

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथ, लेखक सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.679/Chny/2024
निर्धारण वर्ष /Assessment Year: 2012-13

The Dy. Commissioner of
Income Tax,
Exemptions Circle,
Chennai.

Vs. The Indian Institute of Engineering
Technology,
363, Arcot Road, Kodambakkam,
Chennai – 600 024.
[PAN: AAATT 2768C]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri R. Vijayaraghavan, Advocate
: Shri N. Sanjay Gandhi, JCIT

सुनवाई की तारीख/Date of Hearing

: 11.06.2024

घोषणकी तारीख /Date of Pronouncement

: 30.08.2024

आदेश / ORDER

PER S.R. RAGHUNATHA, A.M. :

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals), (NFAC), Delhi [hereinafter "CIT(A)] in DIN & Order No.ITBA/NFAC/S/250/2023-24/1059500064(1), dated 09.01.2024. The assessment was framed by the Assessing Officer for the Assessment Year 2012-13 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 20.03.2015.

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2. There is a delay of 06 days in filing the appeal by the Revenue. The Revenue has given the reason for delay in filing the appeal. We have considered the petition/affidavit of delay in filing the appeal and satisfied that there was sufficient cause for not filing the appeal within the prescribed time limit. Hence, the delay is condoned accordingly.

3. The Revenue has raised several elaborate and argumentative grounds in this appeal; however, the cruxes of the issues are that:-

"2.4. The Ld CIT(A) failed to appreciate that the amount of Rs. 1,11,900/- paid to Ms Meenakshi Sundararajan is in violation of sec 13(1)c).

2.5. The Ld CIT(A) ought to have appreciated that the amount was paid by way of honorarium without any services having been rendered.

31. The Ld CIT(A) erred in holding that the excess payment of Rs. 70,25,780/- made by assessee to sister trust without adequate security did not violate provisions of section 13(1)c) of the Act."

4. Facts of the case:

The assessee is a registered public charitable trust, registered U/s.12AA of the Act, vide DIT(E) No.2(41)/91-92 dated 29/06/1993. The assessee trust is created to establish institutions for studies and research for the advancement of knowledge, skill, training and education for every kind including technology, engineering and professional studies and to construct and acquire building, structures, equipments, implements whatsoever necessary for the purpose. Towards achieving the above objectives the above society runs the following colleges namely

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- a) *Meenakshi Sundararajan engineering college, which is affiliated to Anna university*
- b) *Meenakshi Sundararajan School of management, which is affiliated to Madras university*

5. The assessee trust filed its return of Income for the A.Y.2012-13 on 29/09/2012 admitting Rs.NIL income. The case was selected for scrutiny and assessment proceedings was carried out by issuing statutory notices to the assessee and the AO concluded the assessment by passing an order u/s.143(3) of the Act dated 20/03/2015 by denying the exemption U/s.10(23C)(vi) of the Act, for the reason that the trust is having a substantial percentage of surplus ranging from 30% to 42% which would prima facie point to the assessee running a profitable venture by citing the decision of Hon'ble Karnataka High court's decision in the case of "*Viswesvarayya Technological University Vs.ACIT (2014) 423 Taxmann.com 237*". Further, the AO raised main issues of trust violation of provisions U/s.13(1)(c) & 13(1)(d) of the Act and also claiming the depreciation on assets which have already been claimed application of fund during the year of acquisition.

6. According to the AO firstly the assessee had paid an amount of Rs.1,11,900/- to M/s. Meenakshi Soundarajan in the form of honorarium to the relative of the founder of the Trust by violating section 13(1)(c) of the Act. Further, the assessee has shown an

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amount of Rs.70,25,780/- as loan receivable from another trust (sister concern) Ganapathy Educational trust, which is having a similar object and hence violating section 13(1)(d) of the Act. Since, the assessee has violated the provisions of Section 13(1)(c) & 13(1)(d) r.w.s. 11(5) of the Act, the AO denied the exemption U/s.11 of the Act and brought the surplus of the Trust to taxation. The AO also disallowed the depreciation of Rs.97,90,776/- on addition to fixed assets stating that the assessee has already claimed the acquisition of assets as application of income during the respective year and computed the income of the trust as under :

<i>Excess of Income over expenditure</i>		4,88,55,229
<i>Add: Honorarium</i>	1,00,900	
<i>Add; investment in Non-prescribed modes disallowed as per provisions of Sec.13(1)(c)/13(1)(d) r.w.s. 11(5)</i>	70,25,780	
<i>Add: Depreciation Claimed</i>	97,90,776	
		6,57,83,685
<i>Less: Depreciation allowable</i>	12,34,023	
<i>Total taxable income (Rounded off)</i>		6,45,49,660
<i>Tax thereon</i>		1,93,64,898
<i>Add: Education Cess</i>	5,80,947	
<i>Add: Interest u/s. 234B</i>	71,80,488	
<i>Add: Interest u/s. 234B</i>	7,37,997	
<i>Total tax payable</i>		2,78,64,330

7. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) - 17, Chennai.

