

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखासदस्य 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. 9/VIZ/2024  
(निर्धारण वर्ष/ Assessment Year: 2017-18)**

Kennedy Educational Society Sirinagar, Mahatma Gandhi Road Vijayawada – 520007 Andhra Pradesh  [PAN: AAATK6185E]	v.	Asst. CIT Office of the Asst. CIT, Exemption Circle Vijayawada Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr. Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	26.09.2024
घोषणा की तारीख/Date of Pronouncement	:	11.10.2024

**आदेश /ORDER**

**PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057767092(1) dated 07.11.2023 arising out of

order passed under section 144 of the Income Tax Act, 1961 (in short 'Act') dated 18.12.2019.

2. Brief facts of the case are that, as per the information available with the Revenue, it was noticed that the assessee has deposited a sum of Rs.5,40,06,088/- by way of cash and other credits amounting to Rs.6,42,05,060/- aggregating to Rs. 11,82,11,148/- in the assessee's Bank account bearing A/c.No.630605116657 maintained with the ICICI Bank, Vijayawada. The Assessing Officer noticed that assessee has not filed its Return of Income for the A.Y.2017-18. Thereafter, Assessing Officer to examine the sources of cash deposits and other credits issued notice under section 142(1) dated 23.11.2017 calling the assessee to file return of income for the A.Y. 2017-18. In response to the notice under section 142(1) of the Act assessee furnished reply on 05.08.2019 and 29.08.2019. Assessee further filed a letter dated 25.09.2019 submitting the various explanations. In the meantime, the Ld.AO issued notice under section 133(6) of the Act dated 18.07.2019 to ICICI bank calling for the details of bank account statements held in the name of the assessee during the financial year 2016-17 along with KYC details of the assessee, details of Cash deposits made during the FY 2016-17 and details of Cash deposits made during the demonetisation period. In response to notice under section 133(6) of the Act, bank furnished details called for by the Assessing Officer. Thereafter Assessing Officer considering the facts that the despite repeated opportunities to the assessee, assessee has neither filed return of income nor furnished any documents, completed the assessment under section

144 of the Act based on the material available on record and information gathered from the bank under section 133(6) of the Act. The Assessing Officer therefore completed the assessment under section 144(1)(b) r.w.s. 142(1) of the Act by making the following additions: -

- a. Cash deposits made before and after demonetization period as the income from other sources amounting to Rs.5,01,17,960/-.
- b. Cash deposits made during the demonetization period amounting to Rs.38,88,128/-.

3. On being aggrieved by the assessment order, assessee filed an appeal before Ld. CIT(A), Visakhapatnam, which was subsequently migrated to Ld.CIT(A), National Faceless Appeal Centre, Delhi. Before Ld. CIT(A) assessee has submitted similar statements and information. The assessee, stated before Ld.CIT(A) that assessee society and the school including its infrastructure was taken over by M/s. Narayana Educational Society by way of an agreement dated 05.06.2014. However, apart from the copy of the agreement assessee could not produce any documentary evidences with respect to the income transferred to M/s. Narayana Educational Society. Further, assessee also could not produce that these receipts were accounted in the books of accounts of M/s. Narayana Educational Society while including the same while filing the return of income by the M/s. Narayana Educational Society. Considering the above facts, Ld.CIT(A) dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising the following grounds of appeal: -

*“1. The order of the learned CIT(Appeals) is erroneous both on facts and in law.*

*2. The learned CIT (Appeals) erred in deciding the appeal without providing proper opportunity to the appellant and without considering the submissions made during the appeal proceedings.*

*3. The learned CIT (Appeals) erred in confirming the determination of the total income at Rs. 5,40,06,088/-. The learned CIT (Appeals) ought to have seen that no addition should have been made u/s 69A of the I.T Act as the cash deposits into the bank account are properly explained.*

*4. The learned CIT (Appeals) ought to have considered the submissions made before him and the evidences submitted and allowed the appeal on merit.*

*5. Any other ground that may be urged at the time of hearing.”*

5. Ground Nos. 1 and 5 are general in nature and needs no adjudication.

6. Other grounds raised by the assessee pertains to confirmation of addition of Rs.5,40,06,088/- under section 69A of the Act as unexplained. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has entered into an “Agreement For use and Occupation of Infrastructure” of M/s.Kennedy High School, Vijayawada with M/s. Narayana Educational Society, Hyderabad on 05.06.2014 as per the terms set-out in that agreement. Further Ld.AR submitted the Memorandum of Understanding between M/s. Kennedy High School and M/s. Narayana Educational Society dated 09.03.2012 setting out the terms of use of the properties held by M/s. Kennedy High School. Ld.AR vehemently argued that even though the agreements are unregistered the terms of

the agreement are complied in verbatim, by the parties to the agreement from F.Y.2014-15 onwards. Ld.AR further submitted that the revenue has not disputed the same in the earlier assessment years, however, notice was issued considering the cash deposits during the demonetization period. The Ld.AR further submitted that the return of income filed by the M/s. Narayana Educational Society and the bank account details of M/s. Narayana Educational Society could not be provided before the revenue authorities. The Ld.AR further submitted that the bank statements and details of payment in accordance with the terms of agreements before the Tribunal and hence pleaded that the matter may be remitted back to the file of the Assessing Officer to verify the cash deposits including the additional evidences.

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that the assessee has not filed the return of income even in response to the notice issued under section 142(1) of the Act. Further Ld. DR also submitted that no confirmation from M/s. Narayana Educational Society has been obtained by the assessee along with the financial statements and the Income Tax Returns of M/s. Narayana Educational Society, evidencing the consideration of the receipts into the account of M/s. Kennedy High School and subsequently transferred to M/s. Narayana Educational Society. He therefore pleaded that the order of the revenue authorities be upheld.

8. We have heard both the sides and perused the submissions made by the Ld.AR including the agreements and orders of the lower authorities. It is an undisputed fact that the properties belonging to M/s. Kennedy Educational Society has been taken over by the M/s. Narayana Educational Society including the operations of the school. Ld.AR while demonstrating the cash deposits in the assessee's bank account which is available in paper book at Page No. 26 to 51 for the F.Y. 2016-17 stated that the amounts received have been transferred to M/s.Narayana Educational Society as evidenced by the bank statements. Further, M/s. Narayana Educational Society has also provided the copies of bank statements evidencing the transfer of amount from M/s. Kennedy Educational Society to M/s. Narayana Educational Society which is available in paper book Page No. 56 onwards. Further assessee has also submitted a copy of the return of income filed by M/s. Narayana Educational Society for the A.Y. 2017-18. It is also undisputed and admitted fact that the assessee is in this arrangement from the A.Y. 2015-16 onwards whereas the case was selected for scrutiny during the impugned assessment year consequent to huge cash deposits during the demonetization period. The Revenue Authorities have not disputed the cash deposits and collections made by M/s.Kennedy Educational Society and transferred to M/s. Narayana Educational Society during the earlier assessment years. Further, we also find from Page No.52 of the paper book that M/s.Narayana Educational Society has paid a rent of Rs.12,00,000/- per month by deducting "tax at source" to Mr. N.Eswar Prasad. These circumstances prove

that M/s. Narayana Educational Society has taken over the M/s. Kennedy Educational Society and has accounted for the receipts in their books of accounts and included in the return of income filed by the M/s. Narayana Educational Society by claiming exemption under section 10(23C) of the Act. However, Ld.DR brought to our notice that the Assessing Officer do not have the opportunity to the examine the above fact. Considering the submissions of the Ld. DR, we remit the matter back the file of the Assessing Officer with a direction to examine the return filed by the M/s. Narayana Educational Society and if M/s.Narayana Educational Society has offered the same in their return of income this should not be taxed in the hands of the assessee. Assessing Officer is also directed to provide an opportunity of being heard to the assessee and the assessee is also directed to produce the relevant documents to the Assessing Officer without seeking unnecessary adjournments. Thus, the grounds raised by the assessee in the appeal are allowed for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11<sup>th</sup> October, 2024.

Sd/-

(दुव्वूरु आरएल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :11.10.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-**

1. निर्धारिती/ The Assessee : Kennedy Educational Society  
Sirinagar, Mahatma Gandhi Road  
Vijayawada – 520007  
Andhra Pradesh
2. राजस्व / The Revenue : Asst. CIT  
Office of the Asst. CIT, Exemption Circle  
Vijayawada  
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam