

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.2683 & 2684/Chny/2014

(निर्धारणवर्ष / Assessment Years: 2008-09 & 2009-10)

M/s. C.N.N. Educational Trust 2/47, Dr.Basuvaiah Nagar, Adasholai Ooty, The Nilgiris – 643 001.	Vs	The Income Tax Officer, Ward-1(1), Ooty.
PAN: AAATC 8167G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr.Arjunraj, C.A for Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. AR.V. Sreenivasan, Addl.CIT

मुनवाईकीतारीख/Date of hearing	:	09.12.2021
घोषणाकीतारीख /Date of Pronouncement	:	22.12.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of learned Commissioner of Income Tax (Appeals)-I, Coimbatore, both dated 12.08.2014 and pertain to assessment years 2008-09 & 2009-10. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for both assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2008-09 are reproduced as under:-

“1. The order of The Commissioner of Income Tax (Appeals) I, Coimbatore dated 12.08.2014 in I.T.A.No.159/2013-14 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the re-assessment framed u/s 143(3) rw section 147 of the Act without assigning proper reasons and justification and ought to have appreciated that the order of re-assessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

3. The CIT (Appeals) erred in confirming the assessment of Rs.10,43,587/- on the ground of non spending of the income generated to the extent of 85% of the total income/receipts generated in the previous year relating to the Assessment Year under consideration for charitable purposes in the computation of taxable total income without assigning proper reasons and justification.

4. The CIT (Appeals) erred in confirming the assessment of Rs.59,13,658/- being the amount set apart u/s 11(2) of the Act which amount was claimed by the Appellant for accumulation for the purposes stated n statutory Form No.10 in the computation of taxable total income without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that the assessment of Rs.10,43,587/- on the facts and in the circumstances of the case was wrong, erroneous, unjustified, incorrect and not sustainable in law and went wrong in recording the findings in this regard in para 7 of the impugned order without assigning proper reasons and justification.

6. The CIT (Appeals) failed to appreciate that the assessment of Rs.59,13,658/- being the amount set apart for specific purposes without considering the statutory Form No.10 was wrong, erroneous, unjustified, incorrect and not sustainable in law and went wrong in recording the findings in this regard in para 8 of the impugned order without assigning proper reasons and justification.

7. The CIT (Appeals) failed to appreciate that in any event the computation of taxable total income as reflected in page 5 of

the assessment order was wrong, erroneous, unjustified, incorrect and not sustainable in law.

8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before the passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

3. Brief facts of the case are that the assessee trust is registered u/s.12A of the Income Tax Act, 1961. A survey u/s.133A of the Act was conducted in the case of the assessee on 13.10.2009. Consequent to survey, the assessee has filed return of income for assessment years 2008-09 and 2009-10. The return filed by the assessee was belated, therefore, notice u/s.148 of the Act was issued on 19.10.2011. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer has disallowed accumulation of income u/s.11(1)(a) to the extent of 15% and further, disallowed amount claimed as set apart u/s.11(2) of the Income Tax Act, 1961, on the ground that the assessee has failed to file Form No.10, disclosing amount of income set apart and purpose of setting off income u/s.11(2) of the Act. The assessee carried the matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for reasons stated in his appellate order dated 12.08.2014 has

rejected arguments taken by the assessee and sustained additions made by the Assessing Officer towards accumulation of income u/s.11(1)(a) of the Act and set apart of income for specified purposes u/s.11(2) of the Income Tax Act, 1961. The assessee has filed further appeal before the Tribunal. The ITAT., Chennai, vide its order dated 23.09.2015 in ITA No.2383 & 2684/Chny/2014 has dismissed appeal filed by the assessee and sustained additions made towards disallowance of income accumulated / set apart for specified purposes for not filing Form No.10 within time allowed under the Act. The assessee has challenged order of the Tribunal before the Hon'ble High Court of Madras. The Hon'ble High Court, vide its order dated 12.03.2020 has set aside appeal filed by the assessee to file of the Tribunal and direct the Tribunal to reexamine Form No.10 filed by the assessee along with resolution and additional evidences and decide issue in accordance with law. Consequent to the order of the Hon'ble High Court of Madras, present appeals filed by the assessee are taken up for hearing.

4. The learned A.R for the assessee submitted that the assessee has filed Form No.10 along with resolution passed

by the Executive Committee of the trust for accumulation / set apart income for specific purpose and furnished Form No.10 along with necessary details. However, the Assessing Officer has denied Form No.10 filed by the assessee on the sole ground that return of income filed by the assessee for both assessment years are belated and thus, accumulation of income for specified purpose cannot be allowed. Therefore, he submitted that to justify its case, appeals may be set aside to file of the Assessing Officer to file necessary evidences.

5. The learned DR, on the other hand, strongly supporting orders of the Assessing Officer and learned CIT(A) submitted that as per ratio laid down by the Hon'ble Supreme Court in the case of CIT Vs. Nagpur Hotel Owners' Association (2001) 247 ITR 201 (SC), in order to get exemption of income from property held under Trust for specified purpose, the assessee shall furnish intimation as required u/s.11(2) r.w Rule 17 of the Income Tax Rules, 1962, on or before the assessing authority completes concerned assessment, because such requirement is mandatory. Since, the assessee has not filed required Form No.10 as specified u/s.11(2) of the Act, the Assessing Officer

has rightly disallowed accumulation of income u/s.11(2) of the Act, and thus, there is no reason to give one more opportunity to the assessee.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The solitary issue that came up for our consideration from appeals filed by the assessee for both assessment years is accumulation or set apart of income derived from trust for specified purpose u/s.11(2) of the Income Tax Act, 1961. As per section 11(2) r.w.s. Rule 17 of Income Tax Rules, 1962, if an assessee wants to accumulate / set apart any income for specified purpose, then the assessee shall furnish Form No.10 along with resolution specifying amount and purpose for which such income has been set apart and file necessary Form No.10 along with return of income to be filed on or before due date specified u/s.139(1) of the Income Tax Act, 1961. The provisions of section 11(2) r.w Rule 17 of Income Tax Rules, 1962, has been interpreted by the Hon'ble Supreme Court in the case of CIT Vs. Nagpur Hotel Owners' Association (supra), where it has been clearly held that intimation required

u/s.11(2) r.w. Rule 17 of Income Tax Rules, 1962, has to be furnished before assessing authority completes concerned assessment, because such requirement is mandatory in nature. In light of the above legal position, if you examine facts of present case, claim of the assessee was that it has furnished necessary Form No.10 along with resolution specifying amount and purpose of accumulation of income before the assessing authority on or before he completed his assessment for both assessment years. The case of the Revenue is that Form No.10 required to be filed u/s.11(2) r.w. Rule 17 of Income Tax Rules, 1962, was not filed before assessing authority on or before he completed assessment. The facts are contradictory, therefore, to ascertain correct facts with regard to filing of Form No.10, the issue needs to be set aside to file of the Assessing Officer for verification. Hence, we set aside appeals filed by the assessee for both assessment years to the file of Assessing Officer and direct the Assessing Officer to reexamine the case in light of averments made by the assessee along with ratio laid down by the Hon'ble Supreme Court in the case of CIT Vs. Nagpur Hotel Owners' Association(supra).

7. In the result, appeals filed by the assessee for both assessment years are treated as allowed for statistical purposes.

Order pronounced in the open court on 22nd December, 2021

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President

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

चेन्नई/Chennai,
दिनांक/Dated 22nd December, 2021
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.