

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:3331/CHNY/2016

**Deen Dayal Medical and  
Educational Trust,**  
No.61, D.D. Nagar Bus Stop,  
Kunnavalam Post,  
(Chennai to Tirupathi National  
Highway),  
Tiruvallur Tk & Tiruvallur Dt,  
Tiruvallur – 631 210.

**The Principal Commissioner  
of Income Tax,**  
Vs. Central-2,  
Chennai.

**PAN: AAATD 2757M**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri N. Arjun Raj, Advocate  
: Shri A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 12.08.2024

घोषणा की तारीख/Date of Pronouncement

: 12.08.2024

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the Revision orders passed by the Principal Commissioner of Income-Tax, Chennai-3, in C.No.2860A/C-2/2013-14 dated 30.09.2016.

2. At the outset, the Id.counsel for the assessee stated that the PCIT, Central -2, Chennai vide order dated 30.09.2016 cancelled the

registration earlier granted to the trust u/s.12AA of the Income Tax Act, 1961 (hereinafter the 'Act') by passing order u/s.12AA(3) of the Act. The Id.counsel for the assessee first of all stated that there is gross violation of principles of natural justice in cancelling the registration granted without providing opportunity of being heard to the assessee. The Id.counsel for the assessee took us through para 8.1 & 9 of the impugned order, which reads as under:-

*“8.1 Referring to the assessment orders passed by the Assessing officer on 28.3.2014 in the case of the trust and stating that in that order, the AO has not recommended for cancellation of registration u/s 12AA(3) of the IT Act, it was contended that no grounds exist for invoking Section 12AA(3) of the Act. With these submissions and stating that the Managing Trustee of the trust is in prison, it was requested that no adverse order against the trust may be passed with out giving opportunity of being heard in person to the Managing Trustee. On this date, on request made to the AR to furnish copies of show cause notice issued by the Assessing Officer during the assessment proceedings, for different assessment years, the same were filed later by the AR on 18.3.2016.*

*9. In the meantime, no further compliance has been made by the assessee trust. From the discussions made above, it may be noticed that the assessee trust has not replied to various queries and also has not furnished satisfactory reply to some queries. Even though, a request has been made to allow the Managing Trustee of the trust for his personal appearance and to explain further on some matter, it may be noticed that sufficient and reasonable opportunities have been given to the assessee trust for furnishing reply/explanation on different issues raised in the said show cause notice dated 14.3.2014 issued u/s 12AA(3) of the Act and further notices issued subsequently. Further, at the same time, it may be mentioned here that the present proceedings initiated against the assessee trust, cannot be kept pending indefinitely. Under these circumstances, after considering the various documents available on record and after considering the submissions filed by the assessee trust during the course of hearing on different dates during the proceedings, necessary order is passed on the merits of the case, as discussed in succeeding paragraphs.”*

2.1 Further, the Id.counsel for the assessee took us through para 11.1, 11.2 & 11.3, which reads as under:-

*“11.1 In the show cause notice dated 14.3.2014 issued u/s 12AA(3) of the Act to the assessee trust, referring to the seized documents vide Annexure ANN/PD/B&D/S-1 and Annexure ANN/PD/B&D/S-24 and the sworn statement recorded from Shri G. Prabhu, Finance Manager of M/s DD Medical College and Hospital, run by the assessee trust, it was pointed out that the assessee trust has collected capitation fee from the students for the purpose of getting admission in the medical college and such activity was against the Principles of Law/ Public Policy, as held in the decision of Hon'ble Supreme Court in T.M.A Pai Foundation and Islamic Academy of Education.*

*11.2 In response to that query, the assessee trust in its reply filed vide letter dated 18.3.2014 has submitted that they have not received any capitation fees from any students. It was stated that Shri G. Prabhu is not an employee of the trust and that his statement cannot be accepted as evidence against their trust. Such submissions are not tenable. It may be mentioned here that, such sworn statement was recorded from Shri G. Prabhu on 5.8.2011, during the course of search in the premises of the assessee trust and after confronting him with certain seized documents, seized from the premises of the assessee trust. As recorded in that statement, he was the Finance Manager of M/s D.D Medical College and Hospital, since December 2010 and was looking after the accounts department of the college and hospital. Further, it is pertinent to mention here that in their letter dated 02.03.2016, signed by trustee Ms.T.D. Sonia, filed in response to notice vide letter dated 16.02.2016, it has been stated that Shri G. Prabhu was a consultant of the organization. Under these circumstances, such contention of the assessee trust that he was not their employee is not acceptable. Further, though during the resent proceedings, the assessee trust has filed a letter shown as obtained from Shri G.Prabhu, purportedly signed by him on 5.8.2011, addressed to the Chairman, DD Medical College & Hospital, wherein it is stated that during the time of search in the premises of DD Medical College and DD Hospitals on 4" & 5h August, 2011, his presence was Compelled by Income-tax Authorities by use of Police force and he was brought to the premises of that college and hospital and was forced by the Income-tax Authorities to sign many documents, as in the capacity of Finance Manager of their organization, he was helpless at that time and had no choice other*

*than to sign in the documents, in the fear of the Income-tax Authorities, the same cannot be accepted, being wholly an afterthought. It may be mentioned here, had such contention, as made in that letter now filed by the assessee trust during the present proceedings, been true, the said person Shri G. Prabhu would have filed such letter before the concerned authorities immediately after the search. Under these circumstances and for the reasons stated above, no cognizance can be taken of that letter now filed by the assessee, and hence the same is rejected.*

*11.3 Further, in their letter dated 18.3.2014, the assessee trust has stated that the statement made by Shri G. Prabhu cannot be accepted against the trust without allowing opportunity to cross examine him. In this context, it is stated that as per such statement given by Shri G.Prabhu, he has only clarified regarding various entries as found in the seized documents, which were seized during the course of search in the premises of DD Medical College, belonging to the assessee trust. Further, in this context, it may be stated that in the decision in the case of CIT Vs T. Devasahaya Nadar vs CIT (1964) 51 ITR 20, it was held by the Hon'ble Madras High Court that cross examination of the witness is not always necessary. The Hon'ble High Court held that it cannot be said as a general proposition of law that any evidence upon which the department might rely should have been subjected to cross examination. It was further held that in fairness to the assessee, he should be told what is against him, so that he may, if he can, displace it. The Hon'ble Jurisdictional High Court further held that, it is no denial of natural justice, if the Income-tax Officer refuses to produce an informant for being cross examined by the assessee. Having regard to the facts and circumstances of the case and the statement given by Shri G. Prabhu, only replying to queries raised, with reference to the entries found in such seized documents, during the course of search in the premises of the assessee trust, his cross examination,, as requested for by the assessee trust, in my view, is not necessary.”*

2.2 The Id.counsel for the assessee stated that during the period when the order cancelling registration earlier granted to the trust u/s.12AA of the Act passed on 30.09.2016, the managing trustee of the trust was in police custody and this fact has been acknowledged

by the Tribunal not once, twice, first in the case of Shri T.D. Naidu in ITA No.1411/CHNY/2017 and subsequently in assessee's own in ITA Nos.854 to 856/CHNY/2022, wherein the Tribunal considering the facts in entirety set aside the assessment by observing in paras 5 & 6 as under:-

*5. Having heard both the parties and after perusal of the records, we note that the AO has passed an ex parte / best judgment assessment u/s.144 of the Act. It is noted that the Managing Trustee of the assessee Trust, Shri T.D.Naidu, was the key person, who was running the affairs of the assessee Trust; and pursuant to search in the premise of the assessee on 04.08.2011, the AO initiated proceedings u/s.153A of the Act against the assessee, which resulted in the AO framing the assessment u/s.153A r.w.s.144 of the Act and computed the total income at Rs.97,20,500/- for AY 2006-07; and likewise in other AYs 2007-08 & 2008-09. The assessee has brought to our notice that the relevant documents pertaining to the income/expenditure of the Trust has been taken into custody by law enforcement agencies viz., ED, CBI, etc. and Shri T.D.Naidu was in judicial incarceration during the assessment proceedings. Taking note of these factual back ground, this Tribunal in the assessee's own case for AY 2010-11 has already restored assessment back to the file of the AO as well as that of Shri T.D.Naidu for de novo assessment. In such a scenario, we relying on the decision of the Hon'ble Supreme Court in the case of TIN Box Company v. CIT reported in [2001] 249 ITR 216 (SC), wherein, the Hon'ble Supreme Court has held that if the assessee did not get proper opportunity before the AO, then the assessment need to be restored back to the file of the AO for de novo assessment. It would be gainful to take note of the Hon'ble Supreme Court order which reads as under:*

1. It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightaway agree with the assessee's submission that the Income tax Officer had not given to the assessee proper opportunity of being heard."

2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the

assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.

3. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus: "1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee?"

4. In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of the assessee.

5. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs.

*6. Since, we have noted that the assessee did not get proper opportunity before the AO due to the circumstances which we have noted (supra), we are inclined to restore the assessment for all the three years back to the file of the AO for de novo assessment; and direct the AO to frame it after hearing the assessee; and the assessee is at liberty to adduce evidences in support of its claims and the AO to frame the assessment in accordance with law.*

3. When confronted, the Id.CIT-DR could not controvert the above fact situation.

4. Having heard rival contentions and going through the facts of the case, we, in respectful agreement with the findings recorded by the Co-ordinate Bench of this Tribunal in the case of Managing Trustee Shri T.D. Naidu in ITA No.1411/CHNY/2017 and further, in

assessee's own case in ITA Nos.854 to 856/CHNY/2022 for assessment years 2006-07 to 2008-09 and remitted the matter back, taking a consistent view and allowing one more opportunity to the assessee's trust, we set aside the order of PCIT passed u/s.12AA(3) of the Act cancelling registration and remand the matter back to his file for fresh adjudication after allowing reasonable opportunity of being heard. Needless to say that the assessee will cooperate in the proceedings to be initiated by the PCIT for registration/cancellation u/s.12AA of the Act and it will file the relevant documents and will explain its case. The PCIT will accordingly examine the details and then pass a speaking order after allowing reasonable opportunity of being heard to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12<sup>th</sup> August, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

**(S.R. RAGHUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12<sup>th</sup> August, 2024

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.