

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

| | | |
|--|-----|--|
| ITA No. 236/H/2020 Assessment Year: 2014-15 | | |
| Bhagawan Sree Mahayogi Lakshamma Educational Society, Adoni. PAN - AABAB 2700Q (Appellant) | Vs. | Income-tax Officer, Ward - 2, Kurnool (Respondent) |
| Assessee by: | | Shri S. Rama Rao |
| Revenue by: | | Shri Rohit Mujumdar |
| Date of hearing: | | 08/11 /2021 |
| Date of pronouncement: | | /11/2021 |

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A), Kurnool's order dated 09/01/2020 for AY 2014-15 involving proceedings u/s 154 of the Income Tax Act, 1961 ; in short "the Act on the following grounds of appeal:

"1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.

2. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the learned CIT (Exemptions) vide order No. ITBA/Exm/S/12AA/2019-20/1017/56578(1) dated 1.8.2019 granted registration u/s 12AA of the LT. Act when the appeal for the assessment year 2014-15 was pending and that, therefore, the exemption u/s 11 of the I.T. Act is available even for the assessment year 2014-15.

3. The learned Commissioner of Income-Tax (Appeals) erred in confirming the addition made by the Assessing officer of Rs.31,90,180/- made by the Assessing Officer treating the amount received towards Corpus Fund as income assessable for the assessment year 2014-15.

4. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the said receipt represents capital receipt and is exempt from tax.

5. Any other ground that may be urged at the time of hearing.”

2. Briefly the facts of the case are that the assessee filed its return of income for the impugned AY 2014-15 on 11/12/2014 admitting a total income of Rs. 2,28,290/-, which was processed u/s 143(1) of the Act by the AO at Central Processing Centre (CPC) vide order/information on 16/03/2016 and determined the total income of the assessee at Rs. 44,48,201/- by making the following additions/disallowances to the returned income of the assessee:

1. Addition on account of treating the corpus fund receipts/donations as income – Rs. 31,90,180/-
2. Disallowance of expenditure – Rs. 8,41,028/-

2.1 Against the above additions, the assessee filed a rectification application u/s 154 of the Act and the same was rejected by the AO/CPC vide order No. CPC/1415/T13/1547919575 dated 17/06/2016 by observing as under:

"On verification it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for Rectification under Sec. 154 of the Act is rejected, for the following reasons"

As seen from the e-filed return of income and the rectification request filed by you, you have not furnished the details of registration, u/s 12A/12AA. Details are not entered in "column C (i) of Sch. Part A - General (2)" of the ITR-7. Hence,

deduction/exemption U/S 11 is not allowed.

There is no mistake apparent from record".

(emphasis supplied) .

3. Aggrieved by the order of AO/CPC, the assessee preferred an appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee by observing as under:

"7.1 I have carefully considered the grounds of appeal and various contentions raised by the assessee, and examined the same in the light of the facts of the case and relevant provisions of the statute. Before embarking on adjudication of grounds, it may be noted that the present appeal has been directed against rejection of rectification request of the assessee u/s.154 of the Act, by the AO rather than adjustment made to the returned income u/s.143(1) of the Act. However, while doing so, the assessee has challenged the validity

of adjustment made by the AO u/s. 143(1)(a) of the Act and consequent rejection of the rectification application filed u/s.154 of the Act.

7.2 At the outset, it is an admitted fact that though the assessee is registered under the Societies Registration Act, and the main object of the assessee society is imparting education, but has not been registered u/s.12AA of the Act, in order to claim exemption of its income u/s. 11 of the Act. Similarly, it is not under dispute that the assessee has not been approved u/s. 10(23C) of the Act as a charitable institution/society. Accordingly, the assessee is not eligible to claim deduction of its income either u/s.11 of the Act or u/s. 10(23C) of the Act.

7.3 Coming to the issue under dispute/ as seen from the facts of the case, in the return of income filed, the assessee has disclosed a total income of Rs.2,28,290/-, and the same is computed under the head income from other sources. While doing so, the assessee has disclosed gross receipts of Rs.12,58,021/, and, after claiming certain expenses, the net profit is disclosed at Rs.4,16,993/-. Further, it is observed from the return of income that the assessee has claimed a sum of Rs. 1,88,703/- u/s. 11(l)(a) of the Act towards accumulated or set-apart purportedly for application to charitable or religious purposes. Thus, after excluding Rs. 1,88,703/- from the net profit of Rs.4,16,993/-, the assessee has finally arrived at the total income of Rs.2,28,290/-.

7.4 Also, it is observed from the return of income filed that the assessee has disclosed a sum of Rs.31,90,180/- towards corpus fund receipts and the same was disclosed in the balance sheet under the head capital account. As such, the corpus fund receipts have not been disclosed under profit and loss account. In view of this, while processing the return of income, the AO at CPC had rejected the assessee's claim of exemption u/s. 11

of the Act and considered the gross receipts of Rs.12,58,021/- and corpus fund receipts of Rs.31,90,180/-, aggregating to Rs.48,201/-, as income of the assessee and brought the same to tax.

7.5 On the other hand, it is the contention of the assessee that though it is not entitled to claim exemption u/s. 11 or u/s.10(23C) of the Act, but it is entitled to claim exemption of its income u/s. 10(23C) (iii ad) of the Act on the ground that its gross receipts have not exceeded the threshold limit stipulated u/s. 10(23C) (iii ad) of the Act i.e., Rs. 1,00,00,000/-. Accordingly, the assessee contended that its income is exempt from tax along with corpus fund received of Rs.31,90,180/-, which is exempt from tax u/s. 11(l)(d) of the Act. The relevant portion of the assessee's submissions in this regard is reproduced below for ready reference:

"It is submitted that the appellant is a society providing education and there is no other activity. The total receipt is less than Rs. 1 Crore. Therefore the income of society is exempt U/s. 10(23c)(iii)(ad) of the Income Tax' Act. 'This exemption cannot be dismissed while processing the return of income U/s.143(l) of the Income Tax Act.

Without prejudice to the above it is submitted that the amount of Rs.31,90,180/- was received towards corpus fund which is capital in nature. It cannot be treated as revenue receipt.

Even otherwise the net effect of income and expenditure account shows excess of income of Rs.2,28,290/-. When the exemption u/s. 11 or u/s. 10 are not allowed the deduction u/s. 3C that is depreciation is allowable as a deduction.

Therefore, the Assessing Officer is not justified in making disallowance of depreciation and expenditure while 'processing the Return of Income.

In view of the above and in view of the written submissions already filed the Assessing Officer is not justified in making any adjustment u/s.143(l) of the Income tax Act.

7.6 As seen from the above, it is the contention of the assessee that its income is exempt from tax u/s.10(23C) (iii ad) of the Act and the corpus fund receipts/donations are exempt from tax u/s.11(l)(d) of the Act. Further, during the course of appellate proceedings, the assessee has filed its copy of return of income and computation of total income.

7.7 I have carefully considered the assessee's contentions and perused the documentary evidence placed on record. As seen from the return of income filed, it is observed that the assessee has filed the return of income in Form ITR-7, which is meant for the persons who are eligible to claim exemption u/s 10(23C) and 11 of the Act. Further, as seen from the details furnished in the return, the assessee has not claimed exemption of its income u/s. 10(23C) (iii ad) of the Act. To be precise, as per the return format i.e., OTHER DETAILS-B, it is imperative on the part of the assessee to provide the details of eligibility for exemption u/s. 10(23C) (iii ad) and u/s. 10(23C) (iii ae) of the Act. The relevant portion of the return format is reproduced below for ready reference:

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ITA No. 10026/2016-17/A3/CIT(A)-Kurnool
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| | | | | |
|--|---|---|--|--|
| A | Where, in any of the projects/institutions run by you, one of the charitable purposes is advancement of any other object of general public utility then,- | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | a | whether there is any activity in the nature of trade, commerce or business referred to in proviso to section 2(15)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | b | whether there is any activity of rendering any service in relation to any trade, commerce or business for any consideration as referred to in proviso to section 2(15)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | ii If 'a' or 'b' is YES, the aggregate annual receipts from such activities in respect of that institution | | | |
| | Sl. Name of the project/Institution | Amount of aggregate annual receipts from such activities | | |
| | 1 NA | NIL | | |
| B | University/ Educational Institution/ Hospital/ Other Institution eligible for exemption u/s 10(23C)(iiad) and 10(23C)(iiiae) | | | |
| | Section | Name of the University/ Educational Institution/ Hospital/ Other Institution | Aggregate annual receipts (Rs.) | |
| | 10(23C)(iiad) | | | |
| | 10(23C)(iiiae) | | | |
| C | i Whether Registered u/s 12A/12AA? | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | ii If yes, then enter Registration No. | | | |
| | iii Commissioner/Director of Income-tax (Exemptions) who granted registration | | | |
| | iii Date of Registration (DD/MM/YYYY) | | | |
| | iv Whether activity is,- | | <input type="checkbox"/> Charitable | <input type="checkbox"/> Religious or |
| | | Please tick <input checked="" type="checkbox"/> as applicable | | |
| D | i Whether approval obtained under section 35? | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | ii If yes, then enter the relevant clause of section 35 and Registration No. | | | |
| | iii Date of Approval (DD/MM/YYYY) | | | |
| | iv Approving Authority | | | |
| | v Whether research is,- | | <input type="checkbox"/> Scientific | <input type="checkbox"/> Social Science or |
| vi In case of business activity in research, whether it is | | <input type="checkbox"/> Incidental or | <input type="checkbox"/> Not incidental? Please tick <input checked="" type="checkbox"/> as applicable | |
| E | i Whether approval obtained u/s 80G? | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | ii If yes, then enter Approval No. | | | |
| | iii Date of Approval (DD/MM/YYYY) | | | |
| F | Is there any change in the objects/activities during the Year on the basis of which approval/registration was granted? | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| G | i Whether a political party as per section 13A? (if yes, please fill schedule LA) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | ii If yes, then whether registered? | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| | iii If yes, then enter registration number under section 29A of the Representation of People Act, 1951 | | | |
| H | i Whether an Electoral Trust? (if yes, please fill schedule ET) | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |



7.8 In the instant case, it is clearly evident that the assessee has not chosen either of this columns implying that the assessee did not opt for exemption "" of its income either u/s. 10(23C) (iii ad) or u/s. 10(23C) (iii ae) of the Act, as the case may be. Further, in the same return format, the assessee has categorically stated that it has not been registered u/s.12A/12AA of the Act. Accordingly, it is mentioned that it is not entitled to claim exemption of its income u/s.11 of the Act. However, in the statement of income i.e. Part B-TI, the assessee has claimed exemption of its corpus fund receipts/donations u/s.11(1)(d) of the Act. Similarly, it has claimed accumulation/ set-apart of its income to the extent of 15% of gross receipts i.e., Rs. 1,88,703/- u/s. 11(1)(a) of the Act. A scanned copy of the relevant portion of the same is given below for ready reference:

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| Part B - TI STATEMENT OF INCOME FOR THE PERIOD ENDED ON 31 ST MARCH 2014 | | | |
|---|---|------|---|
| 1 | Income from house property [3c of Schedule-HP] (enter nil if loss) | 1 | NIL |
| 2 | Profits and gains of business or profession [as per item no. E.35 of schedule BP] | 2 | NIL |
| 3 | Income under the head Capital Gains | | |
| a | Short term (A5 of schedule CG) | 3a | NIL |
| b | Long term (B3 of schedule CG) (enter nil if loss) | 3b | NIL |
| c | Total capital gains (3a + 3b) (enter nil if loss) | 3c | NIL |
| 4 | Income from other sources [as per item no. 4 of Schedule OS] | 4 | 12,58,021 |
| 5 | Voluntary Contributions (C of schedule VC) | 5 | 31,90,180 |
| 6 | Gross income (1+2+3c+4+5) | 6 | 44,48,201 |
| If registered under section 12A/12AA, fill out items 7 to 13 | | | |
| 7 | Aggregate of income referred to in section u/s 11 and 12 derived during the previous year to the extent that is included in 6 above | 7 | 44,48,201 |
| 8 | Voluntary contribution forming part of corpus as per section 11(1)(d) [(Ai + Bi) of schedule VC] | 8 | 31,90,180 |
| 9 | Application of income for charitable or religious purposes | | |
| i | Amount applied to charitable or religious purposes in India during the previous year - Revenue Account | 9i | 8,41,028 |
| ii | Amount applied to charitable or religious purposes in India during the previous year - Capital Account (Excluding application from Borrowed Funds and amount exempt u/s 11(1A)) | 9ii | NIL |
| iii | Amount applied to charitable or religious purposes in India during the previous year - Capital Account (Repayment of Loan) | 9iii | NIL |
| iv | Amount deemed to have been applied to charitable or religious purposes in India during the previous year as per clause (2) of Explanation to section 11(1) | 9iv | NIL |
| a | If (iv) above applicable, whether option to be exercised in writing before due date to the Assessing Officer | | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| v | Amount accumulated or set apart for application to charitable or religious purposes to the extent it does not exceed 15 per cent of income derived from property held in trust/ institution under section 11(1)(a)/11(1)(b) [restricted to the maximum of 15% of (7-8) above] | | 1,88,703 |
| vi | Amount in addition to amount referred to in (iv) above, accumulated or set apart for specified purposes if all the conditions in section 11(2) and 11(5) are fulfilled (fill out schedule I) | vi | NIL |

7.9 As seen from the above, it is clearly evident that on the one hand, the assessee has stated that it is not entitled to claim exemption either u/s.11, 10(23C) and u/s.10(23C) (iii ad) of the Act. But, on the other hand, it has claimed exemption of its income u/s. 11(1)(a) and 11(1)(d) of the Act towards accumulation/set-apart and corpus fund, respectively. In view of this, I am of the considered opinion that, prima facie, the claim of the assessee cannot be entertained.

7.10 At this juncture, it may be noted that in order to claim exemption u/s. 11 of the Act, the assessee is required to get registration u/s.12A/12AA of the Act. In

the instant case, it is an admitted fact that the assessee has not been registered u/s.12A/12AA of the Act. Thus, the assessee is not entitled to claim exemption either u/s. 11(1)(d) of the Act or 11(1)(a) of the Act.

7.11 Secondly, in order to claim exemption, u/s. 10(23C) of the Act, the assessee society should have been approved by the competent authority by way of an order passed in writing. In the instant case, it is not under dispute that the assessee has not been approved u/s.10(23C) of the Act by the' competent authority. Thus, as a natural corollary, it is not entitled to claim exemption of its income u/s. 10(23C) of the Act.

7.12 Thirdly, as per the provisions of sec. u/s 10(23C) (iii ad) of the Act, income of any University or other educational institution is exempt from tax, provided the gross annual receipts of such University or other educational institution do not exceed the threshold limit of Rs. 1,00,00,000/-. Also, it is mandatory that such University or other educational institution should exist solely for educational purposes and not for purposes of profit.

7.13 On the other hand, in the instant case, though the gross annual receipts of the assessee are less than the threshold limit of Rs. 1,00,00,000/- but the assessee is not qualifying the basic requirements stipulated u/s. 10(23C) (iii ad) of the Act. To be precise, as seen from the facts of the case, including the financial statements, the assessee is not a University or other educational institution. Further, it is observed from the profit and loss account that the assessee has not disclosed any transactions relating to educational activities. For example, in the income side, the assessee has disclosed receipts under three heads Le., building rent, SML Town Bank FD interest and SML Town Bank SB interest. On the other hand, under the expenses, the assessee has claimed various expenses which are in the nature of general administrative and ~sta6Hsr.nJ1,ent expenses,

apart from depreciation allowance, but there is no expenditure towards imparting education. For the sake of ready reference, a scanned copy of the profit and loss account is given below:

| <u>PROFIT AND LOSS ACCOUNT</u> | | | |
|----------------------------------|--------------|---------------------------|--------------|
| <u>INDIRECT EXPENSES:-</u> | | <u>INDIRECT INCOME:-</u> | |
| Car Driving School Building Rent | 30,000-00 | Building Rent | 92,700-00 |
| Car Maintenance | 1,30,203-50 | SML Town bank FD Interest | 11,63,025-00 |
| Electricity Charges | 9,112-00 | SML Town Bank SB Interest | 2,296-00 |
| Insurance | 6,587-00 | | |
| Misc. Expenses | 1,25,688-00 | | |
| Salaries | 3,01,700-00 | | |
| Sambhavana | 89,890-00 | | |
| Travelling Expenses | 485-00 | | |
| Depriciation | 1,47,362-00 | | |
| Net Profit | 4,16,993-50 | | |
| | 12,58,021-00 | | 12,58,021-00 |

7.14 As seen from the above, it is quite clear that the assessee has not engaged in educational activities during the FY 2013-14 relevant to impugned A Y 2014-15, let alone existing solely for educational purposes and not for purposes of profit. The assessee has actually earned income in the shape of interest on Fixed Deposits and 5B Accounts, apart from rental income. As such, has not fulfilled the basic requirements as envisaged u/s.10{23C) (iii ad) of the Act. Under the circumstances, merely because of the fact that the gross annual receipts of the assessee are less than the threshold limit of Rs.1,00,00,000/-, ipso facto, the assessee is not entitled to claim exemption of its income u/s.10{23C) (iii ad) of the Act.

7.15 In view of the above mentioned factual matrix and the relevant provisions of the Act, I am of the

considered opinion that the assessee is not entitled to claim exemption either u/s. 10(23C) of the Act or u/s. 11 of the Act. Thus, I do not find fault with the AO in rejecting the assessee's claim of exemption.

7.16 Be that as it may, as seen from the intimation issued u/s 143(1) of the Act, and, thereafter, rejection of the assessee's rectification application u/s.134 of the Act, it would appear that the AO has taxed the entire gross receipts of the assessee consisting of building rent and interest income of Rs.12,58,021/- and corpus fund receipts of Rs.31,90,180/-, aggregating to Rs.44,48,201/-, as the total income of the assessee, but without allowing any deduction towards the expenditure claimed, including statutory depreciation allowance u/s. 32 of the Act. Under these circumstances, I am of the considered opinion that the AD is not justified in taxing the entire gross receipts.

7.17 In view of the above, the AO is directed to allow the corresponding expenses incurred towards earning the building rent and interest income to the extent of Rs 12,58,021/-. Further, the AD is directed to allow depreciation allowance as claimed by the assessee society in the Profit & Loss A/c to the extent of Rs. 1,47,362/- .

7.18 Secondly, in regard to the corpus fund receipts/donations, I am of the considered opinion that the entire amount is subject to tax inasmuch as the assessee is not entitled to claim exemption of the same in terms of sec. 11(1)(d) of the Act. Further, as per the definition of income u/s. 2(24)(ia) of the Act, any voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes, apart from others, is subject to tax without any deduction.

7.19 In this instant case, the provisions of sec. 2(24)(iia) of the Act are squarely applicable inasmuch as, as per the Memorandum of Association of the assessee society, the society has been formed with no profit motive, implying that the assessee society has been created wholly or partly for charitable purposes. Accordingly, I am of the considered opinion that the assessee is liable to pay tax on the entire amount of corpus fund receipts/donations of Rs.31,90,180/- without any deduction. Thus, the grounds of appeal raised by the assessee are treated as partly allowed.”

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

5. Before us, the ld. AR of the assessee reiterated the submissions made before the lower authorities and submitted that the assessee is a society registered under the Societies Registration Act. He submitted that the society received corpus fund which is exempt from the tax and the interest received on the investment of corpus fund is also exempt from tax. He submitted that while processing the return u/s 143(1) of the Act, the AO/CPC has made adjustments, which he could not have done. Referring to the provisions of section 143(1) of the Act, he submitted that only adjustments can be made to the income admitted in the return of income and the corpus fund is a specific designated fund, which could be utilized for the designated purpose and, therefore, it is not part of the income of the assessee. Further, he submitted that the assessee filed an

application in form No. 10A seeking registration u/s 12A/12AA of the Act before the CIT(Exemptions) was pending during the course of appellate proceedings before the CIT(A) and the same was granted by the CIT(E) on 01/08/2019 and, therefore, the assessee is eligible to get benefit as per the amendment in proviso of section 12A(2) of the Act, which has not been considered by the CIT(A). Accordingly, this issue is taken up before the ITAT as additional ground. In support of his arguments, the Id. AR of the assessee has relied on the decision of the ITAT, Ahmedabad Bench in the case of Shree Bhanushali Mitra Manda Trust Vs. ITO, [2016] 68 taxmann.com 250 (Ahd.-Trib.).

6. The Id. DR, on the other hand, relied on the orders of revenue authorities and submitted that there is no specific direction with regard to corpus fund as submitted by the assessee that what was the purpose of receiving corpus fund. He submitted that the return of income is processed u/s 143(1) of the Act and if there is any mistake found in the return during the processing, certain adjustments can be made. He also submitted that the assessee is not eligible to claim benefit of proviso of section 12A(2) because of there was no assessment pending before the assessing officer during the pendency of registration u/s 12A/12AA of the Act. He submitted that if the Act is clear, then, the Act should be read as specific directions in the Act. He

submitted further that the case law relied upon by the AR is not applicable to the assessee's facts. He submitted that the case laws relied on by the Id. AR is not applicable to the facts of the present case.

7. After hearing both the parties and perusing the material on record as well as the orders of the revenue authorities, we observe that the assessee has taken an addition ground before us, which is not taken before the CIT(A). As the said additional ground is legal ground, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional ground of assessee.

7.1 The assessee is a society registered under AP Registration Act, by M.O.A. dated 07/03/2003, which is available on record. There are 11 objects of the society, which are mentioned at page 21 of the paper book. As regards the objection of the assessee that the addition made u/s 143(1) is not as per the provisions of the Act, in this connection, we refer to section 143(1) of the Act, which is as under:

“(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:

- (a) the total income or loss shall be computed after making the following adjustments, namely:*
- (i) any arithmetical error in the return;^{3 ***}*
 - (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;⁴*
 - (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
 - (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;*

 - (v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
 - (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:*

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made;"

On perusal of the said section of 143(1), it is clear that while processing the return of income u/s 143(1), the AO can make adjustment as per section 143(1) and raise a demand. We find that the CPC has rightly made adjustment as per section 143(1)(a)(ii). The assessee is not registered u/s 12A/12AA on the date of filing of return in spite of that

it has claimed exemption u/s 11(1)(d) of Rs. 31,90,180/- in Sl. No. 8 in regard to corpus fund and 15% set apart as per Sl.No. 9(v) of Part - B - TI - Statement of Income in the return of income filed by the assessee for the period pending 31/03/2014. This is a wrong claim which comes u/s 143(1)(a)(ii) of the Act. Without obtaining registration U/s 12A/12AA, the assessee can not take benefit of exemption u/s 11 and 12 of the Income Tax Act. 1961 and, therefore, the argument of the ld. AR of the assessee on this issue is hereby rejected.

7.2 Coming to the additional ground regarding the assessee is eligible to get benefit of proviso of section 12A (2), during the pendency of appeal before the CIT(A), in this regard, we refer to the provisions of section 12A, which are as under:

“Conditions for applicability of [sections 11](#) and [12](#).

12A. (1) The provisions of [section 11](#) and [section 12](#) shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

- (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under [section 12AA](#) :*

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of [sections 11](#) and [12](#) shall apply in relation to the income of such trust or institution,—

- (i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or*

Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

- (ii) from the 1st day of the financial year in which the application is made, if the Principal Commissioner or Commissioner is not so satisfied:*

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007;

- (aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and manner to the Principal Commissioner or Commissioner and such trust or institution is registered under [section 12AA](#);*

²⁵*[(ab) the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under [section 12AA](#) or has obtained registration at any time under [section 12A](#) [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under [section 12AA](#);*

- (b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of [section 11](#) and [section 12](#) exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of [section 288](#) and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;*

²⁶*[(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of [section 139](#), within the time allowed under that section.]*

- (c) [***]*

(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of [sections 11](#) and [12](#) shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

Provided that where registration has been granted to the trust or institution under [section 12AA](#), then, the provisions of [sections 11](#) and [12](#) shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under [section 147](#) shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under [section 12AA](#).

7.2.1 The submission of the ld. AR is that the application in form No. 10A seeking registration u/s 12AA was pending before the CIT(E) and the same was granted by the CIT(E) on 01/08/2019 and the CIT(A) passed his order dated 09/01/2020, which was instituted by the assessee on 27th October, 2016, it means that assessment was pending before the CIT(A) and the CIT(A) has coterminous powers with that of AO. In line of this argument of the ld. AR, we refer to the judgment of the Hon'ble Madras High Court in the case of Soundaram Chokkanthan Educational & Charitable Trust Vs. ITO, [2021] 125 Taxmann.com 340 (Madras) wherein the Hon'ble Court has observed as under:

“7. At the outset, we need to point out certain factual aspects before we examine as to the applicability of the decisions cited. Admittedly, the application for registration was filed by the assessee only on 23-2-2016. It appears that the application was not processed as the Commissioner of Income-tax (Exemptions)

['CIT(E)' for brevity] was not satisfied that the activities of the petitioner Trust as mentioned in the deed of trust would qualify for an exemption. This necessitated the assessee to amend the various clauses and covenants in the trust deed and the amended deed of trust was considered by the CIT (E) and an order was passed on 2-3-2016, granting registration with effect from 1-4-2015. Therefore, on facts, the assessee is precluded from contending that the first proviso under section 12A should be made applicable to them and they should be granted with the benefit from the Assessment Year 2013-14, because the factual position being that only after the deed of trust was amended, the application was considered that too registration having been granted with effect from 1-4-2015 only. Therefore, the Tribunal rightly held against the assessee, stating that there is nothing on record to show that the exemption activities/operations and genuineness of its claims for the Assessment Year 2013-14 was examined. Since registration has been granted only after the deed of trust was amended, the assessee cannot contend that they are to be granted benefit from the Assessment Year 2013-14. Apart from that the other question, which will also stare at the appellant is that the appeal, which was filed before the CIT (A) was against the order passed in a rectification petition under section 154 of the Act. The question would be whether the same can be considered to be an assessment proceedings pending before the Assessing Officer. However, since no Substantial Question of Law has been framed to that said effect, we do not wish to express any opinion on the said issue and the question is left open.

8. So far as the decisions cited by the learned counsel for the appellant, we find that the factual position in the case of Shree Shyam Mandir Committee (supra) was entirely different as could be seen from paragraph 6.4 of the said judgment as the issue was whether a reassessment proceedings would also be construed as a pending assessment proceedings and in the background

of those facts, the Court took note of the Circular issued by the CBDT and granted relief. The decision of the Hon'ble Supreme Court in the case of Mathew M Thomas (supra) was entirely a different issue pertaining to a case arising under section 269C, read with section 269-1 of the Act, pertaining to acquisition of immovable properties and initiation of proceedings.

9. Therefore, we find both the decisions cannot be applied to the assessee's case. The decision in the case of Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan (supra), in our opinion, would be applicable to the case on hand. The Substantial Questions of Law which fell for consideration in the said case was:

(i) Whether the Income-tax Appellate Tribunal was justified in allowing retrospective coverage to the assessee under sections 11 and 12 of the Act, by holding that the appellate proceedings can be regarded as assessment proceeding?; (ii) Whether the Income-tax Appellate Tribunal has rightly applied the proviso of section 12A(2) for the Assessment Year 2011-12 in the case of assessee therein when admittedly the assessee got registration under section 12AA from Assessment Year 15-16 ?; and (iii) Whether the Income-tax Appellate Tribunal was justified in holding that the assessee is eligible for exemption under section 11 of the Act even when the assessee was not registered under section 12AA of the Act?

10. The above questions were answered in the following manner.

"13. We need to consider section 12A(2) of Act, 1961 along with proviso to determine the issue raised before us. Section 12A(2) of the Act, 1961 provide that whenever application has been made for registration of trust or institution is made under section 12AA of the Act on or after first date of 2007, the provision of sections 11 and 12 of the Act, 1961 shall apply in

relation to income of such Trust or Institution from the assessment year immediately following the financial year in which application is made. If we go with the provisions of section 12A(2) of the Act, 1961, the question raised before us can be answered holding that the benefit of sections 11 & 12 of the Act, 1961 can be given from the following financial year in which the application for registration is made and registration was subsequently granted.

14. If the facts of this case are taken into consideration then the assessee made an application for registration on 15-12-2014 i.e. in the assessment year 2015-16. The assessment in question is of the year 2011-12. In view of the above, whether the subsequent registration pursuant to the application dated 15-12-2014 would make the assessee entitled for the benefit of sections 11 & 12. It is in respect of the assessment year prior to the date of application. It is in the circumstances that registration was finally given on 8-6-2015. We are required to consider proviso below sub-section 2 of section 12 A of the Act, 1961. The proviso provides that if registration has been given to the Trust or the Institution under section 12 AA of the Act, 1961, then provisions of sections 11 & 12 of the Act, 1961 shall apply in respect of any income derived from the property held under the Trust or the institution for any assessment year" proceeding, for which assessment is pending before the Assessing Authority as on the date of registration. The Tribunal has given interpretation to the proviso to hold that irrespective of the date of application, the benefit of sections 11 & 12 of the Act, 1961 would be available to the assessee retrospectively, if the assessment proceedings were pending and pendency of such proceedings may be not only before the Assessing Office, but even before the Tribunal.

15. According to us, the interpretation of the proviso has been given in ignorance of the main provision of section 12A(2) of the Act, 1961. Whenever

interpretation of the statutes has to be given it should be after making harmonious construction of the statute. For the purpose of proper interpretation of Section 12A of the Act, 1961, the Tribunal was required to make interpretation after taking into consideration the main provision along with the proviso and not by giving meaning to the proviso in ignorance of substantive provision.

16. The Tribunal has even ignored the basic principle of law in giving interpretation in charging provisions, the benefit is to be given to the assessee but same principle is not applicable for an exemption notification or exemption clause, where the benefit of ambiguity must be given to the Revenue/State. It is also that burden to prove applicability of exemption would be on the assessee that it comes squarely within the parameters of the exemption notification or exemption clause. The Tribunal was required to make distinction between charging provision where benefit of ambiguity is given to the assessee and the exemption notification or clause where interpretation is to be given in the form of Revenue. The issue aforesaid has been recently considered and decided by the Apex Court in the Case of Commissioner of Customs (Import) v. Dilip Kumar & Company [2018] 9 SCC 1.

17. Section 12A extends benefit of exemption under sections 11 & 12 of the Act at the first instance to the cases referred under sub-section 1 of section 12A. Sub-section 2 of section 12 A extends benefit even when application for registration of Trust or Institution has been made on or after first day of June 2007. It would however be in relation to the income of the Trust or the Institution from the assessment year immediately following the financial year in which application for registration was made. If the simple meaning of the provision of section 12A(2) is to be given, it governs those cases where application was moved for registration after first day of June, 2007. The benefit of

sections 11 and 12 would be extended from the assessment year immediately following the financial year in which the application was given. In the instant case the application for registration was given on 15-12-2014 i.e. in the financial year 2014-15. On registration of the Trust, benefit under sections 11 and 12 would be available to the assessee from the assessment year following the financial year in which application was given and not any previous year. The benefit of registration could not have been extended for the assessment year 2011-12, even if the matter was pending before the Tribunal when application for registration was submitted on 15-12-2014.

18. The proviso to sub-section 2 applies in a given circumstances, but cannot by making main provision of section 12 A as redundant. In the instant case, the application for registration was then submitted on 15-12-2014. The registration was given on 8-6-2015. Since registration has been given on 8-6-2015, the benefit of sections 11 & 12 would be available for the following financial year in which application was made if the assessment proceedings for the relevant assessment year was pending till the date of registration. It cannot be for the assessment year 2011-12 due to pendency of the appeal before the Tribunal. If the benefit of sections 11 and 12 is extended for the assessment year 2011-12, despite submission of the application for registration on 15-12-2014, it would be in contravention of sub-section 2 of section 12. By virtue of the interpretation taken by the Tribunal the main provision has been made redundant on the facts of the case, though not permissible. The proviso has to be read along with main proviso and not in isolation and contradiction.

19. The Tribunal even ignored the fact that proviso not only require registration of the Trust or the Institution while the assessment proceedings are pending, but it refers to assessment proceedings before the assessing authority and not elsewhere. In a common parlance,

whenever matter is pending before the Tribunal in appeal, considered to be pendency of the assessment proceedings. The aforesaid principle would be applicable in the instant case is another question because proviso qualifies not only pendency of the assessment proceedings, but should be before the Assessing Officer not else where, if in the proviso words "pendency of the assessment proceedings", would have been used then pendency of the appeal against the assessment could have been considered to be pendency of the assessment proceedings, but in the instant case the words used are "pendency of the assessment proceedings before the Assessing Officer". The assessment proceedings of the year 2011-12 was not pending before the Assessing Officer, but before the Tribunal. The observation aforesaid is relevant on the facts of this case. This Court has otherwise given proper interpretation to the substantive provision as well as the proviso.

20. We have further gone through the instruction of the CBDT and find it to be contrary to the proviso to Section 12A of the Act, 1961. The instruction of the CBDT cannot be forfeited, if it is against the statutory provisions. The provision is not to extend benefit in case assessment is pending but it should be before the Assessing Officer. In that case, pendency of the assessment can be treated to be pending before the Assessing Officer though pending before the Tribunal in Appeal. It cannot be in those cases where provision is very specific, because proviso not only refers to the pendency of the assessment when it is pending before the Assessing Officer. In few cases, the assessment proceedings is considered to be pending before the Tribunal due to pendency of the appeal but it is applicable in those cases where words used are pendency of the assessment proceedings and not with words "pending before the Assessing Officer". The interpretation therein is in reference to the words 'pendency of the assessment' and not in reference to the

pendency of the assessment before the Assessment Officer. The instruction of CBDT can not be applied if seems counter the statue.

21. Accordingly the judgment of Gujarat High Court in Mayur Foundation (supra), would not apply. The view expressed therein cannot be applied to the facts of this case, otherwise an anomalous situation may emerge in a given case where for one or the other reason assessment proceedings before the Tribunal remain pending for years together or on a remand or for any other reason it comes before the Assessing Officer and such cases also subsequent application for registration and acceptance would result to extend benefit of sections 11 and 12 creating anomalous position if not meant for. This was not the object sought to be achieved by the legislature. If for one or the other reason, the proceedings in reference to the assessment years 1998-99 remains pending and the application for registration under section 12AA of the Act, 1961 is filed in the year 2014-15 followed by registration, if the proviso is applied, then benefit of sections 11 and 12 of the Act, 1961 would be given to the Trust or the Institution even for the year 1998-99, though the legislatures have not provided such arrangement or to extend the benefit in such cases. The provision is candid to govern only those cases where the application for registration is submitted followed by registration, to extend the benefit to the assessee from the following financial year of the date of application. Taking aforesaid into mind, we find reasons to allow the appeal preferred by the revenue and the substantial questions of law framed herein above are answered in favour of the Revenue and thereby we set-aside the order passed by the Tribuna1."

11. The Hon'ble Division Bench rightly took note of the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import) v. Dilip Kumar & Co. [2018] 9 SCC 1, in which the Hon'ble Supreme Court has

explained as to how the exemption provisions have to be interpreted and such interpretation to lean in favour of the Revenue. Further, we also agreed with the view expressed in Paragraph 20 of the aforementioned judgment, wherein it has been held that the instruction issued by the CBDT cannot be forfeited as it is against the statutory provisions.

12. Apart from the above legal position, the factual matrix as culled out in the assessee's case would disentitle them for any relief."

The facts of the case quoted supra are similar to the facts of the case under consideration. In the said case also, the assessee has filed appeal before the CIT(A) against the order passed u/s 154 of the Act. Following the judgment of the Hon'ble Madras High cited supra, the appeal pending before the CIT(A) cannot be termed as the assessment is pending before the CIT(A)/AO even if the CIT(A) has coterminous powers with that of AO. Considering the totality of the facts and circumstances the case, the arguments made by the Id. AR in this regard are hereby rejected.

7.3 As regards Ground No. 3, the assessee submitted that the corpus fund is exempt from tax as it was designated for a specific purpose. On going through the financial statements submitted by the assessee at pages 4 & 5, which are as under:

BHAGAVAN SREE MAHAYOGI LAKSHMAMMA EDUCATIONAL SOCIETY
D.NO- 13/134, FLOWER BAZAR ADJUSENT TO SMLC BANK,
ADONI-518301
ASST. YEAR 2014-15 PR.YEAR ENDED 31.3.2014
PAN NO- AABAB 2700 Q 07-03-2003

BALANCE SHEET AS ON 31.03.2014

| <u>LIABILITIES</u> | | <u>ASSETS</u> | |
|---------------------------|---------------------------------|------------------------------|---------------------------------|
| Capital Account | | Fixed Assets | |
| Opening Corpus Fund | 84,06,205 | Building Account | 11,07,149-00 |
| Add: Corpus Receipts | 31,90,180 | Car Asset | 1,03,700-00 |
| Add: Income Over Expenses | <u>4,16,993</u> | Furniture A/c | 11,880-00 |
| | 120,13,378-00 | Inverter A/c | 3,825-00 |
| | | Sewing Machine A/c | 22,950-00 |
| | | Site A/c | 1,83,210-00 |
| | | Current Asset:- | |
| | | Deposits. | 1,05,70,725-00 |
| | | Cash in hand | 7,908-00 |
| | | Bank Account | 2,031-00 |
| | | (SML TOWN BANK SB -10229) | |
| | ----- 120,13,378-00 ----- | | ----- 120,13,378-00 ----- |

①

7.3.1 The Profit & Loss account has been incorporated in the order of CIT(A) cited supra and the balance sheet as above wherein the corpus fund receipts were shown under the capital account at Rs. 31,90,180/-. During the course of hearing, the Bench specifically asked the Id. AR that what was the purpose for the receipts of corpus fund as there is no specific purpose mentioned in the financial statements. The Id. AR was unable to explain the same. With regard to the opening balance of corpus fund of Rs. 84,06,205/- also, the Id. AR was unable to explain the specific purpose for what purpose the same was received. On the assets side of

the balance sheet, we find that the assessee has invested in different assets and from the fixed assets, the assessee has charged depreciation of Rs. 1,47,362/- in the P&L Account. If the corpus has been received by the assessee for a designated purpose, the same should have utilized for that purpose only and if depreciation is charged, depreciation should be reduced from the corpus fund as well as from the fixed assets. Whereas the assessee has reduced from the current year's receipts as per the P&L Account submitted at page 4 of paper book.

7.4. Since the society is not registered u/s 12A/12AA of the Act, in our considered view, the AO/CPC has right in making the addition of Rs. 31,90,180/- treating the corpus fund receipts/donations as income and the CIT(A) has confirmed the same by analyzing the issue elaborately. Therefore, we uphold the order of the CIT(A) and dismiss the grounds raised by the assessee on this issue.

8. In the result, appeal of the assessee is dismissed in above terms.

Pronounced in the open court on 10th December, 2021.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 10th December, 2021.

kv

Copy to :

| | |
|----------|---|
| <i>1</i> | <i>Bhagwan Sree Maha Yogi Lakshamma Educational Society, 13/134, Santhe Peta, Adoni - 518 301</i> |
| <i>2</i> | <i>ITO, Ward - 2, Kurnool</i> |
| <i>3</i> | <i>CIT(A), Kurnool</i> |
| <i>4</i> | <i>CIT(E), Hyderabad</i> |
| <i>5</i> | <i>ITAT, DR, Hyderabad.</i> |
| <i>6</i> | <i>Guard File.</i> |