

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "SMC" 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 अपील सं./I.T.A.No.231/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2016-17)**

Narsapur Christian Hospital Association West Godavari – 534275 Andhra Pradesh [PAN: AAATN1545K]	v.	Income Tax Officer (Exemption WD) Rajahmundry
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	08.01.2025
घोषणा की तारीख/Date of Pronouncement	:	28.01.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against 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/250/2024-25/1063941657(1) dated 05.04.2024 for the A.Y.2016-17 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 23.12.2018.

2. Brief facts of the case are that, assessee being a society filed its return of income for the A.Y. 2016-17 on 29.03.2018 belatedly, admitting a total income of Rs.NIL after claiming exemption under section 11 of the Act. The return was summarily processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. In response to the notice, assessee submitted information electronically through e-proceedings. The assessee-society carrying on education, charitable and religious activities and also Registered under FCRA. The Ld. Assessing Officer [hereinafter in short "Ld.AO"] observed from the return and audited financial statements that the assessee-society has admitted gross receipts of Rs.3,88,91,293/- and also accumulated / set apart for specified purposes an amount of Rs. 25,39,000/-. The Ld. AO found that the assessee has not filed Form No. 9A & Form No. 10 within the time allowed under section 139(1) of the Act and therefore issued show-cause notice calling for objections from the assessee for disallowance of the same. In response, assessee filed a reply stating that accrued interest on term deposits should be accumulated by reinvestment and hence is not a receipt and therefore filed a revised audit report in Form No.10B on 10.12.2018. The Assessee also stated that as per the corrected computation statements, the filing of Form No. 9A & Form No. 10 is not required. However, Ld. AO did not accept the submissions and framed the assessment order by disallowing the accumulated and deemed application of income of Rs.25,39,000/-.

3. Aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld.CIT(A). Assessee has made similar submissions before Ld. CIT(A). Ld.CIT(A) did not accept the contention of the assessee and thereby dismissed the appeal of the assessee.

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

“1. The order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre ("CIT(A)", under section 250 of the Income Tax Act dated 05.04.2024 is contrary to the provisions of law and the factual context of the case.

2. The Ld. CIT(A) overlooked the submission regarding interest of Rs.34,51,186/-, derived from accumulated interest on fixed deposits, initially included in the income computation, towards which an amount of Rs. 11,00,000/- and Rs.14,39,000/- was sought as accumulations and to be spent, by filing Form No. 9A and 10, however, since, the accumulated interest was later excluded through a revised computation, the addition is unjustified.

3. The Ld.CIT(A) erred in ratifying the action of the Assessing Officer (AO) for the addition of Rs.11,00,000/- and Rs.14,39,000/-, being the unspent amount that were accumulated, on the ground of alleged failure to file statutory Forms 9A and 10 within prescribed timelines.

4. Without prejudice to the preceding grounds, even if it is assumed that the accumulated bank interest is to be included in the computation statement, the rejection of filing of Forms 10 and 9A by the AO, alleging the same was not filed within the due date, is not acceptable.

5. For these and other reasons that are to be urged at the time of hearing of the appeal the appellant prays that the order passed by the learned CIT(A) NFAC is erroneous both on fact and as well as in law, therefore, the same needs to be set aside in the interest of justice.”

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

6. With respect to Ground No. 2, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that assessee derived an amount of

Rs.34,51,186/- as interest on Fixed Deposits and initially included in the income computation. Ld.AR further submitted that subsequently the assessee revised the computation excluding the interest stating that interest was not actually received by the assessee but was accrued and reinvested along with principal amounts. Ld.AR also stated that if the interest is excluded the assessee has complied with the provision of section 11(1) and 11(2) of the Act and hence filing of Form No. 9A & Form No. 10 is immaterial.

7. Alternatively, Ld.AR on Ground 3 & 4, also argued that even if the interest receipts are included filing of Form No. 9A & Form No. 10 are procedural in nature and hence shall be considered even though if it is filed during the assessment proceedings before the completion of the assessment. He relied on the decision of the Hon'ble Delhi High Court in the case of The Associated Chambers of Commerce and Industry of India v. DCIT in W.P.(C) 10520/2023 dated 05.08.2024. He therefore pleaded that the disallowances be deleted.

8. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] submitted that the assessee has not filed the return of income within the prescribed time allowed under section 139(1) of the Act and accordingly Form No. 9A & Form No. 10 are also filed belatedly, after the expiry of time limit allowed under section 139(1) of the Act. Ld. DR further submitted that assessee as an afterthought revised the audit report in Form No. 10B by

considering the interest which is reinvested will not be accounted as receipts in the books of accounts, which is not acceptable. Ld. DR therefore pleaded that the Ld. AO has rightly disallowed a sum of Rs. 25,39,000/- in the absence of filing of Form No. 9A & Form No. 10 within the prescribed time limit under section 139(1) of the Act. She therefore pleaded that the order of the Revenue Authorities be upheld.

9. We have heard both the sides and perused the material available on record. It is an undisputed fact that assessee has not filed the return of income within the time limit prescribed under section 139(1) of the Act. However, consequent to disallowances made by the Assessing Officer, assessee revised the computation by stating that the interest on term deposits is “accrued” and not “actually received” and hence cannot be considered as the receipt thereby filed revised audit report in Form No. 10B on 10.12.2018. The prayer of the Ld.AR is that, if the amount of interest aggregating to Rs. 37,10,483/- is excluded from the gross receipts, Gross receipts will be Rs. 3,51,80,809/- whereas the amount utilised on both capital and revenue account is Rs.3,06,23,043/- resulting in a surplus of Rs. 45,58,766/- and hence will be less than the permissible accumulation of limit of 15% of the gross receipts. The submission of the Ld.AR in our considered view could not be accepted as the receipt of interest and subsequent reinvestment of such interest in the Fixed Deposits tantamount to receipt as originally envisaged by the assessee

itself and hence the contention of the assessee is not tenable, and thus ground No 2 is dismissed.

10. However, the Hon'ble Delhi High Court in the case of The Associated Chambers of Commerce and Industry of India v. DCIT (supra) has held that filing of Form No. 10 and Form No. 9A before the Assessing Officer during the assessment proceedings amounts to satisfying the requirement of law. Hon'ble Delhi High Court relied on the decision of Hon'ble Gujarat High court in the case of Association of Indian Panel board Manufacturer v. DCIT (2023: GUJHC:27028-DB) while laying down the ratio in the case of The Associated Chambers of Commerce and Industry of India v. DCIT (supra). We therefore of the considered view by following the judicial precedents as stated aforesaid that the assessee is entitled for accumulation and setting apart of funds even though Form No. 9A & Form No. 10 are filed during the assessment proceedings, thereby ground 3&4 raised by the assessee is allowed. We direct the Ld. AO to delete the addition of Rs.25,39,000/-.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 28th January, 2025.

Sd/-
(के.नरसिम्हा चारी)
(K.NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER
Dated: 28.01.2025
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 : **Narsapur Christian Hospital Association**
West Godavari – 534275
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer (Exemption WD)**
Rajahmundry
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam