

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

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

आयकरअपीलसं./ I.T.A. No.194/Viz/2020

(निर्धारणवर्ष/ Assessment Year:2016-17)

Association of Relief Volunteers,
Vijayawada.

PAN: AACTA 0213 B

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Appellant by

प्रत्यार्थीकीओरसे/ Respondent by

Vs.

Income Tax Officer,
(Exemptions),

Rajahmundry.

(प्रत्यार्थी/ Respondent)

Sri GVN Hari, Advocate

Sri ON Hari Prasada Rao, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of

Pronouncement

:

04/08/2022

:

09/09/2022

ORDER

PER Sri S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Vijayawada [the Ld. CIT(A)] in appeal No.10231/CIT(A)/VJA/2018-19, DIN: ITBA/APL/M/250/2019-20/1025816007(1), dated 27/02/2019 arising out of the order passed U/s. 154 of the Income Tax Act, 1961 [the Act] dated 21/12/2018.

2. The assessee filed a condonation petition stating that the Ld. CIT(A) has mentioned the order date as 27/02/2019 instead of 27/02/2020. The Learned Authorized Representative [the Ld. AR] submitted that the request was placed before the Ld. CIT(A) to issue a corrigendum for change of date of order from 27/2/2019 to 27/2/2020. The Ld. AR also submitted that as per the dates of hearing in the CIT(A) order, the last date of hearing was completed on 18/2/2020 and hence order cannot be dated as 27/2/2019. The Ld. AR further submitted that the assessee was awaiting response w.r.t corrigendum, and as no response received from Ld.CIT(A), the assessee submitted the appeal before the Tribunal was filed on 22/10/2020. The Ld. AR further submitted that the delay of and is covered by the order of the Hon'ble Supreme Court being the relevant period covered by COVID Pandemic Situation. The Hon'ble Supreme Court in SMW(A) No.3 of 2020, dt: 23rd March, 2020 directed that the period of limitation for filing the appeals under general laws and all special laws falling between 15/3/2020 and 28/02/2022 shall be excluded for calculating the delay. We also find that the date of order mentioned in the order of Ld.CIT(A), is erroneous and it cannot be 27.02.2019, as the last date of hearing is 18.02.2020.

Considering the same, we hereby condone the delay of 533 days in filing the present appeal before the Tribunal and proceed to adjudicate the case on merits.

3. Brief facts of the case are that the assessee is a charitable organization registered U/s. 12A of the Act filed its return of income for the AY 2016-17 admitting total income of Rs. NIL after claiming exemption u/s. 11 of the Act. The return was summarily processed and subsequently the case was selected for complete scrutiny under CASS and statutory notices U/s. 143(2) and 142(1) of the Act were issued and duly served on the assessee. The assessee however opted for e-proceedings and submitted the information electronically. The Ld. AO after examining the submissions, framed the assessment by making an addition of Rs. 19,25,733/- stating that the assessee has not filed Form-10 within the stipulated time as prescribed U/s. 11(2) of the Act. The Ld. AO further noted that the assessee has incurred an amount of Rs. 22,07,314/- and has reported in ITR-7 in the column "capital account". However, on verification of the records, the AO found that Rs. 22,07,314/- is shown under the headings "sundry debtors". The Ld. AO therefore rejected the claim of the assessee and disallowed a sum of Rs. 19,25,733/-.

The Ld. AO further noted that even though the assessee has shown gross receipts of Rs. 4,06,56,090/-, the gross receipts collected amounted to Rs. 3,92,90,568/- as per the income and expenditure account. Accordingly, the Ld. AO calculated the application of income for charitable purposes at Rs.3,14,71,249/- and disallowed the balance 15% amounting to Rs.19,25,733/- as the assessee has filed Form-10 belatedly on 28/1/2017 for Rs. 8,79,113/-. However, while uploading the assessment order, the Ld. AO erroneously uploaded the total income at Rs. NIL and subsequently revised vide the order U/s. 154 r.w.s 143(3) on 21/12/2018 determining the total income of Rs. 19,25,733. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). During the first appellate proceedings, the assessee's representative filed a written submission stating that the appellant has spent Rs. 22,07,314/- as repayment of loan vide its letter dated 11/7/2019. Subsequently, the assessee filed a revised letter on 14/10/2019 claiming that Rs. 22,07,814/- was mistakenly submitted as repayment of earlier loans but it represents the payment made in advance to suppliers of building materials and others. The assessee's representative submitted copies of the bills and ledger accounts before the Ld. CIT(A). The Ld. CIT(A) admitted the additional evidence under Rule 46A and

forwarded the same to the Ld. AO vide letter dated 15/10/2019 calling for a remand report. The Ld. AO submitted his remand report on 3/12/2019 stating that the admission of the additional evidence may not be entertained. The copy of the remand report was forwarded to the assessee on 10/2/2020 to furnish the rejoinder, if any. In response the assessee filed rejoinder vide letter dated 18/2/2020 to the Ld. CIT(A). After considering the additional evidences, remand report and the rejoinder to the remand report, the Ld. CIT(A) relying on the decision of the Hon'ble Madras High Court in the case of CIT vs. Thanthi Trust reported in [1982] 137 ITR 735 dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

4. The assessee has raised the following grounds of appeal:

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. The Ld. CIT(A) erred in not considering the amount paid in advance towards purchases and services as utilization of the amount.*
- 3. The Ld. CIT(A) ought to have considered the amount of Rs. 19,25,733/- as spent for the purpose of the objects and that no amount remained unused for being taxed. The Ld. CIT(A) ought to have considered that the amount of Rs. 19,25,733/- was also actually expended.*

4. *Any other ground that may be urged at the time of hearing."*

5. The Ld. AR submitted that a detailed reply including copies of the invoices which have been received during the assessment year 2017-18 for the advances paid during the AY 2016-17 has been placed before the Bench in the paper book page nos. 18 to 100. The Ld. AR further submitted that the assessee has provided various advances for which the bills are received in the subsequent year and hence they should be treated as amounts spent for charitable purposes and accordingly the exemption U/s. 11 shall be allowed to the assessee. The Ld. AR further submitted that belated submission of Form-10 should not deprive the assessee of claiming the exemption U/s. 11 of the Act. The Ld. AR relied on the decision of the Hon'ble Madras High Court in the case of M/s. Nadigar Sangam Charitable Trust vs. Assistant Director of Income Tax (Exemptions) [2019] 263 taxman 0648 (Madras).

Per contra, the Ld. DR submitted that as per the provisions of section 11(2) of the Act, the assessee shall file Form-10 on or before the due date of filing of the return of income as mentioned in section 139(1) of the Act. Since the assessee failed to furnish

Form-10 along with the return of income for claiming exemption U/s. 11(2) of the Act, exemption shall not be allowed to the assessee. The Ld. DR relied on the decision of the Hon'ble Kerala High Court in the case of CIT vs. Shree P. Subramoniam Religious Trust [2009] 179 Taxman 144 (Kerala). The Ld. DR pleaded that the order of the Ld. Revenue Authorities be upheld.

6. We have heard both the sides and perused the material available on record and the orders of the Authorities below. We find from the order of the Ld. AO that the assessee has claimed exemption U/s. 11 of the Act while filing ITR-7 claiming it as capital account. However, the Ld. AO observed that the amount is shown under the heading "sundry debtors" but no capital expenditure was incurred as stated by the assessee. Admitted facts are that the assessee has also not filed Form-10 to claim accumulation U/s. 11(2) of the Act while filing the return of income U/s. 139(1) of the Act. We also note that the assessee has not filed condonation of delay petition before the Ld. CIT as per the Circular No. 7 of 2018, dated 20/12/2018. It is an admitted fact that the assessee has incurred certain advances to various suppliers as detailed below:

SI No	Name of the person	Purpose of credit (Rs.)
1.	Bhargavi General Stores	91,100
2.	N. Ways Financial Services	1,00,000
3.	P. Lokesh Raju	82,174
4.	Social Service Centre, Vijayawada	3,000
5.	Sri Lakshmi Fal Ash Bricks, S Kota	1,21,600
6.	Sri Sai Chaitanya General Stores	5,800
7.	Surya enterprises S. Kota	18,03,640
	Total	22,07,314

7. Even though the claim of the assessee is that there is an expenditure incurred during the impugned assessment year and considered as advances since the invoices for the supply of materials have been received in the subsequent financial year. The invoices are also accounted in the AY 2017-18 only. The assessee has also failed to upload Form-10 within the due date prescribed U/s. 11(2) r.w.s 139(1) of the Act. The Ld. AR also failed to demonstrate before us whether the same expenses have been claimed in the AY 2017-18 also. No documentary evidences are produced before us for non-claiming of the same expenditure in the AY 2017-18. In the case law relied on by the Ld. AR in the case of M/s. Nadigar Sangam Charitable Trust vs. ADIT (Exemptions) (supra) the Hon'ble Madras High Court observed that the assessee in that case has filed the necessary Forms as

prescribed U/s. 11(2) of the Act and hence it cannot be pleaded in the instant case. The Hon'ble High Court of Kerala in the case of CIT vs. Shree P. Subramoniam Religious Trust (supra) has laid down that merely an advance cannot be treated as the actual application of funds that this advance would be utilized for the purchase of cement later. In view of the above discussions, we are of the considered view that since the assessee has neither expended the money during the relevant assessment year nor filed Form-10 within the due date prescribed U/s. 139(1) of the Act, the exemption claimed by the assessee is not valid in law and hence the grounds raised by the assessee are dismissed.

8. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on the 9th September, 2022.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : 09.09.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Association of Relief Volunteers, No.48-87-27, ESI Hospital Road, Gunadala, Vijayawada.
2. राजस्व/The Revenue – Income Tax Officer (Exemptions), Aayakar Bhavan, Veerabhadrapuram, Rajahmundry.
3. (i) The Chief Commissioner of Income Tax, Vijayawada.
(ii) The Commissioner of Income Tax (Exemptions), Hyderabad.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), Vijayawada.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam