IN THE INCOME TAX APPELLATE TRIBUNAL
"A"BENCH: BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1267/Bang/2024
AssessmentYear:2016-17

Karnataka Chinmaya Seva Trust Chinmaya Mission CMH Road, Indiranagar Bangalore 560035 **PAN NO : AAATK0797Q**	**Vs.**	ACIT (Exemptions) Circle-1 Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri N. Suresh, A.R.
Respondent by	:	Ms. Neha Sahay, D.R.

Date of Hearing	:	17.02.2025
Date of Pronouncement	:	14.05.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of ld. CIT(A)/NFAC dated 23.4.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1064276983(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the AY 2016-17.

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

1. The order of the learned CIT is contrary to the law and facts of the case. Therefore, it may be set aside.

2. The order of the Learned CIT in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.

3. The Appellant denies itself to be assessed to an income of Rs. 13,76,26,141 against the returned income of Nil on the facts and circumstances of the case.

4. The Learned CIT has erred in denying the claim of exemption under section 11 and 12 of the Act, under the facts and circumstances of the case.

5. The Learned CIT has not considered submission made on 14.12.2022 vide acknowledgement no. 844843991141222, therefore order made is bad in law and circumstances.

6. The Learned CIT was not justified in appreciating that the appellant has filed the return of income within the time specified under section 139(4) of the Act, which was a valid return and hence was eligible to claim exemption under section 11 and 12 of the Act, on the facts and circumstances of the case.

7. The Learned CIT was not justified in law and on facts in appreciating that the appellant has applied the entire amount of receipts towards the objects of the trust and hence the denial of exemption under section11 and 12, was bad in law, on the facts and circumstance of the case.

8. The Learned CIT has erroneously invoked the provisions of section 139(4A) of the Act in order to deny the exemption under section 11 and 12 of the Act, when the provisions of section 139(4A) apply to the representative assessee and hence not applicable to the Appellant, under the facts and circumstances of the case.

9. The Learned CIT was not justified in stating that the provisions of section 12A(1)(ba) were applicable to the appellant, which is contrary to fact as the said insertion was effective only from 01/04/2018 and not applicable to the appellant for the AY 2016-17, on the facts and circumstances do the case.

10. The Appellant denies the liability to pay interest under section 234A and 234B of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.

11. In view of the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity.

3. There is a delay of 41 days in filing the appeal before this Tribunal. The assessee has filed application for the condonation of delay along with an affidavit in original dated 20.7.2024, which is reproduced below for ease of convenience:

N. Suresh, B.Com, F.C.A, Ph.D. Taxation
Chartered Accountant

Rec'd 22/7/24

CA INDIA

Income Tax Appellate Tribunal
Bangalore Benches, Bangalore
Dy.R. No.
Sl.No. 7716 Date 22/07/24

'A'
04/08/24

20.07.2024

The Assistant Registrar,
Appellate Tribunal, Bench 'B'
No. 51, Behind Jal Bhawan,
1st Cross, 4th T Block,
Tilak Nagar, Jayanagar,
Bangalore - 560041

Dear Sir,

Sub: Filing of Affidavit for condonation of delay in case of Karnataka Chinmaya Seva Trust for the A Y 2011-12, 2012-13 and 2016-17.

Ref: Communication of defects in ITA 1265/BANG/2024 for A Y 2011-12, ITA 1266/BANG/2024 for A Y 2012-13 and ITA 1267/BANG/2024 dated 09.07.2024.

Appellant:	Respondent:
Karnataka Chinmaya Seva Trust,	DCIT-(exemptions) Circle -1,
Chinmaya Mission, C.M.H. Road,	Income-tax Appellate Tribunal,
Indiranagar, Bengaluru - 560038.	Bangalore Benches, Bangalore.

With reference to the above, we are filing herewith the following documents for condonation of delay in filing appeal documents for the A Y 2011-12, 2012-13 and 2016-17.

1. Affidavit Original - 1 set
2. Affidavit xerox copy - 2 set

You are requested to kindly acknowledge the receipt of the Same and oblige.

Thanking you,
Yours Faithfully,

N SURESH Bangalore Chartered Accountant

Dr. N Suresh
Chartered Accountant

#7, 2nd Floor, Mytri Park View, 100 Ft. Ring Road, Banashankari 3rd Stage, BENGALURU - 560 085.
Phone (Off.) 080 - 2642 3967, 080 - 2642 3976 Mobile : 98455 45265
Email : nsuresh@snacaoffice.com ◆ nsuresh_ca@yahoo.com
Website : www.snacaoffice.com

सत्यमेव जयते

INDIA NON JUDICIAL

Government of Karnataka

e-Stamp

Certificate No.	:	IN-KA64460511105584W
Certificate Issued Date	:	20-Jul-2024 12:33 PM
Account Reference	:	NONACC/ kakscsa08/ ITTAMADU1/ KA-BV
Unique Doc. Reference	:	SUBIN-KAKAKSCSA0882830210912765W
Purchased by	:	N SURESH
Description of Document	:	Article 4 Affidavit
Property Description	:	AFFIDAVIT
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	N SURESH
Second Party	:	N SURESH
Stamp Duty Paid By	:	N SURESH
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

Please write or type below this line

AFFIDAVIT

I N. Suresh son of Dr. K. Nanasamy Rao authorised representative of the appellant Karnataka Chinmaya Seva Trust hereby state on oath as under:

The appellant Karnataka Chinmaya Seva Trust, Chinmaya Mission, C.M.H Road, Indiranagar, Bengaluru - 560038 originally filed an appeal for the A Y 2011-12, A Y 2012-13 and A Y 2016-17 on 03.05.2024, 02.05.2024

Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

and 06.06.2024 respectively. The copy of the acknowledgement filed originally is enclosed in **Annexure -A.**

While filing an appeal inadvertently some documents were not furnished for the following Assessment Years: 2011-12, 2012-13 and 2016-17 respectively.

Subsequently the appellant has filed all the documents on 02.07.2024. The copy of the acknowledgement filed is enclosed in **Annexure -B** for your kind reference.

The appellant submits that inadvertently omitted to furnish while submitting appeal documents. Therefore, request to condone the delay for A Y 2011-12 - 57 days, A Y 2012-13 - 52 days and for A Y 2016-17 - 41 days.

(DEPONENT)

Date: 20.07.2024

Verification

What is stated above is true to the best of my knowledge, information and belief.

(DEPONENT)

B.K.R. KRISHNAMURTHY M.A.,B.Ed.,M.Com.,M.L. GOVT. OF INDIA NOTARY BANGALORE No. 1351

SWORN TO BEFORE ME

20/7/24

B.K.R. Krishnamurthy
M.A.,B.Ed.,M.Com.,M.L.,
ADVOCATE AND NOTARY
Reg. No. 1351, GOVT. OF INDIA
City Court Complex, Bangalore-

3.1 On going through the above, we find that the assessee has originally filed an appeal for the AY 2016-17 on 6.6.2024, but while filing the appeal some documents were not furnished along with the appeal inadvertently. Subsequently, the assessee has filed all the documents on 2.7.2024 along with form 36 and accordingly prayed that since the assessee inadvertently omitted to furnish the documents while filing the appeal on 6.6.2024 and accordingly requested to condone the delay of 41 days in filing the appeal before this Tribunal.

4. Before us, the ld. A.R. of the assessee submitted that if the delay is not condoned, the assessee would be put to a great hardship and irreparable injury and on the other hand, no hardship or injury would be caused to the revenue if condonation of delay is allowed.

5. The ld. D.R. on the other hand submitted that appeal may be dismissed in limine without adjudicating the same as the assessee is a habitual defaulter in filing the returns and appeal on time.

6. We have heard the rival submissions and perused the materials available on record. It is worthwhile to mention that u/s 253(5) of the Act, the Tribunal may admit the appeal filed beyond the period of limitation where it is established that there exists a sufficient cause on the part of the assessee for not presenting the appeals within the prescribed time. The explanation therefore, becomes relevant to determine whether the same reflects sufficient and reasonable cause on the part of the assessee in not filing this appeal within the prescribed time.

6.1 On going through the Affidavit sworn before the notary public, the assessee has stated to have filed the appeal in original only on 6.6.2024, which is reproduced below:

N. Suresh, B.Com, F.C.A, Ph.D. Taxation
Chartered Accountant

05.06.2024

The Registrar,
Income-tax Appellate Tribunal, Bench 'B'
No. 51, Behind Jal Bhawan,
1st Cross, 4th T Block,
Tilak Nagar, Jayanagar,
Bangalore - 560041

Dear Sir,

Sub: Filing of Form 36, Statement of facts and Grounds of Appeal in case of Karnataka Chinmaya Seva Trust for the A Y 2016-17.

Appellant:	Respondent:
Karnataka Chinmaya Seva Trust,	Commissioner of Income Tax (Appeal),
Chinmaya Mission, C.M.H. Road,	National Faceless Assessment Centre,
Indiranagar, Bengaluru - 560038.	Income Tax Department, Delhi.

With reference to the above, we are filing herewith the following documents for your kind reference.

1. Form 36 - 2 sets
2. Statement of Facts - 2 sets
3. Grounds of Appeal - 2 sets

You are requested to kindly acknowledge the receipt of the Same and oblige.

Thanking you,

Yours Faithfully,

भारत सरकार GOVT OF INDIA
आयकरअपीलीय अधिकरण ITAT Bengaluru
06 JUN 2024

N. SURESH Bangalore Chartered Accountant

Dr. N Suresh
Chartered Accountant

#7, 2nd Floor, Mytri Park View, 100 Ft. Ring Road, Banashankari 3rd Stage, BENGALURU - 560 085.
#504, 5th Floor, 'Commerce House', 9/1, Cunningham Road, BENGALURU - 560 052
Phone (Off.) 080 - 2642 3967, 080 - 2642 3976 Mobile : 98455 45265
Email : nsuresh@snacaoffice.com ♦ nsuresh_ca@yahoo.com
Website : www.snacaoffice.com

6.2 Further, while filing the appeal on 6.6.2024, the assessee inadvertently could not furnish some documents, which were necessary and required for the adjudication of the case and accordingly, the assessee has filed all the documents along with Form 36 again on 2.7.2024 with a delay of 41 days.

6.3 In our view, it is not a case of the assessee that no appeal could be filed within the due date. In fact the assessee had filed appeal on 6.6.24 which is within the due date but as certain necessary documents could not be furnished, the assessee has again filed the appeal with the necessary enclosures on 2.7.2024. Therefore, in our opinion there exists a sufficient cause on the part of the assessee for not presenting the valid appeal within the prescribed time. At this juncture, while considering a similar issue, the apex court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) *'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay?*

The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) *When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be*

preferred, for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

(5) *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

(6) *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

6.4 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. Therefore, in our opinion, by preferring the substantial justice, the delay of 41 days has to be condoned.

6.5 Further, in the case of People Education & Economic Development Society Vs/ ITO reported in 100 ITD 87 (TM) (Chen), wherein held that "when substantial justice and technical consultation are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay".

6.6 The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not

filing the appeal. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Furthermore, the Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay.

6.7 In view of the above, we are condoning the short delay of 41 days in filing the appeal before this Tribunal and admit the same for adjudication.

7. Now coming to the brief facts of the case are that the assessee Trust e-filed its return of income for the assessment year 2016-17 belatedly u/s 139(4) of the Act on 18.1.2018 declaring nil income after claiming exemption u/s 11 of the Act. Thereafter, the case was selected for scrutiny under CASS. Accordingly, notices u/s 143(2) as well as 142(1) of the Act along with detailed questionnaire were issued and served to the assessee, calling for various information/details. The assessee trust has been granted registration u./s 12A of the Act by the ld. CIT Karnataka 1, Bangalore vide No.Trust/718/10A/Vol.A1/374 dated 20.12.1985. The assessee trust has also been granted approval u/s 80G of the Act by the ld. DIT (Exemption) Bengaluru vide order No.DIT(E)/BLR/80G(R)/702/AAATK0797Q/ITO(E)-1/Vol.2009-10 dated 26.11.2009. During the course of assessment proceedings, on a perusal of record, the AO observed that assessee has filed the return of income belatedly on 18.1.2018 and the audit report in Form 10B has also been filed belatedly on 18.1.2018 i.e. on the

same day. It was seen by the AO that assessee is regularly filing its return of income belatedly u/s 139(4) of the Act from AY 2013-14 to AY 2016-17. Further, AO observed that even for the AY 2017-18 & 2018-19, assessee had still not filed its return of income and accordingly, the AO was of the opinion that the assessee is a habitual defaulter in terms of filing of its return of income. The AO is of the opinion that the return of income filed u/s 139(4A) of the Act is required to be treated as a return required to furnished under sub-section(1). The return of income has to be filed on or before the due date and the due date is defined in explanation (2) to section 139 of the Act. In the year under consideration, the due date u/s 139 of the Act had been extended for audit cases till 17.10.2016, whereas the return of income is actually filed by the assessee on 18.1.2018 which is much beyond the due date prescribed. Therefore, in view of the above, the AO was of the opinion that claim of exemption u/s 11 of the Act is not made in accordance with provisions of the Act and the provisions of section 12A of the Act cannot be applied to the return of income filed by the assessee and accordingly concluded the assessment by denying the claim of exemption made by the assessee in the return of income and the surplus of the assessee is taxed as per the normal provisions of chapter IV of the Income tax Act as detailed below-

COMPUTATION OF INCOME OF THE ASSESSEE

Particulars	Amount (in Rs.)
Net Surplus as per Income & Expenditure	10,03,35,098
Add: Depreciation as claimed by the assessee	5,43,83,274
Less: Depreciation allowable	1,70,92,231
Balance	13,76,26,141
Assessed Income	**13,76,26,141**

7.1 Aggrieved by the assessment completed u/s 143(3) of the Act dated 26.12.2018, the assessee preferred an appeal before the ld. CIT(A)/NFAC.

7.2 The ld. CIT(A)/NFAC dismissed the appeal of the assessee by observing that section 139(4A) of the Act stipulates the requirement of the Charitable Trust to file ROI within the due date. In this case, the assessee has not filed the ROI within the due date. Moreover, the assessee is a habitual defaulter and has not brought out any genuine and compelling reasons for the delay in filing return of income. Therefore, in the opinion of the ld. CIT(A)/NFAC, the claim of exemption u/s 11 of the Act is not made in accordance with the provisions of the Act and hence, the provisions u/s 12A of the Act cannot be applied to the return of income filed by the assessee. Therefore, the assessment of total income at Rs.13,76,26,141/- for the assessment year 2016-17 was confirmed by the ld. CIT(A)/NFAC.

7.3 Aggrieved by the order of ld. CIT(A)/NFAC, the assessee has filed the present appeal before this Tribunal.

7.4 Before us, the assessee has filed two paper books marked paper books 1 & 2 along with the summary of case laws relied upon by the assessee.

7.5 Before us, the ld. A.R. of the assessee submitted that assessee has been granted Registration/Approval u/s 12A of the Act as well as u/s 80G of the Act and therefore, the authority below are not justified in rejecting the claim of exemption u/s 11 of the Act. Further, the ld. A.R. of the assessee vehemently submitted that as per the provisions of section 139(4A) of the Act, every person in receipt of income derived from property held under the Trust

shall if the total income in respect of which he is assessable (without giving effect to the provision of section 11 & 12) exceeds the maximum amount which is not chargeable to income tax, furnish a return of income so far as may be applied as if it were a return required to be furnished under sub-section (1). Accordingly, the ld. A.R. of the assessee submitted that reference to section 139(1) of the Act here equally placed to section 139(4A) of the Act. Further, the AR of the assessee submitted that the provisions of section 12A(1)(ba) of the Act was effective only from 01/04/2018 and not applicable to the assessee for the Asst. year 2016-17. Lastly the ld. A.R. submitted that the order of the ld. CIT(A)/NFAC is very cryptic and not considered the grounds of appeal raised by the assessee, which is gross violation of principles of natural justice.

8. The ld. D.R. on the other hand vehemently submitted that the assessee had not only delayed the filing of return of income but also delayed in filing the audited report in Form 10B. Further, ld. D.R. submitted that the assessee is a habitual defaulter in filing the return as well as audit report and has also not brought out any genuine or compelling reasons for the delay in filing the return of income and therefore, the authorities below have rightly denied the claim of exemption made by the assessee u/s 11 of the Act as the insertion by way of amendment in section 12A(1)(ba) of the Act is only clarificatory in nature and the interpretation of the same can be applied retrospectively since the provisions of section 139(4A) already exist in the Act.

9. We have heard the rival submissions and perused the materials available on record. We find that in the Assessment year under consideration, the due date of filing return u/s 139(1) of the Act had been extended for audit cases till 17.10.2016 and there is no dispute that the assessee has filed the return of income

belatedly u/s 139(4) of the Act on 18.1.2018, which is much beyond the due date of filing return as prescribed. Further, the assessee has also filed the audit report in form 10B dated 12.1.2018 belatedly on 18.1.2018. We also cannot brush aside the fact that the assessee has been granted registration u./s 12A of the Act by the ld. CIT, Karnataka-1, Bengaluru vide No. Trust/718/10A/Vol.A1/374 dated 20.12.1985. The assessee trust has also been granted approval u/s 80G of the Act by the ld. DIT (Exemption) Bengaluru vide order No. DIT(E)/BLR/ 80G(R)/ 702/ AAATK0797Q/ITO(E)-1/Vol.2009-10 dated 26.11.2009. Further it is not the case of Revenue that the assessee has ceased to be a charitable institution. It is also not the case of the Revenue that the accounts of the assessee have not been audited by an accountant and an audit report in form 10B has not been obtained. It is also not the case of the Revenue that no return of Income was filed by the assessee trust. Only on technical aspect that the Return & Form 10B was not filed within the due date , the exemption claimed under section 11 of the Act has been denied to the assessee trust.

9.1 Before proceeding further it is appropriate to take note of the section 12A of the Act as emanated by Finance Act, 2017 w.e.f. 1.4.2018 as detailed below:

"Section 12A in The Income Tax Act, 1961
12A. [Conditions for applicability of sections 11 and 12] [Substituted by Act 22 of 2007, Section 8, for " Conditions as to registration of trusts, etc." (w.e.f. 1.6.2007).]
[(1)] [Section 12-A renumbered as sub-Section (1) thereof by Act 22 of 2007, Section 8 (w.e.f. 1.6.2007).] The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-(a)the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the [* *] [Certain words omitted by Act 27 of 1999, Section 8 (w.e.f. 1.6.1999).] Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [whichever is later and such trust or*

institution is registered under section 12-AA] [Substituted by Act 33 of 1996, Section 5, for " whichever is later" (w.e.f. 1.4.1997).]:

***[Provided** that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,-*

(i)from the date of the creation of the trust or the establishment of the institution if the [* *][Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons; [Substituted by Act 49 of 1991, Section 7, for the proviso (w.e.f. 1.10.1991).]*
(ii)from the 1st day of the financial year in which the application is made, if the] [* *] [Certain words omitted by Act 27 of 1999, Section 8 (w.e.f. 1.6.1999).][Commissioner is not so satisfied:] [Substituted by Act 49 of 1991, Section 7, for the proviso (w.e.f. 1.10.1991).]*

***[Provided further** that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;] [Inserted by Act 22 of 2007, Section 8 (w.e.f. 1.6.2007).]*

(aa)[the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA;] [Inserted by Act 22 of 2007, Section 8 (w.e.f. 1.6.2007).]
(ab)the person in receipt of the income has made an application for registration of the trust or institution, in a case 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 (33 of 1996)], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner45, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA;

(ac)notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—

(i)where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;

(ii)where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii)where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

(iv)where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v)where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi)in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought,and such trust or institution is registered under section 12AB;]

Following clause (b) shall be substituted for the existing clause (b) of sub-section (1) of section 12A by the Finance Act, 2022, w.e.f. 1-4-2023:

(b)where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—(i)the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and(ii)the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed;

(ba) 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.
(c)[* *] [Clause (c) omitted by Act 20 of 2002, Section 9 (w.e.f. 1.4.2002).](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:[***] [First proviso Omtt. by the Act. No. 38 of 2020, w.e.f. 1-6-2020.]*

[Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—
(a)sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;
(b)sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment year for which it was provisionally registered:

Provided further *that where registration has been granted to the trust or institution under section 12AA or section 12AB], 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 objects and activities of such trust or institution remain the same for such preceding assessment year:*

[Provided also] *that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:*

Provided also *that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under 53[section 12AA or section 12AB].]"*

9.2 It is pertinent to note the relevant extract of the Memorandum explaining the Finance Bill 2017 which is reproduced below for ease of reference & convenience:

"Further, 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 under section 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."

9.3 It is also pertinent to read the relevant explanatory notes to the provisions of the Finance Act, 2017 issued by way of circular No. 02/2018 dated 15/02/2018 which is reproduced below for ease of reference & convenience:

"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 canceled, 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-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.

15.6 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."

9.4 Further, at this juncture we also take note of section 139(4A) of the Act, which reads as under:

*"**Section 139(4A) in The Income Tax Act, 1961***
(4A)Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1)."

9.5 Undisputedly, on a brief reading of section 139(4A) of the Act, it is clear that return of income filed u/s 139(4A) of the Act is required to be treated as if it were a return required to be furnished u/s 139(1) of the Act. We are of the considered opinion that the provisions of section 12A of the Act **provide for conditions for applicability** of section 11 and 12 of the Act in relation to the benefit of exemption in respect of income of any trust or institution. Further the provisions of section 12AA of the 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. We are of the considered opinion that there was no such conditions exist for the cancellation of registration due to the fact of late filing of Return as well as late filing of Audit for the assessment year under appeal. It is only the Finance Act, 2017 which inserted new clause (ba) in sub section (1) of section 12A of the Act by way of amendment which provides for the additional condition that 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 due dates. Further it is specifically mentioned that the amendment will take effect from 01/04/2018 and will accordingly apply from assessment

year 2018-19 and subsequent years. Hence the Bench is of the view that on the application of general principles concerning retrospectivity, the insertion of clause (ba) in sub section (1) of section 12A of the Act can not be treated as clarificatory in nature, thereby having retrospective effect. In holding so, we rely & taking guidence from the Apex court judgement in the case of CIT v. Vatika Township (P) Ltd. (2014) 367 ITR 0466. The relevant extracts are given below foe ease of reference –

"29. Notwithstanding the aforesaid position clarified with us, we are of the opinion that dehors this discussion, in any case on the application of general principles concerning retrospectivity, the proviso to Section 113 of the Act cannot be treated as clarificatory in nature, thereby having retrospective effect. To make it clear, we need to understand the general principles concerning retrospectivity.

General Principles concerning retrospectivity

30. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phi lips v. Eyre [1870] LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in LOffice Cherifien des Phosphates v. Yamashita Shinnihon Steamship Co. Ltd. [1994] 1 AC 486. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India & Ors. v. Indian Tobacco Association [2005] 7 SCC 396, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors [2006] 6 SCC 286. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

34. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shal be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors.

35. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labeled as "declaratory statutes". The circumstances under which a provision can be termed as "declaratory statutes" is explained by Justice G.P. Singh [Principles of Statutory Interpretation, 13th Edition 2012 published by LexisNexis Butterworths Wadhwa, Nagpur] in the following manner:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case wi l only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law." The above summing up is factually based on the judgments of this Court as well as English decisions. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas & Anr.[1968] 3 SCR 623 , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: "The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional juris-diction was before the amendment derived from s. 115, Code of Civil Procedure, and the legislature has by the amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

36. It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See Controller of Estate Duty Gujarat-I v. M.A. Merchant 1989 Supp (1) SCC 499. We would also like to reproduce hereunder the following observations made by this Court in the case of Govinddas v. Income-tax O ficer [1976] 1 SCC 906, while holding Section 171 (6) of the Income- Tax Act to be prospective and inapplicable for any assessment year prior to 1st April, 1962, the

date on which the Income Tax Act came into force: "11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that a l statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." 37. In the case of C.I.T., Bombay v. Scindia Steam Navigation Co. Ltd. 1962 (1) SCR 788, this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year."

9.5 When we examine the insertion of clause (ba) in sub section (1) of section 12A of the Act by way of an amendment in Finance Act, 2017 which take effect from 01/04/2018 & stated to be apply in relation to the assessment year 2018-19 and subsequent years, keeping in view the aforesaid principles/guidelines of the Apex Court, we are of the firm opinion that the intention of the Legislature was to make it prospective in nature & they have specifically mentioned so to be apply from assessment year 2018-19 and subsequent assessment year. There is no doubt that the insertion of new clause (ba) in section 12A(1) is by way of laying the additional condition. It is well settled rule of Law that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. Law passed today cannot apply to the events of past. In the instant case the insertion of additional condition in section 12A is also not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this we should proceed with normal rule of presumption against retrospective operation. It is

well settled rule of interpretation that unless the terms of statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. Further the AR of the assessee also submitted the CBDT clarification vide F. No. 173/193/2019-ITA-1 dated 23/04/2019 in which based on the representations received 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 Act, the CBDT has clarified that for a Trust registered u/s 12AA of the Act to avail the benefit of exemption u/s 11 of the Act shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, it is directed that the orders u/s 143(1)(a) of the Act in those cases in which demand has been raised on this issue may be rectified. Thus, the clarification given by the CBDT instruction incorporates the time allowed in sub-section (1) or sub-section (4) of section 139 for the purpose of compliance of sub-section (4A) of the said section in respect of furnishing of return of income. The assessee in the present case has filed a belated return u/s 139 (4) of the Act, which the department has also not held it to be a defective return u/s 139(9) of the Act.

9.6 Further, with regard to delay in filing the form 10B for the years prior to assessment year 2018-19, the CBDT has issued circular no.10/2019 dated 22.5.2019 by condoning the delay in filing the form no.10B for assessment year 2016-17 & 2017-18 in all such cases where the audit report for the previous year has been obtained before the filing of return of income and has furnished subsequent to the filing of return of income but before the date specified u/s 139 of the Act. It is worthwhile here to mention that the CBDT had specifically mentioned the “the date specified u/s

139 of the Act". In the present case, the assessee has submitted the audit report dated 12.01.2018 along with the return of income on 18.1.2018 belatedly u/s 139(4) of the Act. Therefore, in our opinion, since the audit report obtained before the filing of return of income and furnished along with the return of income u/s 139(4) of the Act is also squarely covered by the said circular and accordingly the delay in filing Form 10B should be condoned in terms of said circular.

9.7 We are also of the opinion that filing of Audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report filed in form 10B to be available with the Assessing Officer before the assessment proceedings take place, the requirement of Law is satisfied. Admittedly in the present case the return of income as well as the audit report was available before the AO well before the assessment proceedings commenced & the AO has passed an Order u/s 143(3) of the Act after considering the return of Income & Audit Report.

9.8 In view of the above reasoning, we set aside the order of ld. CIT(A)/NFAC and direct the AO to grant the exemption u/s 11 claimed by the assessee as the assessee is registered u/s 12AA of the Act by the Commissioner, Karnataka-1, Bengaluru vide no. Trust/718/10A/Vol.A1/374 dated 20.12.1985.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th May, 2025

Sd/-	**Sd/-**
(Laxmi Prasad Sahu)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 14th May, 2025.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.