

**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. 316/VIZ/2018
(Asst. Year : 2005-06)**

ITO (Exemptions), Rajahmundry.	vs.	M/s. Agricultural Market Committee, Siddhantham Road, Market Yard, Akiveedu, W.G. District.
(Appellant)		PAN No. AAKFA 8420 C (Respondent)

**C.O.No. 45/VIZ/2019
(Arising out of ITA No. 316/VIZ/2018)
(Asst. Year : 2005-06)**

M/s. Agricultural Market Committee, Siddhantham Road, Market Yard, Akiveedu, W.G. District.	vs.	ITO (Exemptions), Rajahmundry.
PAN No. AAKFA 8420 C (Appellant)		(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri V. Appalra Raju– Sr.DR

Date of hearing : 13/08/2019.
Date of pronouncement : 23/08/2019.

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)-11, Hyderabad, dated 30/01/2018 for the Assessment Year 2005-06.

2. This appeal is barred by limitation by 09 days. The Revenue has filed an affidavit. We have gone through the affidavit and find that there is a sufficient cause in non-filing the appeal in time, therefore, it is a fit case to condone the delay. Accordingly, delay is condoned.

3. Facts of the case, in brief, are that assessee is a body established under the Andhra Pradesh Agricultural (Produce & Live Stock) Markets Act, 1966. The Commissioner, Rajahmundry granted registration u/sec. 12AA to the assessee on 26/07/1993. The assessee has claimed exemption of its income under the provisions of section 11 & 12 of the Act. The claim made by the assessee initially disallowed by the Assessing Officer. On appeal, the ITAT vide its order in ITA No. 235/VIZ/2009, dated 11/12/2013 restored to the file of the Assessing Officer by observing that it is not necessary to mention about the specification of accumulation of income keeping in view of the decision of the Hon'ble Delhi High Court in the case of *Bharat Kalyan Pratisthan Vs. DIT (Exemption)* reported in 299 ITR 406 (Del) and directed to allow the accumulation as per law.

4. The Assessing Officer has passed the assessment order u/sec. 143(3) r.w.s. 254 of the Act on 30/03/2015 by observing that as per the decision of the Hon'ble Calcutta High Court in the case of *DIT (Exemptions) Vs. Trustees of Singhania Charitable Trust* (199 ITR 819) accumulation should be specific purpose and also noticed that the Hon'ble ITAT, Visakhapatnam Bench has no occasion to consider the judgment and therefore the Assessing Officer again disallowed the claim made by the assessee for accumulation of income. He also observed that originally the assessee filed Form No.10 dated 22/12/2008 reflecting accumulation of Rs. 2,67,81,477/- for multiple purposes of the trust as mentioned therein. The assessee filed Form No.10, dated 11/03/2015 showing accumulation of Rs. 1,16,61,880/- and there was a discrepancy in Form No.10, therefore, claim made by the assessee u/sec. 11(2) cannot be allowed. The Assessing Officer also noted that in the case of the assessee the audit was undertaken by the State Government Audit and not in the modes and manners prescribed by the Income-tax Act and therefore the assessee failed to fulfil the conditions of statutory audit for applicability of section 11 & 12 of the Act.

5. On being aggrieved, assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) by following the decision in assessee's own case for the earlier year, deleted the addition made by the Assessing Officer. For the sake of convenience, the relevant portion of the order is extracted as under:-

"5. I have considered the assessment order and submissions of the assessee. The issues raised by the AO and contested by the assessee are twofold-one is w.r.t the admissibility, validity and completeness of the form-10B filed by the assessee and violation of sec. 11(5) in terms of placement of accumulated receipts. The CIT(A), in order supra, has held as under:

"5.3 I have considered the submissions and detailed filed, it is relevant to note that the assessee has been granted registration u/s. 12AA by the CIT vide order dt.27.08.09 with effect from 26.07.1993. The return of income was filed on 17.05.2006 claiming exemption u/s. 10(20). The form No. 10 was filed on 28.10.2013 during the set aside assessment proceedings. The Hon'ble Supreme Court in the case of Nagpur Hotel Owner's Association case held that the form-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-10 could be filed even during the appellate proceedings as appeal is on continuation of assessment proceedings. The jurisdictional ITAT has followed the principle laid down by the Hon'ble Gujarat High Court in Mayur foundation. The 110 has relied on the decision of the Hon'ble Keral 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(l) 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 can be explained satisfactorily the same has to be condoned. The Hon'ble Court taking into

consideration the conditions stipulated in the circular no.273 dt.03.06.1980 allowed relied to the assessee. Therefore, it can be said that 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 committee constituted under a stature, whose genuineness is not in doubt, 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 registration u/s.12A was granted from retrospective effect; and the pronounced by the jurisdictional Tribunal on this 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.

5.4 With regard to the AO's view as to violation of sec. 11(5), it is relevant to note that the assessee has kept the excess income in the account maintained with SBI Treasury as mandated under the ILP Marketing act, the same may be considered as substantiate in compliance to the provisions of sec. 11(5) (iii) of the act as per which deposits any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking is a permissible investment. Such a view expressed by the Hon'ble A.P High court in the case of CIT vs AMC Giddalur & Otrs (336 ITR 641) which reads as under:

Even otherwise the contention is without substance sec. 14(1) of the AMC act r.w.r 8 of the rules mandate that "all moneys received by an MAC shall be deposited in a single banking account with the nearest government treasury, or with the sanction of the government in a bank" out of which all the expenditure of the AMC shall be defrayed. Under sec. 11(5)(iii) deposit of the moneys in scheduled bank is substantial compliance with the law. It is nobody's case before us that any AMC contravened s. 14(1) of the AMC act at any time in the past. Therefore, we reject the contention of the senior counsel of the revenue.

In the light of the above discussion, it cannot be said that assessee had violated the provisions of sec. 11(5). As a

result, the AO is directed to allow accumulation of the excess income stated in form -10 filed by the assessee, and allow exemption in respect of such income u/s. 11 of the act."

6. *As the facts remain the same for this year also, the appeal is disposed off with similar direction."*

6. On being aggrieved, Revenue carried the matter in appeal before this Tribunal.

7. Ld.DR relied on the order passed by the Assessing Officer.

8. Ld. counsel for the assessee has submitted that the Hon'ble ITAT set aside the order passed by the Id. CIT(A) and restored to the file of the Assessing Officer with a direction to allow the accumulation of income as per the judgment of the Hon'ble Delhi High Court in the case of *Bharat Kalyan Pratisthan* (supra). The Assessing Officer without following the decision of the Tribunal, has considered the judgment of the Hon'ble Delhi High Court in the case of *Trustees of Singhania Charitable Trust* (supra) rejected the claim of the assessee, which is contrary to law and inconsistency with the directions given by the ITAT, Visakhapatnam Bench in ITA No. 235/VIZ/2009, dated 11/12/2013. Insofar as inconsistency in Form No.10 is concerned, Id.counsel by pointing out page No.3 of the paper book submitted that total receipts for the year under consideration is

Rs.2,81,08,897/-, out of which 15% is automatically allowable as a statutory exemption and after 15% statutory exemption, the remaining income of the assessee for the year under consideration is of Rs. 2,38,92,562/-, total expenditure is of Rs.1,22,30,682/- (Rs.2,38,92,562-Rs.1,22,30,682) and accumulation is of Rs.1,16,16,880/- and submitted that Form No.10 dated 22/12/2008 is not correct, therefore the assessee has filed correct Form No.10 dated 11/03/2015 and the same is explained to the Assessing Officer during the course of set aside assessment proceedings.

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below.

10. The only issue involved in this appeal is with regard to accumulation of income of the assessee for the year under consideration. In the first round of litigation, the Assessing Officer disallowed the exemption claimed by the assessee on the ground that accumulation should be for specific purpose. When the matter reached to ITAT, the ITAT in ITA No.235/VIZ/2009, dated 11/12/2013 by following the judgment of the Hon'ble Delhi High Court in the case of *Bharat Kalyan Pratisthan (supra)*

accumulation need not be specific purpose and it can be on the whole objects of the assessee and by considering the same directed the Assessing Officer to allow accumulation as per law. The Assessing Officer without following the directions of the ITAT, considered the decision of the Calcutta High Court in the case of *Trustees of Singhania Charitable Trust (supra)* denied the claim of the assessee. In our opinion, the Assessing Officer has gone beyond the scope of his powers and without following the direction given by the Tribunal denied the claim of the assessee. Insofar as accumulation is concerned, the assessee has clearly explained that Form No.10, dated 22/12/2008 is not correct and in the paper book at page No.3 as explained is correct accumulation of Rs. 1,16,16,880/-. The Assessing Officer without considering the same simply rejected the claim made by the assessee. Insofar as discrepancies pointed out by the Assessing Officer in respect of audit concerned, the assessee has filed all the bills, vouchers and books of accounts before him without pointing out any mistake simply observed that in the case of the assessee audit is undertaken by the State Government and is not as contemplated by the Act. In our opinion, the Assessing Officer is not correct to come such a conclusion without there being any mistakes pointed

out by him. We find that the Id. CIT(A) by considering the directions of the ITAT and also earlier order of the Id. CIT(A) directed the Assessing Officer to delete the addition. We find no reason to interfere with the order of the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

11. So far as cross objection filed by the assessee is concerned, it is only supportive to the order of the Id. CIT(A). As no grievance against the Id. CIT(A)'s order, this cross objection filed by the assessee has become infructuous and is dismissed accordingly.

12. 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 23rd day of August, 2019.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 23rd August, 2019.

vr/-

Copy to:

1. *The Assessee – M/s. Agricultural Market Committee, Siddhantham Road, Market Yard, Akiveedu, W.G.District.*
2. *The Revenue – ITO (Exemptions), Rajahmundry.*
3. *The Pr.CIT, Rajahmundry.*
4. *The CIT(A)-11, Hyderabad.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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