

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री संजय सरमा, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.113/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

Kongu Educational Trust 198, Nanjappampalayam Road, Anumanpalli, M.Anumanpalli (PO), Erode – 638 112.	बनाम/ Vs.	DCIT CPC, Bengaluru.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AABTK-0789-K		
(पीलार्थी/ Appellant/Cross Objector)		(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri S. Sridhar, Erode (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Ms. M.S. Deeptha (JCIT) – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	24-08-2022
घोषणा की तारीख / Date of Pronouncement	:	24-08-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 20-12-2021 in the matter of an intimation issued by Centralized Processing Center (CPC), Bangalore u/s. 143(1) of the Act on 30-03-2018. The grounds taken by the assessee are as under:

- 1) The order of the CIT(A) is bad and erroneous in law and against the principles of natural justice.

2) That on the facts and in circumstances of the case, the intimation u/s 143(1) dated 30/03/2018 disallowing the claim of exemption u/s. 10(23C)(iiiad) of the I.T. Act, 1961 is illegal, void and without jurisdiction.

3) The appellant being eligible for exemption 10(23C)(iiiad) being an educational institution could not be assessed to tax by denying such an exemption through an intimation u/s 143(1).

4) That the Id. CIT(A) erred in law and on facts in failing to appreciate the settled principle that when a debatable question arises and when the issue is contentious, prima facie adjustment u/s 143(1) of the Act is not permissible. Reliance is placed on the decisions reported in ITA No. 05/JAB/2021, ITA No. 324 and 325/IND/2018 and CBDT Instruction No: 1814 dt. 04/04/1989.

5) The findings by the CIT(A) in para no: 7 of his order that "the appellant has not furnished any documentary evidence either before the AO or before the undersigned which shows that it is existing solely for educational purposes", makes abundantly clear that a verification was necessary to make such an adjustment, which is not possible in sec. 143(1).

And for other grounds of appeal that may be adduced at the time of hearing, the appeal be admitted, facts be considered and justice be rendered.

2. The Registry has noted delay of 03 days in the appeal, the condonation of which has been sought by Ld. AR. Considering the period of delay, we condone the delay and admit the appeal for adjudication on merits.

3. As is evident, the assessee is aggrieved by the fact that deduction u/s. 10(23C)(iiiad) of the Act has been denied to the assessee in an intimation issued by CPC, Bengaluru on 30-03-2018. During arguments, it transpires that the reason for denial of deduction is the fact that the assessee has filed return of income under wrong provisions. The same has aptly been pointed out by Ld. Sr. DR. Upon perusal of Income Tax Return form as placed on record, it could be seen that the assessee has filed return of income u/s. 139(4A) which is applicable to a Trust which is registered u/s. 12AA of the Act. The assessee is not a registered trust but claim to be an educational trust eligible for deduction u/s 10(23C)(iiiad) of the Act. The applicable provision under which the return was to be filed was Sec.139(4C). The

same resulted into denial of deduction to the assessee. This fact could not be controverted by Ld. AR. Accordingly, deduction has rightly been denied to the assessee.

4. The Ld. AR pleaded for restoration of issue of deduction to the file of jurisdictional AO to examine the claim u/s. 10(23C)(iiiad) of the Act. Keeping in the principle of natural justice as well as CBDT Circular No.14 of 1955 dated 11.04.1955 which has taken a view that the officers of the department must not take advantage of ignorance of the assessee about his rights and it is their duty to assist the tax payer in every reasonable way particularly in the matter of claiming and securing reliefs, we accept the plea of Ld. AR. Accordingly, the matter is restored back to the file of jurisdictional Assessing Officer to examine the claim of the assessee in terms of Sec.10(23C)(iiiad). The assessee is directed to substantiate its claim.

5. The appeal stands allowed statistical purposes.

Order pronounced on 24th August, 2022.

Sd/-
(SONJOY SARMA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 24-08-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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