IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 973 OF 2020

Universal Education Foundation ….Petitioner

V/s.

The Income Tax Appellate Tribunal Mumbai
& Ors. …Respondents

ALONGWITH
INCOME TAX APPEAL NO. 3212 OF 2019

M/s. Universal Education Foundation ….Appellant

V/s.

Income Tax Officer (Exemptions) 2 (4) …Respondent

Dr. K. Shivaram, Senior Advocate i/b Mr. Rahul K. Hakani for Petitioner/ Appellant.
Mr. Sham V. Walve for Respondent-Revenue.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 2nd DECEMBER, 2021

P.C. :

1. Dr. Shivaram submitted that tribunal has erred in holding that appellant received the entire consideration of Rs.3,55,45,600/- in the Assessment Year 2011-12 though in fact it was received only during the Assessment Year 2015-16. Dr. Shivaram submits that documentary evidence to that effect was submitted to Income Tax Appellate Tribunal but same has not been considered. Dr. Shivaram further submitted that in fact petitioner also exercise its option under Clause 2 of Explanation to Section 11 (1) of the Income Tax Act, 1961 (the Act) but the tribunal in its order impugned in

the petition has not answered whether petitioner exercised the option. Dr.Shivaram further states that even assuming for the sake of argument tribunal had come to a conclusion that petitioner did not exercise the option within the time prescribed under Clause 2 of Explanation to Section 11 (1) of the Act, but after the time prescribed, the tribunal will have to answer the consequences of not meeting the deadline.

2. Mr. Walve submitted that the tribunal has referred to Clause 2 of Explanation to Section 11 (1) of the Act and also has come to a conclusion that petitioner received Rs.3,55,45,600/- through Financial Year 2011-12. What Mr. Walve states is correct but we would agree with Dr.Shivaram that the tribunal has not answered the queries as submitted above by Dr.Shivaram.

3. In the circumstances, in our view, we would set aside the impugned order dated 26th June, 2019 passed in ITA No.1097/MUM/2016 and 20th March, 2020 passed in MA No.584/MUM/2019 and remand the matter for *denovo* consideration and would request the tribunal to answer, inter-alia,

(a) When did petitioner receive entire consideration of Rs.3,55,45,600/-;

(b) Whether petitioner exercised the option under Clause 2 of Explanation to Section 11 (1) of the Act;

(c) If petitioner has exercised but beyond time prescribed in Clause (2) of Explanation to Section 11 (1) of the Act, the consequences thereof?

4. Petition is disposed in the above terms.

5. In view of the above, Dr. Shivaram seeks leave to withdraw Income Tax Appeal No.3212 of 2019 with liberty to approach this court should the Income Tax Appellate Tribunal hold against petitioner in the remanded matter.

6. All rights and contentions are kept open to be raised before the Income Tax Appellate Tribunal.

7. Income Tax Appeal No.3212 of 2019 stands dismissed as withdrawn with liberty as prayed.

8. Refund of court fee, if any, be paid in accordance with rules.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**