

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos.688 to 690/Bang/2023
Assessment Years : 2010-11, 2011-12, 2012-13

M/s. ACTS Group of Institutions, (formerly known as ACTS Ministries), No.54, KHB Colony, 2 nd Cross, 5 th Block, Koramangala, Bengaluru – 560 095. PAN : AAATA 1889 R	Vs.	Income Tax Officer (Exemption), Ward – 1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Prashanth G. S, CA
Revenue by	:	Shri. Nischal B, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	16.11.2023
Date of Pronouncement	:	17.11.2023

ORDER

Per George George K, Vice President:

These appeals at the instance of the assessee are directed against the consolidated order of CIT(A) dated 28.04.2017, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2010-11, 2011-12 and 2012-13.

2. The Registry had noted delay in filing these appeals and issued defect memos to the assessee. The assessee filed reply vide letter dated 20.09.2023. It was stated that there is no delay in filing these appeals as the assessee did not receive appellate orders either physically or through email. It was stated in the

letter that the appellate orders were downloaded by the assessee on 26.08.2023 and the same date may be taken as the date of service of the appellate order. Hence it was stated that there is no delay in filing these appeals.

3. The learned DR has not been able to provide any positive proof to show when the CIT(A)'s orders were served on the assessee. Therefore, we hold that there is no delay in filing these appeals and proceed to dispose the same on merits.

4. The grounds raised read as follows:

1. *The orders of the authorities below in so far as these are against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.*
2. *The appellant denies itself liable to be assessed on a total income of Rs.44,32,230/- as against the returned income of Rs.Nil/- under the facts and circumstances of the case.*
3. a) *The order of the Commissioner of Income Tax (Appeals) — 14, Large Taxpayers Unit, Bengaluru [CIT(A)] is invalid for the reason that the order is not signed by the Commissioner either physically or digitally and therefore the order of the CIT(A) is non est in the eyes of law and needs to be set aside in the interest of equity and justice.*

b) *The order of the CIT(A) suffers from want of application of principles of natural justice in so far as the learned CIT(A) did not provide sufficient opportunity of being heard under the facts and circumstances of the case.*
4. a) *The learned assessing officer erred in denying the exemption under section 11 of the Income Tax Act, 1961 (the Act) to the appellant under the facts and circumstances of the case.*

b) *The authorities below failed to appreciate that the appellant is a Trust registered under section 12AA of the Act and consequently, the capital expenditure incurred by the appellant qualifies for exemption under section 11 of the Act and hence the addition made on wrong notion of law is liable to be deleted in the interest of equity and justice.*

c) The authorities below failed to appreciate that the appellant Trust was an institution engaged in charitable activities and that the appellant did not have any commercial motive in its activities undertaken during the year under consideration.

5. *a) The authorities below are not justified in law in not affording an opportunity to cross-examine third parties whose statements have been used against the appellant which is against the principles of natural justice.*

b) The orders of the authorities below is bad in law as the appellant was not put forth with the statements of third parties used against it which is against the principles of natural justice.

6. *a) The appellant denies itself liable to be levied interest under section 234B of the Act, as the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with the provisions of the Act.*

b) Without prejudice, the interest under section 234B is not leviable and ought to have been waived on the facts of the case.

5. Brief facts of the case are as follows:

Assessee is a registered trust incorporated on 29.05.1979. The objects of the assessee trust are providing education, health and environment based projects. Assessee was granted registration under section 12AA of the Act as a public charitable trust vide certificate dated 04.06.1982. For the Assessment Years 2010-11, 2011-12 and 2012-13, the return of income was filed by claiming exemption under section 11 of the Act. The AO completed the assessments under section 143(3) of the Act vide orders dated 28.03.2013, 28.03.2014 and 27.03.2015 for Assessment Years 2010-11 to 2012-13 respectively. In the said Assessment Orders completed under section 143(3) of the Act, the AO denied the exemption claimed under section 11 of the Act.

6. Aggrieved, assessee filed appeal before the First Appellate Authority (FAA). The CIT(A) confirmed the view of the AO in denying the claim of exemption under section 11 of the Act.

7. Aggrieved by the order of CIT(A), assessee has filed the present appeals before the Tribunal for the Assessment Years 2010-11 to 2012-13. Assessee has filed a Paper Book comprising of 43 pages enclosing therein copies of communication with the CIT(A) for the relevant Assessment Years, copy of Form 35 filed before the CIT(A) for the Assessment Years 2013-14, 2016-17 to 2018-19. The learned AR submitted that initially appeal was with the jurisdictional CIT(A) and later had moved to NFAC. It was submitted that though the assessee had filed the written submissions, assessee was not given sufficient opportunity of being heard. In this context, the learned AR referred to ground No.3(b) in the memorandum of appeal filed before the Tribunal in Form No.36. The learned AR submitted that the assessee, for Assessment Years 2013-14, 2016-17 to 2018-19, had filed appeals before the FAA and same was pending adjudication. When the appeals for the aforesaid Assessment Years were posted for hearing, assessee had sought for clubbing of the appeals with the appeals filed for the Assessment Years 2010-11, 2011-12 and 2012-13 vide assessee's letter dated 26.04.2019, since the issues involved were common for all the Assessment Years. The same request was reiterated by the assessee vide its letter dated 19.08.2023. The learned AR stated that in connection with hearing of appeal for Assessment Year 2013-14, the assessee was directed to produce the CIT(A)'s orders for Assessment Years 2010-11, 2011-12 and 2012-13. It was submitted that it was only then assessee realized that CIT(A) had passed appellate orders for Assessment Years 2010-11, 2011-12 and 2012-13. It was stated by learned AR that it is clear from sequence of events that the assessee was never heard before

appellate orders were passed by the CIT(A) for Assessment Years 2010-11 to 2012-13. Therefore, it was submitted that in the interest of justice and equity, the matter may be remanded to the CIT(A) so that assessee may be provided with sufficient opportunity of being heard.

8. Learned DR supported the orders of the AO and CIT(A).

9. We have heard the rival submissions and perused the material on record. The first contention of the learned AR is that assessee has not been provided with sufficient opportunity of being heard and the CIT(A) has violated principles of natural justice. Therefore, it was prayed that the matter may be restored to the CIT(A) for fresh consideration. We notice that apart from the present Assessment Years, assessee's appeals for Assessment Years 2013-14, 2016-17, 2017-18 and 2018-19 are still pending before the CIT(A). When the notice for hearing the appeals for Assessment Year 2013-14 was issued from the Office of the CIT(A), assessee had sought to club the appeals pertaining to the Assessment Years with that of Assessment Years 2010-11 to 2012-13. The relevant part of the letter dated 26.04.2019 reads as follows:

"We wish to bring to your notice that we have received the brief from the client recently and we are yet to receive the complete set of appeal documents from the client. The Letter of Authorization drawn in favour of the undersigned is enclosed herewith. We further wish to bring to your notice that we are also handling the appellant's case for the assessment years 2010-11, 2011-12, 2012-13 and 2016-17 pending before your Honour and the issues involved in all the years are identical and similar. Under the circumstances, we request your Honour to kindly club the appeals and post all the cases for hearing on any date convenient to your Honour and oblige.

The inconvenience caused in this regard is regretted and we once again request your Honour to club the appeals and grant us an adjournment and oblige.”

10. The same was reiterated by the assessee vide letter dated 19.08.2023. The relevant part of the letter dated 26.04.2019 reads as follows:

“We wish to bring to your notice that the cases for the assessment years 2010-11, 2011-12 and 2012-13 are also pending before your Honour and the issues involved in these years are identical and similar to that of the assessment year 2013-14. We wish to state that all the submissions pertaining to assessment years 2010-11 to 2012-13 i.e., Paper Book and Common Synopsis were filed before the Commissioner of Income Tax (Appeals) — 14, Bengaluru on 08.06.2015 and 13.02.2019 respectively. Further, on receipt of notice for the assessment year 2013-14 posting the matter for hearing on 26.04.2019, we had requested the Hon'ble Commissioner of Income Tax (Appeals) — 14, Bengaluru to kindly club the appeals and post all the cases for hearing vide our letter filed on 26.04.2019. The copy of the letter filed on 26.04.2019 is enclosed for your immediate reference.

However, we have not received any communication as regards the hearing for the assessment years 2010-11 to 2012-13 till date. Since the video conferencing is now granted for the assessment year 2013-14, we request you to grant us an opportunity of video conferencing for the assessment years 2010-11 to 2012-13 also. Under the circumstances, we once again request you to kindly club the appeals pertaining to assessment years 2010-11 to 2012-13 with assessment year 2013-14 and grant us an opportunity of video conferencing for all the years in the interest of equity and justice. The inconvenience caused in this regard is deeply regretted.”

11. Thereafter, vide notice dated 14.08.2023, assessee was granted opportunity for video conferencing of the appeal pertaining to Assessment Year 2013-14. Again, vide letter dated 18.08.2023 from the Office of the CIT(A), the assessee was directed to furnish the Orders of CIT(A) with regard to Assessment Years 2010-11, 2011-12 and 2012-13 on or before 25.08.2023. The relevant part of the

letter dated 18.08.2023 issued from the Office of the NFAC, Delhi, reads as follows:

“2. On perusal of the Para13 of the assessment order dated 15/03/2016 for AY 2013-14 that the AO stated that the issues involved in the present case are the subject matter of appeal in respect of the AYs. 2010-11, 2011-12 & 2012-13.

3. In view of this, you are requested to submit copies of the appeal orders of the ITAT/CIT(Appeals) with respect to the above mentioned AYs. on or before 25/08/2023 to decide the appeals.”

12. It is stated that on receipt of the above letter from the Office of the CIT(A), assessee checked online and downloaded the CIT(A)'s order for Assessment Years 2010-11, 2011-12 and 2012-13. The learned DR has not been able to controvert the above statement of assessee by placing positive proof that CIT(A)'s orders dated 28.04.2017 has been passed after affording reasonable opportunity of hearing to assessee nor has the DR been able to produce proof when the appellate order of CIT(A) has been served on the assessee. From the sequence of the above-mentioned events, it is clear that for Assessment Years 2010-11, 2011-12 and 2012-13, assessee was not granted sufficient opportunity of hearing before the FAA. Therefore, in the interest of justice and equity, we are of the view that one more opportunity of being heard should be granted to the assessee, especially since the appeals for the Assessment Years 2013-14, 2016-17 to 2018-19 are pending before the FAA on a similar issue. Therefore, the issues raised in these appeals are restored to the files of the CIT(A). The CIT(A) is directed to afford reasonable opportunity of being heard to the assessee before a decision is taken in the matter. It is ordered accordingly.

13. In the result, appeals filed by the assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 17.11.2023.

/NS/*

Copy to:

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.