8. The Ld.CIT(A), after examining the Assessment order, Grounds of appeal and written submissions made by the assessee confirming

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the action of the AO, passed an order dated 30/03/2016 holding as under:

Rejection of Exemption U/s.10(23C)(vi)

"I am not in agreement with the aforesaid contentions of the A.R praying for allowing exemption u/s 10(23C) (vi) for the simple reason that for the instant years in appeal, the CCIT has not granted approval to the appellant's application for exemption u/s 10(23C) (vi) and just as no deemed registration can be granted u/s 12AA(2) as held in Anjuman-e-Khyrkah-e-Aam 200 Taxmann 27 there is no provision for deemed registration u/s 10(23C) either, in the absence of express approval by the CCIT as it is in this case, which would mean that the appellant did not enjoy the exemption u/s 10(23C) (vi) due to lack of registration granted to it by the CCIT for both the Asst. Years 2011-12 & 2012-13 and therefore, the A.O's action in denying exemption for the aforesaid reason is held to be valid and therefore confirmed. This ground is therefore dismissed for both the Asst. Years in appeal, i.e. 2011-12 & 2012-13.

Disallowance of Depreciation

6.3 Viewed against and decided as well against the appellant on the basis of the ratio of the uncontroverted decisions of authorities relied on by the A.O cited supra and notwithstanding and even with prejudice to the clarificatory and therefore the retrospective effect of the amendment by way of section 11(6), the action of the AO in disallowing the depreciation claimed by the appellant on assets earlier claimed as application for the A.Ys 2011-12 & 2012-13 of Rs.1,11,63,823 and Rs.97,90,886/- respectively and adding it to the income of the assessee is hereby confirmed. This ground of appeal is therefore dismissed for both the AYs in appeal i.e. 2011-12 and 2012-13.

Disallowance of payments made to Ms.Meenakshi Sundararajan U/s.11 of the Act as violation of Section 13(1)(c)

Per contra, the A.R submitted that, on identical issue the ITAT, Chennai in the case of instant appellant itself has ruled in its favour on the issue for the Asst. Year 2010-11, in ITA No.318/Mds/2014 dated 27.5.14, relevant parts of which is reproduced hereunder:-

"7. First, let us consider, whether the assessee is eligible for deduction under sec. 11 or not, in view of payment of Rs., 13,400/- made to Ms. Meenakshi Sundararajan.

8. It is the case of the assessee that the ower authorities have erred in holding that sec. 1 3(1) (c), 13(2)and 13(3) are attracted in

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respect of honorarium, ex-gratia and medical expenses of Rs.1,13,400/- paid to Ms. Meenakshi Sundararajan, who is the wife of the founder of the trust. It is the case of the assessee that the lower authorities have overlooked the first proviso to sec.13(1) (c) (i), which provides that the provisions of sub-clause (ii) shall not apply, to a trust or institution created or established before the commencement of this Act, to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-sec.(3), if such use or application is by way of compliance with a trust or a mandatory rule governing the mandatory term of the institution.

9. In the present case, the assessee trust has been created on 1.2.1961. This is before the Commencement of the Income-tax Act, 1961. As per Clauses 36 to 41 of the Memorandum of Association of the assessee trust, Ms. Meenakshi Sundararajan is entitled for honorarium in rendering services to the benefits of the assessee society. Therefore, as rightly argued by the learned counsel, the payment made to Ms. Meenakshi Sundararajan is covered by the said exemption. Therefore, we hold that the lower authorities have grossly erred in holding that the assessee is not entitled for exemption under sec. 11 of the Act."

7.2 The facts being almost identical and recurring for the instant assessment year too, respectfully following the ratio of the above ruling, payment of honorarium ex-gratia and medical expenses to the wife of the founder of the Trust, Smt Meenakshi Sundararajan is held to be allowable and therefore the disallowance and addition of the same to the income of the appellant is held to be legally untenable and therefore directed to be deleted. This ground is allowed for both years in appeal.

Disallowance of payments of loan to another trust Rs.70,25,780/- considered as violation of Section 13(1)(c)

10.2. I have gone through the submissions made by the appellant on this issue along with the case laws relied on both by the A.O and by A.R and I find no substance in the submissions made by the A.R. It is quite clear that the amount received as advance was repaid back by a higher amount of Rs.4,53,10,202/-, indicating that the differential excess amount of Rs.70,25,780/- was loaned to the sister trust, Ganapathy Educational Trust without adequate security or adequate interest or both and therefore, it had clearly violated the provisions of Section 13(1) (c) r.w.s.11(5) and [13(2) (a)] and therefore, the action of the A.O in making the addition of the difference between the amount received and paid back to the sister concern is upheld and the addition confirmed. This ground is, therefore, dismissed."

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9. Aggrieved by the order of the AO, the assessee preferred an appeal before this Tribunal. The tribunal in its order in ITA Nos.2092 & 2093/Chny/2016 dated 22/06/2018 held as under:

1. Denial of exemption U/s.10(23C)(vi) of the Act:

"7. We heard the rival submissions and gone through relevant material. It is clear that the assessee has sought grant of exemptions u/s 10(23C)(vi) before the prescribed authority, viz the Chief Commissioner of Income Tax-III, Chennai, which had been denied, inter alia, for the reason that the assessee is having a substantial percentage of surplus ranging from around 30% to 42% which prima facie points to the fact that the assessee is running a profitable venture. Thereafter, the A O denied exemptions relying on the same order and its ratio. The assessee challenged the same before the Ld. CIT(A) who confirmed denial of exemptions u/s 10(23C) (vi), inter alia, for the reason that the assessee does not enjoy exemption for u/s 10(23C) (vi) for lack of registration. The assessee has not placed any material to say that the order passed by the prescribed authority i.e. the Chief Commissioner of Income Tax-III, Chennai is no more a good order and the orders of the Lower authorities are contrary to the facts and law on which they relied on their orders. Therefore, the corresponding grounds of the assessee are dismissed for both the ays. The Hon'ble SC in the cases of Aditanar Educational Institution vs Additional Commissioner Of Income-Tax and others in 224 ITR 310 (SC) held inter alia, that "the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit". A five member bench of the Hon'ble SC in the case of Islamic Academy of Education and another vs. State of Karnataka and others decided on 14 August, 2003 in the context of the determination of the reasonable fees to be charged by private educational bodies held, inter alia, that a surplus of 6 to 15 % could be held as reasonable or permissible limit. The Jurisdictional High Court in the case of Madras Hotels Association vs Commissioner Of Income-Tax, Madras in 111 ITR 241, held, inter alia, that the best evidence to find out whether the purpose of the activity is to earn income or profit, is the very accounts of the association ie the person. In the light of these ratios and in the absence of any material to the contrary from the assessee, on the above facts ie when the assessee makes huge profits year after year, the findings recorded by the lower authorities that the assessee is running a profitable venture, during the impugned years, is justified and hence the corresponding grounds of the assessee are dismissed for both the ays."

2. On the amount parked with sister concern(Trust) of Rs.70,25,780/-:

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“9. We heard the rival submissions and gone through relevant material. The impugned transactions have happened long before. The assessee has received the excess amount after a long gap. Though, the rationale is questioned at assessment stage itself, it has not laid any contemporaneous material in support of its contentions, viz Minutes book, the facts and circumstances on which the alleged transactions happened, who and when took the alleged decisions etc , before the lower authorities and hence they have rejected assessee’s claim of exemption. Before us also, the assessee has not laid any material to assail the findings recorded by them. Therefore, the corresponding grounds of the assessee are dismissed for this ay.”

3. Denial of Exemption U/s.11 of the Act.

“10. We have considered all other claims of the assessee. The AO has denied the claim of exemption in ay 2012-13 , observing as under :

“7.2 The taxation of income is not confined to the income derived from the units which operate like a business entity. Section 13(8) prohibits applicability of section 11 & 12 in respect of any income of the Trust and is not restricted to the business activity of the Trust. Therefore, the surplus derived by the Trust is entirely brought to taxation.”

In view of the findings recorded , supra, that the assessee is carrying its activities as a profitable venture , the A O held that the assessee is not undertaking any charitable activity within the scope of section 2(15) of the Act . Therefore, he denied the assessee’s exemption claim u/s 11, supra. It appears that this finding is not challenged by the assessee before the Ld. CIT (A). When the assessee’s activities or the purposes are considered as existing for purposes of profit , its claim u/s 11 that it is existing for “charitable purposes” within the scope of section 2 (15) of the Act also fails both the ays . Thus, when the assessee is not entitled for the benefit u/s 11, all its other claims u/s 11 are not allowable and hence they become academic and hence not dealt with.”

10. Aggrieved by the order of the Tribunal, the assessee challenged the same at Hon’ble High court of Judicature at Madras. The Hon’ble High court of Madras in its order in TCA No.668 of 2019 dated 10/12/2020 held that the depreciation claim of the assessee was allowed and another issue with regard to amount receivable from

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another trust of Rs.70,25,780/- has been remanded to the AO by holding as under:

10. So far as the second substantial question of law framed is concerned with regard to disallowance of depreciation, it is not disputed by the learned Senior Standing Counsel for the Revenue that the issue is clearly covered in favour of the assessee by the decision of the Hon-ble Supreme Court in the case of CIT Vs. Rajasthan and Guajrati Charitable Foundation [reported in (2018) 402 ITR 441] wherein it was held that normal depreciation could be considered as a legitimate deduction in computing the real income of the assessee on general principles or under Section 11(1)(a) of the Act. Thus, applying the said decision, substantial question of law No.2 is answered in favour of the assessee.

11. With regard to substantial question of law Nos.1, 3 and 4, all relate to the same fact situation namely the amount, which was given to another trust, was stated to be for the purpose of putting up the construction.

12. Before us, the assessee has placed for our consideration the order passed by the Chief Commissioner of Income Tax~3, Chennai under Section 10(23C)(vi) of the Act wherein it has been stated that after carefully considering the report of the Commissioner of Income Tax (Exemptions) and the submissions made by the assessee and having been satisfied that the institution existed solely for education purpose, approval was accorded for exemption under Section 10(23C)(vi) of the Act for the assessment year 2014~15.

13. We are conscious of the fact that the assessment year under consideration is 2012~13. Nevertheless, in the first paragraph of the order of the Chief Commissioner of Income Tax~3, Chennai dated 30.9.2015, there is a reference to the fact that several documents placed by the assessee were taken note of including the audited statement of accounts and reports for the years ending 31.3.2012, 31.3.2013 and 31.3.2014. In fact, the Assessing Officer was never called upon to decide or test the activities of the trust and as to whether they being charitable or not.

14. Admittedly, the registration granted under Section 12AA of the Act continued to remain valid. Therefore, in our considered view, the Assessing Officer treaded into the territory, which was not required to be done. Partly, the assessee also should be blamed for not placing sufficient material before the Assessing Officer to substantiate its claim, which is now raised before us as well as before the CIT(A) that the amounts were directly paid to the contractor, who constructed the building for the college. Another argument, which was placed, was that even assuming that it has to be treated as a loan, the amount given by the assessee to the other trust with similar objects for

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carrying out the object of other trust could not be considered as investment or parking of funds of the trust, but, in fact, should be considered as an application for carrying out the objects of the assessee trust. This argument was not considered.

15. In fact, the assessee would place reliance on the decision of the Delhi High Court in the case of Director of Income Tax (Exemptions) Vs. ACME Educational Society [reported in (2010) 326 ITR 0146] wherein it had been held that advancing of interest free temporary loan by the assessee society to another society having similar objects was not an investment or a deposit and that therefore, there was no violation of the provisions of Section 13(1)(d) read with Section 11(5) of the Act to render withdrawal of exemption under Section 11 of the Act.

16. The learned Senior Standing Counsel appearing for the Revenue has sought to sustain the impugned order by contending that the core issue was as to whether Section 13(1)(c) read with Section 13(3)(e) would stand attracted.

17. However, there are several factual aspects, which have been missed out by the Assessing Officer to be taken into consideration and we cannot be called upon to take a decision in the abstract without examining the foundation facts for their correctness. Considering all the aspects, we deem it appropriate that the matter should be remanded to the Assessing Officer for a fresh consideration.

18. For all the above reasons, the tax case appeal filed by the assessee is allowed, the impugned order passed by the Tribunal and the orders passed by both the Assessing Officer and the CIT(A) are set aside so far as substantial questions of law 1, 3 and 4 are concerned and the matter is remanded to the Assessing Officer for a fresh consideration after affording an opportunity to the assessee. Substantial question of law No.2 is answered in favour of the assessee. No costs.”

11. In order to give effect the order of the Hon'ble High court of Judicature at Madras, the AO again denied the exemption by passing an order U/s.143(3) r.w.s. 260A of the Act dated 31/03/2022, holding as under:

“5. In order to give effect to the Hon 'ble High Court of Madras the assessee was asked to furnish relevant details on 07/03/2022 and 27/03/2022 and the assessee filed submissions vide letter dated 21.03.2022 and 29.03.2022. On the basis of the materials available

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on record and after careful consideration of the reply furnished by the assessee, the assessment u/s 143(3) r.w.s 260A of the Act is completed as under:

As the registration u/s 12AA of the Act continued to exist in the case of assessee, the benefits of the sec 11 are extended to the assessee trust.

5.1 Depreciation:

The issue of depreciation was decided in favour of the assessee trust relying on the decision of the Hon'ble SC in the case of CIT Vs Rajasthan and Gujarati Charitable foundation reported in 2018(102 ITR 441). As the issue is settled, the depreciation claim of the assessee trust is allowed.

5.2. Amounts given to M/s Ganapathy Educational Trust:

On the issue of parking of funds with sister concern, during the assessment proceedings for the A.Y 2012-13, the assessee has stated that it has received a sum of Rs.3,82,84,422/- from M/s Ganapathy Educational Trust as loan between the F.Ys 2002-03 and 2004-05 for construction work of IJET Society and Subsequently an amount of Rs.4,53,10,202/- was returned to the M/s Ganapathy Educational Trust between the F.Y's 2004-05 to 2006-07. While repayment, an excess amount of Rs.70, 25, 780/- (Rs.4,53, 10,202- Rs. 3,82,84,422/-) was paid to M/s Ganapathy Educational Trust and that the same was recovered from M/s Ganapathy Educational Trust on 26.03.2012 during the F.Y 2011-12 relating to A.Y 2012-13. This was discussed by the AO and addition was made as the funds till its on recovery Trust Ganapathy Educational remained with M/s 26.03.2012 treating it as investment made in violation of sec 13(1)(c)/ 13(1)(d) r.w.s 11(5) of the IT Act, 1961. But during the judicial proceedings pending before the Hon'ble High court of Madras, the assessee has stated that amounts were directly paid to the contractor M/s L & T, who constructed a building for M/s Ganapathy Educational Trust. The assessee also stated that even if it were to be treated loan, it has to be treated as application as the loan was given to another trust with similar objects. The assessee trust relied on the Delhi High court judgment in the case of DIT(E) Vs ACME Educational society (2010) (326 ITR 0146) for treating it as application towards carrying out the objects of the trust. The assessee was asked to produce details like construction agreement, Plan approvals, project cost, date of commencement of Project, completion certificate etc. regarding the construction work carried out by M/s L & T in respect of M/s Ganapathy Educational Trust for which the loan repayments were made. The assessee produced bills/vouchers pertaining to the construction of M/s Meenakshi Sundarajan Engineering College by the M/s L & T raised in the name of Meenakshi College for women a unit of M/s Ganapathi Educational trust. The amounts have been directly paid by M/s Ganapathy Educational Trust to M/s Larson & Turbo for construction of

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Meenakshi Sundarajan Engg. College, a college run by the assessee trust. The assessee trust has not furnished any proof of its payments claimed to have made directly to the contractor i.e, M/s Larson and Turbo for construction of building for M/s Ganapathy Educational Trust. In addition, other details like construction agreement, Plan approvals, project cost, date of commencement of Project, completion certificate were not produced and its absence it cannot be established that the vendor M/s L&T has carried out the construction work.

The amounts received by the assessee trust from M/s Ganapathy Educational Trust has been accounted as interest free loan received, in the books of the assessee trust. The repayment has not been claimed as application by the trust. As per the CBDT circular No:100 dt: 24.01,1973, the repayment of loan taken for the purposes of achieving the objects of the trust can be claimed as application. The assessee trust has not furnished any proof of its direct payment to the contractor and other documents evidencing the construction. Even if it is considered, funds belonging to the trust whether it is from capital or revenue cannot be parted/ given to a vendor who is carrying out a construction for another trust but can be considered only if it is directly given to the trust. In light of the above, the amount can only be treated as loan repayment and not charity given to another trust. The assessee has paid in excess and the excess amount has moved away from the trust and was not available to the trust for charitable purposes till the period of its recovery. Even if the loan was subsequently recovered, the interest it would have fetched in market is a loss to the trust. This act of assessee is mis-utilization of funds and in the absence of construction details it cannot be established that the vendor M/s L & T has carried out the construction work for M/s Ganapathy educational Trust and has to be brought taxed as not applied for its charitable purposes.

5.3. Honorarium paid to specified person:

On the issue of payment of honorarium to Ms. Meenakshi Sundarajan, wife of the founder of the trust, the Hon'ble ITAT has allowed the same vide order in ITA no:2092& 2093/chny/20 16 dt: 22.06.2018 as the trust has been established before the commencement of the IT Act, 1961 i.e on 1.2.1961 and also as per the clauses 36 to 41 of the Memorandum of Association of the Trust. The department has filed an appeal before the Hon'ble High court and the same is pending. In order to keep the issue alive, the payment of honorarium made to Ms. Meenakshi Sundarajan, wife of the founder of the trust is treated as violation of section 13(1) (c) of the IT Act, 1961 and exemptions u/s 11 are denied accordingly in this case.

6. In view of the above, the assessment is completed as under:

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	Excess of income over expenditure	4,88,55,229
Add	Honararium paid	11,190

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	Funds paid in excess to sister trust	70,25,780
	Assessed income	5,59,92,909
Add	Tax thereon	1,66,49,873
Add	Education cess	4,99,496
Add	Interest u/s. 234B	10,28,962
Add	Interest u/s. 234C	7,37,997
	Total tax payable	1,89,16,328

12. Again, aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A), NFAC, Delhi on 29/04/2022. The Ld.CIT(A), NFAC, has allowed the appeal of the assessee by deleting the additions made by the AO by holding as under :

6. I have gone through the assessment order, the grounds of appeal and statement of facts. The appellant is a charitable trust and is running educational institutions. The appellant had given certain amounts to another charitable trust M/s. Ganapati Educational Trust basically for construction work of building in the earlier years. The excess amount paid to the said trust was returned to the appellant during the impugned AY amounting to Rs.70,25,780/-. The AO has treated that the loan recovered subsequently without interest has resulted in mis-utilisation of funds in absence of construction details by the vendor M/s. L & T. Accordingly, the AO made the addition of Rs.70,25,780/- as funds paid in excess to sister concern as not applied for charitable purposes. The second addition made by the AO is the addition of honorarium paid to Ms. Meenakshi Sundarajan, wife of the founder of the Trust amounting to Rs.1,11,900/-. Aggrieved by the said additions, the appellant is in appeal and has raised 11 grounds which are adjudicated as under:-

7. Ground no. 1 & 11 are general in nature and hence, not adjudicated.

8. Ground no. 2 to 4 are relating to disallowance of honorarium paid to Ms. Meenakshi Sundarajan of Rs.1,11,900/-. The AO herself has mentioned in the assessment order that this issue has been decided by the Hon'ble ITAT in favour of the appellant. Accordingly, the AO is directed to allow the honorarium paid to Ms. Meenakshi Sundarajan u/s.11 of the Act. Ground no.2 to 4 are treated to have been allowed.

9. Ground no.5 to 10 are relating to addition of Rs.70,25,780/- as funds paid in excess to sister concern as not applied for charitable purposes. The facts of the case are that the appellant had given certain amounts to another charitable trust M/s. Ganapathy

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Educational Trust, basically as advance for construction work of building in the earlier years. The excess amount paid to the said trust was returned to the appellant during the impugned AY amounting to Rs.70,25,780/-. The AO has treated that the loan recovered subsequently without interest has resulted in mis-utilisation of funds in absence of construction details by the vendor M/s. L&T.

9.1 The appellant has filed a detailed submission on this issue. The appellant had given excess amount to the tune of Rs.70,25780/- to M/s. Ganapathy Educational Trust (GET), which is also a Charitable Trust having identical objectives as that of the appellant. This amount was shown by the appellant as loan and advance in the name of Meenakshi College for Women, which is a college run by GET. This entry was found in Balance Sheet of the appellant as on 31.03.2007. The said amount of loan was received by the appellant in the impugned AY. The appellant has submitted that the said amount has not been claimed as an application of appellant's income in any of the earlier assessment years. However, the AO treated the said amount as not applied for charitable purposes and denied the claim of exemption u/s.11 of the Act. In fact, GET was formed by the appellant in 1961 in capacity of a parent establishment.

9.2 The impugned order has been passed by the AO giving effect to the order of Hon'ble High Court. In the said order, Hon'ble High Court has held that the amount given by the appellant to the other Trust with similar objects for carrying out the objects of the other trust could not be considered as investment or parking of funds of the trusts and should be considered as application for carrying out the objects of the appellant trust. The further direction of the Hon'ble High Court was that the appellant had not placed sufficient material before the AO or CIT(A) that the amounts were directly paid to the contractor who constructed the building for the college. So this aspect had to be examined by the AO. The appellant has produced all the invoices for the payments made to L& T from AY 2003-04 to 2004-05 totaling to Rs.3,82,84,422/- Whereas the appellant had actually made the payment totaling to Rs.4,53,10,202/- resulting in excess amount paid of Rs.70,25,780/-which was shown as loan and advance till it was received in the impugned AY.

9.3 Considering the details produced and the directions of the Hon'ble High Court on the basis of which the impugned order was passed by the AO, I am satisfied that the loan given by the appellant to the other charitable institution (GET) with the identical objects for pursuing their object of building colleges would not violate provisions of section 13(1) (c) of the Act as it is not for individual benefit of any person or entity or for commercial reason. Hence, the addition made by the AO of Rs.70,25,780/- stands deleted. Ground 5 to 10 are treated to have been allowed.

10. In the result, the appeal is allowed.

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The order of the Ld.CIT(A), NFAC, is now challenged by the Revenue before us:

13. The Ld. DR vehemently argued that the Ld.CIT(A), NFAC, has erred in allowing the appeal of the assessee, even though the assessee has violated the provisions of Section 13(1)(c) by paying honorarium to Ms.Meenakshi Soundarajan, relative of the founder Trustee. Apart from that, the AO's observation with regard to amount parked in another Trust (sister concern) to the tune of Rs.70,25,780/-, the Ld. DR assailed that, the Ld.CIT(A) has erred in passing the order by directing the AO to allow exemption U/s.11, without appreciating the fact that the trust has violated the provisions of section 13(1) (d) of the Act and hence, the order of the AO please be confirmed by setting aside the order of the Ld. CIT(A).

14. Per contra, the Ld. AR asserted the action of the Ld.CIT(A) and stated that the denial of exemption U/s.11 of the Act, by the AO was erroneous and on examination of the issues the Ld.CIT(A) has allowed the same. The Ld. AR, in support of the Ld. CIT(A), filed the paper book volume 1 consisting of 1 - 13 pages and volume 2 consisting of 1 - 31 pages of case laws for all the 4 issues raised by the Ld.DR for violation of Section 13(1)(c) & (d) and stated that AO order was erroneous.

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15. Firstly, the Ld. AR stated that the payment should be considered as a charitable act provided to a destitute woman, whose spouse Sri Soundarajan was the soul and spirit in establishing this educational institution and was an employee of the institution until the time of his death. The payment of Rs.1,11,900/- should be viewed in the context of the financial status of the recipient, who does not have any other source of income, the desperate medical help need at that ripe age, the selfless service rendered by her spouse rather than the relationship she enjoys with the Trust. The said payment made represented retirement benefits for his invaluable service to the assessee institution. The said payment was governed by the registered mandate of the assessee society registered prior to the commencement of the Income Tax Act. The Ld.AR also mentioned that the said payments are outside the purview of Section 13 of the Act. Therefore, the Ld.AR prayed that the decision of the Ld.CIT(A) should not be interfered in respect of this issue.

16. With regard to loan receivable from the sister concern M/s.Ganapathy Educational Trust, the Ld.AR stated that the outstanding amount of Rs.70,25,780/- has been received back during the A Y 2012-13. It is pertinent to note that the said amount has never been claimed as application of Income of the trust in any of the

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assessment years. It is submitted by the Ld.AR that initially when the assessee was constructing its college building M/s. Ganapathy Educational Trust supported by giving a refundable advance of Rs.3.82 Crores. When M/s. Ganapathy Educational Trust wanted funds for construction of their college building, the assessee returned the amount based on their requirement, which amounts to Rs.4.53 crores, resulting an amount receivable from them of Rs.70,25,780/-. In support of this the Ld.AR took us through the paper book page No.5, the certificate issued by the L&T Limited, Chennai, showing that the assessee has made payments during the year 2005-06 & 2006-07 on behalf of M/s.Ganapathy Educational Trust, towards construction of college building. Further, Loan amount of Rs.70,25,780/- receivable upto 31.03.2011 (Paper Book Page No.3) and Rs.Nil balance as on 31.03.2012 (Paper Book Page No.4) under the head Advances & deposits in the balance sheet.

17. The Ld.AR also demonstrated by showing the balance sheet of the assessee as on 31.03.2004 (Paper book Page No.1), wherein the assessee had borrowed an amount of Rs.3.12 Crores for the purpose of construction of College building. Therefore the loan amount receivable from M/s. Ganapathy Educational Trust, cannot be treated

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as violation of Section 13(1)(d) and prayed for upholding the order of the Ld.CIT(A).

18. In support of the same, the Ld.AR relied on the following decisions of the various courts:

1. *CIT Vs. Indian National Theatre – 305 ITR 149 (Del)*

Loan or deposit with another trust / concern – amounts to application of income at para 11, the Hon'ble High Court held as under:

"11. As far as the third question is concerned, on examining the orders passed by the authorities, in which the objects of both the assessee Trust as well as the Shriram Centre for Art and Culture have been discussed, we are of the Considered view that the Tribunal was correct in its conclusion that the sum of Rs. 50,000 deposited with Shriram Centre for Art and Culture should be treated as an application of the income of the Trust. The word "application" has to be given a wider interpretation keeping in view the purpose for which the provision has been introduced. Also, the tax effect on this sum is insubstantial. We are therefore not inclined to interfere with this part of the order of the Tribunal. We accordingly answer question No. 3 in the affirmative, that is, against the Revenue and in favour of the assessee.

2. *DIT(E) Vs.ACME Education Society – 326 ITR 146 (Del)*

Loan given by a society to another educational society does not violate S.13(1)(d) r.w.s. 11(5) at Para 15, the Hon'ble High Court held as under:

"15. Keeping in view the aforesaid exposition of law, we are of the opinion that interest-free loan of Rs. 90,50,000 given by the assessee-society to Nav Bharti Educational Society does not violate s. 13(1) (d) r/w s. 11(5) of Act, 1961 as the said loan was neither an "investment" nor a "deposit". This is more so as both the societies had similar objects and were registered under s. 12A of Act, 1961 and had approvals under s. 80G of the Act, 1961. The fact that the loan was interest-free and had been subsequently returned is also significant. In view of the order passed by the CIT(A) in the case of Nav Bharati Educational Society, Ms. Bansal's allegation with regard to "entry scam" also does not survive. Consequently, there is no substantial question of law involved in the present appeal and accordingly, appeal is dismissed but with no order as to costs."

3. *DIT Vs.Pariwar Seva Sansthan – 254 ITR 248 (Del)*

Loan given by assessee trust to a Foundation at page 24 & 25 of the paper book, the Hon'ble High Court held as under:

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“Again, we have carefully gone through the orders of the AO and the Id. CIT(A) for the asst. yrs. 1995-96 and 1996-97 on the issue of loan to Tyagi Foundation and considered the submissions and contentions made by the Id. Authorised Representative of both sides. We are of the view that the Id. CIT(A) was justified in holding that there was no violation of provisions of s. 13(5) in giving the loan to Tyagi Foundation. The Id. CIT(A) found that Tyagi Foundation was a separate registered society engaged in similar charitable activities and the allegation of the AO of this society being controlled by Mrs. Sudha Tevwari and others was wrong and irrelevant. No material was brought to show that Tyagi Foundation was not a genuine registered society engaged in similar charitable activities. The loan given by the assessee to Tyagi Foundation was out of the object of the assessee-society to promote its charitable activities. It was not a case that Tyagi Foundation had misused the amount of loan and utilised it for non-charitable purposes. No material was placed to show that the purchase of the property and utilisation of the property by Tyagi Foundation was for purposes other than its charitable purposes. Moreover, the loan given was fully secured by mortgage deed and in fact, in the subsequent year on non-payment of the loan the property was reverted to the assessee-society. No material was placed to show that there were any non-charitable activities connected with the property in question. On the facts and in the circumstances of the case, therefore, we hold that the Id. CIT(A) was justified in rejecting this ground as well as for the rejection of the claim of exemption under s. 11 of the Act by the AO.”

19. In view of the above facts and circumstances of the case and the decisions relied by the assessee, the Ld.AR prayed for confirming the order of the Ld.CIT(A).

20. We have heard the rival contentions and gone through facts and relevant materials of the case and the orders. It is admitted fact that the assessee is a charitable trust registered U/s.12AA of the Act and carrying on the activities of education by running following institutions.

a) Meenakshi Sundararajan engineering college, which is affiliated to Anna university

b) Meenakshi Sundararajan School of management, which is affiliated to Madras university

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21. The assessee's case is before us as a second round of litigation for the Assessment year 2012-13 by the revenue against the order of the Ld.CIT(A), NFAC, wherein the Ld.CIT(A) has allowed the grounds of appeal of the assessee of the following two issues, thereby allowing exemption U/s.11 of the Act:

- a) *Disallowance of honorarium paid to Ms. Meenakshi Sundarajan of Rs.1,11,900/-*
- b) *Relating to addition of Rs.70,25,780/- as funds paid in excess to sister concern as not applied for charitable purposes.*

22. Firstly, we take up the issue of honorarium paid to Ms.Meenakshi Sundarajan of Rs.1,11,900/-. It is noted that the Trust has been formed on 01.02.1961 which is before the commencement of the Income Tax Act, 1961. As per clause 36 to 41 of the Memorandum of Association of the assessee trust, Ms.Meenakshi Sundararajan is entitled for honorarium in rendering services to the benefits of the assessee society. According to the Ld. AR the payment of Rs.1,11,900/- paid was towards medical expenses of the spouse of the Trustee, who was also employee of the organization until his death.

23. This issue of payment of honorarium to Ms.Meenakshi Sundararajan of Rs.1,11,900/- has already been allowed in favour of the assessee in the Tribunal in its decision in ITA No.2092 & 2093/Chny/2016 dated 22/06/2018, which has not been further challenged by the Revenue. Respectfully following the decision of this

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tribunal, we do not find any infirmity in the order of the Ld.CIT(A) and hence the ground of the Revenue is dismissed.

24. The next issue is payment of loan to M/s.Ganapathy Educational Trust(GET) to the tune of Rs.70,25,780/-. It is noted that the recipient Trust is also into charitable and education Trust. According the Id.AR the payment of loan of Rs.70,25,780/- has not been claimed by the assessee as application of fund of the income of the society. Further, the assessee Trust has paid this loan amount for the purpose of construction of the college building by the sister concern which is also carrying on the similar objects. Further it is noted that loan amount has been paid by the assessee Trust during the Financial years 2003 – 2005 towards construction of the college building. It is pertinent to note that the sister concern had given loan to the assessee Trust to the tune of Rs.3.12 crores as on 31/03/2004 and later on the assessee trust repaid the same along with excess amount of Rs.70,25,870/-, which has been shown as loan receivable in the audited financials of the Trust. The assessee Trust has furnished all the details invoices, payments particulars for amounts paid to the contractors M/s.L & T, who built the college building of the sister concern M/s.GET, before the AO for verification, in pursuance of the directions of the Honourable High Court of Madras. Therefore, the Ld.CIT(A) held that there is violation of Section 13(1)(c) of Act by the assessee on this transaction

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as the payment made has been made to the other Charitable trust, which is having the similar objects and it is not for the individual benefit or for any commercial purpose.

25. In support of the decision of Ld.CIT(A), the assessee relied on the following decisions, wherein the Honourable courts have held that payments made to other charitable trust as loan does not violate the provisions of Section 13(1)(c) of Act.

- 1) CIT Vs. Indian National Theatre – 305 ITR 149 (Del) - (Supra)
- 2) DIT(E) Vs.ACME Education Society–326 ITR 146 (Del) – (Supra)
- 3) DIT Vs.Pariwar Seva Sansthan – 254 ITR 248 (Del) - (Supra)

26. In the present facts and circumstances and respectfully following the decisions of the various courts referred we do not find any infirmity in the order of the Ld. CIT(A) and hence this ground of the Revenue also is dismissed.

27. In the result the appeal of the Revenue dismissed.

Order pronounced on 30th August, 2024.

Sd/-
(महवीर सिंह)
(Mahavir Singh)
उपध्यक्ष / Vice President

Sd/-
(एस. आर. रघुनाथ)
(S.R. Raghunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 30th August, 2024.
EDN/-

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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