

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.1782/PUN/2024
निर्धारण वर्ष / Assessment Year : 2020-21**

Muslim Education Society, Muslim Education Society Building, Dapoli S.O., Dapoli, Rantagiri-415712 PAN : AABTM7766J	Vs.	Income Tax Officer, Kolhapur
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Pramod S. Shingte
Department by :	Shri Ramnath P. Murkunde
Date of hearing :	04-12-2024
Date of Pronouncement :	18-02-2025

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 30.07.2024 of the Ld. Additional/Joint Commissioner of Income Tax (Appeals), Prayagraj [**“Addl./JCIT(A)”**] pertaining to Assessment Year (**“AY”**) 2020-21.

2. Briefly stated, the facts of the case (as submitted in Form 35 by the assessee) are that the assessee is a public charitable trust established under the provisions of the Bombay Public Trust Act, 1950. The assessee trust is registered u/s 12A of the Income Tax Act, 1961 (**the “Act”**) from 27.05.2021. The main object of the assessee trust is to facilitate education by starting, acquiring, affiliating or incorporating at different places as circumstances permit, schools and boarding houses under private management or by the other ways best adapted to the wants of people according to Government rules and regulations so far as these affect a recognized or aided school. For AY 2020-21, the assessee trust filed its return of income on 28.03.2021 declaring total income at Rs. Nil and claiming exemption u/s 11 of the Act. The return of income filed by the assessee was processed u/s 143(1) of the Act on

30.11.2021 by the Ld. Assistant director, CPC (“AO”) determining the total income at Rs.2,15,77,799/-.

2.1 During the year under consideration, the trust derived gross income from charitable activities amounting to Rs.2,15,77,799/- and the total expenditure which is application of income u/s 11 of the Act amounted to Rs.2,16,19,901/- resulting into deficit of Rs. 42,102/-. It was thus, claimed that the surplus is less than 15% of the gross income which is evident from the audited accounts of the assessee’s trust. The assessee has been allowed exemption u/s 11 in the past AYs. The assessee trust also received grant in aid from the Government of Rs.68,57,108/-. It is running various school sectors such as pre-primary, primary, secondary and junior college and each having gross receipts less than Rs.1 Crore. The Ld. Assessing Officer-CPC however disallowed the entire amount of application of income on the revenue account which resulted into the tax demand of Rs.81,83,840/-.

3. Aggrieved, the assessee preferred an appeal before the Ld. Addl./JCIT(A) as the case was transferred to the Ld. Addl./JCIT(A), Prayagraj under the E-appeal Scheme, 2023 notified by the CBDT. Before the Ld. Addl./JCIT(A), the assessee challenged the action of the Ld. AO in not allowing exemption u/s 10(23C)(iiiad) of the Act as the gross receipts of each unit is less than Rs.1 Crore. During the appellate proceedings, the assessee submitted that the assessee trust is solely engaged in providing education and has been running five different institutions and none of these institutions exceed the gross receipts from more than Rs. 1 Crore which is the threshold given u/s 10(23C)(iiiad) of the Act for claiming exemption. The entire expenditure incurred by the trust is for educational purposes and thus the entire income of the trust is otherwise exempt, if not u/s 11 but u/s 10(23C)(iiiad) of the Act. There is no requirement of filing of ITR or Form 10B in order to claim exemption u/s 10(23C)(iiiad) of the Act. The assessee further submitted that these are the additional grounds/arguments taken before the Ld. Addl./JCIT(A) for the first time by the assessee and were not taken before the Ld. AO. The assessee made detailed legal submission on admissibility of the additional claim made by it which has been incorporated by the Ld. Addl./JCIT(A) in para 4 of his appellate order (page 4 and 5 of the appellate order refers). Without prejudice, the assessee also raised an additional ground that only the net

commercial income needs to be considered for the purpose of determining the total income and not the entire gross receipts and submitted a chart showing the calculation of the net commercial income along with the copies of audited accounts which was also submitted before the Ld. AO during the rectification proceedings. The said calculation of net commercial income as worked out by the assessee is reproduced below :

<i>PARTICULARS</i>	<i>AMOUNT (Rs)</i>
<i>INCOME</i>	
<i>FEES</i>	1,31,13,484
<i>GOVERNMENT GRANTS</i>	68,57,108
<i>DONATIONS</i>	13,30,500
<i>INTEREST</i>	2,51,284
<i>RENT</i>	20,600
<i>DIVIDEND</i>	4,823
<i>INCOME FROM OTHER SOURCES</i>	
<i>TOTAL COMMERCIAL INCOME- (A)</i>	2,15,77,799
<i>EXPENSES</i>	
<i>EXPENSES ON THE OBJECT OF THETRUS EDUCATION ESTABLISHMENT EXPENSES</i>	1,82,17,002
<i>AUDIT FEES</i>	15,54,532
<i>LEGAL FEES</i>	73,160
<i>EXPENSES ON PROPERTY-REPAIRS AND MAINETANCE ETC</i>	1,23,132
	7,39,822
<i>TOTAL OF EXPENSES (B)</i>	2,07,07,648
<i>SURPLUS (A-B)</i>	8,70,151

3.1 In support of his above contention(s), the assessee relied on various judicial precedents reproduced by the Ld. Add./JCIT(A) on pages 7 to 9 of his appellate order. After considering the facts of the case and legal submission of the assessee, the Ld. Addl./JCIT(A) confirmed the order of the Ld. AO in disallowing the assessee's claim for exemption u/s 11 and 12 of the Act while processing the return u/s 143(1) of the Act for the reason that the assessee failed to furnish Form 10B as per the required provisions under the Act. As regards the additional claim of exemption u/s 10(23C)(iiiad) of the Act and the additional ground regarding the taxability of net commercial income as against the gross receipts of the trust, the Ld. Addl./JCIT(A) observed that the assessee has taken entirely new claim during the appellate proceedings to claim exemption u/s 10(23C)(iiiad) of the Act in order to take the benefit of the expenses incurred for earning the income. He observed that the assessee failed to revise its ROI u/s 139(5) of the Act inspite of it having an opportunity to do so. Consequently, he considered only the claim made in the original ROI or before the Ld. AO and dismissed the fresh claim/additional ground taken up by the assessee before him, relying on the decision of the Hon'ble Supreme Court

in the case of Goetze (India) Limited Vs. CIT. The relevant observations and findings of the Ld. Addl./JCIT(A) are as under :

“6.1 The statement of facts, grounds of appeal, and the order appealed against have been thoroughly examined.

6.2 The appellant has pressed only one ground of the appeal ie, related to the disallowance of Exemption available u/s 10(23C)(iiiad) of the Act. The appellant has taken an additional ground during the appellate proceeding ie, regarding Taxability of only commercial income and not the gross receipts.

6.3 The appellant submitted that these two grounds were not taken before the AO. It is pertinent to note that this appeal pertains to the order under section 143(1) of the Act, which is based on the particulars furnished by the appellant in its return.

6.4 On perusal of the return filed u/s 143(1) of the Act dated 28.03.2021, it is noted that the appellant has claimed deduction u/s 11 of the Act. The appellant has been denied exemption u/s 11 since Form 108 was not filed on time.

6.5 In this context, it's important to note that according to Section 12A(1)(b) and Rule 178. Trusts are obligated to file Form 108, which is mandatory. Form 108 can only be accessed and submitted online and must be filed no later than the specified date mentioned in Section 44AB of the Act, which is one month before the due date for submitting the Income Tax Return under Section 139(1) of the Act.

6.6 In the present case, the appellant did not submit Form 108. Hence, Form 108 was not filed within the time frame outlined by the Act.

6.7 In view of the above, I find no error in the AO's decision to disallow the appellant's claim for exemption under Section 11 and 12 of the Act when processing the return under Section 143(1) of the Act.

6.8 The appellant has the option to approach the jurisdictional Commissioner of Income Tax, Chief Commissioner of Income Tax, or Principal Chief Commissioner of Income Tax for the condonation of the delay in filing Form 10B as per the circular issued by the Central Board of Direct Taxes (CBDT) Circular No. 16/2022 dated 19th July, 2022 and to claim the benefits of Sections 11 and 12 of the Act.

6.9 In the present case, the appellant has taken entirely new claims during the appellate proceedings to seek a deduction under section 10(23C)(iiiad) of the Act and to seek the benefit of the expense incurred for earning the income. The appellant had the opportunity to revise its return under section 139(5) of the Act, but failed to do so Consequently, only the claim made in the original return or before the assessing officer can be considered at this stage, and any fresh claim will not be entertained during the appellate stage. This position finds support in the decision of the Supreme Court in the case of Goetze (India) Limited vs CIT (2006), where it was held that it is imperative for an assessee to revise its income tax return to raise any new claim not previously submitted in the original return.”

4. Dissatisfied, the assessee is in appeal before the Tribunal by raising the following grounds of appeal :

“1. On the facts and circumstances of the case and in law the Additional CIT(A)-2, Gurugram, NFAC erred in confirming the action of the 'AO', CPC of

denying exemption under S. 11 in the intimation u/s 143(1) for delayed filing of Form 10B.

2. *On the facts and circumstances of the case and in law the Additional CIT(A)-2, Gurugram, NFAC erred in not accepting the claim of the appellant of exemption u/s 10(23C) (iiiad) made before her in the appeal filed.*
3. *On the facts and circumstances of the case and in law the Additional CIT(A)-2, Gurugram, NFAC erred in not accepting the claim of the appellant, that the addition, if any, ought to have been restricted only to the Net commercial income and not the entire Gross Receipts.*

The appellant craves leave to add to, amend, alter, modify, delete or add a new ground of appeal before or at the time of hearing.”

5. The Ld. AR submitted that the Ld. Addl./JCIT(A) did not consider the additional claim of the assessee that the assessee trust is eligible for claim of exemption u/s 10(23C)(iiiad) of the Act in case the exemption u/s 11 is not granted to the assessee. Without prejudice to his above contention, he further submitted that an additional ground was raised before the Ld. Addl./JCIT(A) claiming that the addition, if any, should be restricted only to the net commercial income and not the entire gross receipts i.e. the expenses incurred by the trust ought to have been allowed by the Ld. Addl./JCIT(A) which has not been considered by him. He, therefore, requested that the matter may be set aside to the file of the Ld. jurisdictional AO for verification of the claim of the assessee and decide the issue afresh in light of result of such verification. The Ld. AR submitted that the impugned issue is covered by the favourable order of the Co-ordinate Bench of Pune Tribunal in the case of Dr. Sukumar J. Magdum Foundation Vs. ITO in ITA No. 320/PUN/2023 for AY 2018-19, dated 14.08.2023, a copy of which was placed before us, wherein the Tribunal under the similar set of facts had set aside the matter to the file of the Ld. AO holding that the total income needs to be computed in accordance with the regular provisions of the Act in case the benefit of exemption u/s 11 is not available.

6. The Ld. DR supported the order of the Ld. Addl./JCIT(A). However, he had no objection to the above request of the Ld. AR, if the matter is restored to the file of the Ld. jurisdictional AO for verification of the issues involved.

7. We have heard the Ld. Representatives of the parties and perused the material on record. The facts of the case are not disputed. The assessee trust got registration u/s 12A of the Act on 27.05.2021 and therefore it is apparent

that the assessee trust was not a section 12A registered trust during the relevant AY i.e. AY 2020-21. Before us, the assessee has challenged the denial of exemption u/s 11 of the Act by the Ld. AO, CPC and confirmation of the same by the Ld. Addl./JCIT(A). However, we note that this ground was not pressed by the assessee before the Ld. Addl./JCIT(A) (para 5 of the impugned order refers). Ld. Counsel for the assessee has also contended that the assessee should alternatively, be granted exemption u/s 10(23C)(iiiad) of the Act as all the conditions for claim of exemption under the said section are satisfied by the assessee. The assessee has raised yet another ground claiming that without prejudice to the above claim, if exemption u/s 11/10(23C)(iiiad) of the Act is not granted, then the taxability of income of the assessee should be based on commercial principles i.e. only the net income should be taxed after allowing the expenses incurred by the assessee. The addition should, therefore, be restricted only to the net commercial income and not the entire gross receipts should be added to the Nil income returned by the assessee. We find that the Ld. Addl./JCIT(A) have confirmed the action of the Ld. AO in denying the exemption u/s 11 claimed by the assessee for the reason reproduced in para 3.1 above. Further, we also observe that the Ld. Addl./JCIT(A) has not adjudicated on the alternate claim of the assessee seeking exemption under the provisions of section 10(23C)(iiiad) of the Act and also the additional ground regarding the taxability of only net commercial income and not the gross receipts, raised by the assessee before him for the reason that these were not taken before the Ld. AO and restricted his decision only with respect to the claim of exemption u/s 11 as this was the only claim made by the assessee in its return of income which was processed u/s 143(1) of the Act.

7.1 Before us, the Ld. AR of the assessee has not seriously pressed ground Nos. 1 and 2 relating to claim of exemption by the assessee u/s 11 and/or section 10(23C)(iiiad) of the Act. In our considered view, the additional ground (ground No. 3) relating to taxability of only net commercial income being legal in nature and not requiring any fresh examination of the factual matrix is hereby admitted. We have perused the order of Co-ordinate Bench of the Pune Tribunal relied by the Ld. AR in the case of Dr. Sukumar J. Magdum Foundation (supra) wherein the Tribunal considered the issue of manner of assessment by the Ld. AO based on the fact that the assessee was not having

any registration so as to qualify for exemption u/s 11 of the Act and held as under :

“3. We have heard the rival submissions and gone through the relevant material on record. The contentions about the late filing of Audit report in Form No.10B and the need for still granting exemption, were not seriously pressed. The ld. AR has raised an additional ground to the effect that total income of the assessee ought to have been determined on commercial principles and not by charging the gross receipts to tax. The additional ground, being, legal in nature and not requiring any fresh examination of the factual matrix, is hereby admitted. As such, the only issue which survives for our consideration is the examination of the manner of assessment by the AO considering that it was not having any registration so as to qualify for exemption u/s.11.

4. The AO has recorded in the order u/s.154 that the gross receipts of the assessee were Rs.4,31,18,956/- and no deduction was allowed for expenses to the tune of Rs.4,95,86,799/-. We have gone through the Income and Expenditure account of the assessee, whose copy has been placed at page 18 of the paper book. Total of gross receipts on the Income side comes to Rs.4,31,18,955/-, which has been correctly considered by the AO. However, the amount of total deductions, as taken note of by the AO at Rs.4.95 crore, is not borne out from the Expenditure side. It appears that the AO took the amount of gross receipts at Rs.4.13 crore and added 15% at around Rs.64.00 lakh, to compute the total expenditure at Rs.4.95 crore. In fact, the assessee’s Income and Expenditure Account shows that “Surplus of Income over Expenditure” at Rs.2,87,153/-. In addition, there is “Amount transferred to Reserve or Specific Funds” to the tune of Rs.9,54,000/-. The assessee has claimed deduction for various expenses. It goes without saying that incometax is charged on the income and not the gross receipts. Income is determined by reducing the expenses incurred, described under various sections in Chapter IV-D of the Act. If the benefit of exemption u/s.11 is not available, the total income needs to be computed in accordance with the regular provisions of the Act. In the given circumstances, where the AO has charged tax on gross receipts, we cannot countenance the same. The resultant impugned order also deserves to be set aside. We order accordingly and remit the matter to the file of the AO for deducing the total income in accordance with the law after considering the deductibility of various expenses noted in the Income and Expenditure Account. Needless to say, the assessee will be allowed a reasonable opportunity of hearing.”

8. On the facts and in the circumstances of the case and the legal position set out above and in the interest of justice, we deem it fit, in our considered opinion to set aside the impugned order of the Ld. Addl./JCIT(A) and restore the matter back to the file of the Ld. jurisdictional AO with a direction to verify whether the assessee is eligible for claim of exemption u/s 10/23(C)(iiiad) of the Act and grant relief to the assessee as per the provisions of law as a result of such verification thereof. In case the assessee is found to be not eligible for claim of exemption u/s 10/23(C)(iiiad) of the Act, the Ld. jurisdictional AO is hereby directed to examine/verify the claim of expenditure made by the assessee trust against the gross receipts for the relevant AY and modify the assessment accordingly as a result of such examination/verification as per the

fact and law after giving adequate opportunity of hearing to the assessee. The assessee shall provide the requisite support in terms of submitting the relevant details/documentary evidence/submissions as may be required/called upon on the appointed date, failing which the Ld. AO shall be at liberty to pass appropriate order as per law. We direct and order accordingly.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 18th February, 2025.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th February, 2025.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune