

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

**माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं  
माननीय श्री जगदीश, लेखा सदस्य के समक्ष।  
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER  
AND HON'BLE SHRI JAGADISH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.2942/Chny/2024  
(निर्धारणवर्ष / Assessment Year: 2016-2017)**

MAC Educational Foundation,  
MAC ICH Building,  
VHS Campus, TTTI Post,  
Taramani, Chennai 600 113.

**Vs.** The Income Tax Officer,  
Exemption Ward -4,  
Chennai.

**आयकर अपील सं./ ITA No.2951/Chny/2024  
(निर्धारणवर्ष / Assessment Year: 2017-2018)**

MAC Educational Foundation,  
MAC ICH Building,  
VHS Campus, TTTI Post,  
Taramani, Chennai 600 113.

**Vs.** The Commissioner of Income Tax  
(Appeals)  
New Delhi

**[PAN: AAATM 0523A]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. P. Vijaideepan, JCIT.

सुनवाई की तारीख/Date of Hearing

: 13.02.2025

घोषणा की तारीख /Date of Pronouncement

: 24.02.2025

**आदेश / ORDER**

**MANU KUMAR GIRI (Judicial Member)**

Aforesaid appeals by assessee for Assessment Years (AY) 2016-17 & 2017-18 arises out of separate orders of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 21-08-2024 in the

matter of separate assessments framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 20-12-2019 for AY 2016-17 and on 21-12-2019 for AY 2017-18.

2. The registry has noted delay of 19 and 20 days in filing the captioned appeals by the assessee. Considering the period of delay and reasons stated in the Petition by the assessee, we condone the delay and admit the appeal for adjudication.

3. The sum and in substance the sole grievance of the assessee in the captioned appeals is denial of deduction u/s 11 / 12 as applicable to a registered public charitable trust.

4. At the outset, the Ld. counsel for the assessee Mr. R. Vijayaraghavan, Advocate submitted that the issue in question is involved in groups like M/s MAC Charities, M/s MAC Public Charitable Trust and M/s MAC Educational Foundation. In the case of M/s MAC Charities, the Tribunal has set aside and restored back the appeals of assessee to the file of Ld.CIT(A) for fresh adjudication considering factual matrix of relevant years. He further submitted that the Id. CIT(A) without effective notice for hearing has passed ex-parte orders upholding the orders of AO on merits. The Id. Counsel furthermore submitted that the facts of the present appeals are similar to the facts of the M/s MAC Charities hence, same treatment is to be given for this assessee also.

5. Per contra, the Id.DR Mr. P. Vijaideepan, JCIT vehemently supported the orders of the Id.CIT(A) and pleaded for the dismissal of appeals filed by the assessee.

6. We have heard the both parties and perused the record of the appeal papers and order of the co-ordinate bench Tribunal in the case of M/s MAC Charities. The Id. CIT(A) while upholding the order of AO held as under:

*'Decision I have carefully considered the submission made by the appellant in form no. 35, the facts of the case as well as gone through the observation and findings of the AO 's assessment order. I find from the grounds of appeal vis-à-vis statement of facts that dispute of the appellant arises on account of non allowance of contribution treating it non voluntary invoking section 11 & 12 of the I.T Act by the AO. It is observed from the assessment order that appellant is unable to establish the nature of contribution being voluntary in nature despite getting ample opportunity to make necessary compliance in this regard.*

*In the appeal proceedings also the appellant miserably failed to file any compliance; neither the appellant nor its authorised representative has made any adjournment letter or filed any submission. Therefore the appellant miserably failed to substantiate the grounds taken by him with the supporting documents This indicates the appellant is not willing to pursue his appeal. Hence I am inclined to concur the observation and decision of the AO in as much as the appellant is unable to establish the genuine source and nature of contribution shown in its books of accounts before the AO.*

*In view of above, I do not find any infirmity in the order of the AO and I am of opinion that AO's decision of determining income after treating Rs. 33 lakh as non voluntary contribution or capitation fees invoking section 11 & 12 of the I.T Act. is justified and in accordance with law. Accordingly impugned computation of taxable income of Rs. 33 Lakh stand confirmed. The grounds in this regard are dismissed'.*

7. The Co-ordinate Bench of the Tribunal in the case of M/s MAC Charities in ITA Nos.1169/Chny/2023 & 1215/Chny/2023 for AY 2017-18 and 2018-19 dated 10.07.2024 held as under:

3. *'From case records of AY 2017-18, it emerges that the assessee trust was founded in the year 1963 to carry out certain objects. Out of total income of Rs.26.64 Crores, the assessee was in receipt of donations for Rs.24.65 Crores which constitute 92.5% of total receipts. The other receipts were in the nature of interest and rental receipts. Further, out of Rs.24.65 Crores, substantial donations of Rs.22.65 Crores were received from M/s United Education Foundation (M/s UEF). It was also noted that the assessee made donations of Rs.23.42 Crores out of which sum of Rs.21 Crores was given to another trust viz. M/s Venkateswara Educational & Health Trust (M/s VEHT). The remaining donations were also given to the*

*sister concerns only except for donation of Rs.2.99 Lacs which was given to others. This was the practice of the assessee from year after year.*

- 4. The Ld. AO referred to assessment proceedings for AY 2016-17 wherein the assessee was asked to state the purpose of donation etc. In para 4.6, Ld. AO, taking cue from verification carried out in earlier years wherein it was alleged that the donations were made to M/s UEF in lieu of purchase of seats in Sri Venkateswara College of Engineering, Kancheepuram District being run by VEHT, proceeded to take the same view in this year. The Ld. AO, in para 4.7, noted that the donations were received by M/s UEF which, in turn, was routed to VEHT through the assessee and two other trusts. Accordingly, Ld. AO alleged that the assessee was merely one of the tools for channelizing the capitation fees received towards admission to Sri Venkateswara College of Engineering, Kancheepuram District being run by M/s VEHT. Under these circumstances, such donations could not be considered as voluntary donations and not eligible for exemption u/s 11 in the hands of M/s UEF as well as in the hands of the assessee, The Ld. AO also tabulated the dates of donations received by M/s UEF which, in turn, was routed by the assessee to VEHT. Accordingly, the donations of Rs.22.65 Crores as received by the assessee from M/s UEF was held to be non- voluntary contribution and therefore, not eligible for exemption u/s 11. The same would be taxed in the hands of the assessee at the rates applicable to Association of Persons (AOP). Finally, Ld. AO allowed revenue expenses from gross receipts and computed taxable income of the assessee.*
- 5. Though the assessee preferred further appeal against the same, however, it failed to comply with various hearing notices as issued by Ld. CIT(A) during the course of appellate proceedings. The same is evident from para-5 of impugned order. The Ld. CIT(A), considering the decision of Hon'ble High Court of Madras in assessee's own case for AYs 201112 to 2014-15 (144 Taxmann.com 54), upheld the action of Ld. AO. Aggrieved, the assessee is in further appeal before us.*
- 6. Similar assessment was framed for AY 2018-19. The Ld. CIT(A), following first appellate orders for AYs 2016-17 & 2017-18, upheld the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.*
- 7. The Ld. AR has submitted that Ld. CIT(A) has merely relied on the decision of Hon'ble High Court in earlier years which has been stayed by Hon'ble Supreme Court by interim stay of further proceedings in SLP No.- 22024-22026/2022 order dated 04-12-2023. It has further been submitted that Ld. Assessing Officer has not carried out any investigation or examination of persons who have donated monies to M/s United Education Foundation. The Ld. AR relied on the decision of CIT vs. Balaji Educational and Charitable Public Trust (374 ITR 264) for the submissions that if Ld. AO had doubt on the purpose of donations, he should have examined the donors independently in these years. The Ld. AR sought*

*distinction in the facts of earlier years on the ground that in earlier years, 27 persons were examined who conceded that they had paid capitation fees. The Ld. AO extrapolated the result of that investigation to all the donations. However, in the present year, there is no such investigation or examination and there is no evidence regarding payment of capitation fees. The Ld. AR also submitted that the assessee did not receive any donation from any individual which could be correlated to capitation fees for obtaining a seat in engineering college. The entire donation was received from another charitable trust. Whatever may be the source of receipt of the donor trust, it could not impact assessee's donations. Therefore, if the assessee had received a donation from any person, source of income of donor would not affect the character of donation made by them. It has to be treated as donations only and if the assessee has applied stipulated 85% of receipts towards the objects of the trusts including donations to other trusts having similar objects, the assessee is deemed to have fulfilled all the conditions to lay claim on the impugned deduction. No part of income could be taxed on pure assumption that it might be capitation fees received from another trust. The Ld. AR finally submitted that all these aspects were not considered by any of the lower authorities. Each assessment year is separate and decision of earlier years could be applied only if the facts were identical and based on an independent investigation for the current year. The Ld. AR thus pleaded for another opportunity of hearing to the assessee before lower authorities to render concrete findings in the matter. The same has been opposed by Ld. CITDR on the ground that the issue has been decided against the assessee though there is interim stay of further proceedings by Hon'ble Supreme Court.*

### **Our findings and Adjudication**

8. *So far as the earlier years are concerned, we find that Tribunal in ITA Nos.2890/Mds/2014 & ors. order dated 12-04-2017 for AY 2011-12, in assessee's group of cases, dismissed revenue's appeals. This decision was followed by Tribunal in AYs 2013-14 & 2014-15 in the case of assessee group vide ITA Nos.618/Chny/2019 & ors. order dated 1311-2019 again dismissing revenue's appeals. However, Hon'ble High Court of Madras reversed the aforesaid decisions of Tribunal vide order dated 31-10-2022 (144 Taxmann.com 54) and allowed the appeals of the revenue. The assessee group challenged this decision before Hon'ble Supreme Court vide SLP No.22024-22026/2022. The following order has been passed by Hon'ble Court on 04-12-2023: -*

### **O R D E R**

*Issue notice to the respondent(s). Having regard to the order dated 24.11.2023 passed in SLP (C) Nos.22564-22567/2022 arising from the same batch of cases disposed of by the Madras High Court on 31.10.2022 and following the same, there shall be interim stay of further proceedings of the impugned judgment and order in these matters also.*

*In other words, there has been interim stay of further proceedings of the impugned judgment.*

*9. In Ays 2017-18 & 2018-19 as impugned before us, we find that the assessee has failed to make any effective representation during first appellate proceedings and Ld. AR has raised an issue of violation of natural justice and seek another opportunity of hearing before lower authorities. The same is on the ground that Ld. CIT(A) has merely relied on the earlier decisions whereas Ld. AO has not carried out any independent investigation or examination of persons who have donated monies to M/s United Education Foundation. In the absence of such an examination, it could not be concluded that the donations were nothing but capitation fees in these years also. The Ld. AR has sought distinction in the facts of earlier years on the ground that in earlier years, 27 persons were examined who conceded that they had paid capitation fees. However, in these years, no such investigation or examination has been carried out and there is no evidence regarding payment of capitation fees. The Ld. AR has also asserted that entire donation has been received from another trust which has been applied by way of donation to other trusts having similar objects and therefore, the assessee is deemed to have fulfilled all the conditions to lay claim on the impugned deduction. The Ld. AR submitted that all these aspects were not considered by any of the lower authorities. Considering all these facts and circumstances of the case and keeping in mind the principle of natural justice, we deem it fit to grant another opportunity to the assessee to substantiate its case before lower authorities. All the issues are kept open. The impugned orders, in both the years, are set aside and both the appeals are restored back to the file of Ld. CIT(A) for fresh adjudication considering the factual matrix of impugned years. The assessee is directed to substantiate its case forthwith. Needless to add that adequate opportunity of hearing shall be granted to the assessee. |*

*10. Both the appeals stand allowed for statistical purposes.*

*Order pronounced on 10th July, 2024*

8. From the Id. CIT(A) order, we find that purported first notice of hearing was sent to the assessee on 25.12.2020 during Covid-19 pandemic and subsequent two notices were sent suddenly on 26.07.2024 and 07.08.2024 after a gap of almost 3 years 8 months. However, there is no evidence on record that how these notices were served on the assessee. Hence, on these grounds

assessee may be given an adequate opportunity of being heard denovo by the Id. CIT(A).

9. We have also gone through the order of the co-ordinate bench of Tribunal in the case of M/s *MAC Charities in ITA Nos.1169/Chny/2023 & 1215/Chny/2023 for AY 2017-18 and 2018-19 dated 10.07.2024* in entirety. Hence, Considering all these facts and circumstances of the case and keeping in mind the principle of natural justice, we deem it fit to grant another opportunity to the assessee to substantiate its case before lower authorities. All the issues are kept open. The impugned orders, in both the years, are set aside and both the appeals are restored back to the file of Ld. CIT(A) for fresh adjudication considering the factual matrix of impugned years. The assessee is directed to substantiate its case forthwith. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

10. Both the appeals stand allowed for statistical purposes.

Order pronounced in open court 24th day of February, 2025.

**Sd/-**  
**(जगदीश)**  
**(JAGADISH)**

**Sd/-**  
**(मनु कुमार गिरि)**  
**(MANU KUMAR GIRI)**

**लेखा सदस्य / ACCOUNTANT MEMBER** न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 24-02-2025

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF