

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.Nos.484 & 485/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2013-14 & 2014-15)**

St. Marys English Medium School Society Main Road, Ravipadu Village Narasaraopet Mandal Narasaraopet – 522604, Andhra Pradesh [PAN: AAKTS3349C]	v.	ITO (Exemption) Income Tax Office Lakshmipuram Main Road Guntur – 522006 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

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	:	06.12.2024
घोषणा की तारीख/Date of Pronouncement	:	17.12.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals)-1, Mumbai[hereinafter in short "Ld.CIT(A)"] vide respective DIN &Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
ITA No. 484/VIZ/2024 (A.Y. 2013-14)	ITBA/APL/S/250/2024-25/1069526317(1)	08.10.2024
ITA No. 485/VIZ/2024 (A.Y. 2014-15)	ITBA/APL/S/250/2024-25/1069527022(1)	08.10.2024

2. Since the grounds raised by the assessee for both the appeals are identical in nature, these appeals are being clubbed and a consolidated order being passed. We now take up the appeal in ITA No. 484/VIZ/2024 for the A.Y.2013-14 as a lead appeal.

ITA No. 484/VIZ/2024 (A.Y. 2013-14)

3. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-1, Mumbai vide DIN & Order No. ITBA/APL/S/250/2024-25/1069526317(1) dated 08.10.2024 for the A.Y.2013-14 arising out of order passed under section 143(1) of the Income Tax Act, 1961 (in short 'Act') dated 14.03.2015.

4. Brief facts of the case are that, assessee is a society running educational institutions in the name of St. Marys English Medium School. Assessee filed its return of income on 25.09.2013 admitting a total income of Rs.NIL after claiming exemption under section 11 of the Act. Assessee during the impugned assessment year earned gross income of Rs. 1,69,03,822/- from school fee receipts and incurred expenditure of Rs. 1,46,76,271/-. Assessee's return was summarily processed by CPC, Bangalore and intimation under

section 143(1) of the Act was issued on 14.03.2015 by disallowing the exemption claimed by the assessee under section 11 of the Act. In response, assessee filed letter before the Ld. Assessing Officer [hereinafter in short "Ld.AO"] and submitted that the assessee is a charitable institution and hence eligible for exemption under section 11 of the Act. Assessee also submitted that the Hon'ble ITAT in its case for the A.Y. 2015-16 has allowed the exemption under section 10(23C)(iiiad) of the Act vide order dated 31.12.2019 in ITA No. 148/VIZ/2019.

5. Considering the intimation passed under section 143(1) of the Act as erroneous and also denying the exemption under section 11 of the Act is outside the scope of intimation and further considering that the assessee did not exceed gross receipts of Rs. 1 Crore and therefore eligible for exemption under section 10(23C)(iiiad) of the Act, preferred to file the appeal before Ld.CIT(A). The appeal was filed before Ld. CIT(A) on 28.02.2022 with a delay of 2513 days. The Ld. CIT(A) while considering the condonation of delay petition filed by the assessee concluded that reasons submitted by the assessee do not justify the delay of 2513 days and hence dismissed the appeal of the assessee in limine.

6. On being aggrieved by the order of the Ld. CIT(A), assessee filed an 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) is not justified in dismissing the appeal in limine without condoning the delay in filing the appeal.

3. The learned Commissioner of Income Tax (Appeals) ought to have held that the disallowance of exemption claimed by the appellant u/s 11 and making addition of the gross receipts of Rs.1,69,03,822 is outside the scope of Intimation u/s 11 of the Act.

4. Without prejudice to Ground no.2 and Ground no.3, the learned Commissioner of Income Tax (Appeals) ought to have directed the assessing officer to allow the exemption u/s 11 of the Act.

5. The learned Commissioner of Income Tax (Appeals) ought to have held that the appellant is eligible for exemption u/s 10(23C) (iiiad) of the Act as the gross receipts of each institution run by the appellant did not exceed Rs.1crore.

6. The learned Commissioner of Income Tax (Appeals) ought to have held that the CPC is not justified in bringing the entire receipts of Rs.1,69,03,822 without allowing deduction for the expenditure of Rs.1,46,76,271 incurred by the appellant.

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

7. Ground Nos. 1 & 7 are general in nature and needs not adjudication.

8. At the outset, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that Ld. CIT(A) has not considered the condonation of delay of 2513 days. He Further submitted that the delay in filing of appeal was due to the death of the Treasurer and Joint Secretary during the COVID-19 period. Ld.AR further submitted that if the Covid period is excluded by virtue of the order of the Hon’ble Supreme Court the delay is only 1777 days. Further he also submitted that assessee was initially denied Registration under section

12A of the Act vide CIT(Exemption) order dated 31.07.2018 and consequent to the directions of the Hon'ble ITAT, CIT(Exemption) granted Registration under section 12A of the Act on 31.03.2022. Further he also submitted that death of key persons of the assessee's society and the understanding of the assessee that it is eligible for exemption under section 10(23C)(iiiad) of the Act is the main cause of delay for the filing of the appeal before Ld. CIT(A). Ld.AR further stated that the assessee is providing educational facilities at a very concessional rates and is managed by the persons who have dedicated themselves to the service of God. He pleaded that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. He relied on the following case laws: -

- a) Order of the Hon'ble High Court of Madras in the case of Yadhava Kalvi Nithi v. ITO (Exemptions) (2018) 167 DTR 0422 (Mad).
- b) Order of the Hon'ble High Court of Madras in the case of United Christmas Celebration committee charitable Trust v. ITO (2017) 249 Taxman 0372 (Madras).
- c) Order of the Hon'ble High Court of Madras in the case of CIT v. Sanmac Motor Finance Ltd., (2010) 322 ITR 0309.
- d) Order of the Hon'ble High Court of Delhi in the case of DDIT (Exemptions) v. Petroleum Sports Promotion Board [(2014) 362 ITR 0235 (Delhi)].
- e) Decision of the ITAT Mumbai Bench in the case of Shree Sejal Tower Co-operative Housing Society Limited v. CPC in ITA No. 1713/MUM/2024 dated 15.10.2024.
- f) Decision of the ITAT Ahmedabad Bench in the case of Shri Ramji Mandir Trust Akhaj v. Pr. CIT (Exemptions) dated 24.04.2021.
- g) Decision of the ITAT Amritsar Bench in the case of M.K. Hotels & Resorts Ltd., v. ACIT dated 01.03.2023.

9. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully supporting the order of the Ld. CIT(A) stated that assessee has not provided any sufficient cause for condonation of delay and hence Ld.CIT(A) is right in dismissing the appeal in limine. She pleaded that the order of the Ld. CIT(A) be upheld.

10. We have heard both the sides and perused the material available on record including the case laws cited by the Ld.AR. We notice that assessee filed his appeal before the First Appellate Authority on 28.02.2022 with a delay of 2513 days. However, after excluding Covid Period in view of the order dated 10.01.2022 passed by the Hon’ble Supreme Court for the purpose of limitation even in quasi-judicial proceedings before the Tribunal due to wide spread global pandemic COVID-19 the delay works out to 1777 days. According to Section 249(2) of the Act the limitation period for filing the appeal before Ld. CIT(A) is 30 days. However, section 249(3) of the Act empowers the Ld. CIT(A) to condone the delay if satisfied that the assessee had sufficient cause for not filing the appeal within that period. In the instant case, Ld. CIT(A) on being not satisfied with the cause shown by the assessee declined to condone the delay in filing the appeal first appeal before him. On going through the application for condonation of delay, it is observed that the delay in filing the present appeal is due to lack of knowledge and ignorance of

the fact and not due to intention to jeopardise the interest of the revenue by delaying the filing of the appeal.

11. Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji [1987 taxmann.com 1072] analysed the provisions of law qua limitation Act and held that the expression "sufficient cause" employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice. It was further observed liberal approach is required to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further refusing to condone the delay could result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when the delay is condoned the highest that can happen is that a cause would be decided on merits hearing the parties.

12. Further Hon'ble Supreme Court in the case of N. BalaKrishnan v. M.Krishna Murthy [2008] 228 ELT 162, while condoning the delay of 883 days in filing the application for set-aside exparte decree held "That the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare."

13. In the Instant case, the assessee is imparting education in a remote place without any profit motive and therefore considering the interest of

students as well as the employees working in the institution, we are of the considered view that it is a fit case for condonation of delay before the first Appellate Authority for 2513 days in order to serve the purpose of benevolent object of the society to impart education to the people of the backward areas. In these peculiar circumstances, we find it fit to condone the delay of 2513 days. We further find that it is fit case to remit the appeal back to the file of Ld. Assessing Officer [hereinafter in short "Ld. AO"] for fresh consideration of the claim made by the assessee with respect to treating the income as exempt under the Act. We therefore direct the Ld.AO to adjudicate the case on merits, by providing a reasonable opportunity to the assessee. Accordingly, these appeals are remitted back to the file of Ld. AO. Ground No. 2 raised by the assessee is allowed by statistical purposes.

14. Since the matter is remitted back to the file of the Ld. AO, adjudication of other grounds on merits does not arise.

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

ITA No. 485/VIZ/2024 (A.Y. 2014-15)

16. Coming to appeal relating to ITA No. 485/VIZ/2024 for the A.Y.2014-15, the assessee has raised identical grounds. Therefore, the decision taken in ITA No. 484/VIZ/2024 for the A.Y. 2013-14 in the aforesaid paragraph

shall apply mutatis mutandis to the appeal number in ITA No. 485/VIZ/2024.

Accordingly, appeal filed by the assessee is allowed for statistical purposes.

17. To sum-up, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 17th December, 2024.

Sd/-
(के.नरसिम्हा चारी)
(K. NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated: 17.12.2024
Giridhar, Sr.PS

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

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **St. Marys English Medium School Society**
Main Road, Ravipadu Village
Narasaraopet Mandal
Narasaraopet – 522604
Andhra Pradesh
2. राजस्व/ The Revenue : **ITO (Exemption)**
Income Tax Office
Lakshmipuram Main Road
Guntur – 522006
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