

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 No.541/Chny/2025
निर्धारणवर्ष/Assessment Year: 2018-19

The Director Institute for Ocean – Management Anna University, Koodal Building, Anna University, Guindy, Chennai-600 025.	v.	The ITO, Exemptions Ward-4, Chennai.
[PAN: AAAGT 0176 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.R.S.Balaji, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.A.T.Krishnamoorthy, JCIT
सुनवाईकीतारीख/Date of Hearing	:	26.06.2025
घोषणाकीतारीख /Date of Pronouncement	:	29.07.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, dated 17.09.2024 for the Assessment Year (hereinafter referred to as "AY") 2018-19 against the penalty confirmed u/s.270A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").



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2. At the outset, the Ld.AR of the assessee brought to our notice that there is a delay of '86' days in filing of the appeal and cause for delay has been explained in the application filed for condonation of delay and has also filed an affidavit supporting the averments made therein. Having gone through the contents of the application/affidavit, we find that there was reasonable cause for delay, therefore, we condone it and proceed to adjudicate the appeal on its merits.

3. The Ld.AR submitted that this assessee has preferred this appeal against the impugned action of the Ld.CIT(A)/NFAC confirming levy of penalty u/s.270A of the Act. According to the Ld.AR, the penalty levied has to be cancelled in view of the subsequent development wherein the assessee's quantum appeal for AY 2018-19 [on the basis of which penalty was levied u/s.270A of the Act] has been adjudicated by the NFAC/Ld.CIT(A) by order dated 13.06.2025 for AY 2018-19, wherein, the appellate authority was pleased to delete the additions made by the AO to the tune of Rs.8,41,839/- and filed a copy of the Ld.CIT(A)'s order and further submitted that the Revenue has not filed any appeal against the action of the Ld.CIT(A) deleting the addition (Tax Effect). The Ld.DR couldn't controvert the fact that the assessee's quantum appeal has been decided in its favour by the Ld.CIT(A) by passing the order on 13.06.2025.



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4. We have heard both the parties and perused the material available on record. We note that the assessee [The Institute for Ocean Management] has been constituted with the bifurcation of the Centre for Water Resources and Ocean Management in the Anna University from 01.01.1998 onwards to operate independently as an associate of Anna University [which was formed by the Anna University Act, 1978]. The assessee's Institute is fully funded by the Government and the status of the assessee is identified as "Government". Therefore, receipts of the Institute are fully exempt in accordance with provisions of Section 10(23C)(iiiab) of the Act. The RoI declaring total income as 'nil' was later selected for scrutiny and the AO disallowed 20% of the total contingency expenses of Rs.42,09,197/-, thereby making an addition of Rs.8,41,839/- which action of the AO dated 23.04.2021 was challenged by the assessee before the Ld.CIT(A)/NFAC who was pleased to delete the addition by holding as under:

6. In ground no. 1 and 2, the appellant argued that the Ld. AO acted wrongly in disallowing 20% of the total contingency expenses of Rs.42,09,197/-, thereby making an addition of Rs.8,41,839/- (rounded off to Rs. 8,41,840/-) to the total income of the assessee and raising a tax demand of Rs. 3,35,831/-. It further argued that the same was wrong and illegal, considering the constitution, objects and entitlement of the Institution, being part of Anna University established exclusively for the purpose of education, by the legislation of Government, and wholly funded by the Government, for the exemption of its receipts u/s 10(23C)(iiab) of the Income tax Act, 1961, which reads as follows.

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--

23(C) any income received by any person on behalf of -



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(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government;"

7. I have carefully gone through the assessment order, the statement of facts filed along with the appeal and the submissions made by the assessee, especially the nature of and vouchers for the expenditure in question, which was termed 'Contingencies Expense' in the Income and Expenditure account for the relevant period which was submitted before the AO. The assessee had claimed expenditure under the head Contingencies expense amounting to Rs.42,09,197/-(Rs.37,48,935 +Rs.4,60,282). In fact, after careful examination of the material available on record, I notice that the entire confusion/disagreement was caused by the use of this nomenclature, namely 'Contingencies Expense' by the assessee/appellant, in so far as it made the assessing officer wonder whether these expenses were incurred during the year under consideration or whether they were a 'Provision made for future' i.e. for any future 'contingency'. This was the precise suspicion or doubt raised by the AO at the bottom of para no. 4.2 of his assessment order dated 23.04.2021, eventually leading to a 20% disallowance out of the same in para no. 4.3 of the assessment order.

7.1 The appellant, vide response dated 13.05.2025 during the faceless appeal proceeding, submitted that "the Ld. AO has erred in passing the original assessment order by disallowing ad hoc 20% of the expenses accounted under the accounting head - contingencies of Rs.42,09,197/- i.e. Rs.8,41,839/- (rounded off to Rs. 8,41,840/-) not considering the fact that the expenses accounted under the head contingencies are not contingent in nature, instead they are the actual expenditure incurred by the assessee... We are hereby also attaching the vouchers for expenditure in question incurred by the assessee in the A.Y. 2018-19". This submission and the accompanying vouchers showing actual incurrance of the expenditures within the relevant year are sufficient to allay the confusion, suspicion or doubt which the assessing officer had, as brought in para no. 7 above. It is very clear from the perusal of the records, that the only thing which was bothering the AO was that whether this expense is in the nature of a 'Provision' for future contingencies, though that doubt was largely unfounded because the appellant is neither a banking company (or similar financial entity to whom such provisions are allowed), nor any other business entity who may make such a provision, for a likely future losses such as bad debts, on the basis of accounting principle of conservatism but which may not be allowed as deduction under the Income Tax Act, from the income of such assesseees. An educational institution like the appellant in the present case would never make any such provision for expense of likely future losses such as bad debts, as such an eventuality is not a normal part of institutions operating solely for educational purposes. More importantly, it is an undisputed fact from assessment proceedings that the assessee is an educational institution, forming part of the Anna University, established as part of the university curriculum and focuses its attention on research and teaching on diverse coastal issues. It meets the criteria stipulated under section 10(23C)(iiiab) and thus any income received by such an institution shall not be included as taxable income of the assessee. Seen in this light, I am of a judiciously considered view that the addition made by the AO was on account of a simple and avoidable confusion regarding the terminology of expenses incurred by the assessee viz. 'Contingency', which now stands resolved. I delete the said addition of Rs.8,41,839/- (rounded off to Rs. 8,41,840/-) and restore back the returned income at Nil in view of the assessee being an institute covered under section 10(23C)(iiiab) of the Income Tax Act, 1961.



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5. Since the Ld.CIT(A) has deleted the quantum assessment (which decision has reached finality due to Tax effect), the penalty levied by the AO u/s.270A of the Act of Rs.5,20,258/- which emanates from the Assessment order is unsustainable on the principle that when the foundation for levy of penalty has been removed [by the action of the Ld.CIT(A) deleting the quantum addition], the penalty imposed on it can't sustain. Relying on the legal maxim "*sublato Fundmento Credit opus*" meaning in case a foundation is removed, the super-structure falls, which principle was recognized by the Hon'ble Supreme Court in the case of Badarinath v. Tamil Nadu AIR 2000 SC 3243, the Hon'ble Supreme Court held that once the basis of proceedings is gone, all consequential orders & acts would fall on the ground automatically which is applicable to judicial and quasi judicial proceedings. Therefore, penalty levied u/s.270A of the Act dated 23.04.2021 is unsustainable and so, cancelled.

6. In the light of the discussion, the penalty levied stands cancelled u/s.270A of the Act.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 29th day of July, 2025, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



ITA No.541/Chny/2025 (AY 2018-19)
The Director Institute for Ocean –
Management Anna University

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चेन्नई/Chennai,
दिनांक/Dated: 29th July, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित /Copy to:

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