



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

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

**ITA No.447/CTK/2024**  
Assessment Year :2021-22

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, (Exemption),Berhampur
PAN/GIR No. AACTB 4047N		
<b>(Appellant)</b>	<b>..</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 CIT(A), NFAC, Delhi dated 30.8.2024 in Appeal No.CIT(A),NFAC/2020-21/10291247 for the assessment year 2021-22.

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. 27.5.2021 vide registration number AACTB4047NE20206.

2. That under the facts & circumstances, the AO was unjustified in treating the gross receipt of Rs.56,82,145/- as taxable income and raising a demand of Rs.21,18,310/- while assessing the assessee u/s.143(1) of the IT Act.

3. That the CIT(A) is unjustified by upholding the order passed u/s.143(1) by disallowing the expenses of Rs.54,76,336/- without considering the details of expenses reported by the assessee in Form ITR-7.

4) That for the said AY Form 10B was filed belatedly along with the return on 23.2.2022 and as such same should have been considered by the .

5) That the non-filing of the audit report 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 10B.

6) 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.2,05,809/- as per audited accounts alone could be treated as taxable income.

7) 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.

8) 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.

9) 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. The appeal is time barred by 2 days. The assessee has filed condonation petition supported by affidavit. Since, the delay is short period, we condone the delay of 2 days and admit the appeal for hearing.

5. Brief facts of the case are that against the order of the AO the assessee preferred appeal before Id CIT(A) late of 335 days with condonation petition. However, the Id. CIT(A) did not consider the condonation petition as sufficient cause for filing the appeal late and dismissed the appeal as not admitted. Aggrieved, the assessee has preferred appeal before us.

6. 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 on appeal, the Id CIT(A) rejected the condonation petition in filing of appeal before him and dismissed the appeal as unadmitted. 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.

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

8. 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 raising a demand of Rs.20,94,295/-. Against the above order the assessee had preferred appeal late, stating the reason that the assessee is a small charitable trust and the person engaged by the trust was having lack of knowledge in operating computer, unable to search the notice online in income tax site and therefore, could not file the appeal in time. The contention of the assessee in filing the 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 and 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.

9. 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**

