

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1267/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2015-16

M/s. Kongu Trust,
No.1, Pavendar College Buildings,
Manivilundan South P.O.,
Attur Taluk, Salem – 636 112.

**The Assistant Commissioner
of Income Tax,**
Exemptions,
Coimbatore.

PAN: AAATK 6055B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 16.12.2024
घोषणा की तारीख/Date of Pronouncement : 17.12.2024

आदेश /ORDER

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 09.04.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2015-16.

2. The grounds raised read as under:-

- 1. The order of the CIT(A) is erroneous as it is opposed to the facts of the case and the provisions of law.*
- 2. The AO grossly erred in passing the order u/s. 154 of the Act by refusing to carry out the rectification prayed for without considering the rectified return filed by the appellant.*
- 3. The CIT(A) ought to have considered the submissions made in a proper manner and concluded that the rectification sought for was well within the scope of section 154 of the Act.*
- 4. The CIT(A) grossly erred in upholding the addition of Rs. 42,78,331/- to the income of the appellant merely because it is wrongly reported under the head "Business" when no business was carried on by the appellant.*
- 5. The CIT(A) failed to notice that the excess of expenditure over income were accumulation of carried forward excess of application of earlier years and thus the CIT(A) erroneously passed the order without considering the valid submissions made by the appellant.*
- 6. The appellant seeks leave to add, amend any of the aforesaid grounds appeal.*

3. Brief facts of the case are as follows:

The assessee is a charitable trust registered u/s.12A of the Act. For the assessment year 2015-16, the return of income was filed on 27.08.2015 along with the audit report in Form No.10B declaring 'nil' income. Thereafter, a notice u/s.139(9) of the Act was issued on 02.03.2016 and in pursuance to the same, the assessee filed rectified return on 21.03.2016. The rectified return filed on 31.03.2016 was processed u/s.143(1) of the Act on 18.03.2017

and intimation was issued. The two adjustments made in the intimation issued u/s.143(1) of the Act are as follows:-

- i) Income from business or profession was taken at Rs.42,78,331/-
- ii) Rs.4,50,268/- was considered under income from other sources and no set off of loss was allowed against it.

4. Against the intimation issued u/s.143(1) of the Act, the assessee filed rectification application u/s.154 of the Act on 02.05.2017. The said rectification application was disposed off vide the AO's communication dated 09.05.2017. The AO's communication rejecting the application filed u/s.154 of the Act is reproduced below:-

"On verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for Rectification under Sec. 154 is rejected, for the following reasons (if any)"

As seen from the e-filed Rectification Request (.xml filed), the "Aggregate of income referred to in section u/s.11 and 12 derived during the previous year is more than the gross income entered by the assessee". Hence the said "Aggregate of income referred to in section u/s.11 and 12 derived during the previous year" is treated as the gross income.

In view of the above, this rectification Request is rejected.

NOTE: For the assessee to claim the deduction u/s. 11 & 12 of IT Act, the Aggregate of income referred to in section u/s.11 and 12 derived during the previous year should be equal to or less than gross income.”

5. Aggrieved by the order rejecting the rectification application, the assessee preferred appeal before the First Appellate Authority. The CIT(A) partly-allowed the appeal of the assessee. As regards the amount of Rs.4,50,268/-, the CIT(A) found that assessee had already considered the same as part of the gross receipts and the total expenditure being more than 85% of the gross receipts, this amount of Rs.4,50,268/- has been wrongly taxed and directed the AO to rectify the intimation to that extent. As regards income from business or profession of Rs.42,78,331/-, the grounds raised by the assessee was rejected by the CIT(A) by observing as under:-

“A perusal of the return shows that the appellant has shown income from business and profession Rs.42,78,331/- in SCH BP of the return. In the grounds or in submission the appellant has nowhere classified as to how this income is exempt u/s 11/12 of the I.T. Act on account of expenditure for charitable purposes. Therefore I don't find any error in the order u/s 154 of the Act dated 09-05-2017.”

6. Aggrieved by the CIT(A)'s order, assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book enclosing therein the assessment order u/s.143(3) of the Act for the assessment year 2014-15, the return of income filed for the

current assessment year, the notice issued u/s.139(9) of the Act, the rectified return of income, the order rejecting the rectification application u/s.154 of the Act, the submissions of the assessee along with the audited financials, etc.,

7. The Id.AR submitted as against the intimation issued u/s.143(1) of the Act, the assessee had filed an appeal before the First Appellate Authority and the same is pending adjudication. It was stated by the Id.AR, as against the rectification order against the order u/s.143(3) of the Act, the impugned appeal had arisen. It was prayed that the issue raised in this appeal may be remitted to the First Appellate Authority so that both the appeals can be disposed off together. On merits, the Id.AR submitted that the assessee should not be penalized for inadvertently offering the income derived from schools and colleges as business income. By taking us through the audited financials, it was submitted that the assessee does not undertake any business activity and it only carries out the activities imparting education, which is eligible for deduction u/s.11 of the Act. It was further submitted that out of the total gross receipts, the assessee has excess application of income towards revenue and capital expenditure and thus, applied more

than the receipts towards educational activities and is thus, eligible for deduction u/s.11 of the Act.

8. The Id.DR supported the order of the CIT(A).

9. We have heard rival submissions and perused the material on record. The financials of the assessee has been placed on record and on perusal of the same, we find prima facie, the assessee did not derived income from business. In the return of income filed, the assessee has inadvertently offered the income derived from schools and colleges as business income. This inadvertent mistake on the part of the assessee cannot be fatal and the true essence of the income needs to be determined for proper adjudication of the matter. Since the assessee's appeal against the intimation passed u/s.143(1) of the Act is pending adjudication before the First Appellate Authority, we deem it appropriate to restore the issues raised in this appeal to the files of the CIT(A). It is desirable that the same CIT(A) / First Appellate Authority before whom the appeal against the intimation u/s.143(1)(a) of the Act is pending adjudication, decide the issues that are restored by us. It is ordered accordingly.

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

Order pronounced in the open court on 17th December, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 17th December, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT