

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

(HYBRID HEARING)

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.435/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2021-22)**

The Society for Collegiate Education D.No. 52-14-75 New Resapuvanipalem Visakhapatnam – 530013 Andhra Pradesh [PAN: AAATT9499E] (अपीलार्थी/ Appellant)	v.	DCIT (EXEMPTIONS) Exemption Circle Income Tax Office C.R. Building "Annex" M.G. Road Vijayawada – 520002 Andhra Pradesh (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri GVN Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	19.11.2024
घोषणा की तारीख/Date of Pronouncement	:	28.11.2024

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, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/NFAC/s/250/2024-25/1067697732(1) dated 16.08.2024 for the

A.Y. 2021-22 arising out of order passed under section 154 of the Income Tax Act, 1961 (in short 'Act') dated 24.02.2023.

2. Brief facts of the case are that, assessee which is engaged in running educational institution filed its return of income for the A.Y. 2021-22 on 25.11.2021 admitting a total income of Rs. 3,01,980/- which was summarily processed under section 143(1) of the Act. However, assessee noticed that a credit for TDS of Rs. 1,736/- was not allowed to the assessee, thereafter, assessee filed rectification petition on 23.01.2023 claiming the said TDS. Subsequently, CPC, Bangaluru passed a rectification order under section 154 of the Act on 24.02.2023 by disallowing a claim of exemption under section 11(2) for Rs. 3 crores and also disallowed the TDS credit for Rs. 1,736/-.

3. Aggrieved by the rectification order, assessee filed an appeal before Ld.CIT(A), NFAC, Delhi. Simultaneously, the Assessee also filed one more rectification petition before CPC, against the rectification order passed on 24.02.2023. Since the appeal before the Ld. CIT(A) was filed with delay of 193 days. Ld. CIT(A) dismissed the appeal of the assessee as there is no sufficient cause provided by the assessee for delay in filing the appeal before the Ld.CIT(A). Meanwhile, consequent to the rectification petition filed by the assessee on 07.10.2023 another rectification order under section 154 r.w.s. 43(1) of the Act was passed on 24.11.2023 by allowing the accumulation claimed by the assessee in Form – 10 and while filing the return of income for

an amount of Rs. 3 crores. The assessee considering the grievance redressed by way of rectification order dated 24.11.2023 filed a petition before Ld. CIT(A) for withdrawing the appeal. Ld. CIT(A) has not considered the withdrawal petition however dismissed the appeal of the assessee without condoning the delay in filing the appeal before Ld. CIT(A).

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 Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) ought to have considered the request of the appellant for withdrawal of appeal.

3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) ought to have condoned the delay of 195 days in filing the appeal.

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

5. At the outset, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that grievance of the assessee stood redressed by way of rectification order dated 24.11.2023 and hence filed a petition for withdrawal of the appeal before Ld. CIT(A) on 09.12.2023. Ld.AR further submitted that this withdrawal petition was not considered by the Ld. CIT(A) while disposing of the appeal. Ld.AR pleaded that order of the Ld. CIT(A) may be set-aside.

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supported the order of the revenue authorities.

7. We have heard both the sides and perused the material available on record. It is an undisputed fact that while passing the rectification order under section 154 dated 24.02.2023 accumulation of income for Rs. 3 crores under section 11(2) was disallowed by the CPC, Bangalore. Consequent to another rectification application under section 154 of the Act filed by the assessee on 07.10.2023, another rectification order under section 154 r.w.s. 143(1) of the Act dated 24.11.2023 was passed by allowing the accumulation of Rs. 3 Crores under section 11(2) of the Act. Thus, grievance of the assessee stood redressed and therefore assessee filed a withdrawal petition before Ld. CIT(A) withdrawing the appeal filed by the assessee. Ld. CIT(A) ought to have considered the withdrawal petition fled on 09.12.2023 before passing the final order on 16.08.2024. We therefore find merit in the argument of the Ld.AR, the grievance of the assessee being redressed by way of rectification order dated 24.11.2023 and hence the Appeal before the Ld. CIT(A) subsequent to the withdrawal petition filed by the assessee have no legs to stand. We therefore set-aside the order of the Ld. CIT(A) by allowing the grounds raised by the assessee.

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

Order pronounced in the open court on 28th November,2024.

Sd/-
(के.नरसिम्हा चारी)
(K. NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER

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

Dated: 28.11.2024

Giridhar, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **The Society for Collegiate Education**
D.No. 52-14-75
New Resapuvanipalem
Visakhapatnam – 530013
Andhra Pradesh
2. राजस्व/ The Revenue : **DCIT (EXEMPTIONS)**
Exemption circle
Income Tax Office
C.R. Building “Annex”
M.G. Road
Vijayawada – 520002
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

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam