



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.515/CTK/2024**  
Assessment Year :2018-19

Bharatiya Sikshya Bikasha Sansthana , Siddhartha Nagar 1 <sup>st</sup> Line PO : Banthapali, Puruna Berhampur, B.O : Berhampur Sadar, Ganjam , 760002	Vs.	Income Tax Officer, Berhampur
PAN/GIR No. AACTB 4047N		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Radha Krishna Sahu, Adv  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 31/12/2024**  
**Date of Pronouncement : 31/12/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id Addl/JCIT(A)-10 Mumbai, dated 14.10.2024 in Appeal No.CIT(A), Bhubaneswar-1/10077/2020-21 for the assessment year 2018-19.

2. Shri Radha Krishna Sahu, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. The assessee has raised the following grounds of appeal:

1) That the assessee is a Charitable Trust registered u/s 12A of the Income Tax Act w.e.f. 19.01.2018 vide registration number AACTB4047N/07/17-18/T-551

2) That under the facts & circumstances of the case, the first appellate authority was unjustified in dismissing the appeal by not accepting the reasonable cause adduced before him.

3) That at one stage the first appellate authority dismissed the appeal and at the same time he directed the AO to allow the expenses which were wholly and exclusively incurred and the appellant was also required to produce necessary evidences before the AO. Thus, this being a contradictory order has no leg to stand.

4) Mere because form 108 was filed belatedly the gross receipt would never constitute the income of the appellant u/s 143(1) as the issue involved is debatable.

5) That the non-filing of the audit report in Form 108 along with the return of income is merely a procedural lapse and should not prevent claiming an exemption by the Assessee. In this regard the assessee submits the decision of the Hon'ble Gujarat High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. and Hon'ble Gujarat High Court decision in case of Sarvodaya charitable Trust v. ITO (Exemption). It is held that where the assessee is a public charitable trust registered under section 12A of the Act who substantially satisfied condition for availing benefit of exemption, assessee could not be denied exemption merely on bar of limitation in furnishing audit report in Form 108.

6) That the order passed u/s 143(1) is illegal and barred in law as never a show cause notice was issued by the AO particularly for disallowances of various expenses incurred for charitable purpose.

7) That the order passed by the forums below are otherwise illegal and bad in law.

8) That even though benefit of sec. 11 is to be denied, it follows that income has to be computed on net basis after deducting the expenses from gross receipt. Gross receipts do not constitute income. The net profit of Rs. 1,62,187/- as per audited accounts alone could be treated as taxable income.

9) That the Assessee hereby submit decisions in the case of Joharimal High School Vs ITO (ITAT Cuttack) and Indian Medical Association, Pune Vs Addl-JCIT(A)-1 Visakhapatnam (ITAT Pune),

wherein it has been held that only the profit can be taxed and not the entire receipt if benefit u/s 11 is to be denied.

10) That for the said AY if the Assessee was denied to claim exemption u/s 11, then the assessee has to be treated as Association Of Persons (AOP) for the purpose of application of provisions of Income Tax Act and accordingly the expenses incurred by the assessee has to be allowed out of the entire gross receipts and only the surplus income can be taken as taxable in the hands of the Assessee.

11) That for these among other grounds to be urged at the time of hearing the appellant prays for adequate relief in the interest of equity and justice.”

4. Brief facts of the case are that against the order of the AO the assessee preferred appeal before Id CIT(A) late with condonation petition. However, the Id. JCIT(A) did not consider the condonation petition as sufficient cause for filing the appeal late and dismissed the appeal as unadmitted. Aggrieved, the assessee has preferred appeal before us.

5. Ld AR submitted that the assessee is a charitable trust registered u/s 12(A) of the IT Act. It was the submission that due to late filing of form 10B, the AO treated the entire gross receipt as income of the assessee. It was his submission that the Id CIT(A) on the one hand rejected the condonation petition and the other hand direct the AO to allow the expenses on production of books of account. So it was his prayer that the delay in filing appeal before the CIT(A) may be condoned and the matter be restored to the file of the Id CIT(A) again for production of books of account in support of its claim.

6. In reply, Id Sr. Dr oppose the prayer of the assessee.

7. We have considered the rival submission and perused the material available on records. In this case, the CPC has disallowed the exemption u/s 11 of the Act while processing the Return of income u/s 143(1) of the Act. Against the above order the assessee had preferred appeal late as the Managing Trustee of the assessee trust was absent from the town for religious preaching from 25.11.2019 upto 12.03.2020. The contention of the assessee in filing then appeal late before the Id CIT(A) is found to be reasonable and plausible cause and, therefore, in the interest of justice, the delay in filing of appeal before the Id CIT(A) is condoned. Though the Id CIT(A) himself has observed that expenses incurred should be allowed, however, in the interest of justice, the issues in this appeal are restored to the file of the CIT(A) for fresh adjudication on merits after affording reasonable opportunity of hearing to the assessee.

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

Order dictated and pronounced in the open court on 31/12/2024.

Sd/-  
**(Manish Agarwal)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 31/12/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. Bharatiya Sikshya Bikasha Sansthana ,  
Siddhartha Nagar 1<sup>st</sup> Line  
PO : Banthapali, Puruna Berhampur,  
B.O : Berhampur Sadar,  
Ganjam , 760002

2. The Respondent: Income Tax Officer,  
Berrhampur

3. The CIT(A)-

4. Pr.CIT, Bhubaneswar  
DR, ITAT,

6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.Secretary  
**ITAT, CUTTACK**

