

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.488/Nag./2024
(Assessment Year : 2017-18)

Shri Panchmurti Education Society
N-62, Nagomali Layout
Reshambaug, Nagpur 440 009
PAN – AAFTS2717R

..... Appellant

v/s

Income Tax Officer
Ward-4(5), Nagpur

..... Respondent

Assessee by : Ms. Adiba H. Chimthanawala
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 26/12/2024

Date of Order – 21/01/2025

ORDER

PER K.M. ROY, A.M.

Aforesaid appeal by the assessee is against the impugned order dated 15/07/2024, passed by the learned Commissioner of Income Tax (Appeals)-2, Vadodara, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In its appeal, the assessee has raised following grounds:-

"1. In the facts and circumstances of the case and in law the Learned Jt. Commissioner of Income Tax (Appeals) erred in dismissing the appeal on the grounds that the assessee society had filed the Income Tax Return for the Assessment Year 2017-18 belatedly, whereas as per law for the relevant Assessment Year the condition regarding filing of return within the due date was not applicable to avail exemption U/s. 11 & 12 of the Act

2. That in facts and circumstances of the case the condition regarding filing of return within the due date levied by the Commissioner of Income Tax (exemption) was without jurisdiction, consequently the reliance of Jt. Commissioner of Income Tax (Appeals) on the said condition is also bad in law.

3. That the Assessee society had complied with all the conditions 'aid down for availing exemption U/s. 11 & 12 of the Income Tax Act, 1961(Act). Hence in In the facts and circumstances of the case it is prayed to allow the exemption to the Assessee U/s 11 & 12 of the Act.

4. That the income of the trust is also exempted U/s. 10(23C) (iiiab) of the Act also as it is purely an educational institution receiving grant from the government.

5. That the Learned Jt. Commissioner of Income Tax (Appeals) failed to consider that the delay in submission of the Audit Report in form 10B was beyond the control of the society as the approval granted by the exemption authority was much after the due date of filing of Audit report in Form 10B for the Assessment Year 2017-18 as prescribed by the Act. Hence, it is prayed to condone the delay in filing of Audit report in Form 10B of the Act for the said Assessment Year in the facts and circumstances of the case

6. The Assessee craves leave to add/alter any of the Grounds of Appeal before or at the time of hearing."

3. The learned Authorised Representative (*the learned A.R.*"), at the very onset, submitted that she wants to argue solely on grounds no.1, 2 3, and 5. Hence, after considering her concession, the rest of the grounds no.4 and 6, are being treated as not pressed hence dismissed.

4. The relevant facts of the case are that the assessee education society is a public charitable trust registered with the Charity Commissioner, Nagpur vide Registration No. F-742(N) dated 11/05/1965. The said Registration is placed on record. The assessee is also registered under the Societies Registration Act vide registration dated 11/05/1965 and a copy of which is placed on record. The assessee approached the Charity Commissioner of Nagpur for framing of Scheme under section 50A of the Maharashtra Public Trust Act, as in the old bye-laws there was no provision regarding the mode of succession of trustees, tenure of trustees, etc. The Assistant Charity Commissioner, Nagpur, by an order dated 30/09/2014 approved the said

Scheme, a copy of which is placed on record. The said Scheme contains the object of the trust which are all educational in nature. The assessee was running the following educational institution under its aegis which is affiliated to SSC Board of Education:-

- i) Mount Everest Primary School
- ii) Pandit Nehru High School

The said schools receive grant from Government of Maharashtra and is fully aided school. The school is regularly inspected by the Department of Education, Government of Maharashtra, and it continuing to receive grant till date. The said Schools are engaged in imparting secular education. The financial statement for the year ended on 31/03/2015, 31/03/2016, 31/03/2017 and 31/03/2018 are placed on record. The premises of the assessee was subject to search and seizure operation and after thorough scrutiny of books of accounts and its working, the assessee was granted exemption under erstwhile provision under section 10(22) of the Income Tax Act 1961 ("*the Act*") and the same is placed on record. The assessee applied for the registration under section 12AA of the Act by furnishing application dated 30/03/2017 which was rejected on 29/09/2017 on the grounds that the byelaws did not contain dissolution clause, however, the Commissioner of Income Tax (Exemption) was satisfied that the object of the trust appeared prima facie charitable. The copy of the order of Rejection dated 29/09/2017 is placed on record.

Being aggrieved, the assessee trust preferred appeal before the Tribunal, Nagpur Bench. Meanwhile, the assessee filed its return of income electronically for the assessment year 2017-18 on 30/03/2018. Subsequently, intimation under section 143(1) of the Act was received by the assessee on 24/03/2019 raising the demand against the assessee amounting to ₹ 5,02,23,100, by the Central Processing Centre, Bengaluru, a copy of which is placed on record. Against the said demand, the assessee filed appeal challenging the order dated 24/03/2019 passed under section 143(1)(a) before the Commissioner of Income Tax (Appeals) which was dismissed. On appeal before the Tribunal, the Co-ordinate Bench allowed the appeal of the assessee vide its order dated 09/06/2022 directing the Commissioner of Income Tax (Exempt.) to grant exemption under section 12A to the assessee w.e.f. the assessment year 2017-18, a copy of which is placed on record. Thereafter, the assessee received registration certificate under section 122A issued by the learned CIT(E), a copy of which is placed on record. The assessee trust after obtaining registration certificate approached the statutory auditor for the Audit Report in Form no.10B as per Rule 17(B) of the Income Tax Rules 1961, which was received by the assessee in Form no.10B on 25/11/2022, a copy of which is placed on record. Audit Report in form no.10B dated 10/01/2023, was also furnished before the learned CIT(A) along with written submissions. The case of the assessee was transferred from Commissioner of Income Tax (Appeals) to Jt. Commissioner of Income Tax (Appeals), who, vide order dated 15/07/2024, dismissed the assessee's appeal on the ground that the assessee had filed its return of income for the assessment year 2017-18 belatedly on 30/03/2018. Hence, the assessee is

not eligible to avail exemption under section 11 & 12 of the Act, a copy of which is also placed on record. Being aggrieved, the assessee is in further appeal before the Tribunal.

5. The learned A.R. opened her arguments by inviting the attention of the Bench to the details of incorrect claim under section 143(1(a)(ii) of the Act which is reproduced below, as contained in the intimation dated 24/03/2019, under section 143(1) of the Act:—

<i>Schedule</i>	<i>Error Description</i>	<i>Amount in Income Tax Return</i>	<i>Amount as computed</i>	<i>Variance</i>
	<i>As per Section-12A(1)(b) of Income tax Act read with 1st Proviso to Rule 12(2) of the Income Tax Rules, where the total income of the trust or institution without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax, the audit report in Form-10B has to be E-filed along with the return of income. Since assessee has not E-filed the Audit Report in Form 10B along with or before filing of the Return of income, the exemption u/s-11 .i.e. sr.no 1 & Sl. No. 4i to 4viii in Schedule Part B-TI is not allowed.</i>	<i>112685825</i>	<i>0</i>	<i>112685825</i>

6. Thereafter, she drew our attention to the Paper Book Vol.I, containing following documents:—

<i>Sr. no.</i>	<i>Particulars</i>
<i>1.</i>	<i>Written Submissions</i>
<i>2.</i>	<i>Registration Certificate with Charity Commissioner, Nagpur</i>
<i>3.</i>	<i>Registration Certificate under the Societies Registration Act</i>
<i>4.</i>	<i>Order of Assistant Charity Commissioner dated 30.09.2014 along with Scheme u/s 50A</i>
<i>5.</i>	<i>Photocopies of the Financial Statement The financial statement</i>

	<i>for the year ended on 31.03.2015, 31.03.2016, 31.03.2017 and 31.03.2018</i>
6.	<i>Assessment order for the assessment year 1989-90 and 1990-91</i>
7.	<i>Copy of order of rejection dated 29/09/2017</i>
8.	<i>Income Tax Return for the assessment year 2017-18</i>
9.	<i>Copy of intimation u/s 143(1)</i>

7. Our attention is drawn to Page-130 containing order for approval under section 12AA of the Act dated 23/11/2022, issued by the learned CIT(E), the same is reproduced below for better conceptual clarity:-

*"Order for approval on Set Aside Application
under section 12AA of the Income Tax Act, 1961*

ORDER U/S.12AA OF THE INCOME-TAX ACT, 1961

READ WITH RULE 17A OF THE INCOME TAX RULES, 1962

(Order giving effect to the order dated 09-06-2022 of the ITAT,

'NAGPUR' BENCH, NAGPUR In appeal ITA No.383/NAG/2017)

The applicant had filed an application for registration u/s 12AA of the Income Tax Act, 1961 on 30-03-2017. The said application was rejected by the CIT(Exemptions), Pune vide order dated 29-09-2017. The applicant filed an appeal against the said order. The Hon'ble ITAT, 'Nagpur Bench, Nagpur, vide order dated 09-06-2022 in appeal ITA No.383/NAG/2017 has allowed the appeal of the applicant and directed the undersigned to grant registration to the applicant.

2 Therefore, in compliance to the above directions of the Hon'ble ITAT, the applicant trust/ society/non-profit company is hereby granted registration u/s 12AA of the Income Tax Act, 1961, with salient activities as Education under the category of Charitable Trust/Institution and the provisions of sections 11 and 12 shall apply in the case from the assessment year 2017-18, with the following conditions subject to decision in appeal, if any, filed by the department.

3. The name of the trust has been entered at Sr.No.1684/580/2016-17 in the register of Trusts/Institutions maintained in this office."

8. It is crystal clear that registration has been granted retrospectively from the assessment year 2017-18. The requirement of audit for the assessment

year 2017-18 cannot be thrust upon the trust because the same was unregistered at that time. So, abiding by the concept of supervening impossibility, as the requirement of audit was not binding while seeking registration, she prayed that the adjustments made in the intimation may be set aside.

9. Per-contra, the learned Departmental Representative (*"the learned D.R."*) submitted that concurrent findings of the lower authorities need be left undisturbed as non-submission of return of income in time and audit report goes to the root of the matter to deny application of section 11 and 12 of the Act.

10. Upon thoughtful consideration of the matter and granting a dispassionate hearing of the arguments, it is apparent that till the date of registration on 23/11/2022, the requirement of compulsory audit did not apply to the assessee appellant, because the status of the trust was unregistered. So the prima facie adjustment is based on hyper-technical grounds and is liable to be jettisoned. Further, the Audit Report was obtained on 25/11/2022 as evident from Paper Book Page-134 to 137. In CIT v/s Shahzedanand Charity Trust, [1997] 228 ITR 292 (P&H), it has been held as under:—

"Ratio- (1) The Central Board of Direct Taxes by issuing the Circular dated 9-2-1978, has treated the provisions regarding furnishing of auditor's report along with the return to be directory in nature.

(ii) The Tribunal is right in law in setting aside the order of the Appellate Assistant Commissioner in regard to filing of the audit report in terms of the provisions of section 12A(b) and in directing the Appellate Assistant Commissioner to allow the assessee to submit the said audit report to him at the appellate stage.

Held:

Normally, a charitable or religious trust or institution is expected to file the auditor's report along with the return but, in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report, the assessing officer, for reasons to be recorded, has been authorised to condone the delay in furnishing the auditor's report and accept the same at a belated stage. It has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor's report. The word <169>shall<170> occurring in section 12A cannot, under the circumstances, be read as a <169>must<170> making it mandatory for the trust to furnish the auditor's report along with the filing of the return. If for certain unavoidable circumstances, the assessee is unable to furnish the auditor's report along with the return then the same can be furnished at a later date with the permission of the assessing officer who may permit the assessee to do so after recording his reasons for so doing. The Central Board of Direct Taxes by issuing the Circular dated 9-2-1978, (1/1148-CBDT F. No. 267/482/77-IT (Part), dated 9-2-1978-CBDT Bulletin Tech. XXIII/582) has treated the provisions regarding furnishing of the auditor's report along with the return to be procedural and, therefore, directory in nature. By showing sufficient cause, the auditor's report could be produced at any later stage either before the assessing officer or before the appellate authority."

11. The ratio of the judgment is exactly applicable to the dispute raised before us. We are in complete agreement that the trust has substantially complied with the audit requirement. Hence, the assessee succeeds vide ground no.5.

12. She further invited our attention to Page-169 of the Paper Book Vol.I, containing the order of the JCIT (Appeals) which is reproduced below:-

"Ground 2 to 4 Under these grounds the appellant contends that the appellant trust has fulfilled the objects of the trust and have also complied with all the conditions and is carrying out the objects of imparting secular education hence its income is exempt U/s. 10(230) and also U/s. 11 to 13 of the Income Tax Act, 1961. However, the CPC had computed total income of the appellant at Rs.11,26,85,825/- due to addition of Rs.11,26,85,825/- made owing to denial of deductions to the appellant.

The submissions made by the appellant, have been carefully considered. The appellant claims that the said additions to the total income have been made as the appellant did not possess registration u/s 12A of the act at the time of filing of return. In this case, the registration u/s. 12A of the Act was initially denied by the CIT(E), Puns vide order dated 29.09.2017. Against the order of

CIT(E), Pune, the appellant later preferred an appeal before the Hon'ble ITAT (Nagpur bench) wherein the appeal of the appellant was allowed and eventually the CIT(Exemption), Pune granted the registration u/s 12A to the appellant vide order dated 23.11.2022 from AY 2017-18 onwards. However, it is observed that though the appellant was granted the registration u/s 12A by the CIT(Exemption), Pune vide order dated 23.11.2022, the appellant filed the return of income for the given AY i.e. 2017-18 belatedly. The due date for filing the return of income for the given AY was 07.11.2017, while the appellant filed the same on 30.03.2018 and since the registration u/s 12A is valid subject to various conditions one of them being that the return of income is filed within time as mentioned in Sr.No. 9/6f the registration certificate granted by the CIT(E), Pune (screenshot attached)."

13. The learned CIT(A) finally dismissed the ground by observing as under:–

"Thus it can be observed that the conditions prescribed under section 12A have not been fulfilled by the appellant. Therefore, it is quite clear that the benefit of the exemption u/s 11 and 12 of the act cannot be extended to the appellant as the conditions for the same are not fulfilled by the appellant as mentioned above. Thus, the addition of Rs. 11,26,85,825/- made to the total income of the appellant is Valid and stands confirmed. The appeal of the appellant is dismissed."

14. She also invited our attention to the extract of Circular being memorandum explaining the provisions of sections 11 and 12 of the Act.

"15. Clarity of procedure in respect of change or modifications of object and filing of return of income in case of entities exempt under sections 11 and 12.

15.1 The provisions of section 12A of the Income-tax Act provide for conditions for applicability of sections 11 and 12 of the Income-tax Act in relation to the benefit of exemption in respect of income of any trust or institution.

15.2 Further, the provisions of section 12AA of the Income-tax Act provide for registration of the trust or institution which entitles them to the benefit of sections 11 and 12. Section 12AA also provides the circumstances under which registration can be cancelled, one such circumstance being satisfaction of the Principal Commissioner or Commissioner that its activities are not genuine or are not being carried out in accordance with its objects subsequent to grant of registration. However, before amendment by the Act, there was no explicit provision in the Income-tax Act which mandates said trust or institution to approach for fresh registration in the event of adoption or undertaking modifications of the objects after the registration has been granted.

15.3 Therefore, section 12A of the Income-tax Act has been amended to provide that where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its Amendment by the Finance (No. 2) Act, 1996) and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner. Consequential amendments to Section 12AA of the Income-tax Act have also been made.

15.4 Further, as per the provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there was no clarity as to whether the said return of income was to be filed within time allowed under section 139 or otherwise.

15.5 In order to provide clarity in this regard, further amendment to section 12A of the Income- ax has been made so as to provide for additional condition that the person in receipt of the come chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act.

15. These amendments are clarificatory in nature.

15.7 Applicability: These amendments take effect from 1st April, 2018 and will, accordingly, apply from assessment year 2018-19 and subsequent assessment years."

15. She also submitted that the amendment came into effect from the assessment year 2018–19, whereas the case pertains to the assessment year 2017–18. Moreover, it is manifest from Paper Book Page–103 that return of income was submitted on 30/03/2018, which was within the deadline under section 139(4) of the Act and the same, though delayed, is within the four squares of law.

16. From the analysis of facts it is apparent that the amendment under section 12A(1)(ba) of the Act is effective from the assessment year 2018–19. Further, CBDT has clarified vide instruction dated 23/04/2019, which is

reproduced below that time allowed under section 139 of the Act encapsulates belated return also:-

Dated: 23 April, 2019

*To,
The Pr. DGIT (Systems),
New Delhi.*

Subject: Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in sub- section 1 of section 12A of the income-tax Act, 1961.

Sir,

Undersigned is directed to refer to the representation (s) received on above mentioned subject stating that while processing of ITR-7 for the A.Y. 2018-19, in respect of the belated returns filed u/s 139(4) of the Income Tax Act, 1961 (Act), the following is being communicated u/s 143(1)(a) of the Act:-

"As per section 12A(1)(ba) of the Income-tax Act, 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise the exemption u/s-11 i.e. sr. no 4(i) and 4 viii in schedule Part BTI is not allowed."

Based on this, exemption u/s 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

"as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income- tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years."

3. Additionally, an excerpt of circular 02/2018 dated 15.02.2018 "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income tax Act."

3. Thus, for a trust registered U/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.

This issues with the approval of Chairman (CBDT).

*(Vinay Sheel Gautam)
JCIT (OSD) (ITA-I)
Telefax: 011-23093070
E-mail: vinaysheel.gautam@gov.in"*

17. In view of the binding circular, the impugned order passed by the learned CIT(A) is cancelled and ground of the assessee is allowed as regards non-submission of return of income in time. It is a trite law that the Departmental Officers have to follow the Circular in law.

18. There is no cavil or doubt that the assessee trust has filed the return of income. Our view is emboldened by the fact that section 12A(1)(b) of the Act has been amended w.e.f. 01/04/2023, by Finance Act, 2023, to encompass that return of income filed under section 139(1) or 139(4) of the Act will satisfy compliance of section 139(4A) of the Act. The amendment is a beneficial one and only clarifies the intention of the legislature. Further, There is no further reason to deepdive into the non-furnishing of audit report along with the return of income since the registration was granted belatedly with

retrospective effect at the behest of the directions from this forum. It is excruciating to note that a demand has been created on flimsy grounds as against the assessee which is in existence since 1965. For the sake of clarity it is clarified that the assessee trust is successful in assailing the order on twin grounds of submission of return of income as well as submissions of the audit report in tandem with the provisions for the impugned assessment year. It is surprising that the learned CIT(A) had traversed in an altogether different route to sustain the addition which is also perverse and has been noted cryptically by this forum.

19. Upon conspectus of the entire gamut of the facts and circumstances of the disputes in question, we are in concurrence with the averments raised before us by the learned A.R. and hold that the entire addition of ₹ 11,26,85,825, merits full relief and hence the returned income be accepted. Consequently, grounds no.1, 2, 3 and 5 are decided in favour of the assessee appellant per detailed reasonings rendered supra.

20. In the result, appeal filed by the assessee is allowed as above.

Order pronounced in the open Court on 21/01/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/01/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur