

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
**श्री धुव्वुरुआर.एलरेड्डी, न्यायिक सदस्य एवं श्रीजी. मंजुनाथ, लेखासदस्यके समक्ष**  
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER**  
**AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

**आयकरअपीलसं./I.T.A.Nos.1546 & 1547/Chny/2018**

(निर्धारणवर्ष / Assessment Years: 2011-12 & 2012-13)

Sriram Educational Trust No.49, Anna Salai (Devi Theatre Complex), Chennai-600 002.	Vs	The Deputy Commissioner of Income Tax (Exemptions), 121, Nungambakkam High Road. Chennai-34.
PAN:AAATS2429R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

**आयकरअपीलसं./I.T.A.No.1591/Chny/2018**

(निर्धारणवर्ष / Assessment Year:2012-13)

The Deputy Commissioner of Income Tax (Exemptions),Chennai Circle, Aayakar Bhavan Annex Buldg, 3 <sup>rd</sup> floor,121, Nungambakkam High Road. Chennai-34.	Vs	Sriram Educational Trust No.49, Anna Salai (Devi Theatre Complex), Chennai-600 002.
		PAN:AAATS2429R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/ Revenue by	:	Mr. Abani Kanta Nayak,CIT

सुनवाईकीतारीख/Date of hearing	:	22.10.2020
घोषणाकीतारीख /Date of Pronouncement	:	27.10.2020

**आदेश / ORDER**

**PER G.MANJUNATHA, ACCOUNTANT MEMBER:**

These are two appeals filed by the assessee for the assessment years 2011-12 & 2012-13 and one appeal filed by the Revenue for the assessment year 2012-13 are directed against the common order passed by the learned Commissioner of Income Tax (Appeals)-17, Chennai dated 28.02.2018 and pertain to

assessment years 2011-12 & 2012-13. Since, the facts and issues involved are identical, for the sake of convenience these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has raised more or less common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, the grounds filed for the assessment year 2011-12 are reproduced as under:-

*"This appeal is filed against the order of the Commissioner of Income Tax-(Appeal) dated 28<sup>th</sup> February 2018 passed u/s 250(6) of Income Tax Act on the following amongst other grounds each of which is in the alternative and without prejudice to any other ground.*

- 1. The learned CIT (A) has erred in law and in fact in confirming the order of the learned Assessing Officer determining the income at Rs.19,71,33,840/-.*
- 2. The learned CIT(A) has erred in law in sustaining the tax payable as determined by the learned Assessing Officer at Rs.9,72,22,380/-.*
- 3. The learned CIT(A) has erred in law in not quashing the order of the Assessing Officer which is contrary to law, facts and in circumstances of the case.*
- 4. The learned CIT(A) is wrong in confirming the reassessment framed u/s 147 of Tax Act.*

#### ***I. Non Disposal of Objections raised by the Appellant***

- 5. The Assessing Officer in Para 3.1 in Page NO.5 of the assessment order passed u/s 147 r.w.s. 143(3) dated 23<sup>rd</sup> March 2016 has stated that the appellant has not objected to the reopening of the assessment, whereas the appellant vide letter dated 12<sup>th</sup> May 2015 has filed its objection before the learned Assessing Officer. The Assessing Officer failed to dispose off the objections raised by the appellant.*

6. *The CIT (A) has erred in not considering the above fact brought to his notice vide submission dated 23<sup>rd</sup> Feb 2018 and failed to deal the issue in his order.*
7. *The CIT (A) has failed to appreciate that the reassessment order passed without rejection of the objections raised by the appellant would render the entire reassessment proceeding void abinitio.*
8. *The CIT(A) is wrong in not following the law laid down by the Hon'ble Supreme Court of India in the case of GKN Drive Shafts Vs ITO 259 ITR 019 and the law laid down by the Hon'ble High Court of Madras which is also the jurisdictional High Court.*

## **II. Claim of Depreciation not allowed**

9. *The CIT(A) has erred in not allowing the claim of depreciation.*
10. *The CIT(A) is wrong in not considering the additional grounds of appeal adduced by the appellant on 26<sup>th</sup> February 2018 before CIT (A) on the claim of depreciation.*
11. *The CIT(A) has failed to consider the judgement given by the Hon'ble High Court of Madras in the case of OIT Vs Medical Trust of Seventh Adventists reported in 84 Taxmaan.com 202 (Madras) and judgement of the Hon'ble Supreme Court of India in the case of CIT Vs Rajasthan & Gujarat Charitable Foundation in CA No.7186 of 2014.*

## **III. Wrong addition of unspent accumulation of AY 2005-06**

12. *The CIT(A) has erred in not deleting the addition of Rs.6.63 crore as detailed in Para 6 of the assessment order which pertain to unexpended accumulation of AY 2005-06.*
13. *The CIT(A) has erred in sustaining the addition of Rs.6.63 crore where as S.No.7 in Page 4 of the assessment order itself states that the carry forward expenditure of Rs.4.92 crore pertaining to AY 2004-05 was adjusted in AY 2005-06 and thus arriving at the taxable income for the AY-2005-06 as Nil.*
14. *The CIT(A) has failed to consider the fact that when there was no taxable income for the appellant for the AY 2005-06 the question of unexpended accumulation does not arise as the carry forward expenditure of AY 2004-05 of Rs.4,92,22,844/- was adjusted against the shortfall in arriving at 85% of the income of AY 2005-06 amounting to Rs.3,19,95,993/-.*
15. *The CIT(A) is wrong in not determining the balance carry forward expenditure of AY 2004-05 after set off against the shortfall in*

expenditure of AY 2005-06.

#### **IV. Form 10 not considered**

16. *The CIT (A) has erred in not entertaining the plea for accumulation of income for the purpose stated forming part of the statutory Form 10 within the scope of Section 11(2) of the Income Tax Act.*
17. *The CIT(A) has failed to deal with the accumulation through Form 10 adduced as additional ground of appeal by the appellant vide its additional grounds dated 26th February 2018 filed before the CIT(A).*
18. *The CIT (A) shall have considered the decision of the Hon'ble High Court of Gujarat in CIT Vs Mayur Foundation (2005) 274 ITR 565 which distinguished the judgement of the Hon'ble Supreme Court of India in the case of CIT vs Nagpur Hotel Owners' Association (2001) 247 ITR 201 which states that Form 10 can be filed even when the relevant assessment year is under appeal. The relevant excerpt of the case reads as follows :-*

*".....the assessment is in appeal, it should be treated as pending, so that it could be followed at the stage of appeal by way of additional grounds. Not all time limited are mandatory, since not proved case, as in the case of time limit for filing audit report, the courts have found that they are often directory to such a view as necessary for furthering cause of justice".*

#### **V. Error in computing the accumulation u/s 11(1)(a)**

19. *The CIT(A) is not correct in law in not disposing of additional ground adduced by the appellant where it has been pointed out that the Assessing Officer erred in computing 15% from accumulation available u/s 11(1)(a) as 15% of the gross receipts and not as 15% of gross receipts less revenue expenditure. This has resulted in lesser amount of free accumulation compared to the quantum as envisaged under law.*
20. *If the correct methodology had been followed, the taxable income of the appellant would have been much less assumingly even without allowing depreciation and deletion of unutilised accumulation of AY 2005-06 and thus causing undue hardship and denial of justice to the appellant.*

#### **VI. Retrospective denial of exemption u/s 10(23C)(vi)**

21. *The assessing officer erred in not granting the alternative exemption u/s 11 of the Act citing rejection of condonation of delay in filing Form 10. The appellant filed its original return of income on bonafied belief that it is entitled to the benefits of section 10(23C)(vi) of the Act. With the retrospective cancellation of registration u/s 10(23C)(vi), the appellant should have been granted the alternative exemption*

*available to it without any further compliance.*

22. *Without prejudice to the above and in alternative, an appeal against the cancellation of registration granted u/s 10(23C)(vi) is pending before the Tribunal."*

3. The Revenue has raised the following grounds of appeal:-

- "1. The order of the learned CIT(A) is contrary to the law and facts of the case.  
2. The CIT(A) erred in deleting the addition of 9.36 crores on the ground that the same amount was taxed for the A.Y.2006-07 without appreciating the fact that assessment for the A.Y.2006-07 has not reached finality and the same in appeal before the Hon'ble ITAT and the addition of Rs.9.36 crores made for AY 2012-13 is interdependent on the outcome of the appeal for the AY 2006-07."*

4. Brief facts of the case extracted in ITA No. 1146/Chny/2018 for the assessment year 2011-12 are that the assessee trust was established in the year 1983 with the object of imparting education. The assessee trust is carrying on its objects through establishment of educational institutions including an engineering college, polytechnic college, arts & science college, a matriculation school and CBSE school. The Trust is registered under section 10(23C)(vi) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") vide the order of Chief Commissioner of Income Tax No.CCIT-III/187/10(23C)/07-08 dated 30.04.2008 w.e.f assessment year 2003-04. The trust is also registered u/s.12A of the Act, vide order dated 31.10.1983. The assessee trust filed its return of income for the assessment year 2011-12 & 2012-13 on 28.09.2012 admitting

Nil total income, after claiming exemption under section 10(23C)(vi) of the Act. An inquiry was conducted under section 131 of the Act on 23.11.2012 and based on various inputs, the CCIT cancelled the registration granted under section 10(23C)(vi) of the Act vide his order dated 14.03.2013 with retrospective effect from assessment year 2006-07. Against the order of CCIT, the assessee had filed writ petition before the Hon'ble High Court of Madras praying for restoration of registration of the trust which is pending for adjudication. Thereafter, notice u/s.148 was issued on 01.08.2014 to reopen the assessment for both assessment years. In response to the notice, the assessee has filed return of income and simultaneously requested for reasons for reopening of assessment and such reasons were not furnished. The assessment has been completed u/s.143 (3) r.w.s 147 of the Act on 24.03.2016 determining the total income at Rs 19,71,33,840/-, wherein the AO had denied the benefit of exemption claimed under section 10(23C)(vi) of the Act on the ground that assessee is not entitled for any exemption because of cancellation of registration granted by the CCIT vide order dated 14.03.2013.

5. Being aggrieved by the assessment order, assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has

challenged the reopening of assessment along with denial of exemption claimed under section 10(23C)(vi) of the Act. The learned CIT(A), for the detailed reasons recorded in the appellate order dated 28.02.2018, has rejected the ground taken by the assessee, insofar as denial of exemption claimed under section 10(23C)(vi) of the Act on the ground that once registration granted has been withdrawn, the assessee cannot claim the benefit of exemption. The CIT(A) also rejected the exemption claimed u/s.11 of the Act on the ground that the assessee has filed Form No. 10 setting apart accumulation of income beyond stipulated date. While doing so, the CIT(A) has followed the appellate order of CIT(A) in ITA No.223/2013-14 for the assessment year 2009-10. Aggrieved by the order of CIT(A), the assessee as well as Revenue are in appeal before us.

6. The learned counsel for the assessee submitted that the issue involved in both the appeals filed by the assessee are squarely covered by the decision of ITAT., Chennai in assessee's own case for the assessment year 2006-07 to 2010-11, where the Tribunal has set aside the issue to the file of the A.O to re-examine exemption claimed u/s.11 of the Act. Therefore, these appeals may be set aside to the file of the AO to reconsider the issue in

accordance with the directions of the Tribunal given for the earlier assessment years.

7. The learned DR, on the other hand, fairly accepted that the Tribunal has set aside the issue to the A.O. for the earlier assessment years and further the facts being identical for the years under consideration, these appeals may be set aside to the file of Assessing Officer with similar direction to reconsider the issue of exemption claimed u/s.11 of the Act. As regards the appeal filed by the Revenue for the assessment year 2012-13, the learned DR submitted that since the appeals of the assessee have been set aside, the appeal filed by the Revenue may also be remitted back to the file of the A.O. to look into the issue afresh in the light of the various averments made by the assessee in the light of the findings of the Tribunal for the earlier assessment years.

8. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We find that an identical issue has been considered by the Tribunal for the assessment years 2006-07 to 2010-11, where after considering the relevant facts of the case, the Tribunal has restored the matter to the file of the A.O. to reconsider the issue raised by the assessee

regarding claim of exemption u/s.11 of the Act. We further noted that facts of the impugned assessment years are identical to the case considered by the Tribunal for the earlier assessment years and further assessment of earlier assessment years will have bearing on the assessments framed by the A.O for these assessment years. Therefore, considering the facts and circumstances and also the fact that assessee's claim of exemption u/s.11 needs to be examined from the assessment year 2006-07 onwards, the appeals filed by the assessee for both the assessment years are restored to the file of the A.O. to reconsider the issue of exemption claimed u/s.11 in the light of Form No.10B filed by the assessee for both the assessment years. We further direct the learned A.O. to redo the assessments keeping in mind the findings recorded by the Tribunal vide order in ITA No.590 to 594/Chny/2015 dated 04.03.2019 for the assessment years 2006-07 to 2010-11, because the findings given for the earlier years shall have bearing on the assessments of these two assessment years. We further direct the learned A.O to take note of the Writ Petition filed by the assessee before the Hon'ble Madras High Court challenging cancellation of registration withdrawn by the CCIT u/s.10(23C)(vi) of the Act and the outcome of the Writ Petition before the Hon'ble High Court.

9. As regards the appeal filed by the Revenue challenging the deletion of addition of Rs.9.36 crores made to the income of the assessee for the assessment year 2011-12 on the ground that once substantive assessment has been made for the assessment year 2006-07, protective addition made for the impugned assessment year cannot survive. Since the assessment for the assessment year 2006-07 has been set aside to the file of the A.O, the Assessing Officer will examine the issue of taxability of particular addition in appropriate assessment years in accordance with law. Accordingly, appeal of the revenue is also set aside to the file of the AO.

10. In the result, appeals filed by the assessee for the assessment years 2011-12 and 2012-13 and appeal filed by the Revenue for the assessment year 2012-13 are allowed for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> October, 2020

Sd/-  
(धुव्वुरुआर.एलरेड्डी)  
(Duvvuru RL Reddy)  
न्यायिक सदस्य /Judicial Member

Sd/-  
(जी.मंजुनाथ)  
( G.Manjunatha )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,  
दिनांक/Dated 27<sup>th</sup> October, 2020  
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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