

आयकर अपीलीय अधिकरण, 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

आयकरअपीलसं./ I.T.A. No. 278/Viz/2023

(निर्धारणवर्ष/ Assessment Year :2014-15)

M/s. Viswamanava Samikyata
Samsat, Guntur.
PAN: AAATV 1597 P
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer
(Exemptions),
Guntur.
(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Assessee by

: Sri GVN Hari, Advocate

प्रत्यर्थीकीओरसे/ Revenue by

: Dr. Satyasai Rath, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 02/04/2024

घोषणाकीतारीख/Date of
Pronouncement

: 28/05/2024

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/250/2023-24/1055748974(1) arising out of the

order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 [the Act] for the AY 2014-15.

2. Briefly stated the facts of the case are that the assessee is a charitable trust registered U/s. 12A of the Act. The assessee filed its return of income for the AY 2014-15 on 14/08/2014 admitting total income at NIL. The scrutiny assessment U/s. 143(3) of the Act was completed on 14/12/2016 accepting the income returned by the assessee. Subsequently, the case was reopened after obtaining necessary approvals from the competent authority and accordingly notices U/s. 148 and 142(1) of the Act were issued and served on the assessee. In response, the assessee filed written submissions. On perusal of the written submissions made by the assessee it was observed by the Ld. AO that there is a difference in the cost of construction of "New Annapurnalayam" to the extent of Rs. 42,12,584/- which was capitalized during the AY 2015-16. Further, the Ld. AO also observed that the assessee made incorrect claim of corpus donations received by the assessee during the year amounting to Rs. 4,20,54,192/- though there was no specific direction received from the donors to treat the same as corpus donations which are revenue in nature. Therefore, the Ld. AO opined that the amount of Rs. 42,12,584/- escaped from

assessment for the AY 2014-15 and also rejected the claim of exemption of Rs.4,20,54,192/- U/s. 11(1)(d) of the Act. Thus, the Ld. AO computed the assessment determining the total income at Rs. 4,62,66,776/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC passed ex-parte order and partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following revised 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) ought to have granted sufficient opportunity before deciding the appeal ex-parte.

3. The Ld. CIT(A) ought to have quashed the notice U/s. 148 of the Act as invalid and ought to have quashed the consequent reassessment proceedings as void ab initio.

4. Without prejudice to Ground No.2, the Ld. CIT(A) is not justified in upholding the addition of Rs. 4,20,54,192/- made by the AO by disallowing of the exemption claimed U/s. 11(1)(d) of the Act by the appellant in respect of the corpus donations.

5. Without prejudice to Ground No.2, the Ld. CIT(A) is not justified in sustaining the addition of Rs. 42,12,584/- made by the AO towards alleged cost of construction incurred which was computed on the basis of cost of construction estimated by the DVO.

6. The Ld. CIT(A) ought to have held that the above addition of Rs. 42,12,584/- is not warranted as the appellant did not claim this expenditure.

7. The Ld. CIT(A) is not justified in not allowing the claim for carry forward of unabsorbed depreciation amounting to Rs. 2,41,22,950/- and carry forward of unabsorbed excess of

expenditure amounting to Rs. 3,28,31,680/- pertaining to AY 2011-12 to AY 2013-14.

8. Any other ground that may be urged at the time of appeal hearing.”

3. Grounds No. **1, 2 and 8** are **general in nature** and therefore they need no adjudication. **Grounds No. 5 & 6 are not pressed** by the Ld. AR and therefore dismissed.

4. **Ground No.4 is with respect to disallowance of exemption claimed U/s. 11(1)(d) of the Act** by the assessee with respect to corpus donations. This issue is similar to that the issue raised by the Revenue in the assessee's own case for the AY 151/Viz/2020 (AY 2015-16) wherein while adjudicating the Ground No.2, the Tribunal has confirmed the view taken by the Ld. CIT(A) on the issue and decided the issue in favour of the assessee. For the sake of reference, the relevant paras from the order of the Tribunal dated 13/10/2022 are extracted herein below:

“5. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly the Revenue is in agreement with the activities carried on by the Trust. The only issue here is whether the donation received by the assessee amounting to Rs. 3,96,45,981/- [USD 6,50,000] from SVVFUIP, USA is general donation or a corpus donation with a specific direction. We see from the letter submitted by the Ld. AR in page 80 of the paper book that there is a clear direction from the donor to treat the amount donated as a specific direction towards corpus donation in order to build the corpus fund for the running of VMSS activities in the long run. It is clear from the letter that the intention of the donor is to set up a corpus fund

in long run. We give below the findings of the Ld. CIT(A) which reads as under:

“The appellant submitted that the substance needs to be looked into and would form the basis for conclusion about the nature of DONATIONS. The appellant placed reliance on in the case of State of Andhra Pradesh vs. Kone Elevators India Ltd (2005) 181 ELT 156 (Supreme Court), Sundaram Finance Ltd vs. State of Kerala AIR 1966 SC 1178 the Supreme Court, Bharat Sanchar Nigam Ltd vs. Union of India reported in 2006-TMI-309 (Supreme Court) wherein it was held “where the Apex Court held that the substance of the contract is determinative and not its form. Thus, the essence of the contract is crucial and to be seen, keeping in mind the intention of the parties.”

As the intention of the donor is to build the corpus fund for the running of the VMSS activities in the long term, they cannot be treated as general donations since specific direction has been given. I direct the AO to treat the donation of \$6,50,000 as corpus fund. Ground No.3 is adjudicated.”

6. We agree with the findings of the Ld. CIT(A) and hence no interference is required on this ground. Accordingly, this ground raised by the Revenue is dismissed.”

5. Considering the covered nature of the issue in the assessee’s own case for the AY 2015-16 as well as strictly following the principle of consistency, **we hereby allow the Ground No.4 raised by the assessee.**

6. **Ground No. 7** is with respect to Ld. CIT(A)’s decision in not allowing the claim of the assessee for **carry forward of unabsorbed depreciation** amounting to Rs. 2,41,22,950/- and **carry forward of unabsorbed excess of expenditure** amounting to Rs. 3,28,31,680/- pertaining to AY 2011-12 to AY 2013-14. This issue is similar to that the issue raised by the Revenue in the assessee’s own case for the AY 151/Viz/2020 (AY 2015-16) wherein while

adjudicating the Ground No.3, the Tribunal has confirmed the view taken by the Ld. CIT(A) on the issue and decided the issue in favour of the assessee. For the sake of reference, the relevant paras from the order of the Tribunal dated 13/10/2022 are extracted herein below:

“7. The ground No.(iii) raised by the Revenue regarding allowing the claim of carry forward of unabsorbed excess of expenditure over income and unabsorbed depreciation, we find that the assessee has filed a petition u/s. 154 of the Act before the Ld. AO. However, the Ld. AO has rejected the claim of the assessee since the assessee has not made any claim in the return of income. Therefore, the assessee filed an additional ground along with the evidences before the Ld. CIT(A). The Ld. CIT(A) as per the provisions of section 250(5) of the Act admitted the additional ground raised by the assessee. The Ld. CIT(A) placing reliance on the decision of the Bombay High Court in the case of DIT (Exemption) vs. FramjeeCawasjee Institute (1993) 109 CTR 463 (Bom.) wherein it was held that “the Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of assets, what he really meant was that the amounts spent on acquiring those assets had been treated as application of income of the trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing the income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No.2 is answered in the affirmative ie., in favour of the assessee and against the Department”. This view was confirmed by the Hon’ble Supreme Court in the case of CIT vs. Rajasthan and Gujarathi Charitable Foundation Poona 402 ITR 441 SC. The Hon’ble Supreme Court in the referred case held that “also follows that once assessee is allowed depreciation he shall be entitled to carry forward the depreciation as well”.

8. The facts of the present case are similar to the facts of the above referred case. Respectfully following the judicial discipline, the Ld. CIT(A) directed the AO to allow claim of unabsorbed depreciation of earlier years of Rs. 4,51,52,791/.

9. *We find no infirmity in the order of the Ld. CIT(A) and hence no interference is required on this ground. Thus, this ground raised by the Revenue is dismissed.*

10. *Similarly, the allowance of excess of expenditure over income in earlier years as carry forward loss the Ld. CIT (A) relying on the decision of the Rajasthan High Court in the case of CIT vs. Maharana of Mewar Charitable Foundation 164 ITR 439(Raj) Gujarat High Court in the case of CIT vs. Sri Plot Swetamber Murthy Pujak Jain Mandal 211 ITR 293 (Guj.), Bombay High Court decision in the case of CIT vs. Institute of Banking Personal Selection has concluded that the assessee is eligible for claiming excess expenditure over income of earlier assessment years. We therefore are of the view that there is no error in the order of Ld CIT(A), and hence judicially following the above legal precedents, we find no infirmity in the order of the Ld. CIT(A) and no interference is required. Accordingly this ground raised by the Revenue is dismissed.”*

7. Considering the covered nature of the issue in the assessee's own case for the AY 2015-16 as well as strictly following the principle of consistency, **we hereby allow the Ground No.7 raised by the assessee.**

8. **Ground No.3** is with respect to reopening of the assessment U/s. 148 of the Act by the Ld. AO and Ld. CIT(A)'s action in confirming the reopening of assessment. While adjudicating the other grounds raised by the assessee on merits, we have allowed the relevant grounds in favour of the assessee by following the decision of the Tribunal in the assessee's own case for the AY 2015-16 (supra), we are of the opinion that adjudication of the assessee's contention on the legal issue of validity of reopening of the

assessment becomes infructuous. Accordingly, this ground raised by the assessee is **dismissed as infructuous**.

9. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on the 28th May, 2024.

Sd/-

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

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S. BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :28/05/2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s. Viswamanava Samikyata Samsat, C/o. M/s. Umamaheswara Rao & Co, Chartered Accountants, D.No. 29-7-656, 3rd Floor, Hanumantha Enclave, 1/16 Brodipet, Guntur, Andhra Pradesh – 522002.
2. राजस्व/The Revenue – The Income Tax Officer (Exemptions), Guntur, Andhra Pradesh – 522006.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam