

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA Nos.1645/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2016-17

MIOT Hospitals Medical and  
Educational Trust,  
No.4/112, Mount Poonamallee Road,  
Manapakkam,  
Chennai-89  
[PAN: AABTM3304L]

Income Tax Officer,  
Exemptions Ward-4,  
Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri S.Sundar Raman, CA

प्रत्यर्थी की ओर से /Revenue by

: Shri Keerthi Narayanan, JCIT

सुनवाई की तारीख/Date of Hearing

: 03.09.2024

घोषणा की तारीख /Date of Pronouncement

: 29.11.2024

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1063800219(1) dated 31.03.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2016-17. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 31.03.2024 passed by NFAC, Delhi.

2.0 The appellant assessee has raised following grounds of appeal appended with the appeal Form-36

*“....1. The Hon'ble Commissioner of Income Tax (Appeals) (CIT(A)) erred both in law and in the facts of the case in denying the exemption u/s 11 and 12 of the Act on the ground that it had violated the provisions of section 13(1)(c) and 13(1)(d) of the Act for the Appellant had made an Interest Free Deposit to a specified person within the meaning of section 13(3) of the Act even though the Appellant had derived more than substantial benefits than the specified person.*

*2. The CIT(A) has erred in not taking note of the fact that previously it was running its college from two rented places in Chennai i.e., in Mugalivakkam and Gerumgambakkam.*

*3. The CIT(A) failed to appreciate that and that in the financial year 2013-14 moved the college operations from Mugalivakkam to MIOT Hospitals Private Limited, Ramapuram, Chennai (MIOT) and in the financial year 2015-16 moved its college operations in Gerumgambakkam to MIOT.*

*4. The CIT(A) failed to appreciate that during since the financial year 2015-16 all of the college operations were conducted in the premises of MIOT.*

*5. The CIT(A) erred in not appreciating the fact that college of the Appellant was run at MIOT free of cost for which the Appellant had given the Interest Free Deposit.*

*6. The CIT(A) failed to take note of the circumstances due to which the Appellant had to shift its college operations to MIOT from the aforesaid rented places and had to make the Security Deposit.*

*7. The CIT(A) has erred in stating in the order passed by himself, that there is no presence of the college in MIOT, Since the same has been closed down since FY 2012-13 which is factually incorrect for the Appellant had income by way of admission of new students and also teaching fees in the subsequent years.*

*8. The CIT(A) has erred in observing that the Appellant had failed to justify that the Appellant had derived benefits to commensurate with the amount that would have been derived by it if the Security Deposit monies remained with the Appellant.*

*9. The CIT(A) failed to appreciate that in the assessment proceedings, the Assessing Officer (AO) had primarily relied on the reports of the Inspector of Income Tax to arrive her conclusion that the college of the Appellant was not running in the premises of MIOT even though the AO neither gave the Appellant an opportunity to examine the conclusions provided in the Inspector's report nor gave the Appellant an opportunity to explain its portion of facts or object to the report of the inspector which - is a gross violation of principles of natural justice and is, therefore needs to be set aside.*

10. CIT(A) has erroneously passed the order without appreciating the fact that:

- a. The Appellant was running a part of the College in the premises of MIOT;
- b. In the financial year 2015-16, all the operations of the college were shifted to the premises of the MIOT Hospitals and there were no other properties in which the college was run;
- c. There were substantial savings to the Appellant in running the College at MIOT Hospitals;
- d. The College was not closed by the Appellant (as alleged by the CIT(A)) and was running till date and has been collecting fees from students and the same has been disclosed in the Appellant's Income tax return filed and had validly continuing licenses to run the College from the regulatory authorities and hence the provisions of section 13 of the Act is not violated by making the Security Deposit.

11. Without prejudice to the Appellant's grounds hereinabove, the Appellant submits that the disallowance of exemption under section 11 and section 12 of the Act is in contravention of, the proviso to section 164(2) read with section 161(1A) of the Act as well as circular No. 387, dated 6th July 1984, which provides for the principle that, it is only the income from such investment or Deposit which in the opinion of the AO has been made in violation of section 11(5) of the Act, that is liable to be taxed and that the violation of section 13(1)(d) of the Act does not tantamount to denial of exemption under section 11 of the Act to the total income of the Appellant.

12. The CIT(A) erred in not allowing as a deduction the free food packet distributed to the needy during the November 2015 floods for a sum of Rs. 21,12,182 on the grounds that the disallowance is made in accordance with CBDT Circular No. 5-P dated 19<sup>th</sup> June 1968 which provides that income of trust is to be calculated in terms of Book income and that the distribution of such food packets is only application of income and not charge of income. The distribution of free food packets is an activity which is clearly provided in clause (k) of the objects of the trust and therefore denying the same is not proper in law.

13. The Appellant therefore prays that the Security Deposit to MIOT be treated as not in violation of section 13 of the Act and that the Appellant be allowed exemption u/s 11 and 12 of the Act..."

3.0 The first and foremost issue raised by the assessee through ground of appeal No.1 to 11 and 13 is regarding the denial of its claim of exemption u/s 11 r.w.s 12 of the act. All the grounds of appeal seminal to this principal controversy are being accordingly adjudicated. The Ld. Counsel for the assessee invited our attention to the assessment order dated 21.12.2018 of the assessing officer. The Ld. Counsel for the assessee informed that the appellant trust has been established with the objective of constructing and running medical colleges, colleges of nursing and Physio therapy and similar medical and health facility entities for the benefit of sick sections of the society. It was also an objective to spread knowledge and education by teaching and journal books etc. During the year under consideration. The trust had reportedly given an amount of Rs.3.5 Crs to MIOT hospital Pvt Ltd , a company in which the trustees namely Dr. P.Mohandas and wife Mallika Mohandass are holding sufficient shares capital to put them into a category of specified persons u/s 13(3)€ of the act. The Ld. Counsel informed natural calamity that had occurred in the month of November-2015 had destroyed its existing premises where the College was run in making it totally unusable. The future of large number of students was at stake. Consequently the assessee gave a deposit for use of about 2700 sq.yards premise of MIOT Hospitals for relocating its college and to

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resume its educational activities. Since the MIOT Hospital was not receiving any rent for use of its premises, therefore the trust decided to give an interest free deposit of Rs. 3.5 Crs. Copies of resolution by trust to this effect were filed through paper book. The counsel for the assessee submitted that the AO chose to reject the arguments and claims put forth by the assessee and made the impugned addition by invoking provisions of section 13(1)(d) and proceeded to deny assessee claim of reduction u/s. 11. As per Para-15 of his order, it was held that since funds have not been invested in the modes prescribed u/s. 11/5 of the act therefore 13(1)(d) to be applied. The Ld. AO therefore proceeded to tax the amount of Rs.3.5 Crs at maximum marginal rate, while doing so, he applied the decision of Hon'ble Coordinate Bench of this Tribunal in the case of Paramacheri Naidu Muthuvel Raj and education trust in ITA 2015/Chny/2012. While forming his opinion, the Ld. Counsel for the assessee informed that, the AO had got some enquiries conducted through his inspector who had submitted an enquiry report which has been extracted at para-6.5 and 6.6 of the AO's order. In the aforementioned report, the inspector had submitted that he had visited the MIOT Hospital premises. For the purpose of clarity, the inspector's report contained on para 6.6 of the assessment order is reproduced hereunder:-

“...6.6 Report Submitted

I was directed by the ITO (Exemptions) Ward-4, to conduct an Enquiry about the location of M/s. Miot College of Nursing and M/s. Miot Academy of Allied Health Sciences with regard to the assessment of M/s. Miot Hospitals Medical and Educational Trust. Accordingly, I visited 3 premises on 30.10.2018. My report on the above enquiry is as under:

1. Premises at Door No.1/184, Sankaralinganar Street, Gerugambakkam Village and Post, Sriperumpudhur Taluk, Kanchipuram Dist, Tamil Nadu-602 101.

1. At the above address, I met Mr. Chakarapani, the owner of the premises and his daughter-in-law Mrs. Malarkodi. On enquiring, I was informed by Mr. Chakarapani that, M/s. Miot Hospitals Medical and Educational Trust had taken the building adjacent to their house and the building opposite to it for lease, for the purpose of running hostel for the students studying in the Miot college of Nursing and Miot Academy of Allied Health Sciences till 2016.
2. The buildings were hired only for providing hostel facilities for the students and not for running the college itself.
3. I was also informed that the colleges were run at the Miot Hospital campus at Manapakkam and the students were commuted by college bus from Gerugambakkam to Manapakkam.
4. On further enquiry, I was informed that both the buildings at Gerugambakkam, were never affected by floods during 2015.

2. Premises at No.1/70, Mariamman Koil Street, Mugalivakkam, Chennai-125.

Presently a hotel is located in the said address. On enquiring about the owner of the premises, I was informed that Dr.N.Sivanadian, is the owner of the premises and was residing at Murugan Koil Street situated nearby. I went to his residence. Mrs. Sharmili w/o. Dr.N.Sivanadian was only available. Mrs. Sharmili told that the Miot College was run in the above address till 2012/2013 and was then shifted to the Miot Hospital campus, Ramapuram.

3. Miot Hospital campus Ramapuram:

I was guided by the security to go to the building at the backside of the main hospital complex. The building is presently occupied by M/s. Miot Hospital for the treatment of residential Indians. The name board of both the colleges were displayed in the Ground Floor of the building (a capture of the same is enclosed). On enquiring in the reception, I was asked to go to the 3<sup>rd</sup> floor. Presently, the floor is occupied by the in-patients of the surgical ward and was told that the college is closed since 3 years and only the admn office is available in the building...”

4.0 The Ld. AO wholly relied upon this report and concluded that no Hospital was shifted in the MIOT Hospital premises during FY-2015-16. The AO further concluded that the assessee's claim of being affected by Chennai floods was false as the Gerugambakkam premises was not impacted by the floods. The Ld. AO therefore concluded that the amount of Rs.3.5Cr. has not been given to MIOT Hospital for any bona-fide purposes and that it is merely to benefit the Hospital by mis-utilizing the funds of the trust. The Ld. Counsel for the assessee further informed that CIT(A) provided relief by merely placing reliance upon arguments taken by the Ld. AO and he proceeded to sustain the order of the Ld. AO.

5.0 During the course of this proceedings, the Ld. Counsel for the assessee has requested through their letter dated 02.09.2024 for admission of additional evidences reproduced hereunder:-

5. *"...In this regard, the petitioner, along with his written submissions, submits the following additional evidence to prove that the college was in existence and was running in MIOT:*

- a. Annexure 9 – Copy of Proforma invoice evidencing purchase of various journals.*
- b. Annexure 10 – Photographs of students attending the college.*
- c. Annexure 11 – List of examination centers released by Tamil Nadu Dr. M.G.R Medical University.*
- d. Annexure 12 – Copies of sample hall tickets.*
- e. Annexure 13 – Sample mark sheets.*

6. *The petitioner most humbly submits that the above-mentioned annexures are produced as evidence before this Hon'ble Tribunal to set right the factual position, since ITAT is the Final Fact-Finding Authority.*
7. *The petitioner submits that the aforesaid additional evidence submitted are absolutely essential for deciding the appeal.*
8. *The petitioner, therefore, prays that the additional evidence adduced be admitted....”*

6.0 It is the case of the assessee that impugned evidences could not be produced before the lower authorities and also submitted that these evidences are necessary to set right the factual position for deciding the appeal by this tribunal which is final fact finding authority. It was submitted that the Ld. AO has passed his decision after conducting field enquiries through his inspector.

7.0 We have heard rival submissions in the light of material available on records. It is an undisputed fact of the case that the assessee trust was operating from different premises before shifting to MIOT hospital premises. It is also a fact of the case that the entire controversy has woven around the reports of the inspector alluding that the trust was apparently not operating from MIOT hospital premises. It is also a glaring fact of the case that the report of the inspector was never confronted by Ld. AO to the assessee for its comments. To this extent the action of the

Ld. AO tantamount to a situation in which enquiries were conducted at the back of the taxpayer and conclusions drawn unilaterally without affording an opportunity of being heard to the assessee. Thus a clear cut case of violation of principles of natural justice has been made out by the action of the Ld. AO. This aspect of the case is alarming indeed since the same was raised as a ground of appeal before the Ld. First Appellate Authority who has chosen to conveniently ignore this aspect without giving any a specific finding on the subject.

8.0 At the outset, therefore, we find that the order of the Ld. AO deserves to be set aside on the very principle of violation of natural justice. It is a trite law that principles of natural justice entail that an opportunity of being heard is sine qua non to any judicial proceedings. It is only remedy which protects a citizen from the executive's arbitrary or despotic actions. Therefore, any enquiries conducted at the back of the assessee and any conclusions drawn on the basis of such enquiries without confronting him, cannot justify any order arising therefrom. In the case of Kishan chand chella ram (125 ITR 713) Hon'ble Apex court has held that right to defend oneself is inherent to every litigant and cannot be taken away. It has been held by the Hon'ble Supreme Court in the case of Kishan chand chella ram Supra that an opportunity to cross examine

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always rests with a defendant and cannot be taken away during any judicial proceedings. Thus we are of the view that on this very aspect the action of the revenue in unilaterally denying the assessee the claim made by it in return of income deserves to be set aside.

9.0 Before proceedings with our conclusions, we would also at this stage like to examine another aspect of the case as well. As regards admission of additional evidences upon examining the same we are of the views that they are important and necessary to adjudicate the appeal at hand. The additional evidences like proforma invoices, evidences of purchase of journals , fact of students attending college, list of examinations center released by Tamil Nadu University, sample mark sheets, sample hall tickets have all been found to be critical to arrive at a judicious decision in this case. We therefore admit the impugned additional evidences for adjudication of the appeal at hand.

10.0 We have also noted that the Ld. AO confirmed blindly relying upon the inspectors report and has not done any further enquiries to substantiate the submissions given in the inspectors report. We have noted that the assessee trust has necessary accreditations to run as charitable education institution, a fact which is not in dispute. We have

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also noted that the assessee trust has duly conducted its teaching activities during the year under consideration as evident from the income and expenditure accounts showing receipts of fees etc and expenses towards teaching activities. The Ld. AO has primarily taken a hypothesis that there was no movement of assessee trust to the premises of the MIOT Hospital during the financial year under consideration. As the inspector's report indicated that the assessee had moved out its premises in FY-2014-15 only and not in previous year consideration. The assessee however maintains that there is a clear cut indication of relocation of assessee trust from its erstwhile location to MIOT Hospital premises. Even if the inspector's report indicated some deficiencies it was for the Ld. AO to have conducted more enquiries by calling for details of number of students and attending the courses etc. Secondly it is pertinent to note that the inspector's report per se, is based upon statement of some other party namely one Mr. Chakrapani and his daughter in law Mrs. Malarkodi. Thus the enquiry report itself is based upon hearsay and cannot be taken as a justifiable and dependable report. The report states that buildings at Gerugambakkam were never affected by floods. Similarly, the inspector's enquiry for the MIOT Hospital campus, Ramapuram is also based upon information obtained from some security guard of the building. The report

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of inspector's report thus nowhere shows that he met any authority of the MIOT Hospital so as to arrive at its conclusion.

11.0 We have noted on the basis of comparative figures and statements discussed by the Ld. Counsel for the assessee that the assessee trust would have spent higher amount in terms of rent etc if it had operated its activities from other premises. To this extent assuming a return of investment of 10% on deposits of Rs.3.5CrS which comes to an annual return of about 35 Lakhs can be deemed comparatively lesser amount which the assessee trust would have otherwise incurred had it opted to hire another premise from the open market. Now merely because two trustees, Dr.Mohandass and his wife are holding substantial interest in MIOT Hospital Pvt Ltd would not lead to the conclusion of grant of any excessive benefit or mis-utilisation of funds by the appellant trust. The unprecedented and unexpected floods that had hit Chennai in 2015 had caused substantial loss to life and property across whole of Chennai, though its impact varied from place to place. Thus to conclude that there was no impact in certain parts would not be true. The presumption of the assessee therefore being compelled to relocate its premises can be safely drawn.

12.0 We have seen the case laws relied upon by the Ld. AO as well of the First Appellate Authority in support of their arguments. Without commenting upon the appropriateness or applicability of the impugned judicial pronouncements, it has been noted that the facts of the case which are seminal to a judicious decision making have not been properly collected or examined either by the Ld. AO or the Ld. First Appellate Authority. It is seen that the lower authorities have merely relied upon the report of the inspector, which as noted above suffers from incurable deficiency. We have also noted that there has been a serious case of violation of natural justice available to the taxpayer by the Ld. AO by not confronting the assessee with the contents of inspector's report and giving him an opportunity to explain its case. That the decision to relocate had an apparent connection with future of some 475 students also cannot be ignored.

13.0 It has been further noted that the stand taken by revenue is based upon certain confused understanding of the matter. The Ld. AO holds the view that the relocation was not done during the previous year under consideration but in earlier year. This hypothesis alludes towards a firm finding that a college imparting training courses in health field was running during the previous year under consideration but its relocation

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was done in some earlier year. This therefore answers the basic question as to whether a college was in existence in the Miot Hospital premises or not in affirmative. Now once the conclusion is drawn naturally the question of payment of any usage charges to Miot Hospital will arise. In the instant case, it is an admitted position of the assessee that since Miot Hospital was not taking any rent, the assessee chose to give them an interest free deposit to compensate for waiver of usage charges. There cannot be any argument on this position because if a premise is used the owner should be compensated adequately. The Ld. AO has brought no evidence on record so as to indicate that the interest free deposit paid to Miot Hospital was an excessive amount qua connection with any foreseeable usage charges. The Ld. AO has merely taken a position that because the two trustees are holding substantial interest in Miot Hospital, the amount of Rs. 3.5Crs as interest free security deposit would fall under the purview of section 13 so as to deny the assessee its claim of deduction u/s 11. The same is regarded as an erroneous finding of facts and cannot be approved. We have noted that there exists some veracity in the claims of the assessee. The assessee has done an activity of running an educational institution as evident from income and expenditure account appended with the return of income.

The Ld. AO has nowhere commented upon the falsity of the figures shown in the income and expenditure account.

14.0 Apropos to the discussions made herein above, the assessee has filed before us additional evidences with a request for their admission. We have noted that the impugned additional evidences throw sufficient light to justify the claim of assessee having run an educational institute from the Miot Hospital premises. However, we are also conscious of the fact that the impugned evidences were not available with the lower authorities for their consideration. It is trite law that an assessing officer is the first revenue authority who is entrusted with the responsibility and authority of examining evidences before determining current taxable income of a taxpayer. Accordingly, we are of the view that ends of justice would be met if the assessee is given one last opportunity to present its case and file all supporting evidences including those filed before us for consideration of the Ld.AO. Accordingly, placing reliance upon the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216 the matter is restored to the file of the AO to readjudicate and for assessment de novo. The Ld. AO shall give opportunities of being heard to the assessee including provide all reports of field functionaries in its possession and it shall be bounden upon the assessee

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to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed. **Accordingly, the grounds of appeal No. 1 to 11 and 13 raised by the assessee on this issue are allowed for statistical purposes.**

15.0 Ground of appeal No.12 is regarding denial of deduction claimed of Rs.21,12,182/- by the assessee on account of distribution of food packets to the needy during the November-2015 floods. The Ld. AO has held the view that in case of charitable trust only such expenditure which is a charge on the income can be allowed as a deduction. It has been concluded that distribution of food packets cannot be held to have been expended for earning the receipts of the trust. The Ld. AO while doing so relied upon circular number 5-P dated 19.06.1968 of CBDT which has also been stated to be endorsed by Hon'ble Courts in their judgements. Apropos to the decision taken hereinabove of restoring the matter qua claim of deduction u/s 11 by the assessee to the Ld. AO for readjudication de novo, we deem it appropriate to restore this issue also to the Ld. AO for readjudication de novo after giving due opportunity of being heard to the assessee and by passing a speaking order. Accordingly the ground of appeal No.12 raised by the assessee is also allowed for statistical purposes.

16.0 In the result the appeal of the assessee is allowed for statistical purposes only.

Order pronounced on 29<sup>th</sup>, November-2024 at Chennai.

**Sd/-**

**( एबी टी. वर्की )**

**(ABY T VARKEY)**

**न्यायिक सदस्य / Judicial Member**

**Sd/-**

**(अमिताभ शुक्ला)**

**(AMITABH SHUKLA)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 29<sup>th</sup>, November-2024.

KB/-

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