

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH: DEHRADUN
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.226/DDN/2024
(ASSESSMENT YEAR 2021-22)

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| K L DAV College Railway Road, Roorkee, Uttarakhand-247667 PAN-AAAAK5649L (Appellant) | Vs. | Income Tax Officer, Ward-1(3)(4), Roorkee. (Respondent) |
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| Assessee by | Shri Rajiv Sahni, CA |
| Department by | Shri Aman Pal Singh, JCIT-DR |
| Date of Hearing | 07/08/2025 |
| Date of Pronouncement | 14/08/2025 |

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-2, Chennai ('the Ld. CIT(A)' for short) in Appeal No. Addl./JCIT(A)-2/Chennai/10004/2020-21 dated 30.10.2024 for Assessment Year 2021-22.

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

"1. The order dated 30/10/2024 u/s 250 of the Income Tax Act 1961 passed by ADDL/JCIT (A)-2 CHENNAI, Office of Commissioner of Income Tax Appeal is against the law and on facts of the case.

2. That ADDL/JCIT has erred in law and facts in sustaining the addition for Rs. 1,82,59,837/- made by assessing officer (AO) at CPC u/s 143(1)(ii) through automated process u/s 143(1) of the Income Tax Act 1961 and in passing the order without considering all the grounds of appeal as per Form

35 and written submissions dated 28.10.2024 and case laws relied upon by the appellant.

3. That ADDL/JCIT has erred in law and facts in sustaining the addition for Rs. 1,82,59,837/- made by assessing officer (AO) at CPC u/s 143(1)(ii) through automated process u/s 143(1) of the Income Tax Act 1961 without appreciating the fact that reasonable opportunity of being heard was not afforded before making adjustment u/s 143(1)(a)(ii) of the Income Tax Act 1961.

4. That ADDL/JCIT has erred in law and facts in sustaining the addition for Rs. 1,82,59,837/- made by assessing officer (AO) at CPC u/s 143(1)(ii) through automated process u/s 143(1) of the Income Tax Act 1961 by applying the provisions of section 12A(1)(b) of the Income Tax Act 1961 and disallowing the exemption claimed u/s 11 of the Act without appreciating the fact that appellant has e-filed audit report in Form 10B along with updated return of income u/s 139(8A) of the Act and the same was on records at the time of assessment and furnishing of Audit report is only procedural requirement.

5. That without prejudice to the above the ADDL/JCIT has erred in law and facts in sustaining the addition for Rs. 1,82,59,837/- made by AO at CPC u/s 143(1)(ii) through automated process u/s 143(1) of the Income Tax Act 1961 by applying the provisions of section 12A(1)(b) of the Income Tax Act 1961 and disallowing the exemption claimed u/s 11 of the Act without appreciating the facts that delay in furnishing of Audit Report is condonable on reasonable cause and appellant's application for condonation u/s 119(2)(b) of the Act is yet to be decided by the competent authority.

6. That without prejudice to the above the ADDL/JCIT has erred in law and facts in sustaining the addition for Rs. 1,82,59,837/- made by AO at CPC u/s 143(1)(ii) through automated process u/s 143(1) of the Income Tax Act 1961 by applying the provisions of section 12A(1)(b) of the Income Tax Act 1961 and treating the gross receipts as Income without allowing revenue expenditures and depreciation on capital expenditures.

7. Without prejudice to the above the ADDL/JCIT has erred in law and facts in sustaining the addition for Rs. 1,82,59,837/- and Tax liability including interest and additional Income Tax at Rs. 1,61,64,410/- made by AO at CPC through automated process u/s 143(1) of the Income Tax Act 1961 by applying the provisions of section 140B of the Income Tax Act 1961 on income determined u/s 143(1) of the Income Tax Act 1961 whereas provisions of section 140B regarding additional Income Tax and interest are to be applied on income declared in the return.

8. The appellant craves permission to elucidate, add, amend, modify, delete any ground or grounds of appeal before the disposal in the interest of substantial justice.

9. It is therefore prayed that the appeal may kindly be accepted as prayed above or any other relief to which the appellant may be found entitled may kindly be granted.”

3. All these grounds of appeal are revolving issue of not allowing the exemptions u/s 12A for the sole reason that the audit report was not filed within the statutory timeline.

4. In this regard, the Ld. AR of the assessee submitted that the assessee was granted provisional registration u/s 12A(1)(ac)(vi) as a charitable society on 02.06.2022 and granted permanent registration u/s 12A(1)(ac)(iii) for Aysrs. 2023-24 to 2027-28 on 13.07.2023. Thereafter, vide intimation dt. 29.12.2023, the CPC has not granted the benefit of section 12A for the sole reason that the audit report in form 10B was filed delayed alongwith the updated return and was available with the CPC at the time of passing of the order u/s 143(1) of the Act. It is submitted by the ld. AR that there is no doubt about the charitable activities carried out by the assessee society. Ld. AR that the exemption u/s 11 was mainly disallowed by the CPC on the basis of belated filing of audit report in Form 10B. It is further submitted by Id. AR that it is true that Form 10B could not be furnished one month prior to the due date for furnishing of return u/s 139 but the same was furnished later and when the return was processed, Form 10B was available with CPC. Therefore, the CPC was not justified in rejecting the claim of the assessee u/s 11 of the IT Act merely on the basis of belated filing of Form 10B. In support of this

contention, reliance is placed on the decision of Co-ordinate Bench of Ahmedabad Tribunal in the case of Shiksha Foundation vs. ITO in ITA No.441/Ahd/2024 wherein vice order dated 14.06.2024 the Co-ordinate Bench of the Tribunal has allowed the appeal of the assessee. Reliance is also placed on the decision of the Co-ordinate Mumbai Bench of the Tribunal in case ITO vs. P. K. Krishnan Educational Trust in ITA No.3533/Mum/2023 wherein vide order dated 07.05.2024 the appeal was allowed in favour of the assessee by condoning the delay caused in filing of Form 10B. Accordingly, ld. AR requested to allow the exemption u/s 12A to the assessee.

5. On the other hand, Ld. DR vehemently supported the orders of the lower authorities and requested to confirm the same as the assessee has failed to file the audit report as prescribed under the Act within the stipulated time period. According to the ld. CIT-DR it is the condition precedent to claim exemption u/s 12A and failing which assessee is not entitled for the exemption. He prayed accordingly.

6. We have heard both the parties and perused the material available on record. We find that the assessee is a charitable society and engaged in educational activities by running educational institutions. The assessee society was granted permanent registration u/s 12A on 13.07.2023. The sole reason for not allowing the benefit of exemption was that the audit report in Form 10B was not furnished one month prior to the due date of filing of return of

income u/s 139(1) of the Act. The assessee had filed the same alongwith updated return and, we find that the intimation u/s 143(1)(a) was passed on 29.12.2023 when the audit report was available with CPC and the assessee was having permanent registration u/s 12A also.

7. Since the assessee was granted permanent registration u/s 12A of the Act for during the pendency of assessment proceedings for the assessment year under appeal and the objects and activities remains the same, the benefit of exemption u/s 11 and 12 is available to the assessee for that year for which assessment proceedings are pending. In the instant case in hand, as observed above, provisional registration u/s 12A of the IT Act for AYrs. 2023-24 to 2025-26 was granted on 02.06.2022 and final registration was granted for AYrs. 2023-24 to 2027-28 on 13.07.2023. The return of income was processed by CPC on 29.12.2023 therefore, in the light of second proviso to sub-section (2) of section 12A of the Act, the assessee society is entitled for the benefit of exemption u/s 11 and 12 of the Act. It is also seen that when Id. Addl./JCIT(A)-2, Chennai passed the appellate order in the instant case, assessee was having permanent registration u/s 12A of the Act for AYrs 2023-24 to 2027-28. Though the year under appeal is AY 2021-22 however, in terms of section 12AB(4), the benefit of registration cannot be withdrawn for any earlier year. Under identical circumstances, Co-ordinate Pune Bench of the Tribunal in the case of Shri Shikshan Prasarak Mandal in ITA No. 609/PUN/2024 order dated 04.09.2024 has allowed the

exemption to the assessee. Therefore, considering the totality of the facts and in the light of the decisions of Co-ordinate Bench of the Tribunal (supra), we direct the AO to allow the assessee benefit of exemption u/s 12A of the Act. Accordingly, all the grounds of appeal raised by the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court 14.08.2025.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 14.08.2025

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DEHRADUN