

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No. 612/Ind/2025
Assessment Year: 2018-19

Bhartiya Aadarsh Shikshan Samiti, Manas Bhawan, Sanjit Road, Mandsaur (Assessee/Appellant)	<u>बनाम/</u> Vs.	Deputy Commissioner of Income-tax (Exemption), Bhopal (Revenue/Respondent)
PAN: AABAB2693N		
Assessee by	Shri Rajesh Mehta, AR	
Revenue by	Shri Anup Singh, CIT- DR	
Date of Hearing	04.02.2026	
Date of Pronouncement	19.02.2026	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 05.06.2025 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-6, Kolkata ["CIT(A)"] which in turn arises out of intimation dated 26.02.2020 passed by learned CPC, Bangalore ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on following grounds:

"1. The Ld. AO, CPC and the Ld. JT. CIT(A) have erred in not allowing exemption u/s. 11 of the Act:

1.1. On the facts and in the circumstances of the case and in law, the Ld. AO, CPC has erred in not allowing claim of exemption u/s. 11 of the Act without appreciating that the assessee society is a genuine charitable society engaged in educational activities and is registered u/s. 12AA of the Act vide 12AA Registration Certificate dated 29.07.2019. Thus, the action of the Ld. AO, CPC of not allowing exemption u/s. 11 of the Act is liable to be quashed.

1.2. On the facts and in the circumstances of the case and in law, the Ld. AO, CPC has erred in disallowance of exemption u/s. 11 of the Act without appreciating that as per the First Proviso to Section 12A(2) of the Act, the benefit of exemption u/s. 11 of the Act shall apply on all the pending proceedings and thus, the Intimation u/s. 143(1) of the Act dated 26.02.2020, without considering the 12AA Registration Certificate dated 29.07.2019, is liable to be set aside and exemption u/s. 11 of the Act may kindly be allowed to the assessee society.

1.3. On the facts and in the circumstances of the case and in law and without prejudice to the above, the Ld. AO, CPC has erred in not allowing deduction of revenue expenditure incurred by the assessee society in the regular course of activities of the assessee society, which is wrong and contrary to the provisions of the Act.

2. The disallowance of exemption u/s. 11 of the Act by the Ld. AO, CPC u/s. 143(1) of the Act is without jurisdiction and thus, the Intimation u/s. 143(1) of the Act is liable to be quashed:

2.1. On the facts and in the circumstances of the case and in law, the Ld. AO, CPC has erred in making disallowance of exemption u/s. 11 of the Act without considering the facts of the case and provisions of the Act. Thus, the Intimation u/s. 143(1) of the Act is liable to be quashed.

2.2. On the facts and in the circumstances of the case and in law, the Ld. AO, CPC has erred in disallowing claim of exemption u/s. 11 of the Assessee society without appreciating that adjustments u/s. 143(1)(a) of the Act can only be made for only prima facie adjustment and not for issues which are debatable in nature. Thus, disallowing the exemption u/s. 11 of the Act by the Ld. AO, CPC is wrong and is liable to be deleted."

2. The background facts leading to present appeal are as under:

- (i) The assessee is a society engaged in charitable purpose of advancing education. For AY 2018-19, the assessee filed return of income u/s 139 on 07.01.2019 belatedly u/s 139(4) declaring gross income of Rs.

4,52,77,591/- against which claimed exemption of Rs. 4,52,77,591/- u/s 11/12 and total income of Rs. Nil. The assessee also got accounts audited and filed auditor report in Form No. 10B on the very same day of 07.01.2019. The AO processed assessee's return vide intimation dated 26.02.2020 u/s 143(1) wherein the exemption u/s 11/12 claimed by assessee was denied for the reason that the assessee was not having registration u/s 12A/12AA which was mandatory for being entitled to exemption u/s 11/12. Accordingly, the AO assessed total income at Rs. 4,52,77,591/- without giving exemption u/s 11/12 to assessee.

- (ii) Aggrieved, the assessee carried matter in first-appeal before CIT(A). The assessee made a detailed submission which is re-produced by CIT(A) in Para 4 / Pages 4 to 8 of impugned order. Precisely, the assessee filed a copy of Order No. ITBA/EXM/S/12AA/2019-20/1017067647(1) dated 29.07.2019 issued by CIT, Exemption, Bhopal granting registration to assessee u/s 12AA from subsequent AY 2019-20 vide Registration No. CIT EXEMPTION BHOPAL/12AA/2019-20/A/10126. Further, the assessee relied upon following Proviso to section 12A(2):

“Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the

date of such registration and the object and activities of the trust or institution remain the same for such preceding assessment year:"

On the basis of above Proviso to section 12A(2), the assessee submitted to CIT(A) that since registration has been granted to it from subsequent AY 2019-20, the provisions of section 11/12 shall apply in respect of preceding AY 2018-19 which was pending before AO as on the date of grant of registration. It is an undisputed fact that the registration u/s 12A/12AA from AY 2019-20 was granted to assessee on 29.07.2019 and the intimation u/s 143(1) for AY 2018-19 was passed by AO on 26.02.2020, therefore the assessment of AY 2018-19 was pending before AO. The assessee also relied upon ***ITAT Indore's order dated 27.12.2024 in ITA No. 319/Ind/2024 in assessee's case for AY 2017-18*** wherein the ITAT has directed the AO to give similar benefit of Proviso to section 12A(2). However, the CIT(A) rejected assessee's claim by following order:

"5.5 As regard the non application of the provisions contained in 2nd proviso below sec. 12A(2) of the Act in its case, it is to be stated that as per the said provision, it is required that assessment proceedings as on the date of granting registration should be pending. In appellant's case, no such assessment proceedings was pending as on the date of registration ie. 29.07.2019. Assessment in this regard is referred to regular assessment u/s 143(3)/147/153A/1530 etc. ITR filed and processing u/s 143(1) pending cannot be categorized as pendency of assessment. Moreover, the appellant itself applied for registration u/s 12AA only in the FY-2018-19 (date of application being 10.01.2019) relevant to AY-2019-20. CPC was therefore justified in denying exemption u/s 11 of the Act for the AY-2018-19. Grounds of appeal on this aspect are therefore dismissed."

- (iii) Still aggrieved, the assessee has come in next appeal before us.

3. We have heard learned representatives of both sides and carefully perused the documents held in Paper-Book including the orders of lower-authorities.

4. At first, we take note that the basic issue involved in assessee's case stands covered in favour of assessee by pre-existing decision of ITAT, Indore in assessee's own case for AY 2017-18 in **ITA No. 319/Ind/2024 (supra)**. For an immediate reference, we re-produce below the relevant portion of ITAT's order:

"5. The background facts leading to present appeal are such that the assessee is a society engaged in charitable purpose of advancing education. The AO, based on an information from AIMS Module of ITBA regarding cash deposited by assessee in bank a/c during demonetization period, issued notice dated 28.11.2017 u/s 142(1) calling the assessee to file return of AY 2017-18 by 28.12.2017. The assessee failed to comply with such notice. Subsequently, the AO issued query notices u/s 142(1) in response to which the assessee made submissions. It was a submission of assessee that it is engaged in educational activities through schools; that there were cash-receipts by way of fee from students which were deposited in bank a/c; and that the assessee is registered u/s 12A vide order dated 29.07.2019 by CIT (Exemption), Bhopal w.e.f. AY 2019-20. During proceeding before AO, the assessee also filed Return of Income of AY 2017-18 under consideration on 10.06.2019 alongwith Computation of Total Income, Audit Report and Audited Financial Statements. Ultimately, based on documents of assessee, the AO assessed total income at Rs. 69,37,663/- but without giving exemption u/s 11/12. The AO denied exemption u/s 11/12 for two-fold reasons, viz. (i) the assessee had not filed return within the time permitted in the notice u/s 142(1), and (ii) the assessee got registration u/s 12A from AY 2019-20 which is not for AY 2017-18 under consideration. Aggrieved by order of AO, the assessee carried matter in first-appeal before CIT(A). The CIT(A), however, agreed with AO's conclusions and upheld assessment-order. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

6. Ld. AR for assessee initially submitted that the assessee has, although after expiry of time allowed in notice u/s 142(1) but still before passing of assessment-order dated 28.12.2019, filed Return of Income, Audit Report and Audited Financial Statements for AY 2017-18 under consideration to the AO. Further, the department has granted registration u/s 12A to assessee

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vide order dated 29.07.2019 from AY 2019-20, but as on 29.07.2019, the assessment of AY 2017-18 with which we are concerned was pending before AO. Therefore, the assessee is entitled to the benefit of proviso to section 12A(2) reading as under:

“12A(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment-year immediately following the financial year in which such application is made.

Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the object and activities of the trust or institution remain the same for such preceding assessment year:”

Therefore, Ld. AR submitted, both of the lower authorities are wrong in denying exemption u/s 11/12 to assessee against the clear cut mandate of Proviso to section 12A(2). Ld. AR requested to direct the AO to allow exemption as claimed by assessee.

7. *Per contra, Ld. DR for revenue supported the orders of lower-authorities and submitted that the assessee has failed to file return within the time allowed by AO in the notice u/s 142(1). Therefore, the AO has passed assessment-order u/s 144 without giving exemption u/s 11/12 to assessee. Ld. DR very strongly contended that the assessee has made a non-compliance of statutory obligations, therefore disentitled to exemption. He requested to dismiss the present appeal.*

8. *We have considered rival submissions of both sides and also perused the orders of lower authorities as well as the documents filed in Paper-Book of assessee to which our attention has been drawn during hearing. After a careful consideration, we find that the assessee has not submitted the return of income uptill 28.12.2017 as required by AO in the notice dated 28.11.2017 u/s 142(1). Thus, the assessee is negligent in filing return within the time fixed by AO. However, so far computation of total income is concerned, the assessee is entitled to exemption u/s 11/12 in terms of proviso to section 12A(2) noted above. What needs to be verified by AO is only the fact that the object and activities of assessee remained same for AY 2018-19 as were there at the time when registration u/s 12A was granted. That apart, the claim of exemption u/s 11/12 involves a different type of working based on application and accumulation of income which needs to be verified by AO. Therefore, we feel that it would be more appropriate to refer this matter back to the AO who shall give an opportunity to the assessee to provide necessary*

information for the aforesaid verifications by AO and based on such information allow exemption as admissible u/s 11/12 to assessee.

9. *Since the assessee has not filed return of income within the time allowed by AO in statutory notice u/s 142(1) and also not filed present appeal in time, we apprised the Ld. AR of assessee during hearing that the assessee shall be directed to pay a cost of Rs. 10,000/- to Prime Minister National Relief Fund and submit receipt of same to the AO during proceeding before AO. The assessee is accordingly directed.*

10. *Resultantly, this appeal is allowed for statistical purpose."*

5. Therefore, in view of pre-existing order of ITAT in assessee's own case, we too agree and hold that the assessee is having benefit of Proviso to section 12A(2) and consequently eligible for exemption u/s 11/12.

6. However, we would also like to address the contentions raised by CIT(A) / Ld. DR for revenue:

(a) The Ld. CIT(A) has accepted that the benefit of Proviso to section 12A(2) is applicable when the assessment proceeding is pending on the date of grant of registration i.e. 29.07.2019. But, however, he has observed "Assessment in this regard is referred to regular assessment u/s 143(3)/147/153A/153C etc. ITR filed and processing u/s 143(1) pending cannot be categorized as pendency of assessment." We find no merit in this premise adopted by the Ld. CIT(A) for these reasons: *Firstly*, the proviso to section 12A(2) nowhere refers to "regular assessment u/s 143(3)/147/153A/153C". The language of the proviso is clear and unambiguous, as it refers to *"any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of*

such registration.” Secondly, section 143(1) itself carries the heading “Assessment” and also empowers the AO to make adjustments and issue an intimation specifying the sum payable by the assessee or the amount of refund due. Although an assessment u/s 143(1) is summary in nature, it nevertheless remains an assessment. Furthermore, the assessment proceedings continue to remain pending till the issuance of intimation u/s 143(1). Therefore, the objection raised by the Ld. CIT(A) that the pendency of processing u/s 143(1) cannot be regarded as pendency of assessment is untenable and is accordingly rejected.

- (b) The Ld. DR for revenue also raised a contention that the assessee filed return of income on 07.01.2019 whereas the registration was granted by CIT, Exemption on 29.07.2019. When it is so, how could the assessee claim exemption u/s 11/12 in the return filed prior to grant of registration u/s 12A? To address this issue, Ld. AR for assessee submitted that the assessee filed application to CIT, Exemption on 10.01.2019 which is clearly acknowledged by CIT, Exemption in his order dated 29.07.2019. Therefore, immediately after filing return of income, the assessee filed application for grant of registration and the assessee had a strong expectation of getting registration since it fulfilled all conditions for grant of registration and there was no reason of rejection by CIT, Exemption. Therefore, the assessee claimed exemption in return of income. Be that as it may, we are at present

concerned with the eligibility of exemption u/s 11/12 in the light of Proviso to section 12A(2) and once the situation and condition prescribed therein are satisfied, the objection cited by Ld. DR cannot operate as a bar to the grant of exemption.

7. Lastly, we may also add one more point that during hearing, we raised a specific query to Ld. AR as to whether the assessee filed any response in terms of second Proviso to section 143(1)(a) to the intimation given by AO under first Proviso to section 143(1)(a) before making impugned disallowance? In reply, Ld. AR admitted that the assessee did not file any such response. Had the assessee filed a response to AO narrating the factual position and claiming the benefit of Proviso to section 12A(2), the AO would have considered assessee's response in terms of second Proviso to section 143(1)(a). However, in absence of response from assessee, the AO has proceeded to make the impugned disallowance, which has culminated into the present litigation. The entire exercise has resulted in avoidable consumption of departmental resources. **Therefore, to offset the same, we direct the assessee to pay a cost of Rs. 10,000/- to Income-tax Department by way of an appropriate challan and submit copy of duly paid challan to AO.**

8. In view of above discussions, we hold that assessee is entitled to exemption u/s 11/12 in terms of proviso to section 12A(2) noted above. What needs to be verified by AO is only the fact that the object and activities

of assessee remained same for AY 2018-19 as were there at the time when registration u/s 12A was granted. That apart, the claim of exemption u/s 11/12 involves a different type of working based on application and accumulation of income which needs to be verified by AO. Therefore, we feel that it would be more appropriate to refer this matter back to the AO who shall give an opportunity to the assessee to provide necessary information for the aforesaid verifications by AO and based on such information allow exemption as admissible u/s 11/12 to assessee. We order accordingly.

9. Resultantly, this appeal is allowed for statistical purpose, subject to payment of cost of Rs. 10,000/- as mentioned above.

Order pronounced in open court on 19/02/2026

Sd/-

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 19/02/2026

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore