

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

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

आयकर अपील सं./I.T.A.No.367/Viz/2018

(निर्धारण वर्ष/Assessment Year : 2014-15)

M/s Madhurawada Sree Sampath
Educational Society
D.No.26-15-149
Beside Andhra Bank
Main Road
Visakhapatnam
[PAN : AAEAM0753H]

Vs. Income Tax Officer
Ward-1(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से/ Respondent by

: Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 30.04.2019

घोषणा की तारीख/Date of Pronouncement

: 29 .05.2019

आदेश /O R D E R

Per D.S. Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-10, Hyderabad vide ITA No.0142/ CIT(A)-10 /2017-18/ CIT(A), Hyd-10/10106/2017-18 dated 18.06.2018 for the Assessment Year (A.Y.) 2014-15.

2. Ground No. 1 and 4 are general in nature which does not require specific adjudication.

3. Ground No.2 is related to the claiming of exemption u/s 10(23C) of the Income Tax Act, 1961 (in short 'Act'). The Ld.AR did not make any argument on this ground, however, it is seen from order of the Ld.CIT(A) that the assessee did not make the claim of exemption u/s 10(23C) either in the return of income or before the Assessing Officer (AO), therefore, the Ld.CIT(A) appeals dismissed this ground and we do not see any infirmity in the order of the Ld.CIT(A) and the same is upheld.

4. Ground No.3 is related to the addition of Rs.25,27,425/- incurred towards expenses relating to maintenance of the school which was disallowed by the AO. During the assessment proceedings, the AO observed that the assessee had received fee receipts of Rs.26,96,000/- and claimed the expenses of Rs.25,27,425/- under the various heads to run the school. The assessee is a society is non-operative and did not produce any documentary evidence to support the expenses incurred. Therefore, AO disallowed the entire expenses claimed by the assessee and taxed the total receipts of Rs.26,96,000/-.

5. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO. The Ld.CIT(A) also found that the assessee has failed to produce any evidence to show that the educational society was operating during the A.Y. 2014-15 and hence held that the claim for expenses was unsubstantiated.

6. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee is a society running the school. For the financial year 2013-14, the assessee had received school fee receipts of Rs.26,96,000/- and incurred the expenses of Rs.25,27,425/- for running the school and declared excess of income over expenditure to the extent of Rs.1,68,575/-. Subsequently, the school was closed during the academic year 2014-15. Since the school was closed, none of the responsible persons were available, hence no proper explanation could be filed by the assessee. The Ld.AR submitted that both the AO as well as the Ld.CIT(A) has disallowed the entire expenditure, which is unjustified. The assessee had run the school during the academic year 2013-14 and major part of expenditure was staff salaries, building receipt and advertisement expenses. The Ld.AR filed paper book showing income and expenditure account, computation of

income statement and copy of acknowledgement of return of income filed. In the paper book, the assessee also filed copy of registration deed of society with Regd. No.643/2009 and argued that the society had carried on the activity during the financial year 2013-14, hence requested to allow the expenditure. The Ld.AR also submitted that since the assessee could not maintain proper books of accounts, income may be estimated reasonably instead of disallowing the entire expenditure. The Ld.AR has taken support of the order of this Tribunal in the case of Vidyodaya Educational Society vide ITA No.369/Viz/2016 dated 26.04.2018 on similar facts.

7. On the other hand, the Ld.DR supported the orders of the lower authorities and argued that the assessee could not furnish any evidence to show that it had run the school and incurred the expenditure during the financial year 2013-14. The AO has rightly disallowed the entire expenditure since the society was non operative and no documentary evidence was furnished to support the claim. Therefore, argued that no interference is called for in the order of the Ld.CIT(A).

8. We have heard both the parties and perused the material on record. As submitted by the Ld.AR, the assessee had run the school during the

financial year 2013-14 and received fee receipts of Rs.26,96,000/- . The fact that the assessee had received the fee receipts was not disputed by the AO and the AO assessed same under the head 'business income'. The AO did not give any finding that the sum of Rs.26,96,000/- was not related to the business activity of the assessee and the income was neither assessed u/s 68 nor under the head 'income from other sources. The AO disallowed the expenditure for want of evidence. The fact that the assessee was society running the school was supported by the certified copy of the deed and Memorandum of Association registered by society vide Regd No.643/2009. The assessee has furnished the income and expenditure account which shows that the total receipts were Rs.26,96,000/- and the excess of income over expenditure was Rs.1,68,575/-. The documents placed before us in the paper book and the assessment order evidences that the nature of receipts were fee receipts relating to educational activity carried on by the assessee. In the instant case, the AO disallowed the entire expenditure. Though the AO made the assessment u/s 144 of the Act, it is settled issue that even in the ex-parte assessment the income should reasonably be estimated but should not be determined arbitrarily. This view is supported by Hon'ble Apex Court's decision in the case of Dhakeswari Cotton Mills Ltd. Vs. CIT

(1954) 26 ITR 775 (SC). The AO disallowed the entire expenditure which shows the action of the AO is arbitrary and unreasonable. Considering the facts and circumstances of the case, we are of the view that since, the assessee failed to produce any evidence to support the expenses, the reasonable estimation of income would meet the ends of justice. On similar facts in the case of Vidyodaya Educational Society, this Tribunal held that the estimation of income @20% of gross receipts is reasonable. For the sake of clarity, we extract para No.9 of the order of this Tribunal cited supra which reads as under:

"9. The next submission of the assessee is that the entire gross receipts should not be treated as income and only the profit element required to be assessed to tax. In this case, the assessee has received the gross receipts of ` 19,65,000/- and the assessee has produced the books of accounts, bills and vouchers before the A.O. Though the bills and vouchers are incurred in self-made vouchers, the entire receipt cannot be income and taxed. Once it is believed that the assessee is carrying on business activity, the expenditure relatable to earning income required to be allowed as deduction. In the instant case, as per the books of accounts and the profit & loss account, the gross receipts of the assessee were Rs.19,65,000/- and the expenditure was ` 19,64,330/- resulting in profit of Rs.18,670/-. As per the assessment order, the assessee has claimed the expenditure such as salaries, vehicle maintenance, office expenses, insurance, depreciation, interest on loans and telephone charges, etc., but there was no proper evidence. During the appeal hearing, for a query from the bench, the Ld. A.R. expressed no objection for estimation of income @ 20% of the gross receipts. We have gone through the submissions of the assessee as well as orders of the lower authorities and the arguments of the Ld.DR and of the view that the estimation of income @ 20% of the gross receipts is reasonable, accordingly, we direct the A.O. to estimate the income @ 20% on gross receipts and assess the same as income. The assessee's appeal on this ground is partly allowed."

9. Since the facts are similar to that of the case law relied upon by the assessee, we hold that the estimation of income @20% is reasonable in this case. Accordingly, we direct the AO to estimate the income @20% and recomputed the income accordingly.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29th May 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 29.05.2019

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant - M/s Madhurawada Sree Sampath Educational Society, D.No.26-15-149, Beside Andhra Bank, Main Road, Visakhapatnam
2. प्रत्यार्थी / The Respondent - Income Tax Officer, Ward-1(1), Visakhapatnam
3. The Pr.Commissioner of Income Tax, Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-10, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam