

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

(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.61/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)**

Ramya Charitable Trust D.No. 9-11-130 Elvinpeta, Kakinada – 533004 Andhra Pradesh [PAN: AACTR4315H]	v.	ITO (EXEMPTION WARD) Income Tax Office Aayakar bhavan Veerabhadrapuram Rajahmundry – 533105 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri G.V.N. Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	09.01.2025
घोषणा की तारीख/Date of Pronouncement	:	06.02.2025

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/250/2023-24/1058886312(1) dated 19.12.2023 for the A.Y.2017-18 arising out of the order passed under section 144 of Income Tax Act, 1961 (in short 'Act') dated 06.12.2019.

2. Briefly stated the facts of the case are, assessee is a Charitable Trust Registered under section 12A of the Act vide CIT (Exemption), Hyderabad proceedings in File No. CIT(E)/Hyd/7(9)/12A&80G/2015-16 dated 28.03.2016 w.e.f. 04.09.2015. Assessee-Trust did not file its return of income for the A.Y. 2017-18. It was found from the AIMS data in the ITBA module that the assessee has made cash deposits of Rs. 10,21,400/- in Corporation Bank, Kakinada Branch during the demonetization period from 09.11.2016 to 31.12.2016. Therefore, notice under section 142(1) was issued on 09.03.2018 calling for the return of income which was served on 12.03.2018. Assessee-Trust despite receipt of notice did not file its return of income. Thereafter a notice under section 133(6) was issued to the Corporation Bank, Kakinada on 18.07.2019 requesting to furnish the statements of the Assessee-Trust for the F.Y. 2016-17. In response, bank submitted a statement of account of the assessee. Thereafter once again notice under section 142(1) of the Act dated 19.07.2019 was issued and served on the assessee to submit various details. Assessee has not filed any of the details called for in the notice under section 142(1) of the Act. On verification of the bank account statement, it was noticed that the assessee has made cash deposits to the tune

of Rs. 99,44,850/- during the F.Y. 2016-17. Thereafter a show-cause notice was issued on 12.09.2019 asking the assessee to explain the sources of cash deposits. Thereafter assessee was provided one more opportunity to explain the sources for cash deposits and asked why the best judgment assessment should not be made under section 144 of the Act. In response assessee did not furnish any information. However, the assessee uploaded Form No.10B and ITR-7 in ITBA portal. The assessee has not filed the Form No. 10B and ITR-7 through e-filing portal. The Ld. AO observed that Assessee-Trust neither filed the valid return of income nor furnished the nature and source of cash deposits, therefore framed the assessment to the best of his judgment under section 144 of the Act by adding entire cash deposits as income of the assessee. Further, Ld. AO also noticed that assessee was in receipt of Rs.2,44,250/- by way of transfers / clearings and in the absence of any explanation by the assessee added the same to the total income of the assessee.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). Before the First Appellate Authority, assessee stated that it has filed the return of income for the A.Y. 2017-18 manually on 19.07.2019 along with Audit Report in Form No. 10B admitting the receipts and claiming Exemption under section 11 of the Act. Ld. CIT(A) issued various notices for which assessee submitted written submissions

electronically. Assessee also filed a petition for admission of additional evidences which was referred to the Ld. AO vide letter dated 16.05.2023. Ld. AO in response submitted the Remand Report on 30.06.2023. Ld. AO citing various reasons requested the Ld. CIT(A) not to admit the additional evidences. The Remand Report was shared with the assessee vide letter dated 26.10.2023 calling for rebuttal of the same. Since there was no response from the assessee, one more opportunity was granted on 28.11.2023. Assessee failed to response to that notice also. On perusal of the material available on record Ld. CIT(A) after considering the submissions made by the assessee by way of petition under Rule 46A of I.T. Rules dismissed the appeal of the assessee.

4. Being 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) is not justified in not admitting the additional evidence filed by appellant.

3. The learned Commissioner of Income Tax (Appeals) is not justified in upholding the action of the assessing officer in refusing to grant exemption of the income of the appellant u/s 11 of the Act on the ground that the return of income was not filed in time.

4. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.1,01,89,100 made by the assessing officer u/s 69A of the Act towards alleged unexplained deposits in bank account.

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

5. Ground No. 1, 2 & 5 are general in nature and needs no adjudication.

6. At the time of hearing, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that Ground No. 3 is not pressed, accordingly, Ground No.3 is dismissed as not pressed.

7. With respect to Ground No. 4, Ld.AR submitted that the ledger account demonstrates the accounting of donations, has been submitted before Ld.CIT(A). Further he also submitted that the Trust received corpus donation from its Managing Trustee amounting to Rs. 20 lakhs. He further submitted that the assessee has constructed a building costing of Rs. 28,66,489/-. The corpus donation of Rs. 20,00,000/- from the Managing Trustee was utilised in the construction of the building in addition to the loan availed from Tata Capital. He therefore pleaded that this corpus donations cannot be treated as the income of the assessee. Further with respect to donation of Rs.75,41,950/-, Ld.AR submitted that the names and addresses of the donors were available in the ledger and has been utilised for the purpose of charitable activities of the assessee. He therefore further pleaded that there was an opening balance of Rs. 16,34,783/- in the books of accounts of the assessee which was deposited during the impugned assessment year and hence entire addition of Rs. 1,01,89,100/- is explained. He therefore prayed that the additions made by the Ld. AO be deleted.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that the assessee has not submitted any third party confirmations of the donations received by the assessee other than the ledger of the assessee. Further she also stated that in most of the cases the same person has given donations which was accounted at Rs. 2000/- even on the same day on multiple occasions. She therefore submitted that these donations are not genuine donations and hence Ld. AO has rightly disallowed the same in the absence of the valid return of income for the impugned assessment year.

9. We have heard both the sides and perused the material available on record. It is an undisputed fact that the assessee has not responded before Ld.AO in spite of various opportunities provided. Assessee has also failed to furnish return of income under section 139(4) of the Act. Further the assessee has also not responded except for filing the petition under Rule 46A of I.T.Rules before the First Appellate Authority. The only contention of the assessee is that it has made payment of Rs. 79,19,016/- out of the which Rs.69,72,006/- is by way of cheques and Rs. 9,47,010/- is by way of cash and hence the donations shall be considered as genuine. It is also noted that these expenses were not disputed by the revenue. However, we find that the assessee has not filed any evidences with respect to the receipts of donations and also could not furnish valid explanation for receipt of each donation amounting to Rs. 2,000/- uniformly from various persons including the same

persons on multiple instances on the same day. In the absence of any evidences brought on record by the assessee, we do not find merit in the argument of the Ld.AR, with respect to the donations received by the assessee. However, considering the submissions made by the Ld.AR since the assessee had opening balance of Rs. 16,34,783/-, we are inclined to allow an amount of Rs. 16,34,783/-. Further, an amount of Rs. 20,00,000/- given by Managing Trustee for the purpose of construction is in the nature of corpus fund and hence it cannot be considered as income of the assessee. We are therefore inclined to uphold the additions of cash donations received by the assessee to the extent of Rs.65,54,317/- (Rs.1,01,89,100/- - Rs.36,34,783/-) made by the Ld. CIT(A) thereby partly allow Ground No. 4 raised by the assessee.

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

Order pronounced in the open court on 06th February, 2025.

Sd/-

(के.नरसिम्हाचारी)

(K.NARASIMHA CHARY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 06.02.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Ramya Charitable Trust**
D.No. 9-11-130
Elvinpeta, Kakinada – 533004
Andhra Pradesh
2. राजस्व/ The Revenue : **ITO (EXEMPTION WARD)**
Income Tax Office
Aayakar bhavan
Veerabhadrapuram
Rajahmundry – 533105
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