

L
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.41/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2018-19)

M/s Jayanarayana Educational
Welfare Society
D.No.16-4-152
Opp.Nookambika Temple
Gavarapalem, Anakapalli
Visakhapatnam
[PAN :AAAAJ2684A]

Vs. Income Tax Officer
(Exemptions)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Shri T.S.N.Murthy, DR

सुनवाई की तारीख / Date of Hearing

: 25.09.2019

घोषणा की तारीख/Date of Pronouncement

: 30.10.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the
Commissioner of Income Tax (Exemptions) [CIT(E)], in

F.No.CIT(E)/Hyd/44(05)/12A/2018-19 dated 30.11.2018 for the Assessment Year (A.Y.) 2018-19.

2. All the grounds of appeal are related to the rejection of application of the assessee in Form No.10A seeking for granting the registration u/s 12AA of the Act. The assessee filed application in Form No.10A on 28.05.2018 before CIT(E) seeking registration u/s 12A of the Income Tax Act, 1961 (in short 'Act'). The Ld.CIT(E) issued notice calling for the information and posted the case for hearing on 27.11.2018. The Ld.CIT(E) observed that though, the notice was served on the assessee through ITO(E), Visakhapatnam, the assessee neither appeared before the Ld.CIT(E) nor filed the required information. Therefore, the Ld.CIT(E) decided the assessee's petition in absentia and rejected the application of the assessee seeking registration u/s 12A of the Act. The Ld.CIT(E) stated in the order that with the application, the assessee furnished the bye laws. In the bye laws, there were two papers with the same page number of 12. The second(duplicate) page with number 12 reads differently from that of first page numbered as 12. With regard to the contents of two pages with same number of 12, the observations of the Ld.CIT(E) are extracted from para

No.5 to 5.2 of the order which is made available in page No.2 which reads as under :

“5. On perusal of the bye-laws of the society, it is noticed that there are two papers containing the same page number 12. In the second paper having page No. 12, it is noticed as follows:

“The said rules, and except rulesMay be altered at any time with the prior approval of Government of India (Ministry of Education and Culture) by resolution passed by not less than of total number of members of the Board at any meeting of the Board which shall have been duly sanctioned for the purpose.”

The applicant was asked to clarify about the number of quorum of members and the reason for not mentioning about the approval of Commissioner of Income Tax(Exemptions) for alteration.

5.1. Further, in the first paper having page No. 12, it is noticed as follows:

“In the event of dissolution the Society will transfer all assets liabilities to other society having similar objectives”

This indicates that the assets of the trust can be transferred to other entity even without having registration u/s. 12A.

5.2. The MoA does not contain the necessary clause i.e. investment clause.”

2.1. The Ld.CIT(E) further observed that the assessee had offered the sum of Rs.1,67,32,060/- as income for the F.Y. 2017-18 and the Society was requested to give explanation for which the assessee failed to furnish the explanation. Hence, the Ld.CIT(E) held that the assessee has violated the provisions of the Act by claiming exemption u/s 10(23C), accordingly rejected the application of the assessee.

3. Against the order of the Ld.CIT(E), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee is an educational society, carrying on charitable activity. The assessee had received the letter dated 22.11.2018 posing the case for hearing at Hyderabad on 27.11.2018 in the 11th hour without having time for compiling the information and to attend the case. The Ld.AR further submitted that the assessee is located at Visakhapatnam, whereas the office of the Ld.CIT(E) is located at Hyderabad. Due to non availability of sufficient time for submission of the details, the assessee could not appear before the Ld.CIT(E) and submitted that there was no intention of the assessee, not to attend before the Ld.CIT(E) for hearing. The Ld.AR further submitted that the assessee is a society engaged in the educational activity, duly registered under the Societies Act on 26.03.2019 and also enclosed the copy Certificate of Registration in page No.69 of the paper book. The Ld.AR also submitted that the assessee society has duly amended the memorandum and bye laws to meet the requirement of the Income Tax department as raised by the Ld.CIT(E) in his order. He further stated that the Society would submit the replies to the satisfaction of the Ld.CIT(E) for all the queries that was raised through letter dated 22.11.2018 and the defects pointed out in the order passed u/s 12AA(1)(b)(ii) dated

30.11.2018, hence requested to remit the matter back to the file of the Ld.CIT(E) to decide the issue afresh on merits.

4. On the other hand, the Ld.DR fairly conceded to remit the matter back to the file of the Ld.CIT(E).

5. We have heard both the parties and perused the material placed on record. From the order of the Ld.CIT(E), we observe that the letter dated 22.11.2018 was issued to the assessee, posting the case for hearing on 27.11.2018. The exact date of service of the notice was not mentioned in the order of the Ld.CIT(E), however, the order was passed on 30.11.2018. Thus, we find that sufficient time was not given to the assessee to furnish the reply and to respond to the notice on the issues raised by the Ld.CIT(E) vide letter dated 22.11.2018. Now the assessee has filed the paper book stating that the defects pointed out by the Ld.CIT(E) in the order dated 30.11.2018 were rectified and accordingly filed the memorandum of association, copy of registration certificate as well as the amendments carried out by the assessee. With regard to receipts of income, the assessee submitted that it would be furnishing all the details before the Ld.CIT(E) for granting registration u/s 12A of the Act. Therefore, we are of the considered opinion that the issue required to be reexamined by the

Ld.CIT(E) with the information available on record. Hence, we remit the matter back to the file of the Ld.CIT(E) to reexamine the issue and decide the case of the assessee for grant of registration u/s 12A of the Act, afresh on merits. The Ld.CIT(E) required to give sufficient and reasonable opportunity to the assessee to submit necessary information. Accordingly, appeal of the assessee is allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30th October, 2019

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 30.10.2019 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
--	--

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

1. निर्धारिती/ The Assessee - M/s Jayanarayana Educational Welfare Society
D.No.16-4-152 , Opp.Nookambika Temple, Anakapalli, Visakhapatnam
2. राजस्व/The Revenue - Income Tax Officer (Exemptions), Visakhapatnam
3. The Commissioner of Income Tax(Exemptions), Hyderabad
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam