

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

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1169/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

&

आयकर अपील सं. ITA No.1215/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

MAC Charities MAC / ICH Block-2, VHS Campus, Adyar TTTI Post, Chennai-600 113	बनाम/ Vs.	ACIT (Exemptions) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAATM-0483-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	09-05-2024
घोषणा की तारीख / Date of Pronouncement	:	10-07-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2017-18 & 2018-19 arises out of separate orders of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 15-08-2023 & 05-09-2023 respectively in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s. 143(3)

of the Act on 26-12-2019 for AY 2017-18 and on 02-03-2021 for AY 2018-19.

2. 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. The Ld. AR advanced arguments and submitted that Ld. AO has merely referred to findings of earlier years to deny the exemption without examining the issue independently. The Ld. AR sought another opportunity of hearing before lower authorities in view of the fact that the assessee failed to make any effective representation during first appellate proceedings. The Ld. CIT-DR, on the other hand, submitted that, in earlier years, the issue has been decided against the assessee. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee is a public trust registered u/s 12AA of the Act.

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 2011-12 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. CIT-DR 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 13-11-2019 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

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखासदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 10-07-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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