

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2183/Bang/2024
Assessment Year: 2019-20

Sree Venugopala Swamy Educational Trust No, Devasandra Devasandra SO Bangalore Bangalore North Karnataka 560 036  <b>PAN NO : AAGTS9752H</b>	<b>Vs.</b>	ITO Ward-4(1)(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Ms. Vinaata Shah, A.R.
<b>Respondent by</b>	:	Sri Netrapal M.S., D.R.

<b>Date of Hearing</b>	:	19.12.2024
<b>Date of Pronouncement</b>	:	14.03.2025

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of assessee is directed against the order of Id. ADDL./JCIT (A) dated 23.09.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1068972866(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2019-20. The assessee has raised the following grounds of appeal:

1. The Learned Additional Commissioner of Income Tax (Appeal) erred in passing *ex parte* order without providing adequate opportunity of being heard.
2. The Learned Additional Commissioner of Income Tax (A) erred in law as well as on facts while upholding the adjustment made by CPC U/s 143(1)(a) which is contrary to the provisions of the Act.
3. The Learned Additional Commissioner of Income Tax (A) erred in law by not adjudicating grounds of appeal raised before her in the appeal memo.

4. The Learned Additional Commissioner of Income Tax (A) erred in directing that the appellant should approach PCIT/ CCIT to condone the delay in submitting form 10B without appreciating the facts of the case.
5. The Learned Additional Commissioner of Income Tax (A) erred not allowing expenses incurred for the object of the Trust against the income earned for the year.
6. The Learned Additional Commissioner of Income Tax (A) erred not allowing deduction U/s 10(23C) of the Act.
7. The Learned Additional Commissioner of Income Tax (A) ought to have deleted the interest charged u/s 234A, 234B, and 234C of the Income Tax Act.
8. The appellant craves leave to add, amend, alter or delete the said ground of appeal.

2. Brief facts of the case are that the assessee is an Educational Trust, running Bharatiya Vidya Nikhetana Primary, High School & College. The assessee has filed the return of income on 30.09.2020, declaring total income of Rs.10,94,678/-. The said return of income was processed u/s.143(1) of the Act by CPC on 27.03.2021 after determining total income of the assessee at Rs.1,08,20,120/-. While processing the return of income the CPC has not allowed deduction on account of application of income to the extent of Rs. 95,73,126/- and accumulation of 15% to the extent of Rs.1,52,312/- against the gross receipt of the trust and accordingly assessed on a total income of Rs.1,08,20,120/- and raised demand of Rs. 53,68,689/- for the AY 2019-20. The reasons for disallowance made u/s. 143(1) as noticed in the intimation passed u/s. 143(1) are as under:

- i. As per the details furnished in the return, Assessee is not registered u/s. 12A/12AA or approved u/s. 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via).
- ii. The claim of exemption has been made in Sl. No. 4i to 4viii of Schedule Part B-TI. These fields are applicable for exemption under section 11 or 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via). Hence, exemption is not allowable.
- iii. Assessee has not E-filed the audit report in form 10B along with the Return of Income or before filing the return of

Income. As per section – 12A(1)(b) of the Income tax Act read with 1<sup>st</sup> Proviso to Rule 12(2) of the Income Tax Rules, the audit report Form 10B has to be E-filed along with the return of Income. Hence exemption u/s. 11 is not allowable.

3. Aggrieved by the intimation passed u/s 143(1) of the Act, dated 27.03.2021, the assessee has preferred an appeal before the Id. CIT(A)/NFAC.

4. The Id. ADDL./JCIT(A) Faridabad dismissed the appeal of the assessee on the following grounds:

1. Assessee has not furnished any submissions/details/evidence in support of its contentions/grounds of appeal.
2. The JCIT(A)/CIT(A) do not have the authority u/s 119(2)(b) of the Act to grant condonation of delay in filing ITR/Form 10BB.
3. The assessee has option only to approach the jurisdictional Commissioner for the condonation of delay in filing ITR/Form 10BB and to claim the benefits of section 11 & 12 of the Act.

4.1 In view of the above observations, Id. ADDL./JCIT(A) Faridabad dismissed the appeal of the assessee.

4.2 Again aggrieved by the order of ADDL./JCIT(A) dated 23.09.2024, the assessee has filed the present appeal before this Tribunal.

5. The Id. A.R. of the assessee vehemently submitted that order of ADDL./JCIT(A) without providing adequate opportunity of being heard is illegal and bad in law. Further, Id. ADDL./JCIT(A) erred in law by not adjudicating the grounds of appeal.

6. Ld. D.R. on the other hand supported the order of the authorities below and submitted that neither the AO nor the JCIT(A) have power to condone the delay in filing ITR/Form 10BB and therefore, ld. Addl/JCIT(A) has rightly dismissed the appeal of the assessee.

7. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that assessee has filed return of income belatedly on 30.9.2020 whereas the due date for the assessment year 2019-20 was 30.9.2019. The said return was processed by the CPC u/s 143(1) of the Act on 27.3.2021 after determining the total income of the assessee at Rs.1,08,20,120/- by disallowing deduction on account of application of income to the extent of Rs.95,73,126/- and accumulation of 15% to the extent of Rs.1,52,312/- against the gross receipt of the trust. On going through the intimation passed u/s. 143(1) of the Act, we find that the CPC has disallowed the claim of deduction u/s. 11 of the Act on the grounds that the assessee is not registered u/s. 12A/12AA of the Act and also that the assessee has not E-filed the audit report in form 10B along with the Return of Income or before filing the return of Income. The ld. ADDL./JCIT(A) dismissed the appeal mainly on the ground that Assessee has not furnished any submissions/details/ evidence in support of its contentions/grounds of appeal and the JCIT(A)/CIT(A) do not have the authority u/s 119(2)(b) of the Act to grant condonation of delay in filing ITR/Form 10BB.

7.1. We cannot brush aside the fact that the assessee is an Educational Trust, running Bharatiya Vidya Nikhetana Primary, High School & College and the total gross receipts for the AY under

consideration is below Rs. One crore. Further, as per section 10(23C)(iiiad) of the Act, any university or other educational institutions existing solely for educational purposes and not for the purposes of profit if the aggregate annual receipts of the person from such university or educational institutions does not exceed one crore, the entire income of such institutions are exempt from Income Tax.

7.2 We incline to agree with the arguments AR of the assessee that ld. ADDL./JCIT(A) has not adjudicated all the grounds of appeal raised by the assessee and merely dismissed the appeal by stating that the JCIT(A)/CIT(A) do not have the authority u/s 119(2)(b) of the Act to grant condonation of delay. Further, the ld. ADDL./JCIT(A) on the one hand has also observed that the assessee had not furnished any submissions/details/ evidence in support of its contentions/grounds of appeal and on the other hand the assessee has also raised the first ground of Appeal that no reasonable opportunity of being heard is granted and therefore, the ex-parte order of the ld. ADDL./JCIT(A) is illegal and bad in law. Being so, in the interest of justice and equity and as requested by the AR of the assessee, we incline to remit back the entire issues in dispute to the file of ld. ADDL./JCIT(A) for fresh consideration in accordance with the law. Needless to say, a reasonable opportunity of being heard must be granted to the assessee. The assessee is also directed to produce/ submit necessary documents/ record/ information in support of his claim as required by the ld. ADDL./JCIT(A) for adjudication of the case. We make it clear that in case of further default, the assessee shall not be entitled for any leniency. It is ordered accordingly.

8. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14<sup>th</sup> Mar, 2025

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 14<sup>th</sup> Mar, 2025.  
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.**