

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George Mathan, JM & Shri M. Balaganesh, AM

ITA Nos. 243 & 244/Coch/2021
(Assessment Years: 2015-16 & 2017-18)

Chinmaya International Foundation Door No. 211, Adishankara Nilayam, Veliyanad P.O. Ernakulam 682313	Vs.	AICT, Exemption Circle Kochi
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PAN – AAATC4581G

Appellant

Respondent

Appellant by:	Shri P.M. Veeramani, CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	16.03.2022
Date of Pronouncement:	16.03.2022

ORDER

Per: Bench

These are appeals filed by the assessee against the order of the learned CIT(A), NFAC, Delhi in appeal Nos. CIT(A), Kochi – 2/10183/2016-17 & CIT(A), Kochi – 2/10119/2019-20 dated 10.11.2021 for assessment year 2015-16 & 2017-18.

2. Shri P.M. Veeramani, CA represented the assessee and Smt. J.M. Jamuna Devi, Sr. D.R. represented Revenue.

3. It was submitted by the learned A.R. that the assessee had filed its return of income wherein it had claimed carry forward of its excess application over receipts. It was the submission that the assessee had received an intimation under Section 143(1) of Income Tax Act, 1961 wherein the carry forward of the excess application over the receipts had been denied. On appeal the learned CIT(A) had dismissed the assessee's appeal. It was the submission that subsequently in the case of sister concern of assessee, Chinmaya Vishwavidyapeeth, the learned CIT(A), NFAC on identical issue had held in favour of the assessee by holding that

"the assessee is entitled to adjust the excess application made during the current year over and above the income in the subsequent year wherever there is short fall in application of income subject to provisions of law applicable in that year." To arrive at this conclusion the learned CIT(A), NFAC in the case of Chinmaya Vishwavidyapeeth relied upon the decision of the Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection reported in 264 ITR 110. It was the submission by the learned A.R. that the two sets of orders of the learned CIT(A), NFAC being contrary itself shows that the issue is debatable and the same cannot be subject to adjustment under Section 143(1) of the Income Tax Act, 1961.

4. In reply the learned D.R. vehemently supported the order of the learned CIT(A).

5. We have considered the rival contentions. As rightly pointed out by the learned A.R. admittedly in assessee's case the issue has been held against the assessee while in assessee's sister concern's case identical issue has been held in favour. This itself clearly shows that the issue is debatable. Admittedly a debatable issue cannot be considered in an item for adjustment under Section 143(1) of the Act. In any case even on merits the issue is liable to be held in favour of the assessee in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Subros Educational Society reported (2018) 96 taxmann.com 652 (SC). In these circumstances we are of the view that order of the learned CIT(A), NFAC in the case of the assessee is unsustainable and the same stands set aside. Further the adjustment made under Section 143(1)(a) of the Act being unsustainable in so far as it is a debatable issue, the same stands set aside.

6. In the result, the appeals filed by the assessee are allowed.

Dictated and pronounced in the open Court on 16th March, 2022.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Cochin, Dated: 16th March, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC*
4. *The Pr.CIT - concerned*
5. *The DR, ITAT, Cochin*
6. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Cochin*

n.p.