

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्री के नरसिम्हाचारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**  
BEFORE SHRIK NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T.A. 121/Viz/2023  
(निर्धारण वर्ष/ Assessment Year : 2017-18)

Sri Surya Narayana Swamy Vari  
Devasthanams,  
Arasavalli,  
Srikakulam District.  
PAN: AAAJS0913Q  
(अपीलार्थी/ Appellant)  
अपीलार्थीकीओरसे/ Assessee by  
प्रत्यार्थीकीओरसे/ Revenue by

Vs. The Assistant Commissioner  
of Income Tax,  
Exemption Circle,  
Vijayawada.  
(प्रत्यर्थी/ Respondent)  
Sri GVN Hari, AR  
Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing : 04/02/2025  
घोषणाकीतारीख/Date of Pronouncement : 20/02/2025

**O R D E R**

**PERS. BALAKRISHNAN, Accountant Member :**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)-NFAC") vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1051587084(1), dated 29/03/2023 for the AY 2017-18 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ("the Act"), dated 05/12/2019.

2. Briefly stated the facts of the case are that the assessee is a registered religious and charitable trust in Arasavalli, Srikakulam District, Andhra Pradesh. The assessee filed its return of income on 8/3/2018 for AY 2017-18 admitting a total income of Rs. NIL. Subsequently, the case was selected for scrutiny under CASS and statutory notice U/s. 143(2) was issued on 8/8/2018. In response, the assessee furnished relevant documents from time to time through e-proceedings. The assessee is registered U/s. 12A of the Act by Commissioner of Income Tax, Visakhapatnam vide his order in Hqrs. No. 111/74/82-83, dated 20/04/1983. The assessee is also under the Registry of Section 43(10) of the Endowment Act, Andhra Pradesh. The case was selected for scrutiny to examine the following:- (i) Large agricultural income shown in ITR and large cash deposit during demonetization and (ii) Form-10 filed after due date and large amount accumulated or set apart U/s. 11(2). On verification of the information submitted by the assessee, the Ld. AO noticed that the assessee has not filed Form-10 and Form-9A and has accumulated the surplus amount of Rs.1,21,96,713/- as per the provisions of section 13(9) r.w.s 11(2) of the Act. The Ld. AO observed that Form-10 has not been filed electronically but has been filed manually in the office of Income Tax Officer (Exemptions), Visakhapatnam in the old

format. The Ld. AO did not consider the manual filing of Form-10 in the old format and thereby completed the assessment by disallowing the accumulation or set apart of funds U/s. 11(2) of the Act for Rs. 1,21,96,713/-. On being aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. Before the Ld. CIT(A)-NFAC, the assessee made submissions on various dates and also submitted a copy of Form-10 for the AY2017-18 which was filed electronically on 27/02/2020. The Ld.CIT(A)-NFAC observed that the Ld.AO has rightly not allowed the benefit U/s. 11(2) of the Act in view of the specific provisions of section 13(9) of the Act and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 1,21,96,713/- made by the Assessing Officer towards disallowance of exemption claimed U/s. 11(2) of the Act.*
3. *Any other grounds may be urged at the time of hearing.”*

4. Grounds No. 1 and 3 are general in nature and need no adjudication.

5. Ground No.2 is with respect to addition of Rs. 1,21,96,713/- by disallowing the exemption claimed U/s. 11(2) of the Act. On this issue, the Ld. AR submitted that the assessee by inadvertence has filed Form-10 manually in the old format before the Ld. AO. The Ld. AR also submitted that the Form-10B (Audit Report) has been filed within the due date on 22/09/2017. However, the manual Form-10 along with Board Resolution was submitted before the Ld.AO on 30/04/2017. The assessee also subsequently filed Form-10 electronically on 27/02/2020. The Ld. AR further relied on the CBDT Circular No.06/2020, dated 19/02/2020 and submitted that if the return of income is filed on or before 31<sup>st</sup> March of the respective Assessment Year i.e., for the AYs 2016-17, 2017-18 and 2018-19, has directed the Commissioner of Income Tax (Exemptions) to admit such belated applications for the condonation of delay. He therefore pleaded that the delay is not intentional or deliberate but only due to inadvertence and therefore, exemption U/s. 11(2) of the Act cannot be denied on this issue. The Ld. AR also relied on various case laws as detailed in his case law paper book.

6. Per contra, the Ld. DR submitted that the assessee has not filed the Form-10 electronically even during the assessment proceedings but has only filed after the completion of the

assessment proceedings and hence, he pleaded that the delay shall not be condoned and prayed for upholding the orders of the Ld. Revenue Authorities.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that even though the assessee has filed the return of income within the completion of the respective assessment year however, the assessee has failed to file the Form-10 electronically before the due date. The assessee, as submitted by the Ld.AR, was not in knowledge about the statutory provisions requiring to file the Form-10 along with the return of income which came into effect from the AY 2016-17. The assessee has filed Form-10 manually in time as prescribed U/s. 13(9) r.w.s 139(1) of the Act before the jurisdictional Assessing Officer. The Form-10 along with Board Resolution was filed on 30/04/2017 before the jurisdictional Assessing Officer. These facts are not disputed by the Ld. Revenue Authorities. The CBDT has issued a direction to condone the delay for the AYs 2016-17, 2017-18 and 2018-19 to accept the Form-9A and Form-10 by condoning the delay if the return of income is filed on or before 31<sup>st</sup> March of the respective Assessment Year. The Form-10 was also manually filed before filing the return of income

before the jurisdictional Assessing Officer. The delay even though at all was caused in electronically filing the Form-10, the same ought to have been condoned by the concerned Authorities. Therefore, we are of the considered view that since the powers of Ld. CIT(A) are concurrent as that of the Ld. AO, the filing of Form-10 before the Ld. CIT(A) shall be considered as filing of Form-10 before the completion of the assessment proceedings. Further, there is no dispute regarding the accumulation of funds set apart when compared with the Forms manually filed and electronically filed and Form 10B. We therefore direct the Ld. AO to consider the Form-10 filed belatedly on 27/02/2020 thereby delete the addition of Rs. 1,21,96,713/-. Thus, Ground No.2 raised by the assessee is allowed.

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

Pronounced in the open Court on 20<sup>th</sup> February, 2025

<b>Sd/-</b> <b>(श्री के नरसिम्हाचारी)</b> <b>(K NARASIMHA CHARY)</b> <b>न्यायिक सदस्य/JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(एस बालाकृष्णन)</b> <b>(S. BALAKRISHNAN)</b> <b>लेखा सदस्य/ACCOUNTANT MEMBER</b>
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Dated: 20.02.2025

OKK

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Sri Surya Narayana Swamy Vari Devasthanams, Arasavalli, Srikakulam District, Andhra Pradesh – 530002.
2. राजस्व/The Revenue –ACIT, Exemption Circle, O/o. ITO, CR Building, 1<sup>st</sup> Floor, Annex, MG Road, Vijayawada, Andhra Pradesh-520002.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam