

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE  
SHRI LALIET KUMAR, JUDICIAL MEMBER  
&  
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
222/Hyd/2024	2018-19	Talented Aspirants Peoples Action to the Society for Vigorous India, Hyderabad [PAN: AAATT6716A]	DCIT, Exemption Circle-1(1), Hyderabad
208/Hyd/2024	2021-22		

निर्धारित द्वारा/Assessee by: Shri S. Rama Rao, AR  
(Through virtual mode)

राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 01/05/2024

घोषणा की तारीख/Pronouncement on: 09/05/2024

आदेश / ORDER

**PER MADHUSUDAN SAWDIA, A.M:**

The captioned appeals have been filed at the instance of Talented Aspirants Peoples Action to the Society for Vigorous India ("the assessee") against the orders dated 21/02/2024 & 10/01/2024, passed by the learned Addl/JCIT(A)-Aurangabad ("Ld. First Appellate Authority"), relating to the assessment years (AYs) 2018-19 & 2021-22; respectively.

Since both the appeals were heard together on the issue of disallowance of deduction u/s. 11 of the Income Tax Act, 1961 (for short “the Act”), both these appeals have been decided by this common order, for the sake of convenience.

ITA No. 222/Hyd/2024 (AY. 2018-19):

2. The grounds raised by the assessee reads as under :

*1) The order of the learned CIT (A) is erroneous to the extent it is prejudicial to the appellant;*

*2) The learned CIT (A) erred in confirming the action of the Assessing Officer in not allowing deduction claimed of Rs.47,46,623/ - u/s 11 of the I.T Act.*

*3) The learned CIT (A) erred in not considering that the date of 10.05.2019 mentioned in Form 10B is an inadvertent error and the same should have been read as 31.03.2018 and should have directed allowance of deduction.*

*4) Any other ground/grounds that may be urged at the time of hearing;*

3. The assessee also raised the following additional ground before us :

*“The Assessing Officer and the learned Commissioner of Income Tax (Appeals) erred in not allowing expenditure claimed against the receipt and in treating the entire receipt as income when the appellant actually spent more amount than the amount receiving during the year.”*

4. Learned AR submitted that this is a legal ground, which goes to the root of the matter and requires no verification of facts from the records. Hence, learned AR requested to accept the additional ground.

5. Per contra, learned DR, agitated to accept the contention raised by the learned AR. It was submitted that the eligibility of assessee needs to be verified by the Ld.AO.

6. We have heard the rival contentions, perused the material available on record and gone through the orders of the Revenue authorities. As far as the additional ground raised by the learned AR, we entertain the same, relying on the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., Vs. CIT [229 ITR 383] (SC) as considered in Tribunal's Special Bench's decision in All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai), holds that '*tribunal can very well entertain a new ground going to root of the matter so as to determine correct tax liability of a taxpayer*'.

7. Brief facts of the case as culled out from the record are that the assessee is a society, registered u/s. 12AA of the Act, engaged in promotion of economic development and better standard of living with focus on the aged, women, children those who are mentally challenged, blind and dumb.

7.1. For A.Y.2018-19 the assessee filed its returns of income on 04/02/2019, claiming deduction u/s 11 of the Act amounting to Rs.47,46,623/- and declaring total income of Rs.Nil. The Central Processing Centre, Income Tax Department, Bengaluru ("CPC") in the intimation u/s 143(1) of the Act, dated 30/09/2019 did not allow the deduction claimed u/s 11 of the Act of Rs. 47,46,623/- contending that

the assessee has not filed the return of income within the due date specified u/s. 139(1) of the Act and finally raised a demand of Rs.16,22,365/-.

8. Aggrieved, assessee preferred appeal before the Ld. First Appellate Authority.

9. Ld. First Appellate Authority dismissed the appeal of assessee, thereby confirming the disallowance of deduction of Rs. 47,46,623/- claimed u/s. 11 of the Act, contending that the assessee has not filed the return of income within the time limit allowed u/s. 139(1) of the Act. Hence, the deduction u/s 11 of the Act claimed by the assessee is dismissed by the Ld. First Appellate Authority. The relevant portion of the order of the Ld. First Appellate Authority is reproduced as under:

*“6.3. In its reply the appellant itself has accepted that it had filed its return of income u/s 139(4) of the Act i.e. belated return. However, the appellant has misinterpreted the provision of section u/s 139(1) of the Act.*

*The appellant had filed its return of income on 04.02.2019, however, due date for filing of return of income was on 31.08.2018. As mentioned in above notice as per the conditions for applicability of section 11 and 12 of the income tax act, it is mandatory to file return of income on or before the due date. The appellant has filed the return of income after the due date. Hence, the provisions of section 11 & 12 are not applicable in its case. Therefore the denial of exemption under section 11 by the CPC is justified. Accordingly the grounds raised by the appellant are dismissed.”*

10. Aggrieved by the said order of the Ld. First Appellate Authority, assessee is in appeal before the Tribunal. The

learned AR submitted that the assessee is a society, registered u/s. 12AA of the Act, engaged in promotion of economic development and better standard of living with focus on the aged, women, children those who are mentally challenged, blind and dumb. Hence the assessee is working for the benefit of the society on charity. Learned AR further submitted that for A.Y.2018-19 the assessee filed its returns of income on 04/02/2019, claiming deduction u/s 11 of the Act amounting to Rs.47,46,623/- and declaring total income of Rs.Nil. The Central Processing Centre, Income Tax Department, Bengaluru ("CPC") in the intimation u/s 143(1) of the Act, dated 30/09/2019 did not allow the deduction claimed u/s 11 of the Act of Rs.47,46,623/- contending that the assessee has not filed the return of income within the due date specified u/s. 139(1) of the Act and finally raised a demand of Rs.16,22,365/-. The learned AR also submitted that the only issue in their ground of appeal is qua disallowance of the deduction claimed u/s. 11 of the Act of Rs. 46,68,413/-. Hence, he requested before the Tribunal to allow the deduction claimed u/s. 11 of the Act of Rs.47,46,623/-.

10.1. The ground which are pressed by the learned AR before us are in two fold i.e. a) regarding disallowance of deduction u/s 11 of the Act of Rs.47,46,623/- due to delay filing of form no.10B and b) regarding alternate claim of legitimate expenditures from the gross receipt.

11. Per contra, learned DR placed heavy reliance on the orders of the Ld. First Appellate Authority and vehemently opposed the submission made on behalf of the assessee.

12. We have heard the rival contentions, perused the material available on record and gone through the orders of the Ld. First Appellate Authority. As per the available record, it is a fact that the assessee has filed the Form no.10B on 10/05/2019, thus the assessee did not file the Form no. 10B within specified time. Similar issue came before the co-ordinate bench of ITAT in the case of Shri Jain Shwetamber Murtipujak Sangh v/s The Income Tax Officer (Exemption), ITA Nos. 15 & 16/RPR/2022 for AYs. 2016-17 & 2017-18. Relying on the decision of the said co-ordinate bench of ITAT, we held that, to claim the exemption u/s 11 of the Act, the Form no. 10B must had been filed within in the due date. Since the assessee has not filed the Form no. 10B within in the due date, we find no infirmity in the view taken by the lower authorities who had rightly declined the assessee's claim for exemption u/s.11 of the Act.

12.1. Further relying on the decision of the said Co-ordinate bench of Tribunal, we may herein observe that the lower authorities after declining the assessee's claim for exemption u/s.11 of the Act could not have summarily held its gross receipts of Rs.46,68,413/- as its income. In sum and substance, the lower authorities after treating the assessee as an unregistered trust was obligated to have considered its

claim for deduction of expenses as were raised in the income and expenditure account. Accordingly, on the basis of our aforesaid deliberations, we though uphold the declining of the assessee's claim for exemption u/s.11 of the Act, but at the same time, restore the matter to the file of the Ld. AO with a direction to consider the assessee's claim for deduction of expenses as debited in the income and expenditure account, i.e. to the extent the same are allowable under the Act. Needless to say, the Ld. AO shall grant a reasonable opportunity of being heard to the assessee in the course of set-aside proceedings.

13. In the result, appeal of the assessee in ITA No. 222/Hyd/2024 for A.Y.2018-19 is treated as partly allowed for statistical purpose.

ITA No. 208/Hyd/2024 (AY. 2021-22):

14. The main grievance raised by the assessee in this appeal is that the Ld. First Appellate Authority erred in not granting exemption u/s. 11 of the Act on the reason that there was a delay in filing Form 10B i.e. Audit Report.

15. On the basis of our observation as above in ITA No. 222/Hyd/2024 (AY. 2018-19), we restore the matter to the file of the Ld. AO with a direction to consider the assessee's claim for deduction of expenses as debited in the Income and Expenditure Account, i.e. to the extent the same are allowable under the Act. Needless to say, the Ld. AO shall grant a

reasonable opportunity of being heard to the assessee in the course of set-aside proceedings.

16. In the result, appeal of the assessee in ITA No. 208/Hyd/2024 for A.Y.2021-22 is treated as partly allowed for statistical purpose.

17. To sum-up, both the appeals are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 9<sup>th</sup> day of May, 2024.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Sd/-  
**(MADHUSUDAN SAWDIA)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 09/05/2024

TNMM

*Copy forwarded to:*

1. *Talented Aspirants Peoples Action to the Society for Vigorous India, H.No. 263, Road No. 9B, Alkapuri Colony, HUDA Residential Complex, S.O. Saroornagar, Hyderabad.*
2. *The DCIT, Exemption Circle-1(1), Hyderabad.*
3. *The Pr.CIT-Hyderabad.*
4. *DR, ITAT, Hyderabad.*
5. *GUARD FILE*

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD