

THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.06.2019

Order Reserved on: 17.06.2019	Order delivered on: 27.06.2019
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CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.366 to 368 of 2019
and C.M.P.Nos.12438, 12446, 12447, 12450 and 12452 of 2019

Prathyusha Educational Trust,
3rd Floor, Old No.8, New No.18,
12th Cross Street, Indira Nagar,
Chennai - 600 020.
PAN: AATTP5521H

...Appellant in all the appeals

-vs-

Principal Commissioner of Income Tax,
Central-2,
Room No.302, Investigation Wing,
No.46, M.G.Road,
Chennai - 600 034.

...Respondent in all the appeals

The Assistant Commissioner of Income tax
Central Circle-2(3), Chennai 6.

...Respondent in TCA 367/19& 368/19

COMMON PRAYER: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal Chennai 'C' Bench, dated 27.05.2019 in ITA Nos.637, 638 and 370/CHNY/2017 for the Assessment years 2010-2011 and 2011-2012 against the common order of Commissioner of Income Tax (appeals) 18,46, Mahathma Gandhi Road, Nungambakkam, Chennai -34 made in ITA.NO. 628&732/15-16 DATED 12.01.2017 for the Assessment year 2010-2011 & 2011-2012 against the Assistant Commissioner of Income Tax Circle II(3) 1st Floor, New Income Tax Building 46, Mahathma Gandhi Road, Nungambakkam, Chennai -34 made in PA.NO. AAA TP 5521 H DATED 28.03.13 for the Assessment years 2011-2012 & 2010-2011.

For Appellant
in all the appeals : Mr.Anirudh Krishnan
Assisted by Mr.Adith Narayan
and Mr.Adarsh Subramanian

For Respondent
in all the appeals : Mr.T.R.Senthil Kumar
Senior Standing Counsel

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

These Tax Case Appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') are directed against the common order dated 27.05.2019 in I.T.A.Nos.637, 638 and 370/CHNY/2017 for the assessment years 2010-2011 and 2011-2012.

2.I.T.A.Nos.637 and 638/CHNY/2017 are appeals filed challenging the common order passed by the Commissioner of Income Tax (Appeals) (CIT(A)) dated 12.01.2017 who had confirmed the assessment order passed by the Assistant Commissioner of Income Tax, Central Circle-II(3), Chennai dated 28.03.2013 for both the assessment years. I.T.A.No.370/CHNY/2017 was filed challenging the order passed by the Principal Commissioner of Income Tax, Central-II, Chennai dated 07.12.2016 under Section 12AA(3) of the Act, whereby the registration granted to the assessee Trust under Section 12AA vide order dated 22.10.2002 passed by the Director of Income Tax (Exemption), Chennai was cancelled with effect from 01.04.2009, i.e. from the assessment year 2010-2011 onwards. To be noted that an order dated 18.11.2014 passed by the Director General of Income Tax (Investigation), Tamil Nadu & Puducherry withdrawing the exemption under Section 10(23C)(vi) from the assessment year 2010-2011 onwards had not been challenged by the appellant assessee by way of any independent proceedings.

3.These appeals have been filed raising the following substantial questions of law:

- 1.Whether assessment can be carried out under Section 143(3) of the Income Tax Act, 1961 on the appellant without duly following the

mandatory procedure laid down in the proviso to Section 143(3) of the Income Tax Act, 1961?

2. Whether the approval granted to the Appellant under Section 10(23C)(vi) of the Income Tax Act, 1961 can be withdrawn by the authorities under the Income Tax Act, 1961 with retrospective effect to ratify erroneous assessment orders?
3. Whether the registration under Section 12AA of the Income Tax Act, 1961 granted to the appellant can be cancelled with retrospective effect by the authorities under the Income Tax Act, 1961?
4. Whether the assessment carried out under Section 143 of the Income Tax Act, 1961 be rectified to be an assessment under Section 144 of the Income Tax Act, 1961 through a corrigendum issued at a later date without drawing powers from any particular legal provisions and without providing an opportunity of hearing to the appellant?
5. Whether the authorities under the Income Tax Act, 1961 have the requisite jurisdiction under the Income Tax Act, 1961 to step into the shoes of the assessee in deciding business expediency of expenditure?
6. Whether Sections 11 and 13 of the Income Tax Act, 1961 is applicable in an assessment when the assess has been granted approval under Section 10(23C)(vi) of the Income Tax Act, 1961?
7. Whether an order of a statutory authority that inherently lacks jurisdiction or is void can be challenged in a collateral proceedings?
8. Whether the Hon'ble Income Tax Appellate Tribunal's finding are perverse and therefore liable to be set aside?

4. The case of the assessee is as hereunder:

The assessee is a Public Charitable Trust having its main object of running and operating Educational Institutions, formed vide Deed of Trust dated 01.08.2000 and granted registration under Section 12AA of the Act by order dated 22.10.2002. Approval under Section 10(23C)(vi) of the Act was granted by order dated 30.04.2008. On

02.07.2010, a search under Section 132 of the Act was conducted in the premises of the assessee and subsequently, assessment was completed for the assessment years under consideration. The Assessing Officer for reasons recorded denied exemption which was granted to the assessee under Section 10(23C)(vi) of the Act; benefit available under Section 11 of the Act was denied on the ground that the assessee was an Association of Persons (AOP) and not a Trust. Disallowance was made under various heads on the ground that they were unaccounted expenses/investments consequently demands were raised for both the assessment years under consideration. The assessee preferred appeals before the CIT(A) primarily contending that the mandatory pre-condition prescribed under Section 143(3) of the Act was not adhered to by the Assessing Officer thereby rendering the assessment untenable in law. During the pendency of the appeals before the CIT(A), the Director General of Income Tax (Instigation) issued show cause notice dated 16.07.2013 calling upon the assessee to explain as to why approval granted under Section 10(23C)(vi) should not be withdrawn. The assessee submitted their reply. The reply was not accepted and the approval granted under Section 10(23C)(vi) was withdrawn by order dated 18.11.2014 with effect from the assessment year 2010-2011. The assessee filed a petition for rectification under Section 154 of the Act. The Department initiated recovery proceedings which was challenged by the assessee by filing W.P.Nos.3376 and 3377 of 2014. Subsequently, the attachment of the bank account of the assessee was lifted by the Department. The Assessing Officer issued a corrigendum dated 22.01.2015 seeking to rectify the assessment order dated 28.03.2013 stating that in the preface, in Column No.10, the section and sub-section under which assessment made was erroneously mentioned as Section 143(3) r/w. Section 154A of the Act instead of Section 144 of the Act as the assessment was actually made under Section 144 of the Act, as brought out in paragraph 4 of the assessment order, it was stated that this error which is apparent from the record is corrected and the assessment order shall read as an order passed under Section 144 of the Act. The assessee challenged the corrigendum by filing W.P.Nos.23341 and 23342 of 2015 and the writ petitions were dismissed by order dated 05.07.2016, permitting the assessee to challenge the correctness of the corrigendum by raising additional grounds before CIT(A). Show cause notice dated 18.07.2013 was issued directing the petitioner to show cause as to why the registration granted under Section 12AA of the Act should not be cancelled as the assessee has been found to be carrying on its activities not in accordance with the objects of the trust and in

clear violation of the objects of the Trust. The assessee filed their reply dated 08.08.2013. Subsequently, another show cause notice was issued on 26.09.2016 directing the assessee to explain as to why the registration granted under Section 12AA of the Act should not be cancelled. The assessee submitted their reply dated 06.10.2016. The Principal Commissioner of Income Tax by order dated 07.12.2016 cancelled the registration granted to the assessee under Section 12AA of the Act. Aggrieved by such order, the assessee preferred an appeal before the Tribunal in ITA No.370/CHNY/2017. The appeals filed before the CIT (A) challenging the assessment orders dated 28.03.2013 were dismissed by order dated 12.01.2017 which were challenged by the assessee before the Tribunal in I.T.A.Nos.637 and 638 of 2017. The appeals were rejected by the Tribunal by common order dated 19.06.2018. The assessee filed miscellaneous petitions in M.P.Nos.186 to 188/Chny/2018 to adjudicate the grounds which according to the assessee were not adjudicated by the Tribunal in its order dated 19.06.2018. The miscellaneous petitions were allowed by order dated 13.03.2019 and the assessee was heard and the Tribunal passed orders on issues other than those which were decided by it in its common order dated 19.06.2018 and passed final orders on 27.05.2019. Thus, aggrieved by the common order passed by the Tribunal the assessee is before us by way of these tax case appeals.

5.Mr.Anirudh Krishnan, learned counsel appearing for the appellant/assessee assisted by Mr.Adith Narayan and Mr.Adarsh Subramanian, elaborately referred to the factual position, much of which has been set out by us in the preceding paragraphs. The learned counsel prefaced his submission by contending that it may be true that the assessee has not laid a separate challenge to the order dated 18.11.2014 withdrawing the approval granted under Section 10(23C)(vi) of the Act, the same can be challenged in a collateral proceedings i.e. while challenging the order cancelling the registration under Section 12AA of the Act and while challenging the correctness of the assessment orders dated 28.03.2013 and the order of the CIT(A) dated 12.01.2017. It is the submission of Mr.Anirudh Krishnan that when an order is a nullity, the assessee is not estopped from questioning the correctness of the said order in collateral proceedings.

6.The first contention advanced by Mr.Anirudh Krishnan is by submitting that the corrigendum dated 22.01.2015 stating that the assessment orders should be read as orders

passed under Section 144 of the Act is not sustainable on account of non-adherence to the mandatory procedure under Section 144 of the Act. By referring to the proviso under Section 144(1) of the Act, it is submitted that issuance of show cause notice is mandatory and no such show cause notice was issued to the assessee, hence, the corrigendum dated 22.01.2015 is vitiated. The second contention advanced by the learned counsel is that the cancellation of the registration granted under Section 12AA of the Act dated 07.12.2016 cannot be with retrospective effect from the assessment year 2010-2011 nor the order withdrawing the approval granted under Section 10(23C)(vi) of the Act dated 18.11.2014 with retrospective effect from the assessment year 2010-2011 is wholly without jurisdiction. It is further submitted that these issues which were canvassed before the CIT(A) were not considered in a proper perspective. It is submitted that before the Tribunal all grounds were canvassed but however the Tribunal dismissed the appeal filed by the assessee by common order dated 19.06.2018 and subsequently miscellaneous petition was filed and the other points were urged before the Tribunal, nevertheless the Tribunal did not adjudicate into those contentions and erroneously rejected the appeals by order dated 27.05.2019. It is the submission of Mr. Anirudh Krishnan, that the assessment order passed under Section 143(2) of the Act had attained finality and the same cannot be now directed to be treated as an order under Section 144 of the Act more so when the mandatory procedure under the Proviso under Section 144(1) of the Act is not complied with. It is the further submission of the learned counsel that the non-compliance of the mandatory provision as contained in Section 144 of the Act being an incurable illegality will render the assessment order as null and void and the same cannot be rectified by issuance of a corrigendum. In support of such contention reliance was placed on the judgment of the Division Bench of this Court in the case of Assistant Commissioner of Income Tax, Media Circle-11, Chennai vs. Vijay Television (P) Ltd. ([2018] 407 ITR 642 (Madras)).

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7. With regard to the effect of corrigendum as to how the best judgment assessment can be made under Section 144 of the Act, reliance was placed on the decision of the High Court of Calcutta in Maya Debi Bansal vs. Commissioner of Income Tax ([1979] 117 ITR 125 (Cal)). To support his contention that the orders cancelling the registration under Section 12AA of the Act having been done with retrospective effect is illegal, reliance was placed on the

decision of the High Court of Allahabad in Assistant Commissioner of Income Tax-I vs. Agra Development Authority ([2018] 407 ITR 562 (Allahabad)). Further with regard to the procedure to be followed by the Assessing Officer while passing an order withdrawing the exemption under Section 10 (23C)(vi) of the Act, reliance was placed on the decision of the High Court of Karnataka in the case of Commissioner of Income Tax, Central Circle, Bangalore vs. Peoples Education Society ([2014] 42 taxmann.com 353 (Karnataka)). On the facts of the case, Mr. Anirudh Krishnan, learned counsel submitted that the decision in the case of Director of Income Tax (Exemptions) vs. Sri Belimatha Mahasamsthana Socio Cultural and Educational Trust ([2011] 336 ITR 694 (Karnataka)) and the decision of the Division Bench of this Court in the case of Commissioner of Income Tax vs. Balaji Educational and Charitable Public Trust ([2015] 374 ITR 274 (Mad)) would also come to the aid and assistance of the assessee. With regard to the challenge to a proceedings which is void by questioning its correctness in a collateral proceedings and it is presumability, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Nawabkhan Abbaskhan vs. The State of Gujarat ([1974] 2 SCC 121) and the decision of the High Court of Allahabad in the case of Commissioner of Income Tax vs. Kamla Town Trust ([2005] 279 ITR 89 (Allahabad)). On the above grounds, the learned counsel sought for setting aside the order of the Tribunal and answering the substantial questions of law in favour of the appellant/assessee.

8. Mr. T. R. Senthilkumar, learned Senior Standing Counsel for the respondent/revenue contended that the corrigendum issued is perfectly legal and valid and a perusal of the assessment order will clearly reveal that it is an order under Section 144 of the Act. Further, it is contended that the mandatory procedure required to be complied with have been fully complied with which have been clearly brought out in the assessment order, more particularly in paragraph 4 therein. It is submitted that the assessee's case would fall under Clause (c) of Section 144(1) of the Act and therefore, the Assessing Officer was well justified in issuing the corrigendum. It is further submitted that inspite of repeated notices, the assessee did not cooperate with the assessment proceedings, time granted till 21.03.2003 for production of documents was not utilized, no documents were produced and the assessment would get time barred on 31.03.2003. Further, a reading of the assessment order will clearly show that there has been diversion of funds, fanciful salary was paid to the daughter-in-law of the promoter of the assessee and such other matters and

therefore, the Assessing Officer rightly assessed the assessee as an Association of Persons (AOP). Further, the Assessing Officer recommended for cancellation of exemption under Section 10(23C)(vi) of the Act and cancellation of registration under Section 12AA of the Act. To support the stand of the revenue that the assessment order is in fact a best judgment assessment, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Kachwala Gems vs. Joint Commissioner of Income Tax, Jaipur ([2007] 288 ITR 10). The learned Senior Standing Counsel also referred to the decision of the Hon'ble Supreme Court in the case of Visveswaraya Technological University vs. Assistant Commissioner of Income Tax ([2016] 384 ITR 37). To sustain the finding regarding the cancellation of the exemption granted under Section 10(23C)(vi) of the Act, reliance was placed on the decision of the High Court of Karnataka in Navodaya Education Trust vs. Union of India ([2018] 405 ITR 30).

9. We have heard the learned counsels for the parties.

10. The first issue to be decided is with regard to the effect of corrigendum dated 22.01.2015. The assessee's contention is that the assessment having been completed under Section 143(3) r/w. 153(A) of the Act by way of a belated corrigendum the assessment cannot be treated to be one under Section 144 of the Act.

11. The following facts would be relevant to decide this issue. A search under Section 132 of the Act was conducted on 02.07.2010 at the premises of the assessee. Notice under Section 153A of the Act was issued and served on the assessee and in response, return of income was filed on 09.11.2011 declaring total income at NIL. Subsequently notices under Sections 143(2) and 142(1) were issued, in response to which, the assessee's authorized representative, their chartered accountant submitted certain details. However, the said chartered accountant submitted a letter dated 13.03.2013 stating that he is withdrawing himself from representing the assessee. Even earlier notice dated 12.02.2013 was issued under Section 142(1) of the Act calling for details. The assessee did not respond to this notice, consequently summons under Section 131 of the Act was issued on 04.03.2013 directing the Chairman Trustee to appear on 11.03.2013 and submit details called for vide notice under Section 142(1) of the Act. The Chairman Trustee did not respond to the summon

nor details called for were furnished. On 14.03.2013, the General Manager (Finance) of the assessee appeared before the Assessing Officer, it is stated that he did not submit any details. On 19.03.2013, the Chairman of the assessee Trust appeared and stated before the Assessing Officer that the details called for would be submitted by 21.03.2013. However, till the assessment was completed no details were submitted that therefore, the Assessing Officer with the particulars available on records, seized documents and statements recorded during the course of search completed the assessment. The corrigendum dated 22.01.2015 states that while passing the assessment order in the case of the assessee in the preface in column No.10, it was erroneously mentioned as Sections 143(3) r/w. 153A of the Act instead of Section 144 of the Act as the assessment was actually made under Section 144 of the Act, as brought out in paragraph 4 of the assessment order. Therefore, the Assessing Officer issued corrigendum stating that this error which is apparent from the record is corrected and the assessment order shall be read as an order passed under Section 144 of the Act.

12. The Hon'ble Supreme Court in the case of Kachwala Gems, pointed out that in a best judgment assessment there is always a certain degree of guess work. However, the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment and shall not act totally arbitrarily, there is necessarily some amount of guess work involved in a best judgment assessment and the assessee himself who is to be blamed as he did not submit proper accounts.

13. Mr. Anirudh Krishnan, learned counsel for the petitioner would contend that the assessment cannot be treated as a best judgment assessment under Section 144 of the Act as the mandatory provision under the Proviso to Section 144(1) of the Act has not been complied with.

14. We have noted the averments set out in paragraph 4 of the assessment order dated 28.03.2013, from which, it is seen that notice under Section 142(1) of the Act was issued as early as on 12.02.2013, wherein details were called for from the assessee, the assessee did not respond, summons under Section 131 of the Act was issued directing the Chairman of the assessee Trust to be present, the Chairman did not honour the summons nor submitted any details, subsequently the General Manager (Finance) of the assessee appeared but did not submit any details and subsequently, the Chairman appeared and stated that he will give the

details by 21.03.2013 which commitment he did not honour. Before all these events could happen the assessee received notice under Section 153A of the Act, filed his return of income on 09.11.2011, responded to the subsequent notice issued under Sections 143(2) and 142(1) of the Act, appointed a Chartered Accountant who appeared in the matter but subsequently had withdrawn his appearance by letter dated 13.03.2013.

15. Section 144 of the Act deals with best judgment assessment. Three contingencies have been contemplated under Sub-Section (1) of Section 144 of the Act which empowers the Assessing Officer to proceed on best judgment basis. The case of the assessee would fall with Clauses (b) and (c) of Section 144(1) of the Act, which reads as follows:

144.(1). If any person-

(a)

(b) fails to comply with all the terms of a notice issued under sub-section (1) of Section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143.

16. The assessee failed to comply with the notice under Section 142(1) of the Act dated 12.02.2013. The summon which followed the notice under Section 131 of the Act was also ignored. The assessee having filed his return of income on 09.11.2011 failed to comply with the terms of the notice issued under Section 143(2) of the Act. In such contingency, the Assessing Officer after taking note of the particulars available on record, seized the documents and statements recorded during the course of search completed the assessment. This has been clearly brought out in paragraph 4 of the assessment order. Therefore, we are of the clear view that the assessment for the year under consideration were under Section 144 of the Act and mentioning of Section 143(3) of the Act in the preamble of the assessment order is an error which is apparent on the face of the order and requires to be rectified. Therefore, the corrigendum dated 22.01.2015 is legal and valid.

17. The learned counsel for the assessee relied on the

decision in the case of Vijay Television (P) Ltd. The said decision is clearly distinguishable on facts and the Court in the said case on appreciation of the factual matrix held that the mandatory requirement under Section 144C of the Act was not complied with and therefore, held that it is an incurable defect. No such contingency arises in the instant case.

18.The decision in the case of Maya Debi Bansal of the High Court of Calcutta also will not be of assistance to the case of the assessee as in the said case the assessee had not filed return of income in the usual course under the provisions of the Act. In the said factual background, the Court held that the provision of Sections 143 and 144 of the Act cannot be said to be in parimateria. Section 144 of the Act provides for circumstances under which in the absence of a return, a best judgment assessment can be made and the duties of the ITO in making such best judgment assessment are well known and there is no question of any reliance or reference to any return in that case. However, in an assessment under Section 143(3) of the Act as was done in the said case the basis is the return. In the instant case, the return of income was filed on 09.11.2011 declaring the total income at NIL. Subsequently, notices were issued under Sections 143(2) and 142(1) of the Act. On account of the assessee's non-compliance and non-cooperation in the assessment proceedings which clearly fall within the Clauses (b) and (c) of Section 144(1) of the Act, the assessment made on the appellant assessee are indeed best judgment assessments.

19.The next contention of Mr.Anirudh Krishnan is that the cancellation of the exemption under Section 10(23C)(vi) of the Act and cancellation of the registration under Section 12AA of the Act with retrospective effect is illegal. At the first blush, the Court assumed that the argument of Mr.Anirudh krishnan is to the effect that the cancellation/withdrawal was with effect from the date of grant of exemption/registration. However, on a perusal of the order dated 18.11.2014 withdrawing the approval granted under Section 10(23C)(vi) of the Act, it is seen that it has been given effect to from the assessment year 2010-2011. Likewise the order cancelling the assessee's registration under Section 12AA of the Act is from the assessment year 2010-2011. Can it be said that these orders of cancellation are with retrospective effect. The definite answer for this question is an emphatic 'No'. Admittedly, the business premises of the assessee was

subjected to search during the assessment year 2010-2011. The Assessing Officer while completing the assessment found large scale diversion of funds and several improper actions on the part of the assessee in direct conflict to the terms of the Deed of Trust and conditions of registration/exemption. Therefore, it was recommended to the competent authority to initiate proceedings for cancellation of the exemption/registration. The matter was decided after due opportunity to the assessee and speaking orders have been passed and obviously these orders will take effect from the assessment year 2010-2011 and it is a mis-nomer to state that the orders are retrospective or retroactive. The lis which was the subject matter is for the assessment year 2010-2011 and though the orders of cancellation of the exemption/registration was passed on 18.11.2014 and 07.12.2016 they would take effect from the assessment year 2010-2011 during which year the cause of action arose. This being the factual position, the decision in the case of Agra Development Authority is not applicable to the facts of the present case.

20.Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the respondent revenue had pointed out that the order withdrawing the approval granted under Section 10(23C)(vi) of the Act dated 18.11.2014 was not challenged by the assessee.

21.Mr.Anirudh Krishnan, learned counsel for the appellant assessee in reply to this preliminary objection submitted that an order which is void can be challenged in collateral proceedings which is what the assessee had precisely done by challenging the same before the Tribunal when the assessee challenged the cancellation of the assessee's registration under Section 12AA of the Act. Two submissions were made to state that the order of withdrawal of approval under Section 10(23C)(vi) of the Act is a void order. Firstly on the ground that such order with retrospective effect is bad in law and void. The second argument is that there was no basis for withdrawal of the approval under Section 10(23C)(vi) of the Act. On the first issue, we have already held that the order of withdrawal of approval is not an order with retrospective effect but with effect from the assessment year in which cause of action arose for such withdrawal, i.e. after issuance of show cause notice based on the material unearthed during the course of search operations which was conducted on 02.07.2010. Therefore, the first contention of the learned counsel for the assessee is rejected. In support of his contention, the learned counsel referred to the decision in the case of Nawabkhan Abbaskhan of the Apex

Court. With all humility we observe that the decision in the case of Nawabkhan Abbaskhan can be never be relied on by the assessee to substantiate their case.

22.The question which arose for consideration in Nawabkhan Abbaskhan is whether when has the citizen the discretion to disobey an order. While answering the question, the Court pointed out that it is right and duty of every man to resist unconstitutionally exercised public power. To be noted that Section 10(23C) of the Act falls in Chapter III of the Act which deals with income which do not form part of total income. Clause (vi) of Section 10 (23C) of the Act would stand attracted in cases where in computing the total income of a previous year of any person any income falling within the University or Educational Institution existing solely for educational purposes and not for purposes of profit shall not be included in the total income. But for the registration granted in favour of the assessee, this benefit will not accrue to the assessee. Therefore, the assessee cannot take a stand that he will refuse to obey the conditions stipulated in the order granting approval under Section 10(23C)(vi) of the Act. It is a beneficial provision to aid the Universities and educational institutions which are functioning solely for educational purposes and not for purposes of profit. Therefore, a person who has not complied with the conditions has absolutely no right to contend that he need not obey the order. The approval being in the nature of an exemption provision should be considered with utmost strictness and question of adding or substituting words or phrases in the statute is impermissible. As noted above, the second contention raised by Mr.Anirudh Krishnan is that there is absolutely no material to come to the conclusion that the approval granted to the assessee needs to be withdrawn or the registration granted under Section 12AA of the Act needs to be cancelled. In an appeal under Section 260A of the Act, we are not required to go into the facts nor or we are entitled to re-adjudicate the factual details in the absence of any perversity or illegality. Yet since the learned counsels had advanced arguments on those lines, we perused the orders dated 18.11.2014 and 07.12.2016, from which we find that there are substantial documentary evidence and other details which clearly show that the assessee Trust has violated all the conditions and they are not entitled for any approval under Section 10(23C)(vi) of the Act or a registration under Section 12AA of the Act. Hence, both the grounds raised by the learned counsel for the assessee has to necessarily fail.

23.The decision in the case of Sri Belimatha was rendered considering the fact that there were no materials which was available on record and the Court found that based on presumption the Assessing Officer cannot conclude that the Trust has received donations merely because it was running a professional courses. In the case of Balaji Educational and Charitable Public Trust, the fact situation was more or less identical as that of Sri Belimatha. The Tribunal on appreciation of the factual details found that the finding rendered by the Assessing Officer was hypothetical and based on surmises and conjunctures. A bare perusal of the orders dated 18.11.2014 and 07.12.2016 will clearly show that there has been large scale diversion of funds disentitling the assessee to approval/registration.

24.We have also perused the annexures which were tagged along with the order cancelling the registration under Section 12AA of the Act. The annexures are photocopies of the various diary notings and hand written notings. In an event there was no endeavour on the part of the assessee to go into the factual thicket to substantiate their case. In the case of Kamla Town Trust, the High Court of Allahabad held that the onus lies on the revenue to bring on record cogent materials/evidence to establish that the trust/charitable institution is hit by provisions of Section 13 of the Act. As noted above, the onus has been discharged by the revenue by bringing on record materials justifying the cancellation of the approval/registration.

25.Furthermore, we find that the Assessing Officer while completing the assessment had held that the facts clearly prove that the affairs of the assessee are managed by the Managing Trustee in such a manner the funds collected from some of the students admitted to the institutions run by the assessee are taken away outside the books of accounts of the assessee without even issuing receipts and thereby setting apart these funds of the assessee for purposes other than the objects of the Trust. Further, the Assessing Officer pointed out that the assessee has violated its own objectives by diverting substantial portion of its funds by and to the Managing Trustee without truly recording in the books of accounts maintained by it and as these funds were diverted outside its books of accounts the audit report furnished does not reflect the true and correct affairs of the assessee. After referring to the facts discovered during the course of search coupled with the admission of the Managing Trustee and the officers incharge of the accounts in their deposition, the Assessing Officer held that such a contumacious conduct in running the affairs of the Trust to

go against the basic tenets of the Trust and Trusteeship warrants cancellation of the approval. All these factual findings are perfectly justified and consequently, approved.

26. In the result, the appeals filed by the assessee are dismissed and the substantial questions of law are answered against the assessee. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

cse
To

1. Principal Commissioner of Income Tax,
Central-2,
Room No.302, Investigation Wing,
No.46, M.G.Road,
Chennai - 600 034.
2. The Income-tax Appellate Tribunal,
"C" Bench, Chennai.
3. The Assistant Commissioner of Income tax
Central Circle-2(3), Chennai 6.
4. The Commissioner of Income Tax (appeals) 18,
46, Mahatma Gandhi Road, Nungambakkam, Chennai -34
5. The Assistant Commissioner of Income Tax Circle II(3),
1st Floor, New Income Tax Building,
46, Mahatma Gandhi Road, Nungambakkam, Chennai -34
6. The Assistant Registrar,
Income tax Appellate Tribunal,
III Floor, Rajaji Bhavan, Besant Nagar, Chennai 90

+3ccs to Mr. Anirudh Krishnan, Advocate SR.No. 53198
+1cc to Mr. T.R. Senthil Kumar, Advocate SR.No. 54249

T.C.A.Nos.366 to 368 of 2019
and C.M.P.Nos.12438, 12446,
12447, 12450 and 12452 of 2019

A.SK (07/08/2019)