IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA (DB) BENCH, AGRA

BEFORE : SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No. 415/Agr/2026
Assessment Year: 2017-18

Shiva Shiksha Samiti, Sector-7, Deendayal Puram, UP Avas Vikas Colony, Sikandra, Agra-282007.	**Vs.**	Income-tax Officer, Ward- Exemption, Aayakar Bhawan, Sanjay Place, Agra-282002
PAN : AAABS0763L		
(Appellant)		**(Respondent)**

Assessee by	Sh. Deependra Mohan, CA
Department by	Sh. Anil Kumar, Sr. DR

Date of hearing	04.08.2026
Date of pronouncement	15.10.2026

ORDER

PER : BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER:

This appeal is directed against the impugned order dated 29.01.2025 passed in appeal No. CIT(Appeal) 2, Agra/10456/2019-20 by the ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "CIT(A)] u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the A.Y. 2017-18, wherein ld. CIT(A) has dismissed assessee's appeal.

2. At the outset, we notice that there is a delay of 405 days in filing the present appeal before us. In this regard, the assessee has filed a condonation application. The relevant extract of the same is reproduced as under:

> "We are filing an appeal against the CIT (A) order passed under section 250 of the Income-tax Act, 1961 dated 29.01.2025. It is submitted that the appellant's erstwhile Chartered Accountant, CA Rajkumar Agarwal had received all the notices issued during the assessment proceedings. However, no such communications or relevant information was conveyed to the appellant. As a result, the appellant was unaware about this order and the matter was not communicated to the present counsel in a timely manner. The said appeal was to be filed on or before 01.04.2025. However, the appellant is filing the appeal on 04.05.2026 i.e., after a delay of 398 days from 01.04.2025.
>
> The appellant has come to know about the aforesaid proceeding as and when refund adjustment intimation u/s 245 of the Act dated 19.03.2026 issued by CPC, Bengaluru has received by the appellant the intimation shown the details of refund for the A.Y 2024-25 which was adjusted against the demand of the year under consideration. Accordingly, the appellant has perusal of the aforesaid records and get the details of the impugned order passed by the Ld. CIT (A) and accordingly the appellant filing the appeal before your honour's office.
>
> The appellant follows the time limit prescribed under law and has not deliberately delayed the filing of the appeal instead it was just a mistake beyond the control of the appellant due to which the appeal could not be filed on time. Thus, in the lights of the above facts and circumstances, we humbly request your honour to condone the delay, and acknowledge the appeal being filed by the appellant."

2.1 On the other hand, the Sr. DR opposed the above condonation application.

2.2 Having heard both the parties and after considering the explanation of the assessee, we are satisfied that the assessee was prevented by

sufficient cause for the delay in filling the appeal. Accordingly, we condone the delay and take up the appeal for adjudication on merits.

3. Brief facts of the case: The assessee is engaged in educational activities and running educational institutes, which are registered u/s. 12A of the Act. On perusal of the submissions filed by the assessee, the AO noted that the assessee had not filed audit report in Form 10B within the prescribed time. In this regard, a detailed show cause notice dated 02.09.2019 was issued to the assessee and a final show cause notice was issued on 15.10.2019. The AO noted that in response, the assessee filed reply, which was considered but not found satisfactory, as the assessee failed to file Form 10-B within the due date, which was a pre-condition to allow exemption u/s. 11 and 12 of the Act. Accordingly, the AO disallowed the claim of exemption u/s. 11 and 12 and the surplus of Rs.1,21,11,638/- was taxed in the hands of the assessee.

3.1 Aggrieved with the said order, the assessee filed an appeal before the learned CIT(A). Before the learned CIT(A), the assessee submitted that the CBDT vide circular No. 10 of 2019 dated 22.05.2019 had allowed for the condonation of the delay in filing Form 10-B for A.Y. 2017-18 (the appellate year involved in this appeal), provided the audit report was obtained before the return filing and submitted subsequently. The learned CIT(A) noted that the said audit report was not even

submitted during the course of assessment proceedings and therefore, the benefit of the aforesaid circular cannot be given to the assessee. In this regard, the relevant extract of the order of learned CIT(A) is reproduced as under :

> "4. Appellate Findings:
>
> 4.1 Appeal Notices were Issued to the assessee on 10.02.2021, 06.12.2024, 20.01.2025 fixing the case for 23,02/2021, 23:12:2024, 27.01.2025 respectively. The assessee has filed same documents on 25.02.2021
>
> 4.2 I have gone through the assessment order and record available. Brief facts of the case are that he assessee an educational society registered under section 12A, filed its return for AY 2017-18 on 29.03.2018, declaring a NIL income, which was processed under section 143(1) of the Income Tax Act. The case was selected for scrutiny, and notices under sections 143(2) and 142(1) were issued, to which the assessee responded with submissions through the ITBA System, providing financial documents such as the income and expenditure account, balance balance sheet, and books of account. E
>
> However, it was found that the assessee failed to submit the mandatory audit report in Form 10B within the prescribed time. A show-cause notice was issued on 02.09.2019, stating that the failure to file the report could result in disallowance of the exemption under sections 11 and 12 of the Income Tax Act. The CBDT issued Circular No. 10 of 2019, which allowed for the condonation of the delay in filing Form 10B, provided the audit report was obtained before the return filing and submitted subsequently. Despite this, the assessee did not comply with the deadline or provide a satisfactory reply, leading to the disallowance of the exemption. As a result, the surplus of Rs. 1,21,11,638 was treated as taxable income, and the exemption under sections 11 and 12 was denied. The total taxable income was computed at Rs. 1,21,11,638, and a corresponding addition was made to the returned income. Therefore, the assessment concluded with the total taxable income being Rs. 1,21,11,638.
>
> 4.3 I have gone through the assessment order and record available. In the instant case, in my view, the Assessing Officer (AO) correctly disallowed the exemption under Sections 11 and 12 of the Income Tax Act, 1961, as the assessee, an educational society registered under Section 12A, failed to comply with the mandatory requirement of submitting Form 10B in full before the completion of

assessment. There is Mandatory Requirement of Form 10B. Section 12A(1)(b) states that to claim exemption under Sections 11 and 12, a trust/society must obtain an audit report in Form 10B and file it before the due date of return filing under Section 139(1). The assessee failed to file a complete Form 10B within the prescribed timeline. Through, CBDT Circular No. 10/2019 Condonation of Delay. The CBDT allowed condonation if the audit report was obtained before the return filing and submitted later. However, in this case, the assessee did not submit a complete Form 10B even after being given an opportunity via Show Cause Notice (SCN) on 02.09.2019 by AO. The assessee uploaded only the first two pages of Form 10B on 29.03.2018 and again on 10.09.2019 as available in the ITBA system. This amounts to non-submission of the audit report, as partial submission does not meet the statutory requirement. failure to submit Form 108 before assessment completion to result in denial of exemption Since the assessee failed to submit a complete Form 10B before the assessment was finalized, the AO is justified in denying the exemption and treating the surplus of 1,21/11,638 as taxable income. The action of the AO is confirmed.

5. As a result, the appeal of the assessee le dismissed."

4. Aggrieved with the said order, the assessee is in appeal before us on the following grounds of appeal :

"1. That Ld. CIT (A) has erred in law and facts to upheld the Impugned order passed by the Assessing officer, merely denying the exemption u/s 11 and 12 on account of non-filing of audit report in Form-10B whereas the appellant has duly filed the audit report.

2. That the Ld. CIT (A) and AO has erred in law and on facts to make impugned addition to Rs. 1,21,11,640/- on account of non-giving the exemption u/s 11 and 12 whereas the complete audit report in prescribed form have been obtained before the filing of return of income and furnished within the time limit given u/s 139 of the Act.

3. That the Ld. Authority below has erred in law and on facts not to take the proper cognizance of the circular issued by the board bearing circular no. 10/2019, wherein the condonation of delay in filing of Form-10B for A.Y 2017-18 therein.

4. That the Ld. Authority below has erred in law and on facts to make impugned addition merely on the ground that delayed furnishing audit report whereas the appellant has duly furnished the audit report within the prescribed time as per circular no. 10/2019 in which the appellant is entitled to take the benefit of condonation.

5. That the Ld. Authority below has erred in law and on facts to make impugned addition whereas the appellant is an educational society duly registered with 12A in previous years along with subsequent years. Hence, eligible to claim the benefit u/s 11 and 12 of the Act.

6. That the Ld. Authority below has erred in law and on facts to make impugned addition without taking the cognizance of proviso given to sub-section 2 of section 12A. The Ld. Authority has failed to consider the objectives of the educational society which was constantly similar in the subsequent years wherein the society has claimed the exemption u/s 11 and 12 of the Act.

7. That the Ld. Authority below has erred in law and on facts to denial the exemption merely on the ground of the audit report furnishing. However, the books of accounts was duly audited and report has been obtained and genuine activities have been carried out from the pass several years to till date.

8. That the Ld. Authority below has erred in law on facts without taking the proper cognizance of the submission filed by the appellant. The appellant has submitted complete report as prescribed wherein no adverse finding was recorded."

