

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri George George K., JM & Shri Laxmi Prasad Sahu, AM**

ITA No.9/Bang/2023 : Asst.Year 2018-19

M/s. H M V Educational Cultural & Social Trust No.2090, 4 <sup>th</sup> Cross, Judicial Layout, GKVK Post Bangalore-560 065  <b>PAN : AAATH 7337 K</b>	v.	ITO[E], Ward-1 Bangalore
(Appellant)		(Respondent)

Appellant by : Sri V.Srinivasan, Advocate and Ms. Sunaina Bhatia, CA

Respondent by : Sri. Sunil Kumar Singh, CIT-DR

<b>Date of Hearing :16.03.2023</b>	<b>Date of Pronouncement : 23.03.2023</b>
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**ORDER**

**Per Laxmi Prasad Sahu, AM :**

This is an appeal filed by the assessee against the order passed by the National Faceless Appeal Centre(NFAC), Delhi dated 10.11.2022 vide DIN No. ITBA/NFAC/S/250/2022-23/1047217017(1) for the assessment year 2018-19 with the following grounds of appeal:-

- 1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and -stances of the case.*
- 2. The learned CIT[A] is not justified in upholding the determination of income of the appellant at Rs. 10,22,94,076/- as opposed to the excess of expenditure over income of Rs. 6,62,324/- as per the financials for the year under appeal and the ITR filed claiming application of Rs 10,29,56,400/- under the facts and in the circumstances of the appellant's case.*
- 3. The learned CIT [A] is not justified in upholding the disallowance of the exemption claimed u/s.11 of the Act, on the ground that the return was*

*not filed in accordance with the Provisions contained in Sec. 12A[1][ba] of the Act i.e. within the due date u/s 139[4A] of the Act under the facts and in the circumstances of the appellant's case.*

*3.1 The disallowance of the exemption claimed u/s.11 of the Act, on the ground that the return was not filed in accordance with the Provisions contained in Sec. 12A[1][ba] of the Act i.e. within the due date u/s 139[4A] of the Act is unwarranted in as much as the appellant has since filed a petition for condonation of delay u/s 119[2][b] for the delay in filing the return of income under the facts and in the circumstances of the appellant's case*

*4. The CPC is not justified in disallowing the exemption claimed u/s 11 of the Act holding that Form No. 10B was not filed on or before the due date of filing the return of income and the same is unwarranted in as much as the appellant has since filed a petition for condonation of delay u/s 119[2][b] for the delay in filing the Form No. 10B under the facts and in the circumstances of the appellant's case.*

*5 Without prejudice to the above, the learned CIT[A] is not justified in upholding the taxation of gross receipts of Rs. 10,22,94,076/-, without allowing the application/ expenses of Rs. 10,29,56,400/- even de-hors the provisions of section 11(1)(a) of the Act as only income can be taxed and not the gross receipts under the facts and in the circumstances of the appellant's case.*

*6. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*

*7. For the above and ether grounds that may be urged at the time of hearing of the appeal, your-appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

2. The brief facts of the case are that the assessee is a Trust registered u/s. 12A of the I.T. Act, 1961 vide registration No. DIT(E)BLR/12A/H-446/AAATH7337K/ITO(E)-1/Vol2008-09 dated 29.08.2008. The assessee filed return of income on 19.03.2019 claiming exemption u/s. 12AA of the Act. The assessee Trust is running educational institution since 2008. The return was processed u/s. 143(1) of the Act by the CPC on 17.10.2019 by adopting the gross total income of Rs. 10,22,94,076/- without

giving any deduction of expenditure incurred. The CPC did not grant any exemption claimed u/s. 11 of the Act and intimation was sent to the assessee.

3. Aggrieved from the above intimation, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) by observing as under did not grant exemption since the assessee did not file his return of income within the time limit prescribed under section 139(4A) of the Act., therefore provision of section 11 & 12 will not apply.

*5.1 I have gone through the facts of the case, the grounds of appeal and the submissions made by the appellant during the appellate proceedings. Briefly the facts of the case are that for A.Y. 2018-19 the appellant filed its return in Form ITR-7 as per Provisions of 139(4A) on 19.03.2019. This return was due on 30.9.2018 and this has been filed after the due date. The return being late was processed u/s 143(1) & vide intimation dated 17.10.2019 the claim of exemption u/s.11 was not allowed apparently because the return was not filed in accordance with the Provisions contained in Sec.12A(1)(ba) of Income Tax Act. Sec.12A(1)(ba) of Income Tax Act has been introduced with effect from A.Y. 2018-19 and it stipulates that to avail exemption u/s.11 & 12 the return has to be filed in accordance with the Provisions of Section 139(4A). The appellant is a trust engaged in providing education but has not complied with the Provisions of Sec.12A(1)(ba) of Income Tax Act that, disqualifies him from availing the exemption.*

*5.2 The appellant has raised an issue that the disallowance made u/s.143(1 )(a) is not correct because the said section does not empower the A.O. to make the adjustment as in the case of the appellant. However, this contention of the appellant is not correct it is observed that the appellant has been informed while processing of the return that the claim of exemption is incorrect as contemplated in the Provisions of Section 143(1 )(a)(ii) i.e. the claim made is incorrect. There is also no dispute if the return filed is late then the same fails the condition stipulated by Sec.12A(1)(ba) of Income Tax Act which state as follows :-*

*"12A [(1)] The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely :-,..... [(ba) the person in receipt of the income has furnished the return of income from the previous year in accordance with the provisions of sub-section(4A) of section 139, within the time allowed under that section.]".....*

*It is obvious that the appellant does not qualify for the exemption and as such the disallowance made by the CPG is hereby upheld.*

4. Aggrieved from the above order of the Id.CIT(A), the assessee filed appeal before the Income tax Appellate Tribunal.

5. The Id.AR submitted that the CPC is not justified to make addition on the entire gross receipts of the Trust. The Trust is running an educational institutions and it is registered u/s. 12A of the I.T. Act. The Id.CIT(A) is not justified in dismissing the appeal on the basis of the return was not filed in the pursuance of section 12A(1)(ba) of the Act within the due date as prescribed under section 139(4A) of the I.T. Act. During the year, there was a loss for the impugned assessment year and she also submitted that the CPC is not justified for making disallowance by observing that Form No.10B was not filed within the due date. The assessee has filed condonation of delay u/s. 119(2)(b) of the Act, which has not been disposed off yet. The assessee has fulfilled the conditions as specified in CBDT circular No.06 of 2020 dated 19.02.2020. She also submitted that Shri H.V Anasuyamma, who is aged about 70 years was suffering from severe low back pain and chronic Multiple Joint Arthritis with neuritis since 15<sup>th</sup> September and doctor advised for physiotherapy for about six months until March, 2019. Therefore, the assessee had genuine hardship for not filing return of income within the time specified. The Id.AR for the assessee also submitted that the tax should be charged only on the net income but not on the entire gross receipts of the assessee.

6. The Id. DR relied on the order of the lower authorities and he submitted that the assessee has not fulfilled the conditions as prescribed u/s. 12A(1)(ba) of the I.T. Act for filing the return of income within the due date for getting exemption u/s. 11 an 12 of

the Act. The assessee registered u/s. 12A of the Act, therefore, it is required to file return of income within the due date and the assessee has not fulfilled the conditions prescribed under the Act and even assessee did not submit Form No.10B within the due date. Form No.10B has been issued by Chartered Accountant on 13.11.2018, which is beyond the due date as prescribed for filling the return of income.

7. The sole substantive issue involved in this appeal is income tax charged by the CPC & confirmed by the ld. CIT(A) on the entire receipts of the assessee

8. After hearing the rival contentions and facts of the case, we noted that the assessee filed return of income on 19.03.2019, whereas the due date for filing return of income was on 30.09.2018. The assessee is also registered u/s. 12A of the Act, therefore, as per the amendment made in section 12A(1)(ba) of the Act, the assessee was required to file return of income within the due date for getting exemption u/s. 11 and 12 of the I.T.Act. In the impugned assessment year, the gross receipt of the society is Rs.10,22,94,076/-, which consist as under:-

<i>Bank Interest</i>	24,94,862.00
<i>Receipts</i>	23,042.00
<i>Activity Service/Incomes</i>	1,42,51,999.00
<i>Application &amp; Admission Fees</i>	4,90,600.00
<i>Tuition &amp; Annual Fees</i>	7,17,92,051.00
<i>Other Fees</i>	5,95,206.00
<i>Transport Fees</i>	1,04,27,081.00
<i>Events &amp; Projects Fees</i>	64,000.00
<i>Miscellaneous Income</i>	4,31,000.00
<i>OCEP fee</i>	17,24,235.00

8. From the above, it is clear that the above receipts includes bank interest of Rs. 24,94,862/- and we noted that in over all, the

Trust is in loss for the year of Rs. 6,62,323.82/- The income tax is levied on the income of the assessee during the impugned assessment year. However, in this case, the CPC has charged the income tax on the entire gross receipts without giving effect of the expenditures incurred by the assessee towards earning of the income. The income has been defined in section 2(24) of the Act., the income should be construed in its general meaning but not to the entire receipts, if the assessee has incurred any expenditure towards earning the income, in such case, the assessee is entitled for deduction of expenditure incurred as prescribed in the Income Tax Act. There may be disallowances of the expenditures, which are not in conformity within the provisions of the Income Tax Act. In this case, the assessee filed return of income belatedly as per section 139(4) of the Act. The section 139(4A) of the Act prescribes that all other provisions of the Act shall apply as if it were a return required to be furnished under sub-section (1) of section 139 of the Act. The income is arrived after deducting the allowable expenditures as per the I.T. Act. 1961. In the impugned case on hand, the total receipts declared by the assessee, which is placed at Paper Book page No.6, we observe that there is excess expenditure over income of Rs.6,62,324/-, which is loss suffered by the assessee during the year. Therefore, in this case, the claim of deduction from income under section 11 and 12(1) (ba) of the Act does not arise. No doubt that the assessee has filed his return of income belatedly but he was required to compute his income and the income is below the threshold limit and in this case no tax shall be charged on the entire receipts. We also make it clear that the assessee will not get the benefit of carry forward & setting off of loss for the subsequent year as prescribed under section 139(3)

of the Act. Considering the facts of the case, we set aside the order of the CIT(A). Accordingly, appeal of the assessee is partly allowed.

10. In the result, appeal of the assessee is partly allowed

Order pronounced in the open court on 23<sup>rd</sup> day of March, 2023.

**Sd/-**  
**(George George K.)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

Bangalore; Dated : 23<sup>rd</sup> March, 2023.  
Thirumalesh, Sr.PS/Vms

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr.CIT, Bengaluru.
4. The DR, ITAT, Bengaluru.
5. Guard File.

Asst.Registrar/ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	16.03.2023		Sr.PS
2.	Draft placed before author	16.03.2023		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	Date of uploading the order on website			
8.	If not uploaded, furnish the reason			
8.	File sent to the Bench Clerk			Sr.PS
9.	Date on which file goes to the AR			
10.	Date on which file goes to the Head Clerk.			
11.	Date of dispatch of Order.			
12.	Draft dictation sheets are attached			Sr.PS