

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1040/Bang/2023
Assessment Year: 2016-17

Bangalore University No.1, Jnanabharati Bangalore University Bangalore 560 056 Karnataka  <b>PAN NO : AAALB0022H</b>	<b>Vs.</b>	ACIT (Exemptions) Circle-1 Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Annamalai S. & Sri Joseph Varghese, A.Rs
<b>Respondent by</b>	:	Shri Sunil Kumar Agarwal, D.R.

<b>Date of Hearing</b>	:	17.04.2024
<b>Date of Pronouncement</b>	:	17.04.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against the order of NFAC for the assessment year 2016-17 dated 6.7.2023. The assessee has raised following grounds of appeal:

- 1. The order of the learned Commissioner of Income tax (Appeals), NFAC passed under Section 250 of the Income Tax Act, 1961 (for short 'the Act') in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
- 2. The learned Commissioner of Income tax (Appeals), NFAC erred in confirming the assessed income of the appellant at a sum of Rs. 33,52,34,000/- as against NIL returned income on the facts and circumstances of the case.*
- 3. The learned Commissioner of Income-tax (Appeals), NFAC erred in upholding the rejection of exemption claimed by the appellant under section 10(23C)(iiiab) of the Act on the facts and circumstances of the case.*

4. *The learned Commissioner of Income-tax (Appeals), NFAC erred in law and on facts in erroneously applying and determining the percentage of Government grant under Rule 2BBB of the Income Tax Rules, 1962 resulting in denial of exemption under section 10(23C)(iiiab) of the Act on the facts and circumstances of the case.*
  5. *Without prejudice, the learned Commissioner of Income-tax (Appeals), NFAC ought to have excluded the receipts which are not in the 'nature of grant / fees in reckoning the total receipts for the purposes of rule 2BBB of the Income Tax rules, 1962 on the facts and circumstances of the case.*
  6. *The Appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*
  7. *For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.*
2. The assessee has raised following first set of additional grounds:
1. *“The impugned assessment order dated 24.12.2018 passed under section 143(3) of the Act is wholly without jurisdiction and consequently liable to be quashed on the facts and circumstances of the case.*
  2. *The impugned assessment order is without jurisdiction in as much as the notice issued under section 143(2) of the Act does not contain any/signature and thereby no valid notice was issued thereunder on the facts and circumstances of the case.*
  3. *The assessing officer, having not assumed the jurisdiction validly, the subsequent proceedings are bad in law in entirety and the impugned assessment order passed in pursuance thereof is non est and void ab initio and consequently liable to be quashed on the facts and circumstances of the case.*
  4. *The appellant, having been entitled to exemption under section 10(23C)(iiiab) of the Act in immediately preceding several assessment years and there being no change in the nature of the activities during the year under appeal, the exemption under section 10(23C)(iiiab) of the Act could not have been denied on the facts and circumstances of the case.*
  5. *Without prejudice, the appellant, having subsequently obtained approval from the competent authority under section 10(23C)(vi) of the*

*Act is entitled to claim of exemption thereunder on the facts and circumstances of the case.*

6. *Without prejudice, even if exemption denial is accepted for argument's sake and without conceding, the lower authorities have committed grave error in the manner of computing and arriving at the total income of the appellant on the facts and circumstances of the case.*
7. *Without prejudice, the lower authorities have misdirected themselves in considering the 'net surplus' as per the 'Revenue & Expenditure Account' of the appellant-university for computing the total income on the facts and circumstances of the case.*
8. *The lower authorities have misconstrued the 'Revenue & Expenditure Account' as 'Income & Expenditure Account' without appreciating that under the accounting method followed by the appellant-university, the 'net surplus' as per Revenue & Expenditure Account does not and cannot represent the income of the appellant in as much as it includes various receipts and funds which are not income under the provisions of the Act on the facts and circumstances of the case.*
9. *Without prejudice, the authorities below ought to have excluded capital project fund, proprietary fund, fiduciary fund, and such other receipts in computing the total income of the appellant in as much as they do not fall within the scope of income and total income under the provisions of the Act on the facts and circumstances of the case.*
10. *Without prejudice, the authorities below are not justified in adding back the capital expenditure to the net surplus for the year in computing total income of the appellant, more so when capital grants have been included in arriving at the net surplus on the facts & circumstances of the case.*
11. *Without prejudice, the lower authorities ought to have allowed deduction towards depreciation under section 32 of the Act in computing the total income of the appellant more so when the capital expenditure have been added back to net surplus in computing the total income of the appellant on the facts and circumstances of the case.*
12. *Without prejudice the assessed income of the appellant by the learned Assessing officer is required to be reduced substantially on the facts and circumstances of the case.*
13. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing of the appeal.*
14. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”*

3. The assessee has raised following second set of additional grounds:

1. *The learned Assessing officer erred in not considering the grants received from University Grants Commission a sum of Rs. 640.9\$ lakhs as well as other government grants included in Admission fees, Tuition fees, Exam Fees and other heads in the computation of government (rants for the purpose of calculation of exemption under section 10(23C)(iiiab) of the Act on the facts and circumstances of the case.*
2. *The learned Assessing officer erred in not reducing from the total receipts in respect of income from sale of material, income from university properties, investment income and certain other income which are not exactly in the shape of grant/ fees for the total receipts purpose of calculation of exemption under section 10(23C)(iiiab) of the Act on the facts and circumstances of the case.*
3. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing of the appeal.*
4. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

4. There was a delay of 98 days in filing this appeal before this Tribunal. The ld. A.R. submitted that the present Finance Officer viz. Dr. Sunitha M., D/o J. Mukunda having taken charge of the office w.e.f 15.09.2023 took some time to familiarize herself with the responsibilities of her office, including tax matters. Furthermore, the audit of the assessee University was also underway immediately thereafter and the present Finance Officer had also availed thirty days of commuted leave between 11.10.2023 to 10.11.2023. In these circumstances, the filing of the appeal against the above order of the ld. CIT(A), NFAC came to be inadvertently overlooked more so since the aforesaid order of the CIT(A), NFAC was only served by email and no physical copy of the same was served on the assessee. He submitted that it was only on 23.11.2023, when the Assistant Commissioner of Income-tax, Exemptions, Circle-I, being the assessing officer in the assessee's case informed about the case, the

present Finance Officer located the order of the Id. CIT(A) dated 06.07.2023 passed by the National Faceless Appeal Centre for the AY 2016-17 and took note that substantial demands of tax and interest are involved and approached the present counsel for appropriate advice in the matter. The assessee was advised to immediately prefer further appeal before this Tribunal. The assessee thereafter has taken all possible steps and filed the present appeal. Hence, he submitted that the cause for the delay in filing the present appeal was due to bonafide reasons as explained above and not due to any malafide intent and submitted that the cause for the delay was also beyond the control of the assessee.

4.1 We have gone through the condonation petition filed by the assessee. In our opinion, there is a good and sufficient reason in filing the appeal belatedly before this Tribunal. Considering the short delay of 98 days and reasons advanced by the assessee, we condone the delay and also admit the appeal for adjudication.

5. The assessee also filed petition for admission of additional grounds raised on two occasions.

5.1 We have heard the rival submissions and perused the petitions for admission of additional grounds in both occasions. We are of the opinion that there is a good and sufficient reason for raising additional grounds and more so, there was no necessity of investigation of any fresh facts otherwise on record. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC), we inclined to admit the additional grounds for the purpose of adjudication as the action of the assessee is bonafide.

6. The assessee also filed additional evidences along with petition for admission of additional evidences. We also carefully gone through the petition for admission of additional evidences. In the interest of justice, these additional evidences are very much required for fair adjudication of the grounds involved herein.

Accordingly, these additional evidences are also admitted for adjudication.

7. We have heard the rival submissions and perused the materials available on record. In this case, the assessee has filed additional grounds and also additional evidences before us as discussed above. These additional grounds and additional evidences were brought for the first time on record by assessee before us and the lower authorities have no occasion to examine these additional grounds/additional evidences. Being so, it is appropriate to remit the entire issues in dispute along with additional grounds and additional evidences to the file of Id. AO for fresh consideration to decide in accordance with law.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 17<sup>th</sup> Apr, 2024

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 17<sup>th</sup> Apr, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**