

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

S.No.	ITA No.	AY	Appellant	Respondent
1	2210/Hyd/2017	2005-06	Asst. Commissioner of Income-tax (Exemptions)	Vignana Jyothi, Hyderabad.
2	2211/Hyd/2017	2006-07	-do-	-do-
3	2212/Hyd/2017	2008-09	-do-	-do-
4	2213/Hyd/2017	2009-10	-do-	-do-
5	2214/Hyd/2017	2012-13	-do-	-do-
6	2215/Hyd/2017	2013-14	-do-	-do-
7	2216/Hyd/2017	2014-15	-do-	-do-
Assessee by:			Shri A.V. Raghuram	
Revenue by:			Shri Rajendra Kumar	
Date of hearing:			06/04/2022	
Date of pronouncement:			11/04/2022	

ORDER

PER L.P. SAHU, A.M.:

All these appeals of the revenue are directed against the CIT(A) - 9, Hyderabad's order dated 29/09/2017 passed u/s 143(3) rws 254 of the Income-tax Act, 1961 (in

short 'the Act') for the AYs 2005-06, 2006-07, 2008-09 and, 2009-10(assessment u/s 147) and 2012-13 to 2014-15 (assessments u/s 143(3). As identical grounds are raised in all these appeals, the same were clubbed and heard together and therefore, a common order is passed for the sake of convenience.

2. To dispose of these appeals, we refer to the facts and grounds from grounds of appeal from AY 2005-06 being ITA No. 2210/Hyd/2017.

3. In all the appeals, the revenue has raised a common ground in respect of voluntary donations.

4. The CIT(A) in its combined order for AY 2005-06 & 2006-07, observed as under:

"To state briefly, after examination of additional evidence filed by assessee, the books of accounts and based on the statements recorded from donors during the, remand proceedings, Assessing Officer reported that the donations are not in the nature of capitation fee. The donations were given as corpus fund and are voluntary but not related to admission. The relevant portion of remand report is reproduced as under:

Receipt books containing the donations received were also examined This book contains the recordings of the donors particulars along with their addresses, amount of donation made, mode of payment and donation towards Chief Patron/ Patron/ Membership Fee Corpus Fund. The reason mentioned In the receipts, was towards 'Corpus Fund' The back side portion of the

receipt consisted of donors acknowledgement, acknowledging the donation made.

For the A Y 2006-07, the total donations received were Rs 1,84,85,000/- The assessee furnished confirmations from all parties giving the details of donations made towards corpus fund As could be seen from the confirmations, all the donations received from the above donors amounting to Rs 1,84,85,000/- were reported In cash/bank book maintained by the assessee-society under the head capital fund account The assessee submitted that none of the books reveals that the donations received were towards 'capitation fee' It is further submitted that even the receipts which were issued by the society to the donors and which were acknowledged by the donors at the backside of the receipts, mentioned as Corpus Fund The assessee's contention was not contrary to the submission made as above.

In view of the above observations, it is submitted that the documentary evidence in the form of donation receipts produced by the assessee during the remand proceedings suggest that donation was given for specific purpose of corpus fund.

4. 1. 1. Based on the above report of Assessing Officer, it can be seen that the donations are voluntary and are towards corpus fund. After considering the remand report and following the Hon'ble ITAT order dated 22/09/2017 in assessee's case for AYs. 2010-11 & 2011-12, and in view of restoration of Registration u/s 12A by Hon'ble ITAT, I am of the considered opinion that there is no case for denial of exemption u/s 11. As the Assessing Officer reported that the donations are voluntary and towards corpus funds, I hold that the addition of Rs.2,29,99,999/- (AY. 2005-06) and Rs.1,84,85,000/- (A Y 2006-07), have no legs to stand. Therefore, Assessing Officer is directed to re-determine the income of assessee as per the provisions of Section

11 and the additions made on account of donations are directed to be deleted for the both the assessment years. The grounds related to the above issues are therefore treated as allowed.”

5. Against the order of CIT(A), the revenue is in appeal before the ITAT and submitted that the CIT(A) erred in law in holding that the assessee is entitled for exemption u/s 11 of the Act, when the assessee had collected donation over and above the prescribed fee for admission and which has nexus with the admission of students & such fee from the parents of the students during the year. He, therefore, requested to set aside the order of the CIT(A) and restore the order of AO on this issue.

6. The ld. AR, on the other hand, filed written submissions, wherein, it was, inter-alia, stated that in the light of the fact that the decision of ld. CIT(A) is based on factual evidence, remand report submitted by the AO and also on the decision of the Hon'ble ITAT in assessee's own case, the order of the CIT(A) may kindly be upheld.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. As the issue in dispute is squarely covered by the decision of the coordinate bench of this Tribunal in assessee's own case in ITA Nos. 1803, 1804, 1752 & 1753/Hyd/2014 vide its order dated 22/09/2017

and respectfully following the same, we uphold the order of the CIT(A) on this issue and dismiss the grounds raised by the revenue as ground Nos. 2 to 5.

7.1 Since, similar issue raised in AY 2006-07 in ITA No. 2211/2017 as ground Nos. 2 to 5, in AY 2008-09 in ITA No. 2212/Hyd/2017 as ground Nos. 2 to 4, in AY 2009-10 in ITA No. 2213/Hyd/2017 as ground Nos. 2 to 4, and in AY No. 2012-13 in ITA No. 2214/Hyd/2017 as ground Nos. 2 to 4, following the decision taken in AY 2005-06 in ITA No. 2210/Hyd/2017 vide para No. 7 (supra), these grounds of appeals in the said years are also dismissed.

7.2 Even though the above issue was not in the assessment orders for AY 2013-14 & 2014-15, the CIT(A) decided this in favour of the assessee and the revenue is in appeal against this issue in both the AYs 2013-14 and 2014-15. The issues which are not born out from the assessment order, the CIT(A) cannot exceed his jurisdiction beyond the assessment order as per section 251(1(a) of the IT Act and the revenue has also taken the ground without observing the assessment orders. In view of the above, the ground Nos. 2 to 4 taken for both the years by the revenue become infructuous and the same are dismissed as infructuous.

8. Another common issue raised in all the appeals is with regard to the depreciation on assets and claimed as application of income.

8.1 The CIT(A) observed that the ITAT in assessee's own case for AYs 2010-11 and 2011-12 held that depreciation u/s 32 has to be allowed even though the capital expenditure was allowed as application of income in earlier years. The CIT(A) extracted the relevant observations of the ITAT in assessee's own case as under:

13. As regards the assessee's appeals are concerned, we find that the CIT (A) has disallowed the depreciation on the ground that the cost of the assets have already been allowed as application of income in the earlier years. This issue had come up for consideration before the Coordinate Bench of this Tribunal in the case of (i) A.P. Olympic Association vs. ADIT (E) 48 Taxmann.com 282 (Hyd) and (ii) Guru Nanak Mission Trust vs. DDIT (E) 69 Taxmann.com 82 (Hyd) in which, after considering the decision of the Hon'ble Supreme Court in the case of Escorts Ltd vs. Union of India (199 ITR 43) and also the decision of the Hon'ble Delhi High Court in the case of Vishwa Jagruti Mission (IT Appeal No. 140 of 2012 dated 29.3.2012) as well as the decision of the Coordinate Bench in the case of Venkata Sai Educational Society in ITA No.1440/Hyd/2011 dated 9.4.2012, it has been held that charitable or religious trusts registered u/s 12A of the Act can claim benefit u/s 11 in the form of application of funds as well as depreciation u/s 132 in respect of property held under the trust. Respectfully following the decisions of the Coordinate Benches of this Tribunal, the assessee's appeals are also allowed.

In view of the categorical and binding decision of Hon'ble ITAT in the assessee's own case, Assessing Officer is directed to allow the depreciation for both the assessment years. Therefore, the grounds related to the issue of depreciation are treated as allowed.

9. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT and submitted that the CIT(A) erred in law in allowing the depreciation claimed by the assessee on the assets purchased in earlier years which tantamount to double deduction as the assessee is not allowed

exemption u/s 11 and was assessed as an AOP. He, therefore, submitted that the order of the CIT(A) may be set aside and that of the AO's order be restored.

10. On the other the ld. AR of the assessee, referring to the written submissions filed, submitted that the issue in dispute is squarely covered by the decision of the ITAT in assessee's own case in ITA Nos. 1803, 1804, 1752 & 1753/Hyd/2014 for AYs 2010-11 and 2011-12 vide its order dated 22/09/2017.

11. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. Since the assessee's case relates to the before amendment in the income tax provision, we uphold the order of the CIT(A) in allowing assessee's claim of depreciation as his decision is in consonance with the decision of ITAT cited supra and dismiss the grounds raised by the revenue in AY 2005-06 in ITA No. 2210/Hyd/2017 as ground No. 6 and in AY 2006-07 in ITA No. 2211/Hyd/2017 as ground No. 6.

11.1 Since, similar issue raised in AY in AY 2008-09 in ITA No. 2212/Hyd/2017 as ground No. 5, in AY 2009-10 in ITA No. 2213/Hyd/2017 as ground No. 5, in AY No. 2012-13 in ITA No. 2214/Hyd/2017 as ground No. 5, in AY 2012-13 in 2215/Hyd/2017 as ground No. 5, in AY 2013-14 in ITA No.

2215/Hyd/2017 as ground No. 5 and in AY 2014-15 in ITA No. 2216/Hyd/2017 as ground No. 5, following the decision taken in in AY 2005-06 in ITA No. 2210/Hyd/2017 as ground No. 6 and in AY 2006-07 in ITA No. 2211/Hyd/2017 as ground No. 6 vide para No. 11 (supra), we dismiss these grounds raised by the revenue.

12. Another ground is with regard to violation of Rule 46A in respect of addition to fixed assets raised in 2008-09 ITA No. 2212/Hyd/2017 as ground No. 6, in AY 2009-10 (ITA No. 2213/Hyd/2017) as ground No. 6 and in AY 2013-14 (ITA No. 2013-14) as ground No. 7. In AY 2009-10, this issue was not at all before the AO & CIT(A), therefore this issue raised by the revenue as ground No. 6 in AY 2009-10 becomes infructuous and therefore, the same is dismissed as infructuous.

12.1 With regard to AY 2008-09 & 2013-14, regarding violation of rule 46A in respect of fixed assets towards building to the tune of Rs. 17,65,20,684/- the facts as taken from AY 2013-14 are that the AO asked the assessee to furnish the following details in this regard:

(i) Full and complete address of the building construction along with floor Wise plinth area of the building.

(ii) A copy of Municipal/anchayat/HMOA approval taken,

(iii) Completion certificate from the same authority

(iv) Complete bills/ vouchers for construction

(v) Books of account maintained if any for the construction

(vi) Valuation report, if any”

12.2 It is observed by the Assessing Officer that the assessee did not furnish the details of approvals from competent authority to construct the building nor produced the vouchers to support the expenditure. Therefore, it was held by Assessing Officer that the expenditure claimed towards building development is not genuine and hence the same was added back as expenditure as it is claimed that the assessee did not furnish the details called for.

13. During the appellate proceedings, it was submitted by the assessee that the Assessing Officer called for details of additions to fixed assets along with copies of vouchers vide notices dt 10/10/2015 and 26/02/2016. It was further stated that in response to the same, assessee filed details vide letter dated 22/07/2015 and 04/03/2016 Assessee during appellate proceedings filed copies of questionnaires and the replies filed in response. It was also claimed by the assessee that copies of the bills and vouchers were produced before the inspector as per the Assessing Officer's direction. Therefore, it was contended that Assessing Officer is not justified in stating that the details are not

furnished and in disallowing the above amount On perusal of the details filed by the assessee during the appellate proceedings, which included the copy of the notice asking for specific details and also the copy of the covering letter giving the list of details furnished, it is observed that all the details with regard to acquisition of fixed assets have been furnished

4 Details of additions to building for Rs 17,65,20,684/- - The bills/supporting documents for construction of buildings were produced in your office and were verified Copies of following letters are enclosed as Annexure-4

a) Letter dated 25 02 10 to Gram Panchayat asking for permission for construction of building

b) Letter dated 25 08 10 by Gram Panchayat to HMDA forwarding all documents for approval

c) Letter dated 0911 10 to HMDA for building permission

d) Letter dated 15-05-12 to HMDA along with payment details for building regularization

e) Acknowledgment by HMDA for receiving the letter mentioned in (d) above

f) Details of floor-wise area of Civil & Mechanical Building of VNR Vignan Jyothi Institute of Engineering & Technology and extension block of Vignan

13.1 The CIT(A) observed that from the assessment order all the above details were furnished and are on record. From the above referred letter of assessee, it is seen that

the permission letters, floor wise area details, HMDA building regularization fee payment details etc. were furnished to Assessing Officer and the bills/supporting evidence was produced during assessment proceedings. Therefore, the CIT(A) held that there is no basis for Assessing Officer's observation that no details are furnished. Coupled with this fact, further, he observed that no verification was conducted by the Assessing Officer to prove that the building was not constructed. In view of the above observations, the CIT(A) held that there is no basis for disallowance of Rs. 17,65,20,684/- claimed as application for acquisition of fixed assets in the form of building. He, therefore, directed the Assessing Officer to allow the expenditure towards addition to buildings.

14. Before us, the Id. DR besides relying on the order of AO, submitted that the CIT(A) erred in not calling for remand report from the AO in this regard and has accepted additional evidence which is in violation of rule 46A of IT Rules.

15. The Id. AR of the assessee, on the other hand, relied on the order of the CIT(A) and submitted that the CIT(A) after examining the details filed before him, listed out the various details seen to have been filed by the assessee before the Assessing Officer and also stated that permission letters, floor-wise area details, HMDA building regularization fee

payments etc., were furnished before the Assessing Officer and the bills and supporting evidences were produced during the assessment proceedings. He also recorded that no verification was conducted by the Assessing Officer to prove that the building was not constructed. C.I.T(A) therefore deleted the disallowance made stating that there is no basis for the same.

16. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The CIT(A) categorically held that no verification was conducted by the Assessing Officer to prove that the building was not constructed and further stated that the bills and supporting evidences were produced during the assessment proceedings. The assessee had replied against the notices issued by the AO vide assessee's letters dated 22/07/2015 and 04/03/2016. Vouchers were also filed before the department as per the directions of the AO. Therefore, it cannot be said that the assessee has violated the rule 46A. The Id. DR could not controvert the findings of the CIT(A). We, therefore, find no reason to interfere with the order of the CIT(A) in deleting the disallowance made on this count and accordingly, upholding the order of CIT(A), we dismiss the ground raised by the revenue in this regard in AY 2008-09 as ground No. 6 and 2013-14 as ground No. 7.

17. With regard to the issue of claim of gratuity raised in AY 2013-14 in ITA No. 2215/Hyd/2017 as ground No. 6 and in AY 2014-15 in ITA No. 2216/Hyd/2017 as ground No. 6, during assessment proceedings the Assessing Officer observed that the assessee claimed expenditure towards gratuity amounting to Rs. 3,58,42,444/- and Rs. 1,39,48,389/- for AYs 2013-14 and 2014-15 respectively. Assessee was asked to submit the reasons for increase in expenditure towards gratuity and why the gratuity should not be disallowed and brought to tax. Assessing Officer observed that gratuity for teaching staff is only Rs. 25,20,894/- and Rs 6,01,344/- for AY. 2013-14 and 2014-15 respectively, whereas the balance of Rs.3,33,21,550/- and Rs.1,33,47,045/- was provided for non-teaching staff. It was observed by the Assessing Officer that the assessee failed to substantiate the expenditure with vouchers and bills. Therefore, it was held by Assessing Officer that the gratuity for non-teaching staff is excess expenditure claimed by the assessee only to reduce the profit. Holding so, Assessing Officer disallowed the entire claim of gratuity for both the assessment years

18. Before the CIT(A), the assessee argued that the gratuity is provided for both teaching and non-teaching staff, but not only to nonteaching staff as observed by the Assessing Officer. It was further submitted by the assessee that during the assessment proceedings, vouchers for

gratuity paid amounting to Rs.25,20,894/- and Rs.6,01,344/- for AY. 2013-14 and 2014-15 were produced before the Assessing Officer. The remaining details of provision for gratuity amounting to Rs.3,33,21,550/- and Rs.1,33,47,045/- were also provided to the Assessing Officer. It was submitted by the assessee that as per Gratuity Act, 1972, the gratuity is payable to all employees irrespective of their cadre and hence the assessee provided for the gratuity liability which is calculated on the basis of actuarial valuation. He, therefore, claimed that the AO erred in disallowing the claim of the assessee.

19. After considering the submissions of the assessee, the CIT(A), directed the AO to allow the gratuity as claimed by the assessee for both the AYs. by observing as under:

“4.6.2 I have considered the arguments of the assessee and have gone through the reasons given by the Assessing Officer for disallowance. On perusal of the details filed by the assessee during the assessment proceedings, it is seen that the assessee is providing for gratuity to both teaching and non-teaching staff. On perusal of the assessment records for AY. 2013-14, it is observed that complete working of gratuity was furnished by the assessee as per which the total gratuity amount worked out is Rs.3,58,42,444/-, out of which Rs. 3,13,37,462/- pertains to gratuity to teaching staff of Vignana Jyothi Engineering College, whereas gratuity for non-teaching staff is worked out at Rs.26,01,935/-. Thus, the total gratuity in case of engineering college is Rs3,39,39,397/- whereas the remaining gratuity pertains to other colleges and

school. Assessee also furnished the complete working of actuarial calculation as provided by the Life Insurance Corporation which worked out to Rs.3,13,37,462/- for Vignana Jyothi Engineering College. Similarly, for A.Y 2014-15, net provision made during the year for gratuity is Rs 1,39,48,389/which includes gratuity payable to both teaching and non-teaching staff The net provision is arrived at after reducing payment of gratuity made during the year amounting to Rs.6,01,344/-. From the assessment records, it is observed that entire details of employee-wise provision are furnished to the Assessing Officer It is submitted during the appellate proceedings that these calculations are made as per the actuarial valuation However, Assessing Officer without considering all these details held that the provision for gratuity is a voluntary claim of expenditure only made with an intention to reduce the profit. It is not disputed by the Assessing Officer that gratuity is payable to both teaching and non-teaching staff and the assessee has provided for the same. As the assessee's income is to be computed as per the provisions of Section 11, the provisions of Section 40A(7), which are applicable to the assessee's having business income, are not applicable to this assessee. Considering all these aspects, it is seen that there is no basis for the Assessing Officer to disallow the claim of gratuity. Therefore, Assessing Officer is directed to allow the gratuity as claimed by the assessee for both the assessment years. Thus, the grounds relating to this disallowance are treated as allowed for both A.Ys 2013-14 and 2014-15."

20. Before us, the ld. DR besides relying upon the order of AO, submitted that the CIT(A) erred in law in allowing the claim of gratuity as it is a provision made by the assessee society and not actually paid during the year besides the

disallowance u/s 40A(7) in the absence of section 11 exemption to the assessee.

21. The Id. AR of the assessee besides relying on the order of the CIT(A), submitted that the disallowance was made in the assessment by applying Sec.40A(7). Order passed by DIT(Exemptions) cancelling registration was operative at the time the assessment was made. However, as the CIT(A) noted in paragraph 4.2 of his order that Hon'ble ITAT restored registration by vacating the order passed by D.I.T(Exemptions). In these circumstances, there is no case for disallowance of the provision for gratuity. The order of the CIT (A) may kindly be upheld for both the years i.e., Asst.Years 2013-14 and 2014-15.

22. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. As held by the CIT(A) since there is no case for disallowance of the provision for gratuity, once the ITAT restored the registration by vacating the order passed by the DIT(E). Therefore, we uphold the order of the CIT(A) in directing the AO to allow the assessee's claim of gratuity and dismiss the grounds raised by the revenue in AY 2013-14 as ground No. 6 and 2014-15 as ground No. 6.

23. As regards the issue of prior period expenses raised in AY 2014-15 in ITA No. 2216/Hyd/2017 as ground No. 7, during the assessment proceedings, the AO observed that the assessee society debited prior period expenditure of Rs 6,72,471/-. As the assessee society's claim u/s 11 was denied, Assessing Officer held that in view of mercantile system of accounting, this expenditure which pertained to prior period is disallowed.

24. Before the CIT(A), the assessee claimed that the said amount contains prior period expenses of Rs.2,00,000/- and advances written off of Rs 4,72,471/-. With regard to prior period expenses, it was stated that the same represents annual maintenance charges for computers pertaining to F.Ys. 2011-12 to 2013-14 and as the bill was received on 21.11.2013 and the payment was made during the year under consideration, the entire amount was debited in the current year. With regard to Rs. 4,72,471/-, it was stated that the amount represents advances given to parties which could not be recovered and hence the same is written off.

25. After considering the assessee's submissions, the CIT(A) observed that the expenditure was disallowed by Assessing Officer only because the income is computed on commercial lines after denying exemption u/s 11. However, as registration is restored to the assessee and the Assessing

Officer is directed to compute the income as per Section 11, these disallowances no more stand. As the income itself will be computed as per Section 11, Assessing Officer will reconsider these disallowances at that time and decide accordingly. The ground related to this disallowance is therefore treated as allowed.

26. The ld. DR relied on the order of the AO and submitted that that since the assessee's claim of exemption u/s 11 was denied, the AO disallowed the prior period expenses and, therefore, the order of the AO be restored by setting aside the order of CIT(A).

27. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The AO disallowed the assessee's claim of prior period expenses on the ground that assessee's claim of exemption u/s 11 was denied. Whereas, the CIT(A) held that the ITAT restored the registration to the assessee and directed the AO to compute the income as per section 11, the disallowance cannot withstand. Therefore, we uphold the order of the CIT(A) and dismiss the ground No.7 raised by the revenue on this issue.

28. In the result, the appeals of the revenue in ITA No. 2210, 2211, 2212, 2213, 2214, 2215 & 2216/Hyd/2017 are

dismissed in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 11th April, 2022

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 11th April, 2022.

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5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>