

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "B" BENCH: HYDERABAD

BEFORE SHRI MANJUNATHA G, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA.No.114, 115 and 116 to 118/Hyd./2025

Assessment Years 2016-2017, 2018-2019 And, 2019-2020 to 2021-2022

The Zoos and Parks Authority of Telangana, Hyderabad - 500 064. Telangana. PAN AAEAT0231H	vs.	The Deputy Commissioner of Income Tax, Exemption Circle-1(1), Hyderabad.
(Appellant)		(Respondent)

For Assessee :	Shri AV Raghuram, Advocate
For Revenue :	MS. M. Narmada, CIT-DR

Date of Hearing :	01.05.2025
Date of Pronouncement :	06.05.2025

ORDER

PER BENCH :

The above 05 appeals are filed by the assessee against the orders dated 27.11.2024 and 28.11.2024 of the Addl./JCIT(A)-1, Guwhati, relating to the assessment years 2016-2017, 2018-2019 and 2019-2020 to 2021-2022, respectively. Since common issues are involved in all these appeals, these appeals were heard together and are being disposed of by this single consolidated order for the sake of

convenience and brevity. First, we take-up ITA.No.114/Hyd./ 2025 as “lead” appeal for the assessment year 2016-2017.

ITA.No.114/Hyd./2025 – A.Y. 2016-2017 :

2. Briefly stated facts of the case are that, “The Zoo Authority of Andhra Pradesh” has been granted registration to claim exemption under Section 12A and approval u/sec. 80G of Income Act, 1961 dated 18.02.2011 with effect from 01.04.2010. Due to partition of Andhra Pradesh State, the Government of Telangana has approved name change from Zoo Authority of Andhra Pradesh to “The Zoos and Parks Authority of Telangana” (in short “ZAPAT”) i.e., the appellant herein to continue the conservation of wildlife and environment activities of incumbent Zoo Authority of Andhra Pradesh. The ZAPAT, instead of requesting for name change in PAN, has obtained a new PAN and have not applied for any registrations under Section 12A and Section 80G under its new PAN. But it has been filing returns claiming exemption as per incumbent Zoos Authority of Andhra Pradesh registration as the assessee was under

bonafide impression that the exemption obtained by the incumbent authority holds good. However, the exemption was not allowed by the Assessing officer-CPC, Bengaluru and passed order dated 17.03.2020 u/sec.143(1) of the Act for the impugned assessment year 2016-2017.

3. On being aggrieved, the assessee carried the matter in appeal before the learned CIT(A). Although, the learned CIT(A) discussed the issues on merits, but, dismissed the appeal of the assessee on technical ground of not condoning the delay.

4. Aggrieved by the order of the learned CIT(A), the assessee is now in appeal before the Tribunal.

5. Shri AV Raghuram, Advocate-Learned Counsel for the Assessee submitted that, the learned CIT(A) has erred in not condoning the delay in filing of the appeals before the First Appellate Authority by observing that there is a huge delay of more than 02 years in filing the appeal, even though, the delay in filing appeal is only 116 days after exclusion of delay covered under Covid-2019 period by the Hon'ble Supreme Court in it's Suo Motu Writ Petitoin (C)

No.3 of 2020 vide order dated 10.01.2022 IN RE: Cognizance For Extension of Limitation. Learned Counsel for the Assessee referring to the order of the learned CIT(A) and delay noticed by the Authority submitted that, for the assessment year 2021-2022 there is no delay. However, the learned CIT(A) dismissed the appeal on delay. Further for the assessment year 2016-2017 to 2020-2021 except for assessment year 2017-2018 the actual delay is only 116 days which is evident from the Suo Motu Writ Petitoin (C) No.3 of 2020 order dated 10.01.2022 passed by the Hon'ble Supreme Court IN RE: Cognizance For Extension of Limitation, where the Hon'ble Supreme Court excluded the period between 15.03.2020 till 28.02.2022 with a grace period of 90 days from 01.03.2022 which expires on 31.05.2022. He submitted that, if the Hon'ble Tribunal consider the said date as "due date" for filing the appeal before the learned CIT(A), then, the actual delay is only 116 days. The learned CIT(A) without appreciating the relevant facts, dismissed the appeals on the ground that there is a huge delay. Learned Counsel for the Assessee further

referring to the decision of Hon'ble High Court of Madras in the case of Vijayeswari Textiles Ltd., CIT [2002] 256 ITR 560 (Mad.) submitted that, once the appeal is dismissed on account of delay, then, the learned CIT(A) cannot go into the issues on merits and, therefore, it is deemed that the delay in filing of the appeal is condoned. In the instant appeal also, although, the learned CIT(A) dismissed the appeal *in limine* for not condoning the delay, however, the learned CIT(A) discussed the issues on merits and, therefore, in view of the Judgment of Hon'ble Madras High Court in the case of Vijayeswari Textiles Ltd., CIT (supra), it is deemed that the delay in filing of the appeal is condoned and the appeal is admitted for adjudication. In this regard, he relied upon the decision of ITAT, Hyderabad Bench in the case of Nafees Sulatana, Hyderabad vs., The ITO, Ward-14(1), Hyderabad in ITA.No.642/Hyd./2025 dated 28.04.2025. He, therefore, submitted that the delay in filing of the appeal before the learned CIT(A) should be condoned.

5.1. Learned Counsel for the Assessee further referring to the issues on merits submitted that, the

assessee is a society registered under the Societies Registration Act. The assessee has obtained PAN in the year 2014 after the re-organization of the Combined State of Andhra Pradesh into the State of Andhra Pradesh and State of Telangana. Untill bifurcation of the State into two States, the assessee was an Authority of the Government of Andhra Pradesh. However, subsequent to the bifurcation, the assessee registered as a Society and obtained separate PAN. Further, because the erstwhile Authority having 12A registration, it was under the bonafide impression that there is no registration required u/sec.12A of the Act since the assessee is having erstwhile 12A registration. While processing return of income u/sec.143(1) of the Act, the Assessing Officer-CPC, Bengaluru has denied exemption and computed the income under normal provisions of the Act by considering the gross receipts as income of the assessee without allowing deductions towards expenditure. Therefore, he submitted that, since the assessee is an Authority under Government of Telangana, the exemption claimed u/sec.11 should be allowed. The Learned Counsel

for the Assessee submitted that, in the alternative, in case the exemption is not allowed to the assessee, then only any 'surplus' from the books of accounts of the assessee can be assessed as 'income' of the assessee. Since the Assessing Officer has assessed the 'gross receipt' as 'income' and a direction may be given to the Assessing Officer to consider the financial statements of the assessee and assess the net surplus as per the books of accounts maintained by the assessee instead of gross receipts. In support of this contention, he relied upon the decision of ITAT-C-Bench, Chennai in the case of Kingston Educational Trust, Thiruvannamalai vs., DCIT, CPC, Bengaluru in ITA.No.567/CHNY/2019 dated 21.11.2019.

6. MS. M. Narmada, learned CIT-DR, on the other hand, supporting the order of the learned CIT(A) submitted that, the assessee has not brought to the notice of the First Appellate Authority the order of the Hon'ble Supreme Court passed in Suo Motu Writ Petitoin (C) No.3 of 2020 vide order dated 10.01.2022 IN RE: Cognizance For Extension of Limitation. Further, the assessee has pleaded only on the

basis of ignorance on their part in filing the appeal on delay. However, not argued the case law in light of decision of Hon'ble Supreme Court. Therefore, the arguments of the assessee in light of decision of Hon'ble Supreme Court at this stage, does not hold good for condonation of delay. She further submitted that, there is no dispute with regard to the fact that the assessee society is not entitled for exemption u/sec.11 of the Act because the assessee society is not registered u/sec.12A of the Act. Therefore, there is no error in the reasons given by the Assessing Officer and the learned CIT(A) to deny exemption u/sec.11 of the Act. In so far as the arguments of the Learned Counsel for the Assessee that, only surplus can be taxed, but, not gross receipts, the Assessing Officer in absence of relevant details, does not have had an occasion to consider expenditure claimed by the assessee and, therefore, she submitted that the issue may be set-aside to the file of Assessing Officer for verification of facts by considering the arguments of the assessee for allowing deduction of expenditure.

7. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We find that, admittedly there is no dispute between the parties that, the appeal filed by the assessee was dismissed *in limine* by the learned CIT(A) without condoning the delay in filing the appeal before him. Admittedly, the learned CIT(A) dismissed the appeal on the ground that there is a huge delay of 269-890 days in filing appeal for various assessment years. Since the assessee could not explain the reasons for the delay, the learned CIT(A) was of the opinion that, there is no 'sufficient cause' for the assessee for not filing the appeal on or before the due date and, therefore, dismissed the appeal. It is the argument of the Learned Counsel for the Assessee that, if we exclude delay covered by Covid period in view of decision of Hon'ble Supreme Court passed in *Suo Motu Writ Petition (C) No.3 of 2020* vide order dated 10.01.2022 IN RE: Cognizance For Extension of Limitation (*supra*), the actual delay in filing of the appeal is only 116 days for assessment year 2016-2017 to 2020-2021 and for assessment year 2021-2022 there is

no delay. Further, the actual delay is 116 days which is on account of staff who are not aware of the Income Tax Proceedings in filing of the appeal before the Authorities. Otherwise, the assessee was not having any intention not to file the appeals. If we go by the reasoning given by the assessee by excluding the Covid period, there is only a delay of 116 days in filing the appeal before the learned CIT(A) and for such delay, there is a 'sufficient reason' for the assessee in not filing the appeal before the learned CIT(A) on or before the due date. Further, the learned CIT(A) having dismissed the appeal *in limine* for condonation of delay, but, discussed the issues on merits and upheld the additions made by the Assessing Officer. In our considered view, once the appeal is not admitted on account of delay, then, the learned CIT(A) cannot proceed to decide the issue on merit. If at all, the learned CIT(A) decided the issue on merit, then, in our considered view, it is deemed or implied that the learned CIT(A) has condoned the delay in filing the appeal and admit the appeal for adjudication. This view is supported by the decision of Hon'ble Madras High Court in

the case of Vijayeswari Textiles Ltd., vs., CIT (supra) wherein it has been held that, the Tribunal did not stop with the order declining to condone the delay, but, consider the matter on merits and has practically treated the appeal as being properly filed before it and has answered the question before it with reference to the material placed on record. It is, in view of these facts and circumstances, we hold that the Tribunal has not committed error in not condoning the delay. This view is further supported by the decision of ITAT, Hyderabad Bench in the case of Nafees Sultana, Hyderabad vs., ITO, Ward-14(1), Hyderabad (supra) wherein the Tribunal by following the decision of Hon'ble Madras High Court held that once the learned CIT(A) decided the issue on merit, having not condoned the