

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

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आरएल 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 अपीलसं./I.T.A.No.163/VIZ/2024  
(निर्धारण वर्ष/ Assessment Year: 2018-19)**

ACIT EXEMPTION CIRCLE Stalin Corporate Building Autonagar Vijayawada - 520007, Andhra Pradesh	v.	Mother Theresa Educational Society Near RED Bridge NH-216 Andhra Pradesh - 533201  [PAN: AAAAM4660P]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**सी.ओ सं. / C.O. No. 01/VIZ/2024**

**[आयकर अपीलसं. से उत्पन्न / ARISING OUT OF I.T.A. No. 163/VIZ/2024  
(निर्धारण वर्ष/ Assessment Year: 2018-19)]**

Mother Theresa Educational Society Chaitanya Nagar, Near RED Bridge NH-6, Amalapuram East Godavri District – 533201 Andhra Pradesh  [PAN: AAAAM4660P]	v.	The Asst. CIT Exemption Circle Income Tax Office, C.R. Building “Annexe” M.G. Road, Vijayawada – 520007
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

**आयकर अपीलसं./I.T.A.No.229 /VIZ/2024**  
**(निर्धारण वर्ष/ Assessment Year: 2018-19)**

Mother Theresa Educational Society Chaitanya Nagar, Near RED Bridge NH-6, Amalapuram East Godavri District – 533201 Andhra Pradesh  [PAN: AAAAM4660P]	v.	The Asst. CIT Exemption Circle Income Tax Office, C.R. Building “Annexe” M.G. Road, Vijayawada
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri GVN Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Satyasai Rath, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	22.10.2024
घोषणा की तारीख/Date of Pronouncement	:	24.10.2024

**आदेश /ORDER**

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

1. These appeals and cross objection are filed by the assessee and revenue, against different orders of the Learned Commissioner of Income Tax (Appeals / Exemption) for the A.Y.2018-19. Since all these appeals relates to same assessee, these appeals are being clubbed and heard together. For the sake of convenience, consolidated order being passed.

**ITA No. 163/VIZ/2024 (A.Y. 2018-19) (Revenue Appeal)**

2. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre

(NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061337077(1) dated 22.02.2024 for the A.Y.2018-19 arising out of order passed under section 270A of the Income Tax Act, 1961 (in short ‘Act’) dated 12.03.2022.

3. Brief facts of the case are that, the assessee being the society is registered under section 12A r.w.s. 12AA(1)(b) of the Act vide Registration No. H.QRS/III/114/2003-04 dated 28.10.2005 and also registered under section 80G of the Act vide Registration No. F.NO. H.QRS/III/107 80G on 29.01.2010 by the CIT, Rajahmundry. The assessee filed its return of income declaring NIL income after claiming of application of income under section 11 of the Act. The case was selected for complete scrutiny under CASS and accordingly the assessment was completed under section 143(3) r.w.s. 144B of the Act on 15.04.2021 assessing the total income at Rs. Nil. However, during the scrutiny assessment proceedings, Assessing Officer noticed that assessee has mis-reported claim of expenditure on account of depreciation amounting to Rs.7,95,54,942/- and thereafter initiated penalty proceedings under section 270A of the Act requiring the assessee to submit his reply online electronically. The Assessing Officer observing that the assessee has claimed application of fund as capital application while acquiring the assets amounting to Rs.8,36,91,167/- and simultaneously has claimed depreciation amounting to

Rs.7,95,54,942/-. Therefore, the Assessing Officer treated the claim of depreciation as tantamount to double deduction. The Assessing Officer noticed that assessee has claimed application on revenue account Rs.56,70,42,821/- after deducting the depreciation claimed but included application of capital expenditure aggregating to total claim u/s 11 for Rs. 65,07,33,988/- which is more than 85% of total receipts of Rs.73,04,73,622/- i.e. Rs.62,09,02,578/-. Thereafter, the Assessing Officer accepted the assessee income at Rs. NIL while finalising the assessment. However, Assessing Officer considered that the assessee has mis-reported the claim of expenditure on account of depreciation and therefore initiated penalty proceedings under section 274 r.w.s. 270A of the Act. The Assessing Officer thereafter issued show-cause notice dated 15.04.2021. In response, assessee submitted its reply on 28.07.2021. Considering the reply submitted by the assessee, Assessing Officer did not accept the justification made by the assessee and therefore imposed penalty of Rs.4,91,64,956/- which the Assessing Officer states that it is 200% of the amount of tax on the under-reporting of the income.

**4.** Aggrieved by the order of the Assessing Officer, assessee filed an appeal before Ld. CIT(A). The main contention of the Authorized Representative of the assessee, before the Ld. CIT(A) is assessee has fulfilled the conditions of spending 85% of the total revenue even after disallowing the depreciation

amount. Considering the information provided by the assessee, Ld. CIT(A) allowed the appeal.

5. On being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal: -

*“1. The Ld.CIT(A) erred in simply relying on the submissions of the assessee and deleted the penalty levied u/s 274 r.w. 270A of the Act for under reporting of income due to mis-reporting.*

*2. The Ld.CIT(A) failed to appreciate that the claim of double deduction which is not allowed by Section 11(6), is itself misrepresentation of facts.*

*3. Any other Ground with the permission of the Hon'ble Tribunal.”*

6. The only contention of the revenue is with respect to deletion of penalty on the mis-reporting of income by the assessee which is not allowed under section 11(6) of the Act. The Ld. Departmental Representative [hereinafter in short “Ld.DR”] by placing heavy reliance on the orders of the Assessing Officer stated that the assessee has furnished false information and mis-reported the application of income while filing the return of income, and therefore pleaded that the penalty levied by the Assessing Officer be upheld.

7. Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that assessee has fulfilled obligation of spending 85% of the total receipts even after the disallowance made on account of depreciation. He further submitted that there is no leakage of revenue and no tax is payable or no

income has escaped tax. The Ld.AR referring to Sub-Section (2) of section 270A where in it is clearly mentioned that a person shall be considered as under-reported the income, if the following conditions are satisfied.

270 (A) *Penalty for under-reporting and misreporting of income.*

(1) .....

(2) *A person shall be considered to have under-reported his income, if*

*(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;*

*(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;*

*(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;*

*(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;*

*(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;*

*(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;*

*(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.”*

8. He argued that the assessee does not fulfill any of the conditions and hence there is no under-reporting of any income. Further, he also referred to Sub-section (7) of section 270A of the Act wherein which is stated that penalty shall be leviable on the amount tax payable on under-reported income. Ld.AR further submitted that in the instant case there is no tax payable by the assessee and hence there is no under-reporting income to attract the penalty proceedings under section 270A of the Act. Therefore, he pleaded that the order of the Ld.CIT(A) be upheld.

9. We have heard both the sides and perused the material available on record and the orders of lower authorities. It is an undisputed fact that the assessee has fulfilled the obligation of spending 85% of the revenue collected. However, assessee has claimed depreciation which is not permissible as per section 11(6) of the Act. The Assessing Officer has rightly disallowed depreciation of Rs.7,95,54,942/- and has framed the assessment stating that even after disallowance of depreciation the assessee has spent more than 85% of the total receipts and therefore the income offered by the assessee at Rs.NIL was accepted while finalising the assessment. However, Assessing Officer resorted to levy penalty under section 270A of the Act stating that the assessee has mis-reported income by computing the tax on the amount disallowed as depreciation and subjected it to the maximum marginal rate and levied the

penalty 200% on the amount of tax payable. We find that Assessing Officer has contradicted himself by levying penalty whereas while framing the assessment accepted Rs. Nil as income even after disallowance of depreciation. However, the Assessing Officer has resorted to compute notional tax on the disallowance on which no tax is payable by the assessee. Further as argued by the Ld.AR, the assessee has not under-reported his income as per section 270A sub-section (2) clause (a) to clause (g). Further sub-section (7) of section 270A refers to penalty leviable on the amount of tax on the under-reported income. However, in the instant case there is no tax payable by the assessee as the assessee has spent more than 85% of the revenue collected during the year. This fact is not disputed by the revenue. We are therefore of the considered view that Ld.CIT(A) has rightly deleted the penalty and hence we find no infirmity in the order of the Ld. CIT(A) thereby dismissing the appeal filed by the revenue.

**10.** In the result, appeal filed by the revenue is dismissed.

**C.O. No. 01/VIZ/2024 (2018-19) (assessee appeal)**

**11.** This cross objection is filed by the assessee against the appeal of the revenue in ITA No. 163/VIZ/2024 for the A.Y. 2018-19. As we have dismissed the appeal filed by the revenue, the grounds raised in the Cross objection filed by the assessee which is supportive to the order of Ld.CIT(A) is also dismissed as infructuous.

**12.** In the result, cross objection filed by the assessee is dismissed.

**ITA No. 229/VIZ/2024 (A.Y. 2018-19) (Assessee Appeal)**

**13.** This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax, Exemption, Hyderabad at Vizag [hereinafter in short Ld.CIT(E)] passed under section 263 of Income Tax Act, 1961 (in short ‘Act’) in DIN & Order No. ITBA/REV/F/REV5/2023-24/1063374578(1) dated 26.03.2024 arising out of the order passed under section 143(3) of the Act dated 15.04.2021.

**14.** Brief facts of the case are that, Ld. CIT(E) considered the assessment order passed by the Assessing Officer as erroneous and prejudicial to the interest of the revenue while exercising his powers under section 263 of the Act, stating that Assessing Officer has not disallowed the claim of depreciation on assets, thereby amounting to claim of double deduction of the same amount. He therefore considered the assessment order as erroneous and prejudicial to the interest of the revenue, thereby, directed the Assessing Officer to redo the assessment after verification of the issue in accordance with law as per the issues mentioned in Para No. 6 to 6.2 of the order of the Ld. CIT(E) passed under section 263 of the Act.

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

*“1. The order of the learned Principal Commissioner of Income Tax is contrary to the facts and also the law applicable to the facts of the case.*

*2. The learned Commissioner of Income Tax (Exemption) is not justified in assuming jurisdiction u/s 263 of the Act in as much as the assessment order u/s 143(3) r.w.s. 143(3A) & 143(B) dated 15.04.2021 for the A.Y.2018-19 is neither erroneous nor prejudicial to the interests of revenue.*

*3. The learned Commissioner of Income Tax (Exemption) erred in holding that the assessing officer allowed deduction both for depreciation on fixed assets and for repayment of loan used for purchase of fixed assets and thereby directing the assessing officer to re-do the assessment.*

*4. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing officer had already disallowed the claim for depreciation and hence there was no case for redoing the assessment on the same ground.*

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

**16.** The only issue emanate from the above grounds is with respect to the validity of the order passed by the Ld.CIT(E) under section 263 of the Act wherein the Assessing Officer has already disallowed a sum of Rs.7,95,54,942/- on account of depreciation claimed as revenue expenditure by the assessee. Ld.Authorised Representative [hereinafter “Ld.AR”] submitted that since the Assessing Officer has already disallowed a sum of Rs. 7,95,54,942/- the order of the Ld.CIT(E) deserves to be quashed.

**17.** Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] relied on the order of the Ld.CIT(E).

**18.** We have heard rival contentions and perused the material available on record. The Assessing Officer while framing the assessment has disallowed the depreciation amount of Rs. 7,95,54,942/- under section 11(6) of the Act and has assessed the income at Rs.NIL as the assessee has applied more than 85% of the income as per section 11 of the Act. The relevant findings of the Assessing Officer is extracted below:-

*“2. During the course of assessment proceedings while perusing the ITR, it is noticed that the assessee has claimed depreciation of Rs.7,95,54,942- under Schedule-ER as revenue application which is not allowable to the assessee trust as per section 11(6) of the Act as under:*

*“Sec. 11(6): In this section where any income is required to be applied or accumulated on set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.”*

*The assessee had always claimed application of its fund on capital application such as acquiring assets. Even, in this year, the assessee has claimed application on capital account at Rs.8,36,91,167/-. Therefore, the assessee's claim of depreciation tantamount to double deduction, which was plucked by inserting a new provision, mentioned supra, by the Finance Act, 2014 w.e.f 01.04.2015. However, it will not affect the final outcome of income of the assessee trust as the application on revenue account at Rs.56,70,42,821/-, after deducting the depreciation claimed, plus application on capital account at Rs.8,36,91,167/-, cumulative comes at Rs.65,07,33,988/- which is more than the 85% of total receipts of Rs.73,04,73,6221-i.e. Rs.62,09,02,578/- Therefore, the income is assessed at the returned income at Rs. NIL/-.”*

**19.** It is the contention of the Ld.AR that since the Assessing Officer has already disallowed claim of depreciation, order of the Ld. CIT(E) deserves to be

quashed. We find merit in the argument of the Ld.AR that since the Assessing Officer has already disallowed the depreciation amount of Rs. 7,95,54,942/- the order passed under section 263 of the Act by the Ld.CIT(E) directing the Assessing Officer has no merits. We therefore quash the order passed by the Ld. CIT(E) u/s 263of the Act. Accordingly, grounds raised by the assessee are allowed.

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

21. To sum-up, the adjudication of appeals is follows:

Sl.No.	ITA No. /CO No.	Filed By	Result
1.	ITA No. 163/VIZ/2024 (A.Y. 2018-19)	Revenue	Dismissed
2.	C.O. 01/VIZ/2024 [Arising out of ITA No. 163/VIZ/2024)	Assessee	Dismissed as Infructuous
3.	ITA No. 226/VIZ/2024 (A.Y. 2018-19)	Assessee	Allowed.

Order pronounced in the open court on 24<sup>th</sup> October, 2024.

**Sd/-**  
**(दुव्वूरु आरएल रेड्डी)**  
**(DUVVURU RL REDDY)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

Dated: 24.10.2024  
Giridhar, Sr.PS

**Sd/-**  
**(एस बालाकृष्णन)**  
**(S. BALAKRISHNAN)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

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

1. निर्धारिती/ The Assessee : Mother Theresa Educational Society  
Near RED Bridge NH-216  
Andhra Pradesh - 533201
2. राजस्व/ The Revenue : ACIT EXEMPTION CIRCLE  
Stalin Corporate Building  
Autonagar  
Vijayawada - 52007, Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam