

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.834 to 837/Chny/2019
(निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13, 2013-14 & 2014-15)

M/s. Meenakshi Ammal Trust, Vs The ACIT,
No.61, Ramasamy Salai, Central Circle 2(1),
K.K. Nagar, Chennai-34.
Chennai – 600 078.

PAN: AAATM4676Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri A. Sundararajan, Addl.CIT

सुनवाई की तारीख/Date of hearing : 24.10.2019

घोषणा की तारीख /Date of Pronouncement : 21.01.2020

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the four appeals of the assessee are directed against the respective order passed by the Commissioner of Income Tax (Appeals)–18, Chennai for the assessment years 2011-12, 2012-13, 2013-14 and 2015-16. Therefore we heard all the appeals together and disposing off the same by this common order.

2. Let us first take ITA Nos.835, 836 & 837/Chny/2019 arising out of the assessment order for the assessment years 2012-13, 2013-14 and 2015-16.

3. Shri G. Baskar, the Ld. Counsel for the assessee submitted that there was a search in the premises of the assessee on 29.09.2008. Consequently the assessment was completed for the assessment years 2003-04 to 2009-10. There was a second search in the premises of the assessee on 15.12.2010. The assessment proceeding was also completed for the assessment years 2005-06 to 2011-12 consequent to the second search. According to the Ld.AR, there was a third search in the premises of the assessee on 30.07.2013. Consequent upon the search, a notice was issued to the assessee U/s.153A of the Act, for filing the return of income.

4. Shri G. Baskar, the Ld.Counsel for the assessee submitted that the assessee is an educational trust registered U/s.12AA of the Income Tax Act, 1961 (in short 'the Act'). The assessee trust established and managing several institutions such as Medical College, Engineering College, Polytechnic College, Arts & Science College, Catering Colleges apart from Schools. During the course of

search proceedings, the Revenue authorities found the receipt of voluntary donations from various individuals. The assessee by letter dated 11.01.2016 disclosed the Assessing Officer the receipt of ₹5,34,58,159/- being the voluntary donations said to be received from various individuals. However in the books of account, it was found that the assessee claimed only a sum of ₹5,31,58,159/- as voluntary donation received. The assessee explained before the Assessing Officer, the assessee received voluntary donation to the extent of ₹5.31 crore which consists of ₹3.24 crores received in cash and ₹2.07 crore received by Demand Draft. The assessee has filed the confirmation letters from the donors. The Ld. AR further submitted that in spite of filing the confirmation letters from donors, in order to settle and avoid the prolonged litigation, the assessee offered the amount to the extent of ₹3.24 crores received in cash for taxation. According to the Ld. AR receipt of voluntary donation is not prohibited under the Act. The assessee has also received voluntary donations from various individuals and accounted the same. The voluntary donations were utilized for the educational activity as per the object of the trust. Similarly, the assessee has also admitted ₹6,54,35,500/- and ₹9,73,81,500/- for taxation. According to the

Ld.AR, the voluntary donation received by the assessee was treated as anonymous donation by the Assessing Officer and CIT(A). According to the Ld.AR, the assessee has furnished the entire details of the donation received from various individuals. Therefore, it cannot be construed as anonymous donation. Moreover, the refund of salary was also considered to be anonymous amount received by the assessee. According to the Ld.AR, the CIT(A) without considering the material available on record confirmed the disallowance made by the Assessing Officer. According to the Ld.AR, for the assessment year 2013-14, a sum of ₹6,74,26,047/- was collected through Meenakshi Medical College Hospital and Research Institute. The said sum was collected from the staff of the Medical College to whom salary advance was given earlier. The Ld.AR submitted that the matter may be remitted back to the file of the Assessing Officer for reconsideration in the light of the confirmation letters filed by the assessee.

5. On the contrary, Shri A. Sundararajan, the Ld. Departmental Representative submitted that during the course of search proceedings, several incriminating materials were found in the

premises of the assessee. The assessee appears to have collected various donations from individuals. Even though the assessee claimed that it was voluntary donation, the assessee could not establish the individual identity through whom the donations was received. Therefore the Assessing Officer treated the so called donations as anonymous and brought the same for taxation. According to the Ld.DR, M/s. Meenakshi Ammal Trust and Shri Muthukumaran Educational Trust was functioning in the same premises. During the course of search operation, it was found by the Revenue authorities that the assessee was in the habit of receiving donations. The Ld.DR further submitted that the so called donation said to be received by the assessee is also deposited in the bank account in various branches of several banks. The Ld.DR further submitted that the accountant of the assessee trust was examined. Shri Muthusamy, the Chief Accountant of the assessee trust explained before the Assessing Officer that M/s. Muthukumaran Educational Trust manages 7 educational institutions and M/s. Meenakshi Ammal Trust manages 19 educational institutions. Even though the assessee filed an affidavit before the Revenue authorities, during the course of search operation the assessee

admitted that several persons gave voluntary donation by means of demand draft and some of the individuals who gave donation filed confirmation letters, however majority of the donors have not filed confirmation letters. Even though the assessee admitted that the voluntary donation was offered to taxation while filing the return of income, no such anonymous donations were offered for taxation. The Revenue authorities has also examined books of account and found various accommodation entries. Even though the assessee claims that the identity of the donors was established, there is no material available on record to suggest that the assessee has filed any material to establish the identity of the donors. Therefore the Ld.DR submitted that the matter may be remitted back to the file of the Assessing Officer for re-examination.

6. Having heard the Ld.AR and the Ld.DR, we have carefully gone through the materials available on record including the impugned orders of the CIT(A) and the Assessing Officer. Admittedly, there were three searches in the premises of the assessee. The assessment was completed for the earlier two searches. The present proceeding arisen out of the third search

conducted by the Revenue authorities. It is not in dispute that the assessee trust was registered U/s.12AA of the Act. It is also not in dispute that the assessee trust established and manages several educational institutions such as Medical College, Engineering College, Polytechnic College, Arts & Science College besides Schools. During the course of search operation, it was found various donations said to be received by the assessee. The assessee claims that it is a voluntary donation. The assessee also claims before this Tribunal, confirmation letters were filed from various individuals who donated the funds. Majority of the donations were said to be received in cash however a part of the donation is said to be received in cheque / demand draft. The Assessing Officer found that the donations were not voluntary, it is anonymous. Moreover, the assessee could not establish the identity of the donors. Therefore, the Assessing Officer brought the entire donations for taxation. For the assessment year 2013-14, the Assessing Officer made addition of ₹6,74,26,047/- which said to be pertains to advance salary, festival advance, etc., The Assessing Officer found that the assessee is in the habit of collecting donations and accommodating such donations received as fees as they were received from students. In fact, the

Assessing Officer observed as follows in the impugned Assessing Officer for the assessment year 2013-14 in Para No.3.2.1:-

“During the course of search it was found that the assessee trust was in the habit of receiving donations but accommodating such donations received as if they were received from students. It was evident from receipt books and torn vouchers seized from the Trust Office vide ANN/CS/MAT/B&D/SI/1 to 5”

From the above observation of the Assessing Officer for the assessment year 2013-14, an impression was created as if they were collected from students. However, it is not known whether such donations were collected from the students over and above the fees prescribed by the High Level Committee constituted by the State Government headed by the retired Judge of High Court.

6.1 It is a known fact that the State Government has constituted a High Level Committee headed by a High Court Judge for determining the fees for the professional colleges. Once the fee was prescribed by the High Level Committee, the assessee is expected to collect only those fees fixed by the Committee. In this case, the seized material as referred to in Para No.3.2.1 of the assessment order for the assessment year 2013-14 gives an impression that the amount was collected from the students. However, it is not known

that such donations were collected from students or any other party who are related to the students at the time of admission. These facts were not examined either by the Assessing Officer or by the CIT(A). Even though there was no prohibition for receiving voluntary donations from the general public, collecting capitation fee for admission of the students in any educational institution is prohibited and it is a punishable offence under the State Enactment. The assessee claims that necessary materials were filed before the Assessing Officer to establish the identity of the donors and also the confirmation letters. In this situation, this Tribunal is of the considered opinion that this matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the entire issue raised by the assessee including voluntary donations, anonymous donations and salary advance said to be received from the staff, etc., are remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and bring on record the nexus between the donations and the donors in respect of each donation and there after decide the issue afresh, in accordance with law, after giving a reasonable opportunity to the assessee.

7. Now coming to ITA 834 of 2019. This appeal arisen out of the order of the CIT(A) confirming the penalty levied by the Assessing Officer U/s.271(1)(c) of the Act for the assessment year 2011-12.

8. Shri G. Baskar, the Ld. Counsel for the assessee submitted that the Assessing Officer levied penalty U/s.271(1)(c) of the Act. During the year under consideration, the assessee deposited Rs.17,86,93,107/- in Indian Bank, Valasaravakkam Branch. The assessee explained before the Assessing Officer that these amounts were from and out of the tuition fees, out-patient deposit collection from medical and dental colleges run by the trust. The assessee also explained that the fees collected from M/s. Vani Vidhyalaya and AMACE Schools run by the trust was deposited in the bank account. All the receipts were recorded in the books. The assessee has also explained before the Assessing Officer, a sum of Rs.5,67,33,606/- was deposited from the opening cash available on hand. The Assessing Officer in fact accepted the opening cash available on hand and made addition only to the extent of Rs.12,19,59,501/-. According to the Ld.AR, the assessee has recorded the entire

receipts in the books of account and it was deposited in the bank accounts. The Assessing Officer claims that it is anonymous donations. However, the assessee claims that it is tuition fees collected from the students and the deposit collected from the out-patients from the medical college and dental college. According to the Ld.AR, only the classification or the source for the deposit is in dispute. The fact that the assessee has disclosed the entire receipts before the Assessing Officer is not in dispute. Since the amount was collected from the students and the out patients and the same was deposited in the bank account and the assessee claims the same as exempted U/s.11 of the Act. Therefore, it is neither the case of concealment of income nor furnishing any inaccurate particulars. Merely because the assessee could not explain the receipt of money to the satisfaction of the Assessing Officer, it does not mean that the assessee furnished any inaccurate particulars or concealed any part of the income. Therefore the CIT(A) is not justified in confirming the penalty levied by the Assessing Officer.

8.1 The Ld.AR further submitted that the search was conducted in the premises of the assessee on 15.12.2010. Therefore if at all any

penalty to be levied, it has to be levied only U/s.271AAA of the Act and not U/s.271(1)(c) of the Act. Referring to Section 271AAA of the Act, the Ld.AR submitted that in respect of search initiated on or after 01.04.2007 but before 01.07.2012, the penalty shall be levied U/s.271AAA of the Act and no penalty can be levied U/s.271(1)(c) of the Act. In this case, admittedly the search was conducted on 15.12.2010. Therefore, the assessment year under consideration falls within the specified previous year within the meaning of Section 271AAA(4) of the Act. Hence, the penalty if at all to be levied only U/s.271AAA of the Act and definitely not U/s.271(1)(c) of the Act.

9. On the contrary, Shri A. Sundararajan, the Ld. Departmental Representative submitted that during the course of search proceedings, several incriminating materials were found. On verification there was a huge cash deposit to the extent of Rs.18.79 Crores to various branches / accounts of Indian Bank. The assessee has not maintained any proper books of account. Even after conclusion of search on 10.02.2011, the assessee could not produce any books of account to establish the so called collection of fees and deposit from out-patients. The Assessing Officer found that the cash

deposited in various bank accounts are anonymous donations and brought the same for taxation for about Rs.12,19,59,501/-. Since, the assessee could not explain the source of cash deposit to the extent of Rs.12,19,59,501/-, the Assessing Officer found that the assessee has concealed its income. Therefore, penalty was levied U/s.271(1)(c) of the Act.

9.1 Referring to the claim of the assessee, that no penalty U/s.271(1)(c) of the Act, if at all can be levied U/s.271AAA of the Act, the Ld.DR submitted that the Assessing Officer discussed the claim of the assessee at Para 7.5 and 7.6 of the impugned order. Section 271AAA of the Act could be applied only in case there was a search in the premises of the assessee's trust. In this case, there was no search in the premises of the assessee's trust. The search was admittedly in the case of Shri A.N. Radhakrishnan, who is the Managing Trustee of the assessee. Since the assessee trust is a person other than the searched person, the assessment has to be made U/s.153C of the Act. Therefore the provisions of Section 271AAA of the Act cannot be made applicable to a person other than the searched person.

10. We have considered the rival submissions on either side and perused the material available on record. Admittedly there was cash deposit in the bank account. The Assessing Officer at Page No.2 of the impugned order reproduced the submission of the assessee which indicates the cash deposit to the extent of Rs.17,86,93,107/-. The assessee claimed before the Assessing Officer that Rs.5,67,33,606/- was from opening cash on hand. However the Assessing Officer found that there was a cash deposit of Rs.18.79 crores at Page No. 4 of the impugned order. The assessee has not maintained any proper books of account. Even though the Assessing Officer found that the cash deposit was Rs.18.79 crores, he found that income sought to be evaded was Rs.12,19,59,501/-. Accordingly he levied penalty. Therefore, it is obvious that the opening cash to the extent of Rs.5,67,33,606/- said to be in the hands of the assessee was accepted by the Assessing Officer and the balance of Rs.12,19,59,501/- was considered for levying of penalty.

10.1 The fact that the entire amount was deposited in the bank account was not in dispute. The assessee claims that the cash

deposited was from students and out-patients. However the Assessing Officer claims that it is from anonymous donations. An identical issue was considered by this Tribunal in the case of M/s. Balaji Educational & Charitable Public Trust Vs. ACIT in ITA 186/Mds/2014 dated 24.07.2015, this Tribunal found that the assessee explained before the Assessing Officer that the amounts were received but the details were not available. On such circumstances, this Tribunal after referring to the judgment of the Hon'ble Apex Court in the case of M/s.MAK Data (P) Ltd., Vs. CIT, found that the explanation given by the assessee was neither false nor bonafide. Accordingly after referring to the judgment of the Hon'ble Gujarat High Court in the case of M/s. National Textiles Vs. CIT, 249 ITR 125, found that the assessee has neither concealed any part of the income nor filed any inaccurate particulars.

10.2 In this case also, the assessee has disclosed the entire receipt of donations. However the Assessing Officer found that it is not a voluntary donation but anonymous donation. The fact that the assessee has disclosed the entire donation and claimed exemption U/s.11 of the Act is not in dispute. When the assessee has disclosed

the entire receipt and the expenditure and claimed the same as exempted U/s.11 of the Act, merely because the assessee could not furnish the details of the persons from whom the donations was received, cannot be a reason for concluding that the assessee concealed any part of income or furnished inaccurate particulars. Making a statutory claim U/s.11 of the Act cannot be construed as furnishing inaccurate particulars.

10.2 We also carefully gone through the judgment of the Apex Court in the case of CIT Vs. M/s. Reliance Petro Products Pvt. Ltd., 322 ITR 158. In the case before the Apex Court, the assessee claimed certain amount as expenditure, however the Assessing Officer disallowed the claim of the assessee and also levied penalty. The Apex Court found that when the assessee claims certain amount as expenditure, merely because the assessee could not furnish the entire details, it cannot be said that there was concealment of income or furnishing inaccurate particulars. In view of the judgment of the Apex Court in the case of Reliance Petro Products Pvt. Ltd., mere claim of exemption U/s.11 of the Act, in respect of the so called donations received by the assessee cannot be a reason for levy of

penalty U/s.271(1)(c) of the Act. In view of the above discussions, we are unable to uphold the orders of the lower authorities. Accordingly the same is set aside and the penalty levied U/s.271(1)(c) of the Act, is deleted.

11. In the result, the appeals filed by the assessee in ITA Nos.835, 836 & 837/Chny/2019 are allowed for statistical purposes. However, the assessee's appeal in ITA No.834/Chny/2019 is allowed.

Order pronounced in the court on 21st January, 2020 at Chennai.

Sd/-

(इंटूरी रामा राव)
(Inturi Rama Rao)
लेखा सदस्य /Accountant Member

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 21st January, 2020.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |