

**IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam**

**Before Shri Vijay Pal Rao, Vice-President
A N D**

Shri Balakrishnan, S, Accountant Member and

आ.अपी.सं / **ITA No.289/Viz/2023**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Sripada Srivallabha Mahasamsthanam Pithapuram PAN:AADTS8424P (Appellant)	Vs.	Income Tax Officer Exemption Ward Rajahmundry (Respondent)
निर्धारिती द्वारा/Assessee by: Shri VVS Narayana Mediseti		
राजस्व द्वारा/Revenue by:: Dr. Aparna Villuri, DR		
सुनवाई की तारीख/Date of hearing: 27/11/2024		
घोषणा की तारीख/Pronouncement: 27/11/2024		

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal filed by the assessee is directed against the order dated, 21/08/2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. There is a delay of 31 days in filing of the present appeal. The assessee has filed an application for condonation of

delay, which is also supported by an affidavit of the Executive Officer of the assessee trust.

3. We have heard the learned AR as well as the learned DR on the condonation of delay and carefully perused the reasons explained, for delay in filing of the present appeal in the application for condonation of delay. The learned AR submitted that the assessee is a Charitable Trust and taken over by the Endowment Department, in the year 2017. Thus, the affairs of the assessee trust are being managed and controlled by the Executive Officer of the A.P Endowment Department. The limitation for filing the appeal was to expire on 20th October, 2023. However, in the month of October, 2023, the temple was celebrating Sripada Swamy Jayanti Utsav and therefore, due to large number of devotees from all over India, visited the temple on this auspicious unique occasion for darshan and various pooja ceremonies, the Executive Officer was completely busy and engaged in making the arrangement in the months of August and September, 2023 and completely lost site of filing the appeal against the impugned order. Later on, after the event of celebration of Jayanti Utsav, the Executive Officer realized that the appeal has not been filed against the impugned order and immediately took steps to file the present appeal. Thus, the learned AR has submitted that the delay of 31 days in filing of the appeal is neither intentional or wanton, but due to the circumstances explained. On the other hand, the learned DR has objected to the condonation of delay

and submitted that the assessee has not explained sufficient cause for the delay of 31 days in filing of the appeal.

4. Having considered the rival submissions and on careful perusal of the contents of the application for condonation of delay, we find that the assessee has explained the cause of delay, as the Executive Officer who was controlling and managing the affairs of the assessee trust, was busy in making the arrangements for the celebration of Sripada Swamy Jayanti Utsav during the month of October, 2023. Therefore, the assessee could not file the appeal within the limitation period on or before 20/10/2023. The reasons explained by the assessee are supported by the fact of the celebration of Sripada Swamy Jayanti Utsav and therefore, we do not find any malafide on the part of the assessee for filing the appeal belatedly. Hence, in the facts and circumstances of the case, we are satisfied that the assessee is having sufficient cause for delay of 31 days in filing the present appeal. Accordingly, the delay of 31 days in filing the appeal is hereby condoned and the appeal is admitted for adjudication.

5. The assessee has raised the following grounds:

“1. Impugned order dated 24-12-2019 under section 143(3) of I.T. Act determining total income at Rs 1,46,25,654/- and raising a demand of Rs 64,73,618/- is not correct on the facts and in the law applicable to the facts of appellant's case and hence not tenable.

2. In the Facts and circumstances of appellants case, the Learned Assessing Officer ought to have accepted, the income as returned by appellant at Rs NIL, as per which short fall of

application is Rs.77,06,131/-, which is accumulated and invested in specific deposits as per provisions of section 11(2) of I.T. Act as well as statement in prescribed Form 10 filed, though belatedly, but before completion of assessment.

3. In the Facts and circumstances of appellants case, the Learned Assessing Officer is erred in denying exemption u/s 11(2) of I.T. Act for Rs.77,06,131/-.

4. In the Facts and circumstances of appellants case, the Learned Assessing Officer is erred in not properly appreciating that, the donations of Rs 70,39,067/- received through common gate way, does not belong to appellant and in essence and substance belongs to "Sripada Srivallabha Seva Sangh" which is another Trust registered u/s. 12A of I.T. Act, 1961 doing activity of only "Annadanam", As such inclusion of the said amount of Rs.70,39,067/- as gross receipts of appellant is not correct and tenable.

5. In the Facts and circumstances of appellants case, the Learned Assessing Officer is erred in including Temple Infrastructure Fund etc., of Rs.11,01,549/- as general gross receipts of appellant, without properly appreciating that they are specific donations towards infrastructure development of the organization and invested in modes specified in sub section 5 of section 11 of I.T. Act, pending utilization, and as such including the said amount of Rs.11,01,549/- as general gross receipts of appellant is not correct and tenable.

Without prejudice to the above, in the alternative, it is also to contend that:

5.1 In the Facts and circumstances of appellants case, even admitting but not accepting the computation of short fall at Rs.1,46,25,654/- as correct, even then the Learned Assessing Officer is erred in taxing the same, without considering eligibility for exemption u/s. 11(2) of I.T. Act.

5.2 Alternatively, exemption should have been given to the extent of Rs. 77,06, 131/- for which Form 10 is filed, though belatedly, but available before Learned assessing Officer at the time of completion of assessment.

6. The very levy of interest under section 234B and 234C totaling to Rs.16,82,246/- is not correct in the facts and circumstances of appellants case.

7. For the above ground or any other grounds or request to allow submission of evidences, that may be urged during the course of hearing of the appeal, the appellant humbly prays the Hon'ble Commissioner of income-Tax (Appeals), to allow the appeal or to give appropriate relief as the Hon'ble Commissioner of Income-Tax (Appeals) may deem it fit, in the facts and circumstances of appellants case."

6. At the time of hearing, the learned AR of the assessee submitted that the learned CIT (A) has passed the impugned order ex-parte on the ground that, the assessee has not responded to the notices issued by the learned CIT (A). The learned AR has pointed out that the assessee has duly responded to the notices dated 22/1/2021 vide reply dated 6/2/2021 and thereafter another reply was also filed on 6/3/2021. The learned AR referred to page No.5 to 8 of the paper book and submitted that, the assessee has responded to the said notice of the learned CIT (A) and filed reply on 6/2/21 and thereafter on 6/3/2021. Thus, the learned AR has submitted that the learned CIT (A) has passed the impugned order without considering the reply filed by the assessee and therefore, the same may be set aside and the assessee be granted one more opportunity to represent his case before the learned CIT (A).

7. On the other hand, the learned DR has submitted that the reply referred by the assessee were filed, prior to the case of the assessee migrated to Faceless proceedings and thereafter, the assessee did not file response to the notices issued by the learned CIT (A) NFAC in the faceless proceedings.

8. We have considered the rival submissions and carefully perused the impugned order as well as the replies filed by the assessee. Initially, the appeal was filed by the assessee on 21/1/2020 before the CIT (A), Rajahmundry but later on, vide notification dated 25/09/2020, the appeal was migrated to Faceless Appeal Centre. We further note that, the notice dated 22/1/2021 was issued by the NFAC Delhi and therefore, the reply of the assessee dated 6/2/21 and thereafter 6/3/2021 were also filed during the faceless proceedings and not in the physical proceedings. Thus, it is manifest from the record that, the assessee has duly complied with the notice issued by the learned CIT (A) dated 22/1/2021 but the same has not been considered by the learned CIT (A) while passing the impugned order ex-parte and dismissing the appeal of the assessee in para 4 of the impugned order, as under:

“4. During the appeal proceedings, the assessee was provided an opportunity of being heard on 24/03/2023, 5/6/2023 and 28/07/2023 however, no details are filed despite the fact that notices were duly served. The approach of the assessee amply shows that it is not interested in prosecuting the appeal. Therefore, having considered the entire facts of the case and evidence available on record, the appeal so filed is dismissed”.

9. Thus, the findings of the learned CIT (A) is contrary to the record manifest that the assessee has duly filed the replies to the notice issued by the learned CIT (A). Accordingly, in the facts and circumstances of the case, the impugned order of the learned CIT (A) is set aside and the matter is remanded to the record of

the learned CIT (A) for fresh adjudication on merits after giving an appropriate opportunity of hearing to the assessee.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on the conclusion of the hearing on 27th November, 2024.

Sd/-

Sd/-

(BALAKRISHNAN, S.) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 27th November, 2024

Vinodan/sps

Copy to:

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1	Sripada Srivallabha Mahasamsthanam, 10-1-113, Gopala Swamy Temple Street, Pithapuram 533450, A.P
2	Income Tax Officer Exemption Ward Rajahmundry A.P
3	Pr. CIT -Visakhapatnam
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order