

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.265/Viz/2021
(निर्धारण वर्ष / Assessment Year :2018-19)

Yenuguvani Lanka Rural
Educational Society,
D.No.2-76, New Harijana Peta,
Yenuguvani Lanka.

Vs. Income Tax Officer, Ward-1,
Income Tax Buildings,
Near Govt. College,
Doddipatla Road,
Palakol, Andhra Pradesh.

PAN: AAAAY 2757 K

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by :

Sri I. Kama Sastry

प्रत्यर्थी की ओर से / Respondent by :

Sri SPG Mudaliar, Sr. AR

सुनवाई की तारीख / Date of
Hearing :

17/03/2022

घोषणा की तारीख/Date of
Pronouncement :

08/04/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is directed against the order of the Ld. CIT(A), National Faceless Appeal Centre, Delhi vide DIN and order No.ITBA/NFAC/S/250/2021-

22/1036675000(1), dated 31/10/2021 passed U/s. 143(1) r.w.s 250(6) of the Act for the AY 2018-19.

2. Brief facts of the case are that the assessee is a public educational society running on a charitable basis and duly registered U/s. 12A of the Act vide order dated 20/02/2009. The assessee filed its return of income on 24/07/2018 declaring a gross receipt of Rs. 2,20,756/- and claimed an exemption of Rs. 2,12,443/- U/s. 11 of the Act. The return was processed U/s. 143(1) by CPC, Bangalore which disallowed the gross receipts due to failure on the part of the assessee to furnish the requisite Form No.10B along with return of income as required under Rule 17B of the IT Rules, 1962. The CPC, Bangalore taxed the entire gross receipt at the maximum marginal rate. Aggrieved by the intimation, the assessee filed an appeal before the Ld. CIT(A), NFAC, Delhi. The assessee filed written submissions before the Ld. CIT(A) both for condonation of delay in filing the appeal and explanation with respect to taxing of gross receipts at the maximum marginal rate. The Ld. CIT(A) observed that for claiming exemption u/s. 11 and 12 of the Act it is necessary that the required Form as prescribed under the Act has to be filed along with the return of income. The Ld. CIT (A) also noted that

as per Circular 2/20, dated 3/1/2020 issued by the CBDT which has delegated the power to the Commissioner to admit belated application in filing Form No.10B for the assessment year 2018-19 onwards for a period of upto 365 days. The Ld. CIT (A) observed that since the delay in the instant case is more than 365 days, the delay cannot be condoned. The Ld. CIT(A) also quoted section 143(1)(a)(ii) that the adjustments by CPC were not beyond the scope of section 143(1). The Ld. CIT (A) therefore confirmed the intimation u/s. 143(1) of the Act issued by the CPC, Bangalore. Aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us.

3. The Ld. AR argued that section 12A of the Act provides conditions for the applicability of sections 11 and 12 of the Act under clause (b) of sub-section (1) thereof where the total income of the Trust or Institution computed without giving effect to section 11 and 12 exceeds the maximum amount **not chargeable to income tax** in any previous year, its accounts for that year have to be audited by an accountant as defined in the Explanation below sub-section (2) of section 288. The Ld. AR reiterated that the gross receipts is below the basic exemption as prescribed in the Finance Act, 2018 which is submitted to us in

paper book page No.19 to 23. The Ld.AR submitted that the accounts need not be audited since the gross receipts is below the basic exemption limit. The Ld. DR relied on the intimation of the CPC, Bangalore.

4. We have heard both the parties and perused the material available on record and gone through the orders of the authorities below. Even if the income of the assessee is not exempt U/s. 11 and 12 of the Act as per section 164(2) the income of the Trust is required to be taxed at normal rates. We find force in the arguments of the Ld. AR that taxing the income at the maximum marginal rate violates the provisions of section 167B of the Act where the assessee is registered under Societies Registration Act. As per section 167B of the Act, in case where an assessee is registered under Societies Registration Act, the same is excluded for taxing the income as per maximum marginal rate. For the sake of reference relevant part of section 167B(1) is extracted below:

167B. (1) *Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such*

association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :

5. Plain reading of section 167B of the Act indicates that the income of company or cooperative society or a society registered under Societies Act of 1860 are excluded from charging the tax at maximum marginal rate (MMR) and would be chargeable at normal rates. In the similar facts and circumstances, the Coordinate Bench of ITAT in ITA Nos. 212 to 215/Viz/2014 in the case of Sri Lakshmigyanapathi Seva Samithi vs. CIT dated 26/08/2016 held that in case of society, the application of maximum marginal rate does not arise. Moreover we find that the gross receipts is below the basic exemption as prescribed in the Finance Act, 2018.

6. Even otherwise, whether to charge the income at normal rates or at maximum marginal rate is an issue of debate and requires verification of facts which cannot be decided u/s. 143(1) of the Act. The Ld. AO taxed the assessee's income at maximum marginal rate without considering the fact that the assessee is a registered society and cannot be taxed at the maximum marginal rate. Therefore, the adjustments in the assessment are not

permissible u/s. 143(1) of the Act and hence we set-aside the orders of the lower authorities and allowed the assessee's appeal.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 08th April, 2022.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated : 08.04.2022

OKK - SPS

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

1. निर्धारिती/ The Assessee– Yenuguvani Lanka Rural Educational Society, D.No.2-76, New Harijan Peta Yenuguvani Lanka, Andhra Pradesh – 534 275.
2. राजस्व/The Revenue –Income Tax Officer, Ward-1, Income Tax Buildings, Near Govt. College, Doddipatla Road, Palakol, Andhra Pradesh – 534260.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), NFAC, Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam