

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1513/Bang/2024
Assessment Year: 2018-19

Chikkanna Puttamma Educational Trust #109/1, Dodderi Grama Tavarekere Hobli, Chikkannahalli PostBengaluru South Bengaluru- 562 130. PAN NO : AABTC6767F	Vs.	ITO(Exemptions) Ward-1 Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Sri Pranav G. Ambekar, A.R.
Respondent by	:	Sri Ganesh R Gale, Standing Counsel for Department

Date of Hearing	:	12.11.2024
Date of Pronouncement	:	29.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. Addl/JCIT(A)-4, Chennai dated 13.6.2024 vide DIN & Order No. ITBA/APL/S/250/2024-25/1065626271(1) for the assessment year 2018-19 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. The appellate order of the learned Commissioner of Income-tax [Appeals]ADDL/JCIT [A]-4, Chennai, passed under Section 250 of the Act dated 13/06/2024 for the impugned assessment year 2018-19, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case, requires to be quashed.*

2. *The appellant denies itself liable to be assessed on a total income of Rs. 39,98,111/- as determined by the learned assessing officer and upheld by the learned Commissioner of Income-tax [Appeals], as against the income returned by the appellant of Rs. NIL/-, on the facts and circumstances of the case.*
3. *The learned Commissioner of Income-tax [Appeals] is not justified in confirming the action of the learned assessing officer in not granting the eligible claim of exemption made by the appellant under section 11 of the Act merely for not filing the audit report in Form 10B along with the return of income, facts and circumstances of the case.*
4. *The learned Commissioner of Income-tax [Appeals] and the learned assessing officer failed to appreciate that filing of Form 10B along with the return of income is only directory in nature and not mandatory even though the word shall in the said section is used and consequently the learned Commissioner of Income-tax [Appeals] and the learned Assessing Officer ought to have allowed the claim of exemption by the appellant under section 11 of the Act, on the facts and circumstances of the case.*
5. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the non-filing of Audit Report in Form 10B of the Income-tax Rules, was beyond the control of the appellant and was also not deliberate or intentional and it is merely a technical breach by the appellant for not filing Form 10B along with the return of income and the appellant having filed the condonation petition as per the provisions of section of the Act ought to have kept the appellate proceedings in abeyance till the disposal of application made by the appellant under section 119[2][b] of the Act, on the facts and circumstances of the case.*
6. *The learned Commissioner of Income-tax [Appeals] and the learned assessing officer further failed to appreciate that the provisions of section 11 [2] of the Act is a beneficial provision and a liberal view has to be taken, on the facts and circumstances of the case,*
7. *The learned Commissioner of Income-tax [Appeals] and the learned assessing officer failed to appreciate that the appellant being a trust registered under section 12A of the Act, is entitled for all the benefits as envisaged under the provisions of section 11, 12 and 13 of the Act and ought to have held that since the appellant is a charitable institution is eligible for all the deductions and other benefits given to a charitable institution, on the facts and circumstances of the case.*
8. *Without prejudice, the appellate order passed by the learned Commissioner of Income-tax [Appeals], is against the principles of natural justice, since the appellant was not afforded a reasonable opportunity of hearing to make its submission, consequently the impugned appellate order passed requires to be cancelled, on the facts and circumstances of the case.*

9. *Without prejudice, to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 B of the Income Tax Act on the facts and circumstances of the case. The appellant 'Contends that the levy of interest under section 234A, 234B & 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.*
10. *The appellant craves leave of this Hon'ble Tribunal to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above at the time of hearing of the appeal by this Hon'ble Tribunal.*
11. *For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.*

2. The brief facts of the case are that the assessee is a Charitable Trust registered u/s 12AA of the Act. For the Assessment year 2018-19 under appeal, the assessee trust filed its return of income on 21.12.2018, whereas the due date of filing the return was extended to 31.10.2018 by an order vide F.No.225/358/2018-ITA 31, dated 8.10.2018. The assessee did not file the audit report in Form No.10B within the due date due to the reasons beyond his control and in fact actually filed the audit report in Form No.10B as per the provisions contained in section 12A(b) of the Act only on 11.5.2023 placed in pages 6 to 9 of the paper book filed before us. Thereafter the assessee trust have been served with an intimation u/s 143(1) of the Act dated 30.9.2019 vide document identification No. CPC/18-19/A-7/1908979434, wherein the deductions claimed u/s 11 of the Act were denied and the entire gross receipt amounting to Rs.36,81,123/- along with Rs.16,988/- declared under head income from other sources totaling to Rs.36,98,111/- had been treated as the income of the assessee trust and accordingly raised a demand of Rs.11,99,833/- including interest u/s 234A, 234B, 234C & 234F of the Act.

2.1 Aggrieved by the intimation passed u/s 143(1) of the Act dated 30.9.2019, the assessee preferred an appeal before the Id. Addl/JCIT(A). In the meanwhile, after filing the audit report on 11.5.2023, the assessee has also moved an application for condonation of delay in filing the Audit report in Form 10B on 20.6.2023, which reads as follows:

010

SRI CHIKKANNA PUTTAMMA EDUCATIONAL TRUST (R)
Ph : 080 2843891 E-mail : gripsbangaluru@gmail.com

Ref:..... Date:.....

Copy :

To :
Hon Commissioner of Income Tax(Exemptions),
Bangalore

Respected Sir,

SUB	Request for condoning delay in filing Form 10-PAN - AABTC6767F
REF	Ms.ChikkannaPuttamma Educational Trust
AY	2018-19


In reference to the above, I would like to bring to your kind notice that, there was a delay in filing Form 10Bfor the relevant Assessment Year.

The delay happened due to the fact that, one of the trustee - Mrs. GalahanumakkaRamegowda -was ill and the Managing Trustee was wholly occupied in taking proper medical care for her, who is also his wife. As such, we missed ensuring some aspects of filings.


Also, the filing of the forms was a technical aspect and being a small institute, and run on meagre resources, we could not employ technically sound staff, who could understand the significance of such compliances.

We would like to bring to your kind knowledge that, our institute is based in a village area [our school is around 35 kms from central Bangalore on the outskirts] providing educational facilities mainly to poor and farmer children. And these children lack the basic reason and resources to continue education.

We would also like to also inform you that, we don't have any intention to delay the forms/ submission of information/ compliances. This delay is beyond our control and purely unintentional.


20 JUN 2023
बेगलूर (बेगलूर)
Bangalore (Bengaluru)

109/1 Dodderi , Mysore Road, Near Hajjala Gate, Tavarekere Hobli, Chikkanahalli Post, Bengaluru South, Bengaluru - 562 130.

**SRI CHIKKANNA PUTTAMMA EDUCATIONAL TRUST (R)**
Ph.: 080 23438891 E-mail: gripsbangaluru@gmail.com

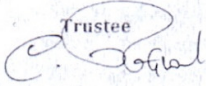
Ref.:..... Date:.....


Please find enclosed following documents for your perusal;

1. Circular no 06/2020 dated 19-02-2020.
2. Audited financial statements and audit report for the year ended 31.03.2018
3. Form 10B for the year ended 31.03.2018
4. Medical Certificate
5. 12A Registration order dated 18-01-2016
6. 12A Registration order dated 24-09-2021 UR No. AABTC6767FE20218
7. Acknowledgement of Form 10B dated 11-05-2023 for FY 2017-18
8. Intimation Order U/s 143(1) dated 30-09-2019 for FY 2017-18
9. Postal Acknowledgement of Documents sent to Hon PCIT(E), NewDelhi, for condonation.

Considering leniently the factors which lead to delay, we humbly request to condone the delay in filing Form 10B.

Ms. ChikkannaPuttamma Educational Trust


Trustee
Place: Bangalore
Date: 09-06-2023



109/1 Dodderi , Mysore Road, Near Hajjala Gate, Tavarekere Hobli, Chikkanahalli Post, Bengaluru South, Bengaluru - 562 130.

2.2 The Id. CIT(A) has partly allowed the appeal with the following observations:

4. **Decision:**

4.1 There is a delay in filing this appeal by 580 days. The appellant has filed an application for condonation stating that the applicant was pursuing alternate remedy by way of filing a condonation application before the CIT(E) for condoning the delay in filing Form 10BB. Considering the facts, the delay is condoned, and the appeal is admitted. The appeal is filed against the order of the DCIT, CPC u/s 143(1) dated 30.09.2019 wherein exemption u/s 11

claimed by the appellant was not allowed due to non-filing of Form 10BB in time. The said Form was filed on 11.05.2023. The appellant has raised two grounds of appeal. The appellant states that the non-filing was due to bonafide and unintentional and has cited judicial decisions in support. A notice was issued calling for submissions and in its response filed on 08.06.2024, the appellant has submitted that it had preferred an application for condonation of delay in filing the Form 10B and has requested to keep the appeal in abeyance till disposal of the condonation application filed before the CIT(E).

4.2 The facts and submissions have been considered. The provisions of section 12A as it stood at the relevant time are reproduced below:

Conditions for applicability of section 11 and 12.

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: —

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(ba) 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 return in this case was filed on 21.12.2018 as against the due date of 30.09.2018 and Form 10BB was filed only on 10.05.2023. As such, there is non adherence to clauses (b) and (ba) of section 12A(1). The request for keeping the appellate proceedings in abeyance till the disposal of the condonation application by the CIT(E) is not maintainable as it is an independent proceeding by itself. From the facts of the case, it is seen that the appellant is not eligible to claim exemption u/s 11. An appellate authority does not have the powers to condone the delay in filing the statutory forms which power has been conferred on Pr,CCsIT/CCsIT/PCsIT/CsIT. This ground is

therefore dismissed. However, the appellant is entitled to set off of administrative expenses from the total receipts as the entire gross receipts cannot be brought to tax. The issue of charging of interest is consequential and is not adjudicated separately. The AO is directed to charge the correct interest after giving effect to this order. The late filing fee charged u/s 234F is mandatory and hence is in order. This ground is partly allowed.

5. In the result, the appeal is **partly allowed**.

2.3 Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before the Tribunal. Assessee has also filed a paper book comprising 13 pages enclosing therein following documents:

- a) Copy of letter to the Commissioner of Income Tax (Exemption) dated 9.6.2023 requesting for condonation of delay.
- b) Copy of audit financial statement for year ended 31.3.2018
- c) Copy of audit report u/s 12A(b) of the Act.
- d) Case law relied by the assessee in ITA No.18/Chny/2023 dated 19.10.2023.

2.4 Before us, the Id. A.R. of the assessee submitted that the order passed by the Id. Addl/JCIT(A) not granting the eligible claim of exemption u/s 11 of the Act on the sole ground of not filing the audit report in Form No.10B along with return of income is not justified. Further, the Id. A.R. of the assessee vehemently submitted that filing of form 10B along with return of income is only directory in nature and not mandatory. He submitted that the non-filing of audit report in Form 10B was beyond the control of the assessee and was not deliberate or intentional and it is merely a technical breach by the assessee. Lastly, the Id. A.R. submitted that the assessee having filed the condonation petition as per the provisions of section 119(2)(b) of the Act ought to have kept the appellate proceedings in abeyance till the disposal of application made by the assessee u/s 119(2)(b) of the Act and accordingly, prayed to remit back the issue to the file of AO(Exemptions) to give effect of the condonation petition pending before Id. CIT(Exemptions), Bangalore.

3. The Id. D.R. on the other hand supported the order of the authorities below and vehemently submitted that the appellate proceedings and the petition for condonation pending before the Id. CIT(E) are two independent and separate proceedings and therefore the Id. CIT(A) has rightly passed the order on merits of the case.

4. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that the assessee has filed belated return of income on 21.12.2018 and belated audit report on 11.5.2023. Further, the assessee has after delay of 580 days filed the appeal before the Id. Addl/JCIT(A) on 18.5.2023 although the intimation u/s 143(1) of the Act was issued and served on 30.9.2019. It is also an undisputed fact that assessee has also filed an application for condonation of delay dated 9.6.2023 in filing Form No.10B on 20.6.2023, whereas Id. CIT(A) passed an order u/s 250 of the Act on 13.6.2024 without waiting for the decision of Id. CIT(E) stating to be two separate & distinct proceedings. We also cannot brush aside the fact that assessee trust is registered u/s 12AA of the Act. We are of the considered opinion that even though the assessee has valid registration u/s 12AA of the Act, still it has to comply with the mandatory requirements of law to lay claim on impugned deduction. The Law not only mandates the assessee to file the return of income within the due date prescribed u/s 139(1) of the Act but also mandates to file the audit report in form No.10B within the due date also. Certainly, the assessee has defaulted in filing both the return of income as well as audit report in form No.10B in time. Before us, Id. A.R. of the assessee submitted the evidence of seeking relevant condonation from the Id. CIT(Exemptions), Bangalore as reproduced above. Therefore, considering the same, we set aside the order of Id. CIT(A) and restore the file back to the AO for fresh adjudication in the light of condonation petition filed by the assessee before the Id. CIT(Exemptions), Bangalore. The AO shall wait for the order of the Id. CIT(Exemptions) with regard to condonation application and thereafter pass necessary orders in accordance with law. All the other issues are kept open. The appeal stands partly allowed in terms of above directions.

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

Order pronounced in the open court on 29th Nov, 2024

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 29th Nov, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.