

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 340/VIZ/2018
(Asst. Year : 2005-06)**

ITO (Exemptions), Rajahmundry.	vs.	M/s. Agricultural Market Committee, D.No. 2-166, Market Road, Attili, West Godavari District.
(Appellant)		PAN No. AAALA 0351 L (Respondent)

**C.O.No.103/VIZ/2018
(Arising out of ITA No. 340/VIZ/2018)
(Asst. Year : 2005-06)**

M/s. Agricultural Market Committee, D.No. 2-166, Market Road, Attili, West Godavari District.	vs.	ITO (Exemptions), Rajahmundry.
PAN No. AAALA 0351 L (Appellant)		(Respondent)

Assessee by	:	Shri G.V.N. Hari – Advocate
Department by	:	Mrs. Suman Malik – Sr. DR
Date of hearing	:	27.11.2018
Date of Pronouncement	:	07.12.2018

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue and the cross objection by the assessee are directed against the order of Commissioner of Income Tax (Appeals), Rajamahendravaram, dated 27/03/2018 for the Assessment Year 2005-06.

2. There is a delay of 3 days in filing the appeal and 108 days in cross objection. In the appeal, revenue filed an application for condonation of delay. We have gone through the application and find that there is a sufficient cause for non-filing the appeal in time. Therefore, we condone the delay in filing the appeal and is admitted for hearing. Insofar as cross objection is concerned, no condonation application is filed, therefore, same is dismissed *in limini*.

3. Facts of the case, in brief, are that the assessee is governed by the Andhra Pradesh Agricultural Markets Act, 1966 and has been registered under section 12A of the Income Tax Act, 1961 (hereinafter referred to as "Act"). In the assessment order, the Assessing Officer has noted that assessee filed Form No. 10B in support of its claim for accumulation of income. After verification of the same, the Assessing Officer has noted that as per the statute the report should contain important details, like 1) the purpose for which the amount is required to be set apart, 2) the period for which it is required to be accumulated etc. In the absence of these details, the Assessing Officer held that Form No. 10B filed by the assessee cannot be considered as complete and valid. The Assessing Officer rejected the audit report filed by the

assessee as defective and the excess income over expenditure is brought to tax i.e. Rs. 1,10,84,000/-.

4. On appeal, Id. CIT(A) allowed the appeal filed by the assessee by considering the Form No. 10B and directed the Assessing Officer to take into consider Form No. 10B and allow accumulation for the amount claimed subject to fulfilment of other conditions. The Id. CIT(A) further observed that the Assessing Officer erred to perceive that the purposes for accumulation of income mentioned in Form No. 10 and the period for accumulation are set apart while computing the income. Since it is evident from the Form No. 10B filed by the assessee that the purpose for which the amount accumulated & the period (A.Y. 2005-06) for which it is required and the Form No. 10 has been properly filled. For the sake of convenience, the relevant portion of the order of the Id.CIT(A) is extracted as under:-

"5. I have considered the submissions filed, in detail. It is pertinent to note that the assessee has been granted registration U/s.12AA by the CIT, Rajahmundry with effect from 23.07.1997 as per the order dated 27.09.2009 in F.No. HQRS/IIJ/20/CJT/RJY/2007-08. For the A.Y:2005-06, the return of income was filed by declaring income at Rs.NIL on 17.05.2006, after claiming exemption U/s.11 & 12 for the year under consideration. It is seen that during the assessment proceedings, the appellant is filed the Form No.10 dated 25.01.2014 for accumulation of income, before the Assessing Officer. The Hon'ble Supreme Court in the case of Nagpur Hotel Owner's Association case held that the Form No.10 must be filed before the AO before completion of assessment. The Hon'ble Gujarat High Court in the case of

Mayur Foundation took the view that the Form No.10 could be filed even during the appellate proceedings as appeal is only continuation of assessment proceedings. The jurisdictional ITAT has followed the principle laid down by the Hon'ble Gujarat High Court in Mayur Foundation. The AO has relied on the decision of the Hon'ble Kerala High Court in the case of Kerala Rural Employment & Welfare Society Vs. ACIT 312 ITR 51, wherein it was held that Rule 17 has prescribed the time limit that Form 10 has to be filed before expiry of time allowed u/s 139(1) and such time limit cannot be extended and, therefore, rejected the assessee's contention. However, it is seen that the Hon'ble Kerala High Court in the said case has held that where the delay could be explained satisfactorily the same has to be condoned. The Hon'ble Court taking into consideration the conditions stipulated in the Circular No.273 dated 3rd June, 1980 allowed relief to the assessee. Therefore, it can be said that the conditions specified in the CBDT Circular No.273 dt.03.06.1980 are relevant factors to be considered. Thus, taking into account the fact that the assessee is a committee constituted under a statute, whose genuineness is not in doubt, and where the excess income to be set apart for accumulation are already kept with SBI treasury account, and other facts of the case more specifically that the registration U/s.12A was granted from retrospective effect; and the views pronounced by the jurisdictional Tribunal on the issue, I consider it appropriate to direct the AO to take into consideration the Form No.10 filed by the assessee during the assessment proceedings and allow accumulation for the amount claimed subject to fulfillment of other conditions. The A.O erred to perceive that the purposes for purposes for accumulation of income mentioned in Form No. 10 and the period for accumulations are set apart while computing the income. Since it is evident from the Form No.10 B filed by the appellant that 'the purpose for which the amount accumulated & the period (A.Y:2005-06) for which it is required and the Form No.10 has been properly filled. The Ground Nos.1 to 7 are, therefore, allowed in favour of the appellant. And the Ground No.10 is general in nature which does not require separate adjudication in this regard."

- 5.** From the above order of the Id. CIT(A), it is clear that the purpose of accumulation of income mentioned in Form No. 10 and

the period for accumulations are set apart, while computing the income. The Id. CIT(A) gave a categorical finding that Form No. 10B filed by the assessee that the purpose for which the amount accumulated and the period, has been properly filed. In view of the above and also the specific finding given by the Id. CIT(A), we find no reason to interfere with the order passed by the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

6. In the result, appeal filed by the Revenue and the Cross Objection filed by the assessee are dismissed.

Order Pronounced in open Court on this 07th day of Dec., 2018.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 07th Dec., 2018.

vr/-

Copy to:

1. *The Assessee - M/s. Agricultural Market Committee, D.No. 2-166, Market Road, Attili, W.G. District.*
2. *The Revenue - ITO (Exemptions), Rajahmundry.*
3. *The Pr.CIT(Exemptions), Hyderabad.*
4. *The CIT(A), Rajamahendravaram.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.