

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.342/Hyd/2022		
Assessment Year: 2016-17		
Sri Krishna Geethasramam Proddattur PAN:AAJTS1403N (Appellant)	Vs.	Income Tax Officer (Exemptions) Ward Tirupati (Respondent)
Assessee by:	Shri S. Rama Rao, Advocate	
Revenue by:	Shri Shakeer Ahmed, DR	
Date of hearing:	01/08/2023	
Date of pronouncement:	04/08/2023	

**ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 13.01.2020 of the learned CIT (A)-Kurnool, relating to A.Y.2016-17.

2. At the outset, it is seen that there is a delay of 845 days in filing of this appeal by the assessee for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to the prevailing COVID. After considering the contents of the condonation application filed along with the affidavit and keeping in mind the decision of the Hon'ble Supreme Court in suo moto writ petition No.3/2020 wherein the period from 15.4.2020 to

29.5.2022 have been directed to be excluded, the balance delay of 71 days is condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is a Trust and filed its return of income for the impugned A.Y on 23.1.2018 disclosing Nil income after claiming exemption u/s 11 of the I.T. Act. The case was selected for scrutiny and statutory notices u/s 143(2) was issued and served on the assessee calling for certain information to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details. The Assessing Officer during the course of assesment proceedings noticed that the Trust has claimed exemption u/s 11 of the I.T. Act. On being asked by the Assessing Officer to furnish the details along with copy of registration u/s 12A of the I.T. Act to verify the genuineness of the claim towards exemption u/s 11 of the I.T. Act, the assessee stated that the Trust is not registered u/s 12A of the I.T. Act. According to the Assessing Officer, the registration u/s 12AA of the I.T. Act is a prerequisite for claiming exemption u/s 11. Since the Trust is not registered u/s 12AA of the I.T. Act, the Assessing Officer held that the provisions of section 11 are not applicable. Therefore, the surplus declared by the assessee to the tune of Rs.13,27,090/- was treated as income of the Trust and brought to tax accordingly.

4. Before the learned CIT (A), the assessee did not file any written submission except filing a copy of registration u/s 12AA of the Act dated 26.7.2014 issued by the learned CIT. In view of the above, the learned CIT upheld the action of the Assessing Officer by observing as under:

6.3 I have carefully considered the grounds of appeal and various contentions raised by the assessee, and examined the same in the light of the facts and circumstances of the case. Also, I have duly considered the relevant provisions of the Act and case laws on this issue.

6.4 At the outset, it may be noted that in the grounds of appeal as well as statement of facts filed along with Form 35 (supra), it is submitted by the assessee that prior to AY 2016-17, the assessee was forming part of the Vyasaashram trust. Further, after separating from the trust, the assessee filed an application in Form 10 A before the CIT seeking registration u/s. 12AA of the Act, and the same was pending for disposal as on the date of filing the return of income for the impugned AY 2016-17. However, with a genuine intention that the CIT would grant the registration of trust u/s. 12AA of the Act, while filing the return of income, the assessee claimed exemption u/s. 11 of the Act.

6.5 Also, it is submitted by the assessee that the assessee trust was taken over by the Department of Endowments, Government of Andhra Pradesh.

Pradesh during the year 2015-16. Accordingly, the assessee requested to allow exemption u/s. 11 of the Act.

6.6 I have duly considered the issue on hand. As seen from the facts of the case, and submissions made by the assessee, it is an admitted fact that at the time of filing the return of income as well as while completing the impugned assessment order u/s.143(3) of the Act (supra), the assessee was not registered u/s. 12 AA of the Act, though its application in Form 10 A was claimed to be pending before the CIT.

6.7 As such, *prima facie*, in the absence of registration u/s. 12 AA of the Act, the assessee is not entitled to claim exemption of its income u/s. 11 of the Act. Accordingly, I do not find fault with the AO in disallowing the assessee's claim of exemption u/s. 11 r.w.s. 12 A of the Act and assessing the surplus income of Rs. 13,27,090/- as the total income of the assessee for the impugned AY 2016-17.

6.8 Be that as it may, during the course of appellate proceedings, the assessee filed a copy of order of registration u/s 12AA of the Act dated 26.07.2019 issued by the CIT. A scanned copy of the said order is given below for ready reference.



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
CIT(EXEMPTION), HYD

<b>Name and Address of the Applicant</b>	
SRI KRISHNA GEETHASRAMAM 4/641 ,GANDHI ROAD GANDHI ROAD PRODDATUR 516360 ,Andhra Pradesh	

PAN: AAJTS1403N	Application No: CIT(EXEMPTION), HYD/2019- 20/12AA/10037	Registration No: CIT(EXEMPTION) HYD/12AA/2019- 20/A/10173	Order No: ITBA/EXM/S/12 AA/2019- 20/1017030671( 1)	Date: 26/07/2019
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**Order for registration under section 12AA of the Income Tax Act, 1961**

- I. An application in Form No. 10A seeking Registration u/s 12AA of the Income Tax Act, 1961 was filed on 08/01/2019.
- II. The trust/ society/ non profit company was constituted on 10/07/1991 by the trust deed/ memorandum of association/ instrument indicating its objects.
- III. After considering the material available on record, the applicant trust/ society/ non profit company is hereby granted registration with salient activities as **Religious Activities** and the provisions of sections 11 and 12 shall apply in the case from the Assessment Year: 2019-20.

S.No.	Conditions
1	As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner shall be sought along with the draft of the amended deed and no such amendment shall be effected until and unless the approval is accorded.
2	In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.
3	In case the trust/institution is converted into any form, merged into any other entity or dissolved in any previous year in terms of provisions of section 115TD, the applicant shall be liable to pay tax and interest in respect of accreted income within specified time as per provisions of section 115TD to 115TF of the Income Tax Act, 1961 unless the application for fresh registration under section 12AA for the said previous year is approved by the Commissioner.
4	The Trust/ Institution should quote the PAN in all its communications with the

S.NO	Conditions
	Department.
5	The registration u/s 12AA of the Income Tax Act, 1961 does not automatically confer any right on the donors to claim deduction u/s 80G.
6	Order u/s 12AA(1)(b) read with section 12A does not confer any right of exemption upon the applicant u/s 11 and 12 of Income Tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each Financial Year relevant to the Assessment Year and all the provisions of law acted upon. This will be further subject to provisions of section 2(15) of the Income Tax Act, 1961.
7	No change in terms of Trust, Deed/ Memorandum of Association shall be effected without due procedure of law and its intimation shall be given immediately to this office. The registering authority reserves the right to consider whether any such alteration in objects would be consistent with the definition of "charitable purpose" under the Act and in conformity with the requirement of continuity of registration.
8	The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(1)(b) of the Income Tax Act, 1961. Separate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/ to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organisation.
9	The Trust/ Institution shall furnish a return of income every year within the time limit prescribed under the Income Tax Act, 1961.
10	Separate accounts in respect of profits and gains of business incidental to attainment of objects shall be maintained in compliance to section 11(4A) of Income Tax Act, 1961.
11	The registered office or the principal place of activity of the applicant should not be transferred outside the jurisdiction of undersigned except with the prior approval.
12	No asset shall be transferred without the knowledge of undersigned to anyone, including to any Trust/ Society/ Non Profit Company etc.
13	The registration so granted is liable to be cancelled at any point of time if the registering authority is satisfied that activities of the Trust/ Institution/ Non Profit Company are not genuine or are not being carried out in accordance with the objects of the Trust/ Institution/ Non Profit Company.
14	If it is found later on that the registration has been obtained fraudulently by misrepresentation or suppression of any fact, the registration so granted is liable to be cancelled as per the provision u/s section 12AA(3) of the Act.
15	This certificate cannot be used as a basis for claiming non-deduction of tax at source in respect of investments etc. relating to the Trust/ Institution.
16	All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to this office.

6.9 As seen from the above, it is clearly evident that the assessee has been granted registration u/s. 12AA of the Act from the AY 2019-20 onwards. As such, the CIT has not granted registration u/s. 12AA of the Act for the impugned AY 2016-17. Accordingly, it is an admitted fact that the assessee is not entitled to claim exemption of its income u/s. 11 of the Act for impugned AY 2016-17. In view of this, on the basis of the order of registration u/s. 12AA of the Act dated 26.07.2019 (supra), I am of the considered opinion that the assessee is not eligible to claim exemption u/s. 11 of the Act. Thus, the grounds of appeal raised by the assessee on this issue are dismissed.

6.10 Before parting, I would like to highlight the fact that, while framing the impugned assessment order, the AO has simply adopted the surplus income as reported by the assessee as the total income of the assessee, but without applying the relevant provisions of the Act. In view of this, the AO is directed to re-compute the total income of the assessee by applying the normal provisions of the Act under various heads of the income as envisaged u/s. 14 of the Act, including deduction towards depreciation allowance u/s. 32 of the Act, if any.

7.0 Thus, the appeal filed by the assessee for the AY 2016-17 is dismissed.

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned CIT (A) is erroneous both on facts and in law.
2. The learned CIT(A) erred in holding that the registration granted to Trust by order of the learned CIT(A) dated 13.1.20 is not applicable to the appellant herein.
3. As an alternative the learned CIT(A) ought to have directed that the Depreciation on the assets used for the purpose of discharge of obligations is allowable as deduction.
4. The learned CIT(A) ought to have seen that the appellant becomes entitled for Sec.32 of the IT Act when the exemption u/s 11 is not allowed.
5. Any other ground/grounds that may be urged at the time of hearing.
6. The assessee has also filed the following additional ground:

*“The Assessing Officer and the CIT (A) are not justified in taxing the petitioner herein particularly in view of the fact that the said unit of trust was a part of Vysasharamam/run by the Asstt. Commissioner, Endowments Department, Govt. of A.P. Therefore, the income is not liable for income tax”.*

7. The learned Counsel for the assessee referring to the following written submission requested the Bench for admission of the additional ground.

It is humbly submitted that a trust was created under the name of Sri Vyasashramam at Yerpedu. The said trust adopted Sri Krishna Geethashramam as a separate institution situated at Proddatur, Kadapa District. The said Vyasashramam was incorporated in the year 1949 and was registered with the Registrar on 25.01.1949.

On 02.08.2017, the Commissioner, Endowments Department, Gollapudi, Vijayawada passed an order in DP1/25/6/2017 dated 02.08.2017. The said Commissioner passed an order separating Sri Krishna Geethashramam, Proddatur from Sri Vyasashramam, Yerpedu. As per the order, the said institution of Sri Krishna Geethashramam was entrusted to the Assistant Commissioner, Endowments Department, Kadapa and thereafter the said institution was being organised by the Asst. Commissioner, Endowments Department, Kadapa

It can be seen from the above facts that the institution is run by the Government of Andhra Pradesh and, therefore, the income of the institution is exempt from income tax. This claim was not made before either the Assessing Officer or before the CIT (A). However, this information is available before the Assessing Officer and others. Therefore, the following ground may kindly be admitted and appropriate orders may kindly be passed.

8. Referring to the copy of the order passed by the Commissioner, Endowment Deptt. report Vijayawada, Andhra Pradesh dated 2.8.2017, he submitted that the Institution is run by the Govt. of A.P and therefore, the income of the institution is exempt from tax. He submitted that the above information was available before the Assessing Officer and the learned CIT (A), however, they have not considered and therefore, the addition ground raised by the assessee should be admitted for adjudication. He further submitted that a specific ground as per Ground of appeal No.3 was taken before the learned CIT (A) which reads as under:

*“3. The Assessee Trust have been taken over by the Department of Endowments, Govt. of Andhra Pradesh”*

9. He accordingly submitted that when the facts are already available on record and no new facts are required to be investigated and the additional ground is a legal one, therefore, the additional ground raised by the assessee should be admitted.

10. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A). He submitted that it is an admitted fact that the assessee has not been granted registration u/s 12A of the I.T. Act. Before the learned CIT (A) the assessee did not file any written submission for which the learned CIT (A) decided the appeal on the basis of the material available on record. Therefore, the additional ground raised by the assessee should not be admitted for adjudication.

11. After hearing both sides and considering the fact that all material facts necessary for adjudication of the additional ground are already available on record and the additional ground raised by the assessee is purely a legal one, the same is admitted for adjudication.

12. The learned Counsel for the assessee submitted that the Assessee Trust is a part of Vyasasram which was incorporated in the year 1949 and was registered with the Registrar on 25.2.1949 and is having registration u/s 12A of the I.T. Act. Further, the Endowments Deptt., Govt. of A.P has taken over Sri Krishna Geethasramam vide order dated 2.8.2017. He submitted that due to some unavoidable reasons, the matter could not be represented before the learned CIT (A) properly. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case before either of the lower authorities.

13. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

14. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the AO in the instant case rejected the claim of deduction u/s 11 on the ground that the assessee trust is not registered u/s 12A of the I.T. Act which is a pre-requisite for claiming exemption u/s 11 of the I.T. Act. We find the learned CIT (A) upheld the actin of the Assessing Officer on the basis of material available on record in the absence of any written submission filed before him. It is the submission of the learned Counsel for the assessee that Sri Krishna Geethasramam is a part of Sri Vyasasramam and the assessee trust has already been taken over by the Govt. of A.P and therefore, the income of the assessee is not liable to tax.

15. From the various details furnished by the assessee, we find the Asstt. Commissioner (Estates), Endowments Department, Govt. of A.P vide order dated 2.8.2017 has taken over the assessee trust from Sri Vyasasramam, the English translation copy of which reads as under:

English translation of the letter written in Telugu language:

Office of the Commissioner  
Endowments Department  
Gollapudi, Vijayawada  
Andhra Pradesh

R.C No.DP/25/6/2017 dated 02.08.2017

Sub: Endowments Department – Sri Krishna Geethasramam, Prodduturu  
Town Kadapa District – Branch Administration, Development,  
Bank transactions, Income-Tax, Budget transactions – Issue of  
Orders

Ref: Letter No.B4/1355/2017 dated 26.05.2017 – from Regional Joint  
Commissioner, Endowments Department , Tirupati.

.. ..

In view of the reasons explained through the letter of the Regional Joint  
Commissioner, Tirupati cited under reference, the administrative control of Sri  
Krishna Geethasramam, Prodduturu Town, Kadapa Dist., is de-linked from Sri  
Vyasasramam, Yerpedu and the Asst. Commissioner, Endowments Department,  
Endowments Department, Kadapa is appointed as Executive Officer with full  
additional charge and orders to this effect are issued by the Commissioner,  
Endowments Department, Gollapudi, Vijayawada.

Sri Vyasasramam, Yerpedu is hereby directed to hand over all the records  
relating to administration, Development, Bank transactions, Income-Tax, Budget,  
etc., to the Asst. Commissioner, Endowments Department, Kadapa immediately.

Similarly, the Asst. Commissioner, Endowments Department, Kadapa is  
directed to take over all the records relating to administration, Development,  
Bank transactions, Income-Tax, Budget, etc., of Sri Krishna Geethasramam from  
Sri Vyasasramam, Yerpedu and supervise.

(As per the orders of Commissioner)

Sd/- 2.8.2017  
Assistant Commissioner (Estates)

To  
The Regional Joint Commissioner, Endowments Department , Tirupati  
The Asst. Commissioner, Endowments Department, KDAPA  
Peetadhipathi, Sri Vyasasramam, Yerpedu  
Sri Krishna Geethasramam, Prodduturu, Kadapa Dist.

16. We find the assessee before the learned CIT (A) has also taken a specific ground as per Ground of appeal No.3 according to which the assessee trust has been taken over by the Endowments Department, Govt. of A.P. and therefore, the

assessee is not liable to tax. However, due to non-submission of any submission before the learned CIT (A), he has dismissed the appeal filed by the assessee. It is the submission of the learned Counsel for the assessee that when the assessee trust has been taken over by the Endowments Department, Govt. of A.P, the income is not at all liable for tax. Since the order of the learned CIT (A) is silent on this issue despite a specific ground taken before him and since the assessee did not file any written submission before the learned CIT (A) for which he has decided the appeal on the basis of material available on record, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the learned CIT (A) with a direction to grant one final opportunity to the assessee to substantiate its case by filing all the requisite details and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee including the additional grounds are accordingly allowed for statistical purposes.

17. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 4<sup>th</sup> August, 2023.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 4<sup>th</sup> August, 2023.

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Sri Krishna Geethasramam, 4/641 Gandhi Road, Proddatur, Kadapa
2	Income Tax Officer Exemption Ward, Tirupati
3	CIT (Exemptions), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*