5. At the time of hearing before us, the learned AR filed a written submission, which is reproduced as under :

"BRIEF SYNOPSIS

Hon'ble Members,

The appellant is an educational society runs educational institution in the name and style of Shivalik Cambridge College, Sector-7, Awas Vikas Colony, Sikandra, Agra and Shivalik Public School, Bichpuri Road, Sikandra, Agra. The schools are affiliated from Central Board of Secondary Education, New Delhi. The education society as duly registered u/s 12A of the Income-tax Act, 1961 from the very beginning l.e. AY 2016-17 to till date and continuously avail the benefit of section 11 and 12 of the Income-tax, Act.

The present appeal lies on account of impugned assessment order passed by the learned AO dated 02.12.2019 u/s 143(3) of the Income-tax Act, wherein the learned AO has denial the benefit of exemption u/s 11 and 12 merely on the ground that the appellant educational society has failed to file audit report in Form 10B within the due date. Aggrieved to that the appellant has filed an appeal before the learned

CIT(Appeals) wherein, the appellant has duly contended that the delay has been condoned by Hon'ble CBDT Board vide issuing Circular No. 10/2019 dated 22.05.2019, however, the learned CIT(Appeals) without taking the proper cognizance of the same, dismissed the appellant contention whereas the appellant has duly filed audit report within the prescribed time as per the Circular No. 10/2019, hence, eligible to claim the exemption 11 and 12 of the Income-tax Act.
[11:28, 12/10/2026] Ashok Kumar Sharma: We are herewith given the relevant verdict of condonation Circular in point no. 4(i) as under:

4. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning the delay in filing Vorm no. 1018 and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:

The delay in filing of Form no. 108 for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.

To substantiate the claim of the appellant in light of the aforesaid circular we are given herewith the relevant details are as under:

ITR filed by the education society	Dated 29.03.2018
Copy of audit report obtained in Form 10B by the educational society	Dated 31.08.2017
Copy of Audit Report furnished	Dated 29.03.2018

Hence, the educational society has filed audit report within the time frame given the Circular No. 10/2019, therefore, the society is entitled to condone the delay in filing Form 10B."

5.1 To substantiate the above submission, the assessee also filed a paper book (page 1 to 7) and the index of the same is reproduced as under :

Sr. No.	Particulars	Page No.
1	Copy of circular having circular no. 10/2019 issued by CBDT on 22nd May, 2019	1
2	Copy Income Tax Return for the AY 2017-18.	2
3	Copy of Acknowledgement of Receipt of Form 10B furnished on 29.03.2018	3
4	Copy of Audit Report u/s 12A(b) of the IT Act, 1961 dated 31.08.2017	4-5
5	Copy of Order u/s 12AA(1)(b)(i) of the Income Tax Act, 1961 dated 20.09.2016	6-7

6. On the other hand, learned Sr. DR supported the orders of the authorities below.

7. We have heard both the parties and perused the material on record. In this regard, the assessee submits that it had obtained copy of the audit report on 31.08.2017, which falls before filing of the return of income by the assessee, as the assessee filed its return of income on 29.03.2018. The assessee also submits that it filed Form 10B on 29.03.2018. However, the learned CIT(A) states that the complete audit report was not submitted by the assessee during the course of assessment proceedings. The learned CIT(A) also observed that the assessee did not submit complete Form 10B and it uploaded only the first two pages of Form 10B on 29.03.2018 and again on 10.09.2019 as available on ITBA portal. In this case, the issue is as to whether the assessee had obtained the Form 10B on 31.08.2017 and had filed the same before the AO on 29.03.2018 as claimed by it so as to get the

benefit of Circular No. 10 of 2019 dated 22.05.2019. This is a matter of factual verification. In this regard, the learned CIT(A) has made certain observations doubting the same, but neither examined nor gave a categorical finding that the claim of assessee that it had obtained Form 10B on 31.08.2017 was not correct. Regarding, the observation of the Ld. CIT(A) that the assessee failed to submit the complete Form 10B before the assessment was finalized, the Ld. AR has filed a copy of Acknowledgement of Receipt of Form 10B furnished on 29.03.2018 placed at page no. 3 of the paper book, which also requires verification. In view of these facts, we set aside the order of learned CIT(A) and remand the matter to the file of the AO for fresh assessment for examining the correctness of the claim of the assessee that the requisite Form 10B was obtained on 31.08.2017 and filed on 29.03.2018 in terms of the above circular. If the said claim of the assessee is found to be correct, the AO is directed to take due cognizance of the Board's Circular No.10 of 2019 dated 22.05.2019 and pass the necessary order accordingly after giving reasonable opportunity of being heard to the assessee and in accordance with law.

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

Order pronounced in the open court on 15/10/2026.

Sd/-	***Sd/-***
(SUNIL KUMAR SINGH)	**(BRAJESH KUMAR SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 15/10/2026
*aks/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra