

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

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.54/Viz/2024

(निर्धारण वर्ष / Assessment Year :2021-22)

Ashram Educational Society,
Kakinada.

PAN: AAEEAA 7642 P

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

Vs. Income Tax Officer,

Ward-1,

Kakinada.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

: 21/03/2024

: 26/03/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1058930741(1), dated 20/12/2023 arising out of the order passed U/s. 143(3) of the Act for the AY 2021-22.

2. Briefly stated the facts of the case are that the assessee is a society registered as association under Societies Registration Act, 2001 filed its return of income for the AY 2021-22 on 02/03/2022 declaring total income of Rs.18,58,030/-. The return was selected for scrutiny under CASS vide notice u/s 143(2) dated 28/06/2022. Thereafter, the case was selected for complete scrutiny for the reason that “the assessee has shown a very low PBDIT (Profit Before Depreciation, Interest and Taxes) ratio in specific business code and turnover range where deficiency is reported in audit report”. Further, it was also observed that the ratio of PBDIT to turnover is abnormally low. Therefore, During the assessment proceedings, the assessee was called for to furnish the relevant information and its reply. The assessee has submitted their reply on 05.11.2022. It was the submission of the assessee before the Ld. AO that their institution is an educational institution and carried out with no profit motive object. Therefore, the net profit is less compared to other business organizations which are to be carried out with an object of earning profit. The assessee has also submitted the detailed statement of computation of total income for the Assessment year 2021-22. The Ld. AO also asked the assessee to furnish the confirmation letters from sundry creditors relating to the financial year 2020- 2021. However, the assessee has not furnished the confirmation letters from the sundry creditors. The assessee has filed

letter dated 17/12/2022 in response to the show cause notice dated 12/12/2022 and stated that the assessee "Ashram Educational Society" is registered as association under Societies Registration Act, 2001 with the objective of 'To promote and propagate education by running public school/ colleges etc. with residential facilities also'. It was further submitted that the assessee's association is established with no profit motive for the last several years and no commercial activities are involved in its working as mentioned in Aims & objects of Memorandum of Association. During the financial year 2020-21 also this Educational Institution collected fees from students and met school running and maintenance expenses. Since this institution has not applied for income tax exemption in respect of income from educational activities, the excess of income over the expenditure was offered to tax for the financial year 2020-21 and paid income tax thereon. After considering the submissions of the assessee, the Ld. AO came to a conclusion that the assessee has shown a very low PBDIT to turnover ratio. Further, the Ld. AO also observed that the assessee has not furnished the confirmation letters from the sundry creditors amounting to Rs. 33,49,752/- reflected in the balance sheet and therefore the Ld. AO disallowed Rs. 33,49,752/- as unexplained expenditure u/s 69C of the Income Tax Act, 1961 and added back to the income of the assessee. Accordingly, the Ld. AO determined the total income of the assessee at Rs. Rs.52,07,782/- and completed the

assessment U/s. 143(3) r.w.s 144B of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee and passed ex-parte order as there was no representation on behalf of the assessee nor the assessee made any submissions. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in further appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in dismissing the appeal ex-parte without granting sufficient opportunity.*
3. *Without prejudice to the above, the Ld. CIT(A) is not justified in sustaining the addition of Rs. 33,49,752/- U/s. 69C of the Act.*
4. *Any other grounds may be urged at the time of hearing.”*

4. At the outset, the Ld. AR submitted before the Bench that the Ld. CIT(A)-NFAC has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A)-NFAC in order to provide one more opportunity to the assessee of being heard and with a direction to decide the case on merits.

5. On the other hand, the Ld. DR vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been

provided to the assessee however, on the given dates of hearing, neither the assessee made any written submissions nor filed any adjournment letter before the Ld. CIT (A)-NFAC. It was further submitted that the Ld. CIT (A)-NFAC had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A)-NFAC does not call for any interference.

6. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, we find that the Ld. CIT (A)-NFAC had posted the case on several occasions. However, no submissions were made before the CIT(A)-NFAC on the dates of hearing whatsoever the reasons. Therefore, the Ld. CIT (A)-NFAC was left with no other option except to adjudicate the appeal ex-parte. In this situation, after considering facts and circumstances of the case and also considering the prayer of the Ld. AR, and in the interest of justice, we hereby remit the matter back to the file of Ld. CIT (A)-NFAC in order to consider the appeal afresh and decide the appeal on merits by providing one more opportunity to the assessee of being heard in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. CIT (A)-NFAC in the proceedings failing which the Ld. CIT (A)-NFAC shall be at liberty to pass appropriate order in

accordance with law and merits based on the materials on the record. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 26th March, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :26.03.2024

OKK - SPS

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

1. निर्धारिती/ The Assessee – Ashram Educational Society, D.No. 68-8-1/31, Ashok Nagar, Kakinada, Andhra Pradesh-533003.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, O/o. ITO, Deepthi Towers, Main Road, Kakinada, Andhra Pradesh-533001.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam