

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.2169 & 2170/Chny/2024  
निर्धारणवर्ष/Assessment Years: 2019-20 & 2020-21

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|---|----|------------------------------------|
| M/s. University of Madras,<br>Centenary Building,<br>Kamarajar Salai,<br>Chepauk,<br>Chennai-600 005. | v. | The DCIT (Exemptions),<br>Chennai. |
| [PAN: AAALU 0145 N]   |    |                                    |
| (अपीलार्थी/Appellant)   |    | (प्रत्यर्थी/Respondent)            |
| अपीलार्थी की ओर से/ Appellant by  | :  | Mr. B. Ramakrishnan, FCA           |
| प्रत्यर्थी की ओर से /Respondent by  | :  | Mr. Nilay Baran Som, CIT           |
| सुनवाईकीतारीख/Date of Hearing   | :  | 14.11.2024                         |
| घोषणाकीतारीख /Date of Pronouncement   | :  | 13.12.2024                         |

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the assessee University of Madras against the order of the Learned Commissioner of Income Tax (Appeal)/Addl./JCIT(A), (hereinafter in short "the Ld.CIT(A)"), Aurangabad, dated 23.06.2024 & 25.06.2024 for the Assessment Year (hereinafter in short "AY") 2019-20 & 2020-21 respectively. Since both parties agreed that issues are similar and there is no change in facts or law, the decision in one AY 2019-20 will decide the fate of AY 2020-21.



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Therefore, AY 2019-20 is taken as the lead case and adjudicated which decision would apply *mutatis mutandis* for AY 2020-21.

**2.** Grounds of appeal raised by the assessee for AY 2019-20 are as under:

1. The order of the Learned Additional/Joint Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.

2. For that the Learned Additional/Joint Commissioner of Income Tax (Appeals) erred in upholding the disallowance made by the CPC towards the claim of exemption u/s 10(23C)(vi) of the Income Tax Act and the consequent demand raised of Rs. 67,76,57,091/-

3. For that the Learned Additional/Joint Commissioner of Income Tax (Appeals) erred in upholding the denial of exemption claimed u/s 10(23C)(vi) of the Act (erroneously mentioned as \*10(23C)(v)" in the impugned Appellate Order) for failure to file the Audit Report in Form 10BB within the stipulated due date without appreciating the fact that the Condonation Petition filed u/s 119(2)(b) of the Act before the CBDT to condone the said delay in filing the Audit Report was pending for disposal as on date.

4. For that the Learned Additional/Joint Commissioner of Income Tax (Appeals) erred in not adjudicating the alternate plea made by the appellant to delete the disputed demand, given the fact that there was an excess claim of expenditure to the tune of Rs. 52,32,70,952/- over and above the income returned whereby there was no taxable income in the appellant University's hands for the subject AY 2019-20

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the demand raised and/or provide such other relief as this Hon'ble Tribunal may deem fit.

**3.** The brief facts are that the assessee Madras University had filed its return of income (RoI) for AY 2019-20 on 30.10.2019; and filed the Audit Report in Form 10BB belatedly on 11.01.2023 [delay of more than three years] and since, the assessee didn't file the Audit Report within the due date to be eligible for claiming exemption u/s.10(23C)(vi) of the Income Tax Act, 1961 (hereinafter in short 'the Act'), the CPC while processing



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the return, didn't allow the exemption claimed by the assessee u/s.10(23C)(vi) of the Act and disallowed the entire expenditure and taxed the gross receipts, thereby, resulting in high demand of Rs.67,76,57,091/-.

**4.** On appeal, the assessee brought to the Ld.CIT(A)'s notice that it had filed application for condoning the delay in belatedly filing Audit Report in Form 10BB before the CBDT through an application filed via mail on 09.03.2024 u/s.119(2)(b) of the Act read with Circular No.2/20 (F) No.19/7/55/2018-ITA-1 dated 03.01.2020 and Circular No.15/2022 dated 19.07.2022 issued in connection with the same; and which is still pending before the CBDT and filed the screen shot to prove that application has been filed on 09.03.2024 and prayed before him to keep the appeals pending for adjudication until the disposal of the condonation of delay filed before the CBDT for AY 2019-20 as well as for AY 2020-21. However, the First Appellate Authority finding that the assessee neither filed Audit Report in Form 10BB of the Act within due date nor obtained condonation of delay in filing of the Audit Report, held that the assessee was not eligible for exemption u/s.10(23C) of the Act.

**5.** Before us, the Ld.AR has first of all assailed the impugned action of the CPC/CIT(A) taxing the gross receipts without allowing the corresponding expenses which according to him is per-se erroneous; and



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according to him, even if the assessee is treated as an AOP, still only the net income ought to have been brought to tax rather than the whole gross receipts which action of the CPC/CIT(A) is arbitrary, whimsical and unjust. According to him, even if assessee is treated as an AoP, or not granted benefit under Chapter-III of the Act, for any reason viz due to belated filing of RoI or for non-filing of the condonation of delay in respect of belated filing of Audit Report, etc, still the assessee University's gross receipts can't be brought to tax and the corresponding expenses for earning income needs to have been allowed. And for such a proposition, he cited the decision of the Hon'ble Madras High Court in the case of Sree Venkateswara Educational Trust v. ITO order dated 02.09.2024 in a similar factual scenario, wherein that case, the CPC passed intimation u/s.143(1) of the Act denying not only the exemption u/s.11 of the Act but also made addition of gross receipts, which impugned action was interfered by the Hon'ble High Court by holding that the AO couldn't have taxed the entire gross receipts but should have only taxed the net income. In other words, assessee can't be denied the legitimate deduction that would be available to it, even if it is treated as an AOP. The Hon'ble High Court in Sree Venkateswara Educational Trust supra held as under:

19. The facts of this case are not in dispute. The appellant/assessee had claimed exemption-cum-payment under the Act without actually



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filing application under Section 12A(a) of the Act as it stood then during the period in dispute.

20. The appellant/assessee obtained registration under Section 12AA of the Act only on 02.03.2016. The case pertains to the Assessment Year 2013- 2014. Therefore, in terms of the decision of the Division Bench of this Court in M/s.Soundaram Chokkanathan Educational and Charitable Trust case (cited supra), the benefit of registration would not enure in favour of the appellant/assessee before registration.

21. At the same time, the appellant/assessee cannot be denied all the legitimate deductions that would have been available, if the returns were filed either as a "Regular Assessee" or as an "Association of Person".

22. The purpose of assessment is to recover just tax and not subject an assessee to unjust tax by holding that no return was filed either as a "Regular Assessee" or as an "Association of Person" merely because revised return was not filed under Section 139(4) of the Act, within a time specified under Section 139 of the Act.

23. The last date for filing the returns under Section 139(4) of the Act would have expired on 31.03.2015 which was just few days before the return was processed on 12.03.2015 under Section 143(1) of the Act.

24. The Hon'ble Supreme Court in Formica India Division, Bombay, Burma Trading Corporation Limited Vs. Collector of Central Excise and others, 1995 Supp (3) SCC 552/1995 (77) ELT 511, had held as under:-

"When it was found that they were liable to pay duty on the intermediary product and had not paid the same, but had paid the duty on the end product, they could not ordinarily have complied with the requirements of Rule 56A. Once the Tribunal took the view that they were liable to pay duty on the intermediary product and they would have been entitled to the benefit of the notification had they met with the requirement of Rule 56A, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the point of time when they could have done so had elapsed and they could not be permitted to comply with Rule 56A after that stage had passed. We are, therefore, of the opinion that the appellants should be permitted to avail of the benefit of the notification by complying at this stage with Rule 56A to the satisfaction of the Department."

25. In our view also, if assessments are to be completed, deductions and applicable exemptions that are otherwise available to an assessee ought to have been extended by the Assessing Officer to an assessee before finalizing the assessment. Since the appellant/assessee was not entitled to exemption as a Trust under Sections 11, 12 and 12A of the Act in absence of registration under the Act as it stood Section 12AA of



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the Act, benefit of other deductions under the Act ought to have been given. The Assessing Officer is not expected to act mechanically to confirm the liability to fasten an unjust tax liability on an assessee.

26. Therefore, we are inclined to set aside the Impugned Common Order dated 30.12.2019 and remit the case back to the Assessing Officer to pass a fresh order deleted under Section 143(1) of the Act.

27. These appeals stand disposed of with the above observations. The substantial questions of law are partly answered in favour of the appellant/assessee. No costs. Connected Civil Miscellaneous Petitions are closed.

**6.** In the light of the aforesaid decision of the Hon'ble Madras High Court (supra), we set aside the impugned orders of the First Appellate Authority and restore the assessment back to the file of the AO/CPC with a direction to tax only the net income of the assessee for AY 2019-20 as well as AY 2020-21 as per the respective income & expenditure account filed by the assessee. In this regard, the Ld.AR brought to our notice that for AY 2019-20, the excess expenditure over income is to the tune of Rs.22,31,78,628/- which may be verified by the AO/CPC and pass order u/s143(1) of the Act in accordance to law. Likewise for AY 2020-21, the excess expenditure over income as per the income and expenditure account is of Rs.2,06,32,878/- which may be verified by the AO/CPC and pass order u/s.143(1) of the Act accordingly.

**7.** And further, since the application for condonation of delay in filing belatedly the Audit Report in Form 10BB is pending before the CBDT as noted (supra), the assessee's claim regarding exemption u/s.10(23C)(vi)



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M/s. University of Madras

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of the Act be granted subject to the condonation being granted by the CBDT by passing rectification order as per law.

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

Order pronounced on the 13<sup>th</sup> day of December, 2024, in Chennai.

**Sd/-**

(जगदीश)

**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 13<sup>th</sup> December, 2024.

**TLN, Sr.PS**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF