

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.780/Chny/2025
Assessment Years: 2018-19

Annai Trust,
D.No.25/235, Jinna Street,
Kaveripattinam(VIIL) (PO),
Krishnagiri,
Tamil Nadu 635 112.
[PAN: AADTA6748A]

The Income Tax Officer,
Exemptions Ward,
Salem

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri Girish Kumar, Advocate
: Ms.Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 03.06.2025
घोषणा की तारीख /Date of Pronouncement : 11.06.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed by the assessee against the order bearing DIN & Order No.ITBA / APL / S / 250 / 2024-25 / 1073962801(1) dated 04.03.2025 of the Learned Commissioner of Income Tax [herein after "CIT(A), Addl/JCIT(A)-1, Lucknow for the assessment year 2018-19. The reference to the word "Act" in this order hereinafter shall mean the Income Tax Act, 1961 as amended from time to time.

2.0 The appellant assessee has assailed the order of the Ld First Appellate Authority on the twin issues of non-maintainability of additions

u/s 143(1)(a) and on the issue of taxing of net income in cases where benefit of exemption is not available. The Ld counsel submitted that it had admittedly filed belated return of income and the tax audit report and also that its request for condonation of delay was also rejected by the competent authority from revenue. The Ld.Counsel submitted that its claim of exemption u/s 11 was thus withdrawn. It is the case of the assessee that in terms of orders from Hon'ble coordinate benches of this tribunal as well as that of Hon'ble Madras High Court, it is entitled for taxation of net receipts and not gross receipts. It was also simultaneously argued that the impugned disallowance, made in its case invoking provisions of section 143(1)(a) of the Act, per se is inadmissible given statutory prohibition qua any such addition u/s 143(1)(a) of the Act. Reliance was placed upon order vide ITA No.2595 & 2596 / Chny / 2024 dated 31.01.2025 and other orders of this tribunal.

3.0 Per contra the Ld DR would like to rely upon the orders of lower authorities. It was submitted that items like corpus donations etc included in appellants claims were not admissible for any deductions.

4.0 We have heard rival submissions in the light of material on records. It is an undisputed fact on record that the benefit of exemption available to the assessee has been denied by the Revenue in view of delayed filing of its return of income and tax audit reports. The request for condonation of delay has also been rejected by the Revenue. No

valid claim of exemption u/s 11 therefore exists. We have noted that Hon'ble Coordinate Benches of this tribunal, in compliance to decision of Hon'ble Madras High Court, held that in such cases only net receipts are to be taxed. Thus, we have noted that in ITA 2169-70 / chny 2024 Dt. 13/12/2024 this tribunal has held as under:-

“..... The Ld Council for the assessee relied upon order of this tribunal in ITA 2169-70 / chny 2024 Dt. 13/12/2024 wherein placing reliance upon decision of Hon'ble Madras High Court relief was accorded to the assessee and net receipts were directed to be taxed. The Ld DR would like to make us believe upon correctness of the order of lower authorities. She also contended that no delay condonation application of assessee has been filed by the assessee before competent authority.....”

5.0 We have heard rival submissions on the matter in the light of material on records. It is undisputed fact on record that gross receipts of assessee have been taxed. The assessee has belatedly filed Form 10 for which it has admittedly filed delay condonation application before competent authority. We have noted with deference the decision of Hon'ble coordinate bench of this tribunal in ITA number 2169 & 2170 supra, reproduced hereunder :-

“.....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 ITA Nos.2169 & 2170/Chny/2024 (AYs 2019-20 & 2020-21) M/s. University of Madras :: 3 :: 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 ITA Nos.2169 & 2170/Chny/2024 (AYs 2019-20 & 2020-21) M/s. University of Madras :: 4 :: 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 ITA Nos.2169 & 2170/Chny/2024 (AYs 2019-20 & 2020-21) M/s. University of Madras :: 5 :: 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 ITA Nos.2169 & 2170/Chny/2024 (AYs 2019-20 & 2020-21) M/s. University of Madras :: 6 :: 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) of the Act be granted subject to the condonation being granted by the CBDT by passing rectification order as per law.”

6.0 We have noted that Similar view have been taken in ITA no. 2720 / Chny / 2024 in the case of UK PM Charitable Trust and ITA No.2595 & 2596 / Chny / 2024. In all the above decisions, the ratio laid down by Hon'ble Madras High Court in the case of Shree Venkateswar Educational Trust in TCA No.168 and 169 of 2020 have been reverentially followed. We have also noted the facts of the present case are identical to those as available in the cases adjudicated above and no distinguishment has been pointed out. In the light of the aforesaid decision of the Hon'ble Madras High Court (supra) and of Hon'ble Coordinate Benches of this tribunal we set aside the impugned order 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 2018-19 as per the income & expenditure account filed by the assessee and in accordance with law. The Ld.AO shall give due opportunity of being heard to the assessee and pass a speaking order. It shall be bounden upon the assessee to comply with the statutory notices of the Ld.AO. **Accordingly, all the grounds of appeal raised by the assessee on this issue are allowed for statistical purposes.**

7.0 Through its another ground of appeal the assessee has raised a legal ground contesting that the addition per se was non-maintainable

because of the prohibition of making similar additions u/s. 143(1)(a).
Apropos to the decision in para 5 above, as the assessee has succeeded
on merits and we have remitted the issue to the Ld.AO for for taxing the
net receipts only , this legal ground of appeal has been left open.

8.0 In the result, the appeal of the assessee is allowed for statistical
purposes.

Order pronounced on 11th , June-2025 at Chennai.

(यस यस विश्वनेत्र रवि)

(SS VISWANETHRA RAVI)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 11th , June-2025.

KB/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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