

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "SMC" BENCH, HYDERABAD**

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

**ITA Nos. 1806 to 1809/HYD/2018
(Asst. Years : 2007-08, 2008-09, 2010-11 & 2011-12)**

M/s. Sri Sai Educational
Society, 1-4-130/18, Sana
Complex, Opp. Govt.
Hospital, Mahbubnagar.

vs.

ITO, Ward-1,
Mahbubnagar.

PAN No. AAFAS 6773 C
(Appellant)

(Respondent)

Assessee by : Shri Mohd. Afzal – Adv.
Department By : Mr. Nilanjan Dey – DR

Date of hearing : 15/05/2019.
Date of pronouncement : 17/05/2019.

ORDER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-4, Hyderabad, all dated 18/06/2018 for the Assessment Years 2007-08, 2008-09, 2010-11 & 2011-12.

2. When these appeals are taken up for hearing, Id. counsel for the assessee has made a detailed submission and also submitted that he could not appear before the Id.CIT(A) due to circumstances beyond his control. However, he further submitted that the Id.CIT(A) has passed an *ex parte* order without deciding the appeals

on merits. Therefore, the orders passed by the Id.CIT(A) may be set aside. It is also submitted that the Assessing Officer assessed the income of the assessee by adopting maximum marginal rate without giving any reasons and submitted that Assessing Officer may be directed to pass a reasoned order.

3. On the other hand, Id. Departmental Representative strongly supported the orders passed by the authorities below.

4. I have heard both the parties, perused the material on record and gone through the orders of the authorities below.

5. In these cases, the assessee could not appear before the Id.CIT(A) though as many as opportunities were given. However, the Id.CIT(A) instead of adjudicating the appeals on merits, passed *ex parte* orders. I find that the Id.CIT(A) has no power to pass *ex parte* order by applying *Multiplex (India) Ltd.'s* case (38 ITD 320) and ought to have been passed the orders on merits of the cases. So far as another argument of the Id. counsel for the assessee is concerned, the assessee is being an educational institution, when the Assessing Officer adopting maximum marginal rate, he ought to have been specified in the assessment order why he adopted maximum marginal rate. Therefore, I direct the Assessing Officer to pass a detailed order in respect of adopting maximum marginal rate. In view of the above, I set aside the order passed by the

ld.CIT(A) and remit the issue back to the file of the Assessing Officer to pass a reasoned order in accordance with law after giving affordable opportunity of hearing to the assessee. Thus, these appeals filed by the assessee are allowed for statistical purpose.

6. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order Pronounced in open Court on this 17th day of May, 2019.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 17th May, 2019.

vr/-

Copy to:

1. *The Assessee - M/s. Sri Sai Educational Society, 1-4-130/18, Sana Complex, Opp. Govt. Hospital, Mahbubnagar.*
2. *The Revenue-ITO, Ward-1, Mahbubnagar.*
3. *The Pr.CIT-4, Hyderabad.*
4. *The CIT(A)-4, Hyderabad.*
5. *The D.R., Hyderabad.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Hyderabad.