

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'SMC' BENCH, BANGALORE**

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

ITA No.859/Bang/2025
Assessment Year: 2018-19

Sree Vishwabharathi Charitable Trust, 54-59, Uttarahalli Main Road, Subramanyapura Uttarahalli, Bengaluru – 560 061.  <b>PAN – AATTS 8000 M</b>	Vs.	The Income Tax Officer, Ward – 3(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri K.H Nagaraj, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of hearing	:	24.06.2025
Date of Pronouncement	:	16.09.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi vide order dated 28/02/2025 in DIN No. ITBA/NFAC/S/250/2024-25/1073838387(1) for the assessment year 2018-19.

2. The issue raised by the assessee in its grounds of appeal is that the learned NFAC/CIT(A) erred in upholding the assessment framed under section 144 of the Act and in confirming the addition of Rs. 30,45,214/-. The Id. further erred in not adjudicating the additional

ground requesting that the issue be set aside to the file of the AO for fresh adjudication.

3. The relevant facts are as follows. The assessee was established on 2<sup>nd</sup> June 2017 as a charitable trust with the objective of imparting education. The trust runs a nursing college at Uttarahalli, Bangalore, in the name and style of M/s Sri Sharda Nursing College. For the relevant assessment year, the assessee was neither registered under section 12AA/12AB nor under section 10(23C) of the Act.

4. For the year under consideration, the assessee filed its return of income on 30<sup>th</sup> August 2018 in ITR-7. It disclosed total receipts of Rs. 22,23,017/- only. These did not include any voluntary contributions. Against these receipts, the assessee claimed expenditure towards its objects of Rs. 30,45,214/- only. The assessee thus declared total income at NIL.

5. The CPC issued a communication under section 143(1)(a) of the Act dated 1 March 2019. It proposed a disallowance of Rs. 30,45,214/-, being the amount claimed as application towards the objects. The reasons given were that the assessee was not registered under section 12A/12AA or section 10(23C) of the Act, and that the audit report in Form 10B was not filed with the return of income.

6. Subsequently, the case was selected for scrutiny on the ground of "large receipts from incidental business." During the assessment, the AO issued several notices calling for details. The notices sought information to substantiate the incidental activities in relation to the main object and

to show compliance with section 2(15) of the Act. The assessee did not respond.

7. Accordingly, the AO completed the assessment under section 144 of the Act. Since the assessee had not furnished the required details and had not filed the audit report in Form 10B, the AO disallowed the claim of application of income of Rs. 30,45,214/- by invoking section 69C of the Act. The amount was added to the total income. The AO thus assessed total income at Rs. 30,45,214/- as against the NIL income declared by the assessee.

8. The aggrieved assessee filed an appeal before the learned NFAC/CIT(A).

9. Before the learned CIT(A), the assessee made detailed submissions. It challenged the validity of the assessment framed under section 144 of the Act as violating the principles of natural justice. It also challenged the disallowance of expenditure claimed towards its objects under section 69C of the Act. It further contended that the assessee should have been treated as an AOP and that income should have been computed accordingly. However, the learned CIT(A) dismissed all the arguments and grounds raised by the assessee.

10. Being aggrieved by the order of the learned CIT(A), the assessee has filed the present appeal before the Tribunal.

11. The learned AR before us filed paper books running from pages 1 to 132. He submitted that the managing trustee of the assessee-trust is

a senior citizen aged over 75 years. He is not well-versed with technology and return filing. The trust therefore relied on a tax practitioner (TP) to file the return. Due to lack of knowledge, an inadvertent mistake happened by the TP who filed the return in ITR-7, which is applicable to trusts registered under section 12AA or section 10(23C) of the Act.

11.1 Since the assessee-trust is not registered under section 12AA of the Act, sections 11 and 12 do not apply. It was not required to get its accounts audited in Form 10B. The assessee is liable to be taxed as an AOP/BOI. In the year under consideration, the assessee incurred expenditure of Rs. 30,45,214/-, in excess of receipts of Rs. 22,33,000/- (fees received from students). This resulted in a business loss of Rs. 8,22,127/- to be carried forward.

11.2 The learned AR submitted that although the ITR form was wrongly selected as ITR-7, the status was correctly selected as AOP/BOI and the sub-status as "other trust/institution." In subsequent assessment years, the assessee filed returns in ITR-5 treating itself as an AOP/BOI. In view of the above, the learned AR prayed that the AO be directed to make a fresh assessment treating the assessee as an AOP.

11.3 Without prejudice, the learned AR submitted that the assessee runs an educational institution, namely a nursing college. It exists solely for educational purposes and not for profit. Its receipts from the educational institution do not exceed Rs. 5 crores. Therefore, the assessee is covered by section 10(23C)(iiiad) of the Act.

12. On the other hand, the learned DR vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee is a newly established educational trust running a nursing college. For the year in question, it disclosed receipts about Rs. 22.23 lakh and expenditure of Rs. 30.45 lakh, resulting in a deficit. It was not registered under sections 12AA/12AB or 10(23C) of the Act. However, the AO completed a best-judgment assessment under section 144 of the Act and added Rs. 30,45,214/- by invoking section 69C of the Act, mainly because no Form 10B was filed and no details being provided in response to the notices issued during the assessment.

13.1 On these facts, we first examine the legal basis of the addition. The provision of section 69C of the Act applies to "unexplained expenditure," i.e., expenditure that is not recorded or the nature and sources not satisfactorily explained. Here, the expenditure is part of the books and relates to running the educational institution. On principal, where books exist and payments are recorded, the proper course is to test allowability under the ordinary computation provisions (e.g., section 37, read with sections 28–43) or to examine exemption, and not to deem the entire recorded expenses as "unexplained" under section 69C of the Act. We therefore hold that the resorting to section 69C of the Act in the given facts is arbitrary and not justifiable.

13.2 We then turn to the claim under section 10(23C)(iiiad) of the Act. The learned AR for the assessee before us asserted that the assessee exists solely for educational purposes and not for profit, and that its annual receipts are below the statutory threshold applicable to the relevant year. This plea is a matter of substance. In our considered view the wrong selection of ITR form (ITR-7 instead of ITR-5), though an error, is a procedural lapse and cannot defeat a substantive exemption if otherwise available. We are also conscious to the facts that whether the institution is "solely" for education, the nature of its activities, fee structure, use of funds, and the quantum of annual receipts are all verifiable matters. The Authorities below has not got the opportunity to examine these facts.

13.3 We also note the assessment was framed under section 144 of the Act due to non-compliance. The assessee has explained that the managing trustee is a senior citizen and that a tax-practitioner's inadvertent error led to the wrong form being used. A detailed paper-book has now been filed. In the totality of circumstances, and to uphold natural justice, one more opportunity is warranted so that the correct head of exemption/computation is tested on facts.

13.4 In view of the above, we set aside the order of the learned CIT(A) and restore the matter to the file of the AO for de novo adjudication with the following directions: (i) examine the assessee's eligibility under section 10(23C)(iiiad) of the Act for the year under appeal and decide the claim on merits; (ii) if exemption is not available, compute the income in the status of AOP/BOI as returned, allowing only those expenditures that are verifiable and otherwise admissible under law; (iii)

do not invoke section 69C of the Act unless there is a clear finding, with reasons, that the impugned expenditure is unrecorded or unexplained in the statutory sense; (iv) verify the deficit, if any, and its carry-forward in accordance with law; and (v) grant adequate opportunity to the assessee and pass a speaking order.

14. Coming to the other issue raised by the assessee on technical grounds. As we have adjudicated the issue on merit and accepted the plea of the assessee for setting aside the issue to the file of the AO for the fresh adjudication on merits. We do not find necessary to give finding on the technical grounds as the same become infructuous in the given facts and circumstances. Hence, in view of the above and subject to these directions, grounds of appeal raised by the assessee is partly allowed for statistical purposes.

15. In the result appeal of the assessee is hereby partly allowed for statistical purposes.

Order pronounced in court on 16<sup>th</sup> day of September, 2025

Sd/-

**(KESHAV DUBEY)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 16<sup>th</sup> September, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore