom.)(HC) condoned a delay of

approximately 1,257 days in filing Form 10B, holding that the delay was attributable to human error and was not intentional or deliberate. The Court specifically observed that a charitable trust should not be deprived of exemption merely because of such a procedural lapse in the absence of mala fide intention. The said judgment was carried to the Hon'ble Supreme Court by the Revenue and the SLP was dismissed. The case is reported as CIT(E) v. Al Jamia Mohammediyah Education Society, [2025] 176 taxmann.com 761 (SC)/481 ITR 215 (SC). Thus, the legal position concerning delayed Form 10B cannot be said to have been so clear and unequivocal that any view other than the one adopted by the CIT(E) was legally impermissible.

15. We have carefully considered the Revenue's reliance upon the CBDT order dated 10.01.2024 rejecting the assessee's application under section 119(2)(b).There is no dispute that the assessee had sought condonation of delay and that such application was rejected. However, the mere subsequent rejection of the condonation application cannot, by itself, establish that the assessment order passed by the AO on 20.03.2023 was erroneous within the meaning of section 263.The assessment order has to be examined in the factual and legal circumstances in which it was passed. At that point of time the assessee had furnished Form 10B on 29.04.2022, the Form 10B was available before the Assessing Officer, the reassessment proceedings continued thereafter, the Assessing

Officer issued notices and called for details, the assessee furnished the requisite explanations and documents and the Assessing Officer accepted the returned income.

16. Further, the question whether delay in furnishing Form 10B should result in complete denial of exemption was itself a matter on which judicial authorities had adopted a liberal and substantive approach. Consequently, we are unable to hold that the Assessing Officer's view was unsustainable in law. The subsequent decision of the Hon'ble Supreme Court in Al Jamia Mohammediyah Education Society assumes considerable relevance. The Supreme Court declined to interfere with the Bombay High Court's decision condoning a substantial delay in filing Form 10B in the case of a charitable institution where the lapse was bona fide and there was no allegation of mala fide conduct. Further, subsequent High Court decisions have continued to apply this principle. For instance, the Bombay High Court in International Resources for Fairer Environment v. Union of India held that a justice-oriented rather than pedantic approach was warranted in relation to delayed Form 10B and noted the Supreme Court's dismissal of the Revenue's SLP in *Al Jamia Mohammediyah Education Society*. In *Association of Indian Panel Board Manufacturers v. DCIT [2023] 157 taxmann.com 550 (Gujarat)/ (2025) 482 ITR 54 (Guj)(HC)*, the Gujarat High Court held that filing Form 10B is a procedural requirement and that delayed filing should not, by itself, result in denial of exemption under sections 11 and 12.

The aforesaid citations are relevant in demonstrating that the interpretation adopted by the Assessing Officer was not an inherently impossible or unsustainable interpretation of law.

17. The assessee has furnished a specific explanation for the delay. It has stated that Cyclone Ockhi in November 2017 caused damage to the server containing accounting data, that the backup was also corrupted, and that the Chief Accountant subsequently left service owing to ill health. Reconstruction of the accounts thereafter took considerable time. The Revenue has not brought any material before us to establish that the explanation was false or motivated by any mala fide intention. There is also no finding in the impugned order that the books of account were fabricated, the charitable activities were non-genuine, the income was suppressed, the expenditure was bogus, the funds were diverted for non-charitable purposes or the assessee was otherwise disentitled to exemption under section 11.The entire controversy, therefore, turns upon the procedural consequence of delayed filing of the return/Form 10B.In our considered view, the impugned order essentially substitutes the opinion of the CIT(E) for the view already taken by the Assessing Officer. The CIT(E) has not demonstrated any specific error in the factual appreciation made by the AO. Nor has the CIT(E) established that the view adopted by the AO was contrary to a binding decision or otherwise legally unsustainable. The principle in Malabar Industrial Co. Ltd. (supra) squarely applies. Where two views are possible and the

AO has adopted one permissible view, the same cannot be branded as erroneous merely because the Commissioner prefers the other view. The principle in Max India Ltd. is equally relevant. The existence of two legally possible views prevents the Commissioner from exercising revisionary jurisdiction merely on account of a difference of opinion.

18. The CIT(E) has observed that the AO allowed exemption without proper verification. However, the record demonstrates that the AO had conducted scrutiny proceedings, issued notices under sections 143(2) and 142(1), examined the transactions forming the basis of reopening and considered the material furnished by the assessee. Thus, the case cannot be placed in the category of complete lack of enquiry. The distinction between "lack of enquiry" and "inadequate enquiry" is material. Once the AO has made an enquiry and taken a view on the material before him, the Commissioner cannot invoke section 263 simply because he considers that a more detailed enquiry ought to have been made. This principle has been recognized in *Gabriel India Ltd.* and *Sunbeam Auto Ltd.*

19. On an overall consideration, we find that the Revenue has not established that the assessment order dated 20.03.2023 was erroneous in law. It may be that, consequent upon the subsequent rejection of the application under section 119(2)(b), the Revenue considers that exemption ought not to have been allowed. But prejudice to the Revenue cannot be considered in isolation. Section 263 requires the order to be

both erroneous and prejudicial. As held by the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd.*, where the view adopted by the AO is a legally permissible view, the mere fact that such view results in lesser tax cannot justify revision under section 263.

20. In the present case, the view of the AO was supported by the fact that Form 10B had been furnished before completion of assessment and was also consistent with the line of judicial authority treating the requirement as procedural in appropriate circumstances.

21. In view of the foregoing discussion, we hold that the learned CIT(E) was not justified in invoking the jurisdiction under section 263 of the Act. The assessment order dated 20.03.2023 cannot be held to be erroneous merely because the assessee had furnished Form 10B belatedly or because the subsequent application under section 119(2)(b) was rejected by the CBDT. The Assessing Officer had conducted enquiry during the reassessment proceedings and had adopted a view which was legally plausible and supported by judicial precedents. The subsequent rejection of the condonation petition does not retrospectively establish that the view taken by the Assessing Officer on 20.03.2023 was unsustainable in law. Accordingly, the twin conditions prescribed under section 263 are not satisfied. The impugned order dated 20.02.2025 passed by the learned CIT(E) under section 263 is therefore quashed and the original assessment order dated 20.03.2023

passed under section 147 read with sections 144 and 144B is restored.

22. In result, appeal of the assessee is accordingly allowed.

Order pronounced in the open court on the 05th day of October, 2026 in Chennai.

Sd/-	**Sd/-**
(इंतूरी रामा राव)	**(मनु कुमार गिरि)**
(INTURI RAMA RAO)	**(MANU KUMAR GIRI)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05th October 2026.

SNDP, Sr. PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF