

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**VIRTURAL HEARING**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA No. 07/Jodh/2023**  
**(ASSESSMENT YEAR- 2020-21)**

Shri Sewaram Charitable Trust, A-33, Talwandi, Kota	Vs	CPC Bangalore/ ITO, Ward Exemption, Udaipur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AAETS 0659 P</b>		

<b>Assessee By</b>	Shri P. C. Parwal, C.A.
<b>Revenue By</b>	Shri Lovish Kumar, CIT-DR
<b>Date of hearing</b>	04/07/2023
<b>Date of Pronouncement</b>	10/08/2023

**ORDER**

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 02/12/2022 [here in after (NFAC)] for assessment year 2020-21.

2. The assessee has marched this appeal on the following grounds:-

- “1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the action of CPC in denying exemption u/s 11 of the IT Act.
2. The Ld. CIT(A), NFAC has erred on facts and in law in taxing the gross receipts of Rs. 2,87,21,492/- without allowing deduction for the expenditure of Rs. 2,82,38,834/- incurred by the assessee to earn such receipt.
3. The appellant craves to alter, amend and modify any ground of appeal.
4. Necessary cost be awarded to the assessee.”

3. The fact as culled out from the records is that the assessee trust was constituted vide trust deed dated 30.11.2002. It is registered with Devasthan Vibhag as per registration certificate dated 20.09.2005. It is also registered u/s 12A of IT. Act dated vide registration certificate dated 18.11.2003 by CIT, Kota. It is imparting education in the name of SR Global School at Jaipur. The assessee filed the return of income u/s. 139(4) on 31.03.2021 declaring total income of at Rs. 2,97,693/-. The AO/CPC while processing the return did not allow the revenue expenditure and capital expenditure claimed in the return of income without assigning any reason and thus assessed the total income at Rs. 2,87,21,492/- as against declared income of Rs. 2,97,693/-. The AO/CPC denied exemption u/s. 11 & 12 since the

assessee filed the audit report in Form no. 10B on 31.03.2021 as against the due date prescribed on 15.02.2021.

4. Aggrieved from the order of the AO/CPC, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“6. Decision

As per intimation u/s 143(1) of the Income-tax Act, 1961, the appellant is a resident AOP/BOI, Public Charitable Trust, has filed its return of income in ITR 7 on 31.03.2021 declaring its income at Rs. 2,97,690/- The return was processed on 24.12.2021 by CPC at assessed income of Rs.2,87,21,492/, disallowing the exemption claimed by the appellant of Rs. 1,34,89,828/-, Aggrieved to it. the appellant is in present appeal.

I have carefully considered the facts of the case in the light of submission made by the appellant as well as the order u/s. 143(1) of the Act and the applicable law in this regard.

6.1. Ground of appeal No. 1:

During the AY 2020-21 the taxpayer filed its return of income along with audit report form 10B The CPC issued an intimation under section 143(1) disallowing exemption claimed under section 11 which resulted in a demand to be payable by the taxpayer amount of Rs. 13489828.

During the course of appellate proceedings, the appellant has submitted that appellant is registered u/s. 12A and 80G by the Commissioner as it is engaged in imparting education and running various education institutions. The appellant had not filed return of income and audit report in Form 10 B before the due date of section 139(4)(a) of the Income-tax Act, 1961 and the same was filed before the end of F.Y. 2020-21 L.e. on 31.03.2021 The appellant was of the view that on account of the COVID pandemic situation there were frequent disruptions with regard to availability of staff, employees, working hours, client meetings and audit work. Hence, the appellant filed the return belatedly. In this regard the appellant submitted various decisions in its favour as under.

(i) Deputy Commissioner of Income-tax (Exemptions) v/s Audyogik Shikshan Mandal

(ii) Savitri Foundation VS ITO (ITAT Mumbai)

(iii) Sarvodaya Charitable Trust Vs Income Tax Officer. (Exemption) The appellant also quoted Circular No. 2/22 of CBDT dated 03.01.2020 u/s. 119 issued by CBDT.

The above submission of the appellant is considered and the following is noted:

“Sec. 12A(1)(ba) states as under the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.”

The above interpretation of the wordings used in sec. 12A(1)(ba) can be further concluded from the Intention of the Legislature while amending sec. 12A(1)(ba) duly explained and communicated in the Budget Memorandum of Finance Bill, 2017, which clearly states that the provisions of sec. 11 and 12 shall be allowed to trusts filing ITR within time allowed u/s 139.

Quoting excerpts from the Budget Memorandum of Finance Bill, 2017 (page 31)

“Further, as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise in order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act”,

The decisions quoted by the appellant do not take into account the above amendment as the matter pertained to earlier assessment years i.e. AY 2002-03 in the case of DCIT Exemption V/s. Audyogik Shikshan Mandal, Pune and also as the decisions are not from the jurisdictional Tribunals hence are not relied on in the present case. Further, the appellant quoted Circular No. 2/2020 dated 03.01.2020 issued by the CBDT u/s. 119 of the Act as instruction to subordinate authorities for condoning the delay of filing of Form 10B for A.Y.2018-19 and subsequent years. As per this Circular, Commissioners of Income-tax were authorized to admit belated applications of condonation of delay under section 119(2) of the Income-tax Act, 1961 and decide on merits. In this regard, as the appellant has not submitted any order of condonation of delay from the Competent Authority hence, this Circular does not come to its rescue.

From the combined reading of section 139(4A) and section 12A(1)(ba) and the explanatory Budget Memorandum of Finance Bill, 2017 as the appellant has filed the return of income beyond the due date (the due date was 15.02.2021 and the date of filing of return was 31.03.2021) and Form 10B was not filed along with the return of income hence, the action of the Ld. Assessing Officer in denying the benefit u/s. 11 and 12 of the Act was correct and proper and hence, upheld.

The Ground of Appeal No. 1 raised by the appellant is therefore dismissed.

6.3 Ground of appeal No. 2:

2. The assessee craves right to add, alter or amend any of the grounds of appeal.”

6.3.1 Since the appellant has not added, amended, altered any of grounds during the appellate proceedings, this ground of appeal No. 3 is dismissed.

7. In the result, the appeal filed by the appellant is dismissed”

5. As the assessee did not find any favour from the appeal so filed before the Id. CIT(A), the assessee preferred this appeal on the grounds as stated in para 2 above. In support of the grounds so raised the Id. AR of the assessee has relied upon the following written submission;

*“Facts:-*

1. The assessee trust was constituted vide trust deed dt. 30.11.2002 (PB 1-7). It is registered with Devasthan Vibhag as per registration certificate dt. 20.09.2005 (PB 8). It is also registered u/s 12A of IT Act dt. vide registration certificate dt. 18.11.2003 by CIT, Kota (PB 9). It is imparting education in the name of SR Global School at Jaipur.
2. The assessee filed the return u/s 139(4) on 31.03.2021 declaring total income of Rs.2,97,690/- computed as under:-

Source of Fund

Receipts from school	2,87,19,463	
Receipts from trust	<u>2,029</u>	2,87,21,492

Application of Fund

Expenses of school (before depreciation)	2,48,96,123
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Expenses of trust (before depreciation)	33,42,711	
Capital Expenses	<u>1,84,965</u>	<u>2,84,23,799</u>
Net Surplus		<u>2,97,693</u>

3. The AO(CPC) while processing the return did not allow the revenue expenditure and capital expenditure claimed in the return without assigning any reason and thus assessed the total income at Rs.2,87,21,492/- as against declared income of Rs.2,97,693/-. However, it appears that exemption u/s 11 & 12 is not allowed since assessee has filed the audit report in Form No.10B along with the belated return on 31.03.2021 against the due date of filing the return on 15.02.2021.

4. The Ld. CIT(A) held that assessee has filed the return of income beyond the due date and Form No.10B was not filed along with the return of income and therefore the action of AO in denying the benefit u/s 11 & 12 of the Act was correct and proper and thus upheld the order passed by AO.

*Submission:-*

1. The lower authorities have not allowed exemption u/s 11 for the reason that return filed on 31.03.2021 is belated as the due date for filing the return was 15.02.2021 and Form No.10B was not filed along with the return of income. It is submitted that u/s 12A(1)(ba) assessee is required to furnish the return of income in accordance with the provisions of section 139(4A) within the time allowed under that section. Section 139(4A) requires the assessee to furnish the return of income in prescribed form and all the provisions of the Act shall apply as if it is the return required to be furnished u/s 139(1). As per the provisions of the Act a belated return can be furnished u/s 139(4). The return furnished by the assessee on 31.03.2021 is a belated return and thus the assessee has satisfied the condition of clause (ba) of section 12A(1). This is also clarified vide CBDT in F. No.173/193/2019-ITA-I dt. 23.04.2019 (copy enclosed) stating that for a trust registered u/s 12AA of the Act, to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act.

Section 12A(1)(b) as applicable for the relevant AY provides that where total income of the trust without giving effect to the provisions of section 11 & 12 exceeds the maximum amount which is not chargeable to income tax in the previous year, it has to get its accounts audited before the specified date referred in section 44AB and to furnish by that date the report of such audit in the prescribed form. The assessee has obtained the audit report in Form No.10B on 31.12.2020 which is before the specified date but the same was not furnished before the specified date, i.e. 15.02.2021 but furnished on 31.03.2021 along with the return of income (copy enclosed). Thus there is delay in furnishing the audit report which is due to technical glitches on

account of Covid pandemic situation. However, once such report is filed, exemption u/s 11 cannot be denied. Reliance in this connection is placed on the following cases:-

*Sarvodaya Charitable Trust Vs. ITO(E) (2021) 278 Taxman 148 (Guj.) (HC)*  
Where assessee, a public charitable trust registered u/s 12A, had substantially satisfied condition for availing benefit of exemption as a trust, it could not be denied exemption merely on bar of limitation in furnishing audit report in Form No.10B especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.

*ITO(E) Vs. Shri Laxmanarayan Dev Shrishan Seva Khendra ITA No. 410/Ahd/2022 order dt. 19.05.2023 (Ahmedabad) (Trib.)*

The relevant para 6 to 6.2 is reproduced as under:-

*6. We have given our thoughtful consideration and perused the materials available on record. The moot question whether it is permissible to the assessee to produce the audit report at the appellate stage is correct in law is been decided by the Jurisdictional High Court in the case of CIT Vs. Gujarat Oil & Allied Industries Ltd. [1993] 201 ITR 325 (Guj.) wherein it is held that the provisions regarding furnishing of audit report along with the return has to be treated as a procedural provision. It is directory in nature and its substantial compliance would suffice. Thus the Hon'ble Court Held that the benefit of exemption should not be denied merely on account of delay in furnishing the same.*

*6.1. Similarly in the case of Social Security Scheme of GICEA (cited supra) the Hon'ble Jurisdictional High Court held as follows:*

.....

*6.2. Respectfully following the above judicial pronouncements by Jurisdictional High Court, we have no hesitation in confirming the order passed by Ld. CIT(A) who has directed the Jurisdictional Assessing Officer (JAO) to verify the Form No. 10B and allow the claim of exemption u/s. 11 and compute the total income. Thus the grounds raised by the Revenue is devoid of merits and the same is liable to be dismissed.*

*Sh. Rajkot Vishashrimali Jain Samaj Vs. ITO (2023) 200 ITD 662 (Rajkot) (Trib.)*

The relevant para 6.1 to 6.3 is reproduced as under:-

*6.1 The first issue for consideration is the impact of delay in furnishing Form 10B beyond the due date prescribed under the Act. Section 12A(b) of the Act mandates that Form 10-B has to be furnished within the specified date (which in the instant case is 15-10-2021) as referred to in section 44AB of the Act, failing which the provisions of section 11 and 12 would not be applicable. The assessee filed Form 10-B on 18-02-2021 and hence there was admittedly a delay in filing Form 10-B beyond the due prescribed date. However, we*

observe that the CIT(Exemptions), Ahmedabad has condoned the delay in filing Form 10-B vide order dated 11-04-2022 and copy of order has been produced for our perusal. Accordingly, we are of the view that delay in filing Form 10-B would not have any impact on claim of the assessee under section 11 and 12 of the Act, once the delay has been condoned by CIT(Exemptions), Ahmedabad. In the case of Sarvodaya Charitable Trust v. ITO (Exemptions) [2021] 125 taxmann.com 75/278 Taxman 148 (Gujarat), the Assessee, a public charitable trust registered under section 12A, filed its return of income declaring income of certain amount. The Assessee had not furnished audit report in Form No. 10B. Thus, Assessing Officer denied exemption to assessee trust. Thereafter, assessee filed audit report in Form No. 10B belatedly and sought to condone such delay. The same was rejected for reason that no ground for condonation of delay was made out by assessee. The Gujarat High Court held that since assessee was a public charitable trust for past 30 years who substantially satisfied condition for availing benefit of exemption, assessee could not be denied exemption merely on bar of limitation to submit Form no.10, especially, when legislature had conferred wide discretionary powers to condone such delay on authorities concerned. In the case of Jaya Educational Trust v. Dy. CIT [2021] 130 taxmann.com 225/191 ITD 107 (Chennai - Trib.), ITAT held that where assessee had filed return of income within due date specified under section 139(4) and also filed Form No. 10 electronically before completion of assessment, assessee could not be denied exemption under section 11. Accordingly, in view of the above discussion, delay in filing Form 10-B would not have any impact on the assessee's claim of deduction u/ss. 11 and 12 of the Act.

6.2 The second issue for consideration is whether delay in filing the return of income beyond the due prescribed date would impact the claim of exemption to the assessee under section 11 and 12 of the Act. In the instant facts, the due date of filing of return of income u/s 139(1) of the Act was 15-02-2021, while the assessee filed return of income on 18-03-2021. Accordingly, admittedly there is a delay in filing return of income on part of the assessee. However, the CBDT vide Circular CBDT F. No. 173/193/2019 -ITA -I dated 23-4-2019 has clarified with regard to the time allowed for filing of the return of income subsequent to the insertion of clause (ba) in sub section (1) of section 12A of the IT Act which includes the IT return filed within the time allowed u/s. 139 of the Act. Notably, the Delhi ITAT in the case of Conference of Religious India v. Ward Exemption [IT Appeal No. 2161 (Delhi) of 2022], dated 13-10-2022 has held that benefit of exemption u/s. 11 of the Income-tax Act was available to the assessee as the income tax return was filed within the specified time limit of sub-section 139 of the Income-tax Act. The ITAT made the following observations while passing the order:

10. In my considered opinion the language of the aforementioned Circular is very clear and unambiguous in so far as the return of income filed u/s. 139 of the Act is concerned. Section 139 has several sub-sections (1), (2),

*(3), (4), (4a), (5). I am of the considered view that if the return is filed within the specified time limit of sub section of 139 would be eligible for the benefit given by the above mentioned CBDT circular and should avail the benefit of exemption u/s. 11 of the Act. In my considered opinion the CIT(A) erred in misinterpreting the aforementioned circular and, therefore, to that extent the order of the CIT(A) is erroneous and deserves to be set aside the grievance of the assessee is allowed.*

*6.3 In view of the above discussion, we are of the view that once return of income has been filed within the time prescribed u/s 139(4) of the Act, benefit of sections 11 and 12 cannot be denied to the assessee by invoking the provisions of clause (ba) to sub-sections (1) of section 12A of the Act.*

*M/s Gangji Shamji Chedda (Princewala) Charitable Trust Vs. DCIT(E) ITA No.1528/M/2022 order dt. 31.10.2022 (Mum.) (Trib.)*

*The relevant para 5 to 7 is reproduced as under:-*

*5. Undisputedly, the assessee trust has filed return of income for the year under consideration on 07.11.2017 well within time, which was processed under section 143(1) of the Act dated 26.03.2019 by Dy. Commissioner of Income Tax (DCIT), Central Processing Centre (CPC), Bengaluru. It is also not in dispute that the assessee has failed to file form 10B along with return of income. No doubt in order to claim the deduction under section 11 & 12 of the Act conditions laid down in the provisions contained under section 12A(B) of the Act need to be complied with by the assessee trust but at the same time when audit report in form 10B has not been filed along with return of income due to some technical reasons DCIT, CPC was not empowered to make any adjustment/raise a demand without issuing a notice to the assessee.*

*6. Undisputedly no notice has been given to the assessee by the CPC before disallowing the expenditure claimed by the assessee as a trust that too without considering audit report filed in form No.10B.*

*7. This issue has already been decided by the Hon'ble High Court of Madhya Pradesh, Hon'ble High Court Calcutta & Hon'ble Gujarat High Court in case of CIT vs. Devradhan Madhavlal Genda Trust (1998) 230 ITR 714 (MP), CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 65 Taxman 273 (Cal) & CIT vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325 respectively wherein it is held that filing of audit report in form 10B during the course of assessment proceedings is sufficient compliance of section 12A(b) which has to be considered. So the exemption otherwise available to the assessee trust under section 11 cannot be denied merely on account of delay in furnishing of audit report in form 10B as required under section 12A(b) of the Act. So in the present case audit report having been filed by the assessee trust well prior to the last date of filing of return is a sufficient compliance of section 12A(b) of the Act.*

In view of above, AO be directed to compute the income after allowing benefit of exemption u/s 11 of the Act.

2. Without prejudice to above, it is submitted that the lower authorities have assessed the gross receipt as income. This is incorrect. The income is to be computed after allowing the expenditure. From the Income & Expenditure A/c of school placed at PB 11-12 and the Income & Expenditure A/c of trust (enclosed), the position of receipt and expenditure is as under:-

Particulars	SR Global School	Sewaram Charitable Trust	Total
Receipt	Rs.2,87,19,463/-	Rs.2,029/-	Rs.2,87,21,492/-
Revenue Expenditure (including depreciation)	Rs.2,62,66,818/-	Rs.33,61,824/-	Rs.2,96,28,642/-
Surplus	Rs.24,52,645/-	Rs.(33,59,795/-)	Rs.(9,07,150)/-

From the above it can be noted that if the income of assessee is to be computed without allowing exemption u/s 11, there would be deficit of Rs.9,07,150/- as against income of Rs.2,97,693/- computed by the assessee. Therefore, the gross receipts cannot be assessed as income. What can be assessed as total income is only the surplus/deficit. However, since there is no surplus, no tax is leviable on the assessee. For this purpose reliance is placed on the decision of Hon'ble ITAT, Jaipur Bench in case of Kund Kund Kahan Digamber Jain Mumokshu Ashram Vs. ITO(E) ITA No.165/JP/19 to 168/JP/19 order dt. 29.05.2019 where at Para 8 it is held as under:-

*8. We have heard the rival contentions and perused the material available on record. We find that where the exemption claimed under section 11 and 12 has been denied by the Assessing officer, what can be brought to tax is the net income in the hands of the assessee trust and not the gross receipts. In all these years, we find that while denying the exemption under section 11 and 12 for want of registration under section 12AA, the Assessing officer has brought gross receipts to tax which is against the basic tenets of law where only the real income which is determined after deducting expenses from gross receipts can be brought to tax. We therefore agree with the alternate contention so advanced by the Id AR and without going into merit of the other contention which is left open, the matter is set-aside to the file of the Assessing officer to examine the claim of the expenditure so claimed by the assessee trust against the gross receipts for each of the relevant years and where the Assessing officer determines the net receipts as not exceeding the maximum amount not chargeable to tax, allow the necessary relief to the assessee trust.*

Following the decision of Kund Kund Kahan Digamber Jain Mumokshu Ashram, Hon'ble ITAT, Jaipur Bench in case of Shri Krishna Mandir Trust Vs. ACIT ITA No.255/JP/2022 order dt. 31.08.2022 has again held that gross receipt cannot be taxed as income and what can be taxed as income is only the surplus.

In view of above, in case income is not computed u/s 11, the AO be directed to assess the total income at loss of Rs.9,07,150/-.”

6. In addition to the above written submission the Id. AR of the assessee submitted that the lower authorities have not allowed exemption u/s 11 because return filed on 31.03.2021 is belated as the due date for filing the return was 15.02.2021 and Form No.10B was not filed along with the return of income. It is submitted that u/s 12A(1)(ba) assessee is required to furnish the return of income in accordance with the provisions of section 139(4A) within the time allowed under that section. Section 139(4A) requires the assessee to furnish the return of income in prescribed form and all the provisions of the Act shall apply as if it is the return required to be furnished u/s 139(1). As per the provisions of the Act a belated return can be furnished u/s 139(4). The return furnished by the assessee on 31.03.2021 is a belated return and thus the assessee has satisfied the condition of clause (ba) of section 12A(1). This is also clarified vide CBDT in F. No.173/193/2019-ITA-I dt. 23.04.2019 (copy enclosed- APB-7) stating that for a trust registered u/s 12AA of the Act, to avail

the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Section 12A(1)(b) as applicable for the relevant AY provides that where total income of the trust without giving effect to the provisions of section 11 & 12 exceeds the maximum amount which is not chargeable to income tax in the previous year, it has to get its accounts audited before the specified date referred in section 44AB and to furnish by that date the report of such audit in the prescribed form. The assessee has obtained the audit report in Form No.10B on 31.12.2020 which is before the specified date but the same was not furnished before the specified date, i.e. 15.02.2021 but furnished on 31.03.2021 along with the return of income (copy enclosed). Thus there is delay in furnishing the audit report which is due to technical glitches on account of Covid pandemic situation. However, once such report is filed, exemption u/s 11 cannot be denied. To support this contention reliance was placed on the following decisions:

S. No.	Particulars	Pg No.
1	Copy of decision of Hon'ble Gujarat High Court in case of Sarvodaya Charitable Trust vs. ITO(E) (2021) 278 Taxman 148	1-12
2	Copy of decision of Hon'ble ITAT Ahmedabad Bench in case of ITO(E) vs. Shri Laxmanarayan Dev Shrishan Seva Khendra ITA No. 410/Adh/2022 order dt 19.05.2023	13-18
3	Copy of decision of Hon'ble ITAT Rajkot Bench in case of Sh. Rajkot Vishashrimali Jain Samaj Vs. ITO (2023) 200 ITD 662	19-24
4	Copy of decision of Hon'ble ITAT Mumbai Bench in case of M/s Gangji Shamji Chedda (Princewala) Charitable Trust vs. DCIT(E) ITA No.	25-28

	1528/M/2022 order dt. 31.10.2022	
5	Copy of decision of Hon'ble ITAT, Jaipur Bench in case of Kund Kund Kashan Digamber Jain Mumokshu Ashram vs. ITO(E), ITA No. 165/JP/2019 to 168/JP/2019 order dt. 29.05.2019	29-34
6	Copy of decision of Hon'ble ITAT, Jaipur Bench in case of Shri Krishna Mandir Trust vs. ACIT ITA No. 255/JP/2022 order dt. 31.08.2022	35-41

The Id. AR of the assessee alternatively submitted that the benefit is not given on the contention then in that case the expenditure incurred by the assessee be allowed while determining the income of the assessee.

7. The Id DR is heard who has relied on the findings of the lower authorities and submitted that once the assessee failed to file the return of income and form no. 10B before the due date of filling the return of income, the assessee is not eligible to claim the benefit of section 11 & 12. Thus, the same is rightly denied to the assessee and therefore, supported the detailed finding of the Id. CIT(A).

8. We have heard the rival contentions, perused the material placed on record and gone through the judicial decision cited to drive home to the contentions so raised by both the parties. Before us the Id. AR of the assessee contended that the assessee obtained the audit report in Form no. 10B on 31.12.2020 which is before the specified

date but the same was not furnished before the specified date i.e. 15.02.2021 but furnished on 31.03.2021 along with the return of income so filed by the assessee. The assessee also contended that delay in furnishing the audit report which is due to technical glitches on the website and also on account of covid pandemic situation. The bench also notes from the provision of section 139(4A) of the act which requires the assessee to furnish the return of income in prescribed form and all the provisions of the Act shall apply as if it is the return required to be furnished u/s. 139(1). As per provision of section 139(4) belated return can be furnished. The return furnished by the assessee on 31.03.2021 was a belated return and thus the assessee satisfies the condition of clause(ba) of section 12A(1). The issue also stands clarified vide CBDT instruction in F. No.173/193/2019-ITA-I dt. 23.04.2019 stating that for a trust registered u/s 12AA of the Act, to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Thus, now the issue remains that the whether the assessee denied the benefit of exemption as a trust merely on the reason that the audit report in Form no. 10 B filed belated along with the return filed on 31.03.2021. This issue is decided by the Gujarat High Court in the

case of Sarvodaya Charitable Trust Vs. ITO(E) (2021) 278 Taxman 148 (Guj.) (HC), Where assessee, a public charitable trust registered u/s 12A, had substantially satisfied condition for availing benefit of exemption as a trust, it could not be denied exemption merely on bar of limitation in furnishing audit report in Form No.10B especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. The similar issue is also dealt by the coordinate bench of Ahmedabad in the case of ITO(E) Vs. Shri Laxmanarayan Dev Shrishan Seva Khendra ITA No. 410/Ahd/2022 order dt. 19.05.2023 (Ahmedabad) (Trib.) and Rajkot bench in the case of Sh. Rajkot Vishashrimali Jain Samaj Vs. ITO (2023) 200 ITD 662 (Rajkot) (Trib.). On being consistent view in the matter we direct the Id. Jurisdiction Assessing Officer (JAO) to consider the Form no. 10B and allow the claim of exemption u/s. 11 of the Act to the assessee. Based on this observation ground no. 1 raised by the assessee is allowed. Ground no. 2 being the alternative plea taken by the assessee and since we have considered the exemption u/s. 11 the alternative plea ground taken by the assessee becomes educative in nature. Ground no. 3 & 4 are general and there is no specific

grievance of the assessee raised before us and therefore, same is not decided.

In the light of the discussion so recorded here in above the appeal of the assessee is allowed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

(Dr. S. Seethalakshmi)  
Judicial Member

Sd/-

(Rathod Kamlesh Jayantbhai)  
Accountant Member

Dated : 10/08/2023

*\*Ganesh Kumar, PS*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench