



आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री इंद्ररी रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri Inturi Rama Rao, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. Nos. 1338 & 1339/Chny/2019  
निर्धारण वर्ष/Assessment Year: 2013-14

Sree Venkateswara Educational Trust,  
655/20 & 600, Jagilkathirampatti  
Village & Post, Pochampalli Taluk,  
Krishnagiri District 635 206.  
**[PAN:AAITS5220J ]**

The Income Tax Officer,  
Vs. Exemptions Ward,  
Salem.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT  
सुनवाई की तारीख/ Date of hearing : 10.12.2019  
घोषणा की तारीख /Date of Pronouncement : 30.12.2019

## आदेश /O R D E R

### PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals), Salem, both dated 25.03.2019 for the assessment year 2013-14 passed against the order under section 143(1) of the Income Tax Act, 1961 ["Act" in short] as well as under section 154 of the Act. Against the order under section 154 of the Act, the assessee has raised following grounds:

- “1. *The Commissioner of Income-tax (Appeals) is not justified in holding that non-allowance of expenditure incurred to earn gross receipts from a college and school involves a complex and debatable legal issue.*

2. *The issue involved, viz., that absence of registration under section 12AA can disentitle claim for application of income and not deduction of expenses incurred for purpose of earning receipts, does not involve any argument, pros and cons, having been decided by Courts of La3 including 135 ITR 485 Mad.*
3. *Non considering the amount of allowable expenses incurred and filled at Clause 6(i) of Part B – TI is only an apparent mistake.*
4. *“Apparent mistake” does not mean only clerical or arithmetic error (69 ITR 342 Mad).*

*For these and other reasons, which may be stated at the time of hearing of the appeal, it is prayed that the Assessing Officer may please be directed to allow the petition filed under section 154 dated 06.11.2015 filed on 09.11.2015.*

2. Against the order under section 143(1) of the Act, the assessee has raised following grounds:

- “1. *The Commissioner of Income-tax (Appeals) is not justified in holding that the assessee trust made a fresh claim of expenses of salaries, interest to Bank, depreciation and other administrative expenditure etc. but not in the return of income, in the circumstances of the case.*
2. *The Commissioner (Appeals) ought to have recognized the fact that the total of the said expenses of ₹.3,08,60,769/- was filled in the Return Form as deduction at Clause 6(i) of Part B - TI, against gross incomings of ₹. 2,57,85,366/- admitted from a school and a college in the same part, on basis of actual receipts and payments, instead of filling it at clause 1 (h) of Schedule OS.*
3. *The Commissioner (Appeals) ought to have accepted that failure to enter an amount in a relevant column will not disentitle an allowable expenditure from being claimed (155 ITD 41 Mum).*
4. *As assessable income of a Trust is to be understood and arrived at in a normal commercial manner, expenses incurred for purpose of earning receipts should have been allowed deduction. Alternately, it is not correct to assess gross receipts as income without taking into expenditure incurred to earn them. Expenses should have been allowed while computing taxable income. Income of a Trust to be assessed should be understood in its commercial sense and arrived at*

*in normal commercial manner (68 ITD 95 Mum, 135 ITR 485 Mad, 56 ITD 37 Del Trib, 125 ITR 531 MP, 162 ITR 612 Guj).*

5. *Application made for charitable purposes out of income earned alone is allowable, only if a Trust is registered under section 12AA and not the expenses incurred for purpose of earning income.*
6. *Observation of the Commissioner (Appeals) that "the appellant has not filed its Return of Income in time but filed only a belated Return" is not correct as it was furnished electronically on 18-01-2014 within time permitted by Section 139(4) and as requirement by Section 12A(ba) to file it in time prescribed by Section 139(1) is only with effect from assessment year 2018-19.*
7. *Contention that a fresh claim made is to be considered by an appellate authority, ought to have been accepted (105 DTR 317 Chennai and 396 ITR 251 Mds referring to Goetz India Ltd. of 284 ITR 323 SC).*
8. *Excess application of preceding years ought to have been directed to be set-off as contended by Ground No.10 reproduced in the first appellate order.*
9. *Registration under section 12AA having been granted on 02-03-2016 with effect from 01-04-2015, it should have been accepted as applicable under 1<sup>st</sup> proviso to Section 12A(2) to assessment year 2013-14, as rectification application tiled On 09-11-2015 was disposed of on 30-05-2016; "proceeding involving rectification of an assessment is one of the channels through which, the purpose of assessment is achieved (83 ITR 828 Madras High Court). Commissioner (Appeals) ought not to have relied on a decision rendered prior to insertion of the proviso made with effect from 01-10-2014.*
10. *As a proposal to increase under section 143(1), the returned income, was not intimated to the assessee, though required by its 1<sup>st</sup> proviso, the addition made to 'Nil' income returned, is not lawful.*

*For these and other reasons, which may be stated at the time of hearing of the appeal, it is prayed that the 'Nil' income returned may please be accepted.*

2.1 Brief facts of the case are that the assessee has filed return of income on 18.01.2014 for the assessment year 2013-14. The belated return filed by

the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short] by the CPC, Bengaluru determining ₹.99,51,157/- as the liability towards tax and interest and an intimation under section 143(1) of the Act issued was received by the assessee on 23.03.2015. Against the intimation, the assessee filed the rectification petition under section 154 of the Act. The Assessing Officer noticed that the assessee trust is not registered under section 12AA of the Act and accordingly rejected the rectification petition of the assessee by his order dated 02.11.2015. Subsequently, the assessee also filed one more rectification petition on 17.11.2015 before the Assessing Officer requesting to allow the expenditure incurred like salary administrative expenditure, etc. While rejected the rectification petition, the Assessing Officer observed that as per section 154 of the Act, the scope of rectification is limited to rectify a mistake apparent from record. Section 154 does not confer upon the Assessing Officer any powers to admit a new claim of deduction/exemption. Further, the change in the claim of deduction or status of the assessee would not mount to mistake apparent from records, and, as such, it cannot be rectified under section 154 of the Act. Against the rectification order, the assessee filed an appeal before the Id. CIT(A), which was dismissed. On being aggrieved, the assessee preferred further appeal before the Tribunal against confirmation of rectification order.

2.2 Against the intimation under section 143(1) of the Act, the assessee filed an appeal against disallowance of corpus donation of ₹.28,91,000/-, disallowance of expenditure claimed against the gross receipts and charging of interest. By following the decision of the Hon'ble Supreme Court in the case of UP Forest Corporation and Anr. V. DCIT in Appeal (Civil) No. 9432 of 2003, the Id. CIT(A) dismissed the grounds raised by the assessee. On being aggrieved, the assessee preferred further appeal before the Tribunal.

3. Before us, with regard to the appeal against the order under section 154 of the Act, by reiterating the submissions as made before the authorities below, the Id. Counsel for the assessee has submitted that in the absence of registration under section 12AA of the Act, necessary expenses incurred in connection with the activity carried on, wholly and exclusively for earning the income, ought to have been allowed, while computing taxable income, as income is to be computed on commercial principles, taking into account provisions of Income Tax Act. It was further submission that the amount of allowable expenses incurred and filled at Clause 6(i) of Part B – TI was not considered by the Revenue is an apparent mistake and prayed for suitable directions to the authorities below. With regard to the appeal against the order under section 143(1) of the Act, it was the submission of the Id. Counsel that the Department never disputed the charitable activities of the Trust and an assessable income of a trust is to be understood and arrived at

in a normal commercial manner, expenses incurred for the purpose of earning receipts should have been allowed as deduction. It was further submission that the assessee has filed the return of income electronically on 18.01.2014 within the time permitted by section 139(4) of the Act and thus, the Id. CIT(A) has erroneously held that the assessee has not filed its return of income in time but filed only a belated return is not correct. By relying on the decision in the case of Goetze India Ltd. v. CIT 284 ITR 323 and other case law, the Id. Counsel prayed for admitting the claim by the appellate authority.

4. On the other hand, the Id. DR has submitted that as on the date of filing of return on 18.01.2014, the assessee has no registration under section 12AA of the Act. It was further submission that the assessee has not even filed Form 10A applying for registration in the assessment year under consideration. It was further submission that the assessee has not filed the return within the time prescribed under section 139(1) of the Act and moreover, the assessee has not filed any revised return of income to consider the claim of deduction as mandated by the Hon'ble Supreme Court in the case of Goetze India Ltd. v. CIT (supra). It was further submission that there was no apparent mistake warranting any rectification under section 154 of the Act and moreover, there was no revised return of income filed within the time prescribed under the Act to allow any deduction as claimed

by the assessee and pleaded for dismissing both the appeals of the assessee.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee. Admittedly, the assessee has filed its return of income on 18.01.2014 as a Trust. However, the assessee has no registration under section 12AA of the Act in the assessment year under consideration or not even applied for registration under the Act since the assessee has application for registration in Form 10A only on 31.12.2015, which is in the financial year 2015-16 and relevant to the assessment year 2016-17. Just because the assessee is a trust, in the absence of registration under section 12AA of the Act, the assessee cannot file its return of income as a Trust. If at all the assessee has filed a revised return other than assessee-trust and not considered by the Department, the Tribunal can direct the authorities below to allow deduction. Moreover, the assessee has not placed any material as to whether any scrutiny on the assessee's activities/operations, genuineness of its claim, etc. was ever made by the Revenue and its claim was found to be in order but for registration under section 12AA of the Act nor it placed any material to suggest that any proceeding was pending before the appellate authority on such claim etc. The assessee has not placed any material to suggest that when granting the

registration of the Trust under section 12AA of the Act dated 02.03.2016 with effect from 01.04.2015 the Id. CIT(E) examined its activities/operations, genuineness of its claim etc. for the earlier years or atleast for the impugned assessment year and found its exemption claim is otherwise in order. Therefore, the assessee's claim that for the assessment year 2013-14, it should be deemed to be an assessment proceedings pending before the Assessing Officer cannot be accepted. Based on the identical facts, similar finding was given by the Coordinate Bench of the Tribunal in the case of Soundaram Chokkanathan Educational and Charitable Trust v. ITO in I.T.A. No. 1844/Chny/2017 dated 30.08.2019. Respectfully following the above decision, the appeal filed under section 154 of the Act stands dismissed.

6. So far as the claim of deduction of expenditure is concerned, the assessee has not at all filed revised return. In this circumstances, neither the Assessing Officer nor the appellate authority have any power to admit the claim of the assessee as per the ratio laid down in the case of Goetze India Ltd. v. CIT (supra), wherein, the Hon'ble Supreme Court makes it clear that the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the power of the Appellate Tribunal under section 254 of the Act. Therefore, the case law relied on by the Id. Counsel for the assessee in the case of Srinivasa Educational Trust v. ITO in I.T.A. Nos. 1327 & 1328/Chny/2019 dated



05.09.2019 has no application. In the present case, no doubt, the appellate authority has power to entertain any new claim if the assessee has filed revised return within the time prescribed under the Act and if the Assessing Officer has not considered the revised return, then the Tribunal can direct the Assessing Officer to consider the same. However, in the present case, admittedly, the assessee has not filed any revised return towards admitting the claim of deduction. Thus, in view of the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd. v. CIT (supra), the appeal filed against the order under section 143(1) of the Act stands dismissed.

7. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on the 30<sup>th</sup> December, 2019 in Chennai.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, 30.12.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.