

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ " C", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" C " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.457/Ahd/2025  
निर्धारण वर्ष /Assessment Year : 2020-2021

Akshat Education And Charitable Trust, 5/35, Gosainu Faliyu, Asodar Borsad Road, Asodar, Anand-388307. (Gujarat)	<u>बनाम</u> <u>/</u> <u>v/s.</u>	The Income Tax Officer, Ward (Exemption), Vadodara.
स्थायी लेखा सं./PAN: AAETA2211K		
<b>अपीलार्थी/</b> (Appellant)		<b>प्रत्यर्थी/</b> (Respondent)
Assessee by :	Shri Mehul Thakkar, AR	
Revenue by :	Shri Rignesh Das, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 14/08/2025  
घोषणा की तारीख /Date of Pronouncement: 19/08/2025

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

This appeal by the assessee is directed against the order of the Learned Joint Commissioner of Income Tax (Appeals)-2, Coimbatore [hereinafter referred to as "Ld. CIT(A)"] dated 25.01.2025, passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2020-21. The impugned order arises out of the

intimation issued under section 143(1) dated 30.11.2021 by the CPC, Bengaluru.

**Facts of the case**

2. The assessee is a Public Charitable Trust, duly registered under section 12AA of the Act vide order dated 06.07.2015 issued by the CIT (Exemptions), Ahmedabad [as mentioned on page No. 4 of the order of CIT(A)]. The trust is engaged in running a school and imparting education, which is its stated charitable object. For the year under consideration, the assessee filed its return of income in Form ITR-7 on 31.03.2021, declaring nil income after claiming exemption under section 11 of the Act on total gross receipts of Rs. 1,99,48,893/-. Along with the return, the assessee uploaded audit report in Form 10B, which was also dated 31.03.2021. The due date for filing the return and audit report under section 139(1) stood extended to 15.02.2021, and hence both filings were beyond the statutory due date.

3. The CPC, Bengaluru processed the return under section **143(1)**. While doing so, it denied the exemption claimed under section 11 on the ground that the return and audit report were filed belatedly. Consequently, the entire gross receipts of Rs. 1,99,48,893/- were assessed as taxable income, resulting in the following demand:

- Tax on total income: Rs. 69,33,412/-
- Interest u/ss 234A/B/C/F: Rs. 16,08,149/-
- Total demand payable: Rs. 88,18,900/-

4. The assessee carried the matter in appeal before the Ld. CIT(A). The primary grounds raised were that the CPC erred in taxing the gross receipts without allowing legitimate revenue expenses. IT was also prayed that even

if exemption u/s 11 was denied, the income should have been computed on commercial principles after deducting expenditure incurred on educational activities.

5. The Ld. CIT(A) issued notices of hearing under section 250 on 05.07.2024, 26.08.2024, and 12.09.2024, which were served electronically on the registered e-filing account and e-mail of the assessee. However, the assessee did not respond to any of the notices.

6. On merits, the Ld. CIT(A) observed that the assessee had filed its return and Form 10B belatedly, beyond the due date of 15.02.2021, and hence the conditions prescribed under section 12A(1)(b) and (ba) stood violated. Consequently, exemption u/s 11 was not available. The Ld. CIT(A) held that the CPC had correctly taxed the gross receipts and dismissed the appeal, both for non-prosecution as well as on merits.

7. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *That the Ld. Joint Commissioner (Appeals)-2, Combatore, erred in law and on facts in dismissing the appeal for non-prosecution without adjudicating on the merits of the case, thereby denying the appellant's right to be heard.*
2. *That the Ld. Joint Commissioner (Appeals) failed to appreciate that the CPC had erred in assessing the income at gross receipts of Rs. 1,99,48,893/-, without allowing legitimate revenue expenses, contrary to the settled principle that only net income is taxable.*
3. *That the Ld. Joint Commissioner (Appeals) erred in upholding the CPC's order, which effectively taxed revenue receipts without considering the fundamental principle that only net income, after allowing for expenditure incurred in the course of carrying out charitable activities, is taxable.*

4. *That the Ld. Joint Commissioner (Appeals) failed to appreciate that even if exemption under Section 11 was disallowed due to late filing, the appellant was still entitled to deduction of revenue expenses for computing taxable income.*
5. *That the appellant craves leave to add, alter, amend, or modify any of the above grounds at the time of hearing.*

8. The Learned Authorised Representative submitted that the CPC gravely erred in taxing gross receipts without allowing deduction of revenue expenditure. It was pointed out that even if exemption u/s 11 was not available owing to late filing, the income is still to be computed on commercial principles as per section 4 read with section 2(24) of the Act.

9. The AR relied upon the following judicial precedents:
  - i. **H M V Educational Cultural & Social Trust v. ITO(E), ITA No. 9/Bang/2023 (ITAT Bangalore)**, wherein it was held that CPC could not levy tax on gross receipts without allowing expenditure, even if return was belated.
  - ii. **Sree Venkateswara Educational Trust v. ITO (Exemptions) [2024] 167 taxmann.com 366 (Madras HC)**, wherein the Hon'ble High Court held that even where exemption under sections 11 and 12 is not available, the benefit of other deductions under the Act must be granted before finalising assessment.
10. On these facts, the AR prayed that the income be directed to be recomputed on net basis after deduction of revenue expenditure.

11. The Learned Departmental Representative, on the other hand, strongly supported the order of the Ld. CIT(A). It was submitted that

several opportunities were granted by the first appellate authority, but the assessee failed to avail any of them. Hence, the Ld. CIT(A) was justified in dismissing the appeal for non-prosecution and confirming the action of CPC.

12. We have heard the rival submissions and perused the material available on record. The undisputed facts are that the assessee is a public charitable trust, duly registered under section 12AA of the Act vide order dated 06.07.2015 issued by the CIT (Exemptions), Ahmedabad. The assessee filed its return of income for the year under appeal in Form ITR-7 on 31.03.2021, declaring nil income after claiming exemption under section 11. The audit report in Form 10B was also filed on 31.03.2021. Both filings were admittedly beyond the extended due date of 15.02.2021 under section 139(1). The CPC, while processing the return under section 143(1), denied exemption under section 11 and taxed the entire gross receipts of Rs. 1,99,48,893/- as income, without allowing any deduction for expenditure. The Ld. CIT(A), Coimbatore, upheld the action of the CPC, holding that since the return and Form 10B were filed beyond due date, exemption under section 11 was not available. He also dismissed the appeal for non-prosecution.

13. The short controversy before us is whether, after denial of exemption under section 11 on account of late filing, the CPC was justified in taxing the gross receipts of the assessee trust without allowing deduction of the expenditure incurred for carrying out its educational activities.

14. In our considered view, the action of CPC in taxing the gross receipts is not sustainable in law. Income-tax is a levy on "income" and not on "gross receipts". The term "income" as defined in section 2(24) of the Act and as understood under the charging section 4, contemplates computation on net basis, after deduction of legitimate expenditure incurred in earning such income. Even where exemption under section 11 is denied for technical non-compliance, the Assessing Officer is still duty-bound to compute the taxable income in accordance with ordinary provisions of the Act and cannot mechanically bring to tax the gross receipts.

15. We find support for this view from the decision of the Co-ordinate Bench of ITAT, Bangalore in the case of H M V Educational Cultural & Social Trust v. ITO(E), ITA No. 9/Bang/2023, order dated 23.03.2023. In that case also, CPC had denied exemption under section 11 due to belated filing of return and taxed the entire gross receipts. The Co-ordinate Bench held that –

*8. From the above, it is clear that the above receipts includes bank interest of Rs. 24,94,862/- and we noted that in over all, the Trust is in loss for the year of Rs. 6,62,323.82/- The income tax is levied on the income of the assesee during the impugned assessment year. However, in this case, the CPC has charged the income tax on the entire gross receipts without giving effect of the expenditures incurred by the assessee towards earning of the income. The income has been defined in section 2(24) of the Act., the income should be construed in its general meaning but not to the entire receipts, if the assessee has incurred any expenditure towards earning the income, in such case, the assessee is entitled for deduction of expenditure incurred as prescribed in the Income Tax Act. There may be disallowances of the expenditures, which are not in conformity within the provisions of the Income Tax Act. In this case, the assessee filed return of income belatedly as per section 139(4) of the Act. The section 139(4A) of the Act prescribes that all other provisions of the Act shall apply as if it were a return required to be furnished under sub-section (1) of section 139 of the Act. The income is arrived after deducting the allowable expenditures as per the I.T. Act. 1961.*

*In the impugned case on hand, the total receipts declared by the assessee, which is placed at Paper Book page No.6, we observe that there is excess expenditure over income of Rs.6,62,324/-, which is loss suffered by the assessee during the year. Therefore, in this case, the claim of deduction from income under section 11 and 12(1) (ba) of the Act does not arise. No doubt that the assessee has filed his return of income belatedly but he was required to compute his income and the income is below the threshold limit and in this case no tax shall be charged on the entire receipts. We also make it clear that the assessee will not get the benefit of carry forward & setting off of loss for the subsequent year as prescribed under section 139(3) of the Act. Considering the facts of the case, we set aside the order of the CIT(A). Accordingly, appeal of the assessee is partly allowed.*

16. Similarly, the Hon'ble Madras High Court in Sree Venkateswara Educational Trust v. ITO (Exemptions) [2024] 167 taxmann.com 366 has held that even when exemption under sections 11 and 12 is not available, the assessee is still entitled to claim deduction of revenue expenditure while computing taxable income, and the Assessing Officer is not expected to fasten unjust tax liability by taxing gross receipts.

17. In the present case, the assessee has placed audited accounts (in the form of form 10B) evidencing expenditure incurred towards its educational activities. The lower authorities have not doubted the genuineness of these expenses; rather, they have mechanically denied exemption and taxed gross receipts. This approach cannot be upheld.

18. We, therefore, set aside the impugned order of the Ld. CIT(A) and direct the Assessing Officer/CPC to recompute the income of the assessee on net basis, i.e. after allowing deduction of legitimate revenue expenditure incurred during the year. Needless to state, the assessee shall not be entitled to the benefit of exemption u/s 11 or carry forward of deficit, as the return

and Form 10B were filed beyond the due date.

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

**Order pronounced in the Open Court on 19<sup>th</sup> August, 2025 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(MAKARAND V.MAHADEOKAR)  
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad, Dated 19/08/2025

*Manish, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(Exemption)-Ahmedabad
5. विभागीय प्रतिनिधि, अपीलीय अधिकरण आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad