

आयकर अपीलिय अधिकरण , ' ए ' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामनलेखा सदस्य के समक्ष

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 367/Chny/2020

निर्धारण वर्ष/Assessment Year : 2009-10

M/s. Dr. D. John Ponnudurai Educational  
Trust,  
No. 25A, New Colony,  
Alwar Thirunagar,  
Chennai – 600 087.

The ADIT,  
Vs. Exemption –III,  
Chennai.

**[PAN: AAATD 6839L]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/Appellant by	:	Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri. AR.V. Sreenivasan, Addl. CIT
सुनवाईकीतारीख/Date of Hearing	:	30.07.2020
घोषणाकीतारीख/Date of Pronouncement	:	07.08.2020

**आदेश/ ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 10, Chennai, in ITA No. 59(Tr.)/CIT(A)-10/11-12/A.Y. 2009-10 dated 24.01.2020 for the assessment year 2009-10.

2. Dr. D. John Ponnudurai Educational Trust, the assessee, filed its return of income for the assessment year 2009-10 claiming exemption u/s. 11. During the assessment proceedings, the A O noticed that several withdrawals were made from bank and cash withdrawals by the trustee, Shri. Vinoth Diraviraj, who is also a correspondent of the school. The A O required the assessee to produce vouchers and bills. Since, the assessee could not produce them, the income from the trust was drawn by the trustee and evidences for the applications were not produced, the AO treated them as violation u/s. 13(1)(c) and hence denied the exemption. Though, the assessee incurred capital expenditure, in view of denial of exemption u/s. 11, the A O treated it as non-application of income, however, allowed the depreciation and thus assessed the entire income in the status of AOP at maximum marginal rate. Aggrieved, the assessee filed an appeal before the CIT(A).

3. During the appellate proceedings, the Ld CIT(A) called for remand report and shared it with the assessee and after considering the assessee's reply etc, he observed, inter alia, that he was in agreement with the AO as appellant is unable to furnish necessary bills/vouchers for the claim of expenses incurred out of cash withdrawals. Although, the appellant has stated that bills/vouchers were produced during the assessment proceedings, the AO has categorically denied that such bills/vouchers were produced. In any case, various opportunities have been given to the appellant to again produce the bills/vouchers during the appellate/remand report proceedings, the appellant miserably failed in producing

the necessary bills/vouchers. Therefore, he upheld the AO's action as per the assessment order as the income from the trust was drawn by the trustee and evidences for the applications were not submitted and therefore, there is violation u/s. 13(1)(c) and hence exemption u/s. 11(3) was rightly denied. Aggrieved against that order, the assessee filed this appeal.

4. The case was heard through video conferencing. The Ld. AR inviting our attention to the relevant portions of the assessment order and the appeal order, stated that the assessee is a charitable trust registered u/s. 12A(a) and is running an educational institution. It maintained regular and detailed books of account supported by vouchers. During the assessment proceedings as well as the remand proceedings, it was submitted that Shri. Vinoth Diraviraj, who is in-charge of the day to day management of the school, was authorised to sign cheques, withdraw money from the bank, authorised to make payments for the purposes of running the school. All the fees collected from the students are deposited into the bank and for making any expenses, the school has to withdraw the money from the bank and spend for the expenses. The trustee, being in-charge of the day to day functioning of the school, withdrawn the cash from the bank. The said cash is accounted in the cash book as receipt and the payments in the bank book. Since, the cash withdrawn has been accounted in the book as receipt of cash from bank, no vouchers are prepared for the contra entries for the cash receipts from the bank. For all other payments like, salaries, travelling and conveyance, telephone bills, ESI, EPF and all other petty cash

payments etc vouchers are available and produced before the AO. In spite of it, the AO has insisted vouchers for the cash withdrawals made from the bank for which no voucher could be maintained but for counterfoil of cheques. Without appreciating the entire fact, the Ld. CIT(A) dismissed the appeal. Being a charitable trust, the Ld. AR pleaded that one more opportunity may be given to the assessee to establish its case. Per contra, the Ld. DR supported the orders of the lower authorities. However, he expressed that he would have no objection if this case is remitted back to the AO for a thorough examination.

5. We heard the rival contentions and gone through the relevant materials. The assessee is registered u/s. 12(A)(a) as a charitable trust and is running an educational institution. It is not clear from the orders of the lower authorities whether the assessee has submitted all the evidences in support of its claim of exemption and such material were properly appreciated or not. In the facts and circumstances and in the interests of justice, we deem it fit to remit the entire issues back to the AO for a fresh examination. Since, the right to exemption must be established by those who seek it, the onus therefore, lies on the assessee. In order to claim the exemption from payment of income tax, the assessee had to put before the income tax authorities proper materials which would enable them to come to conclusion (35 ITR 313 SC). Therefore, the assessee shall place all contemporaneous primary as well as secondary evidences in support of its claim before the AO. The AO shall after due verification and

after appropriate enquiry, as deemed fit, and after affording adequate opportunity to the assessee, shall pass a speaking order.

6. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 7<sup>th</sup> August, 2020 at Chennai.

Sd/-

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(एस.जयरामन)

**(DUVVURU RL REDDY)**

**(S. JAYARAMAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**लेखा सदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 7<sup>th</sup> August, 2020

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR

3. आयकर आयुक्त) अपील(/CIT(A)
6. गार्ड फाईल/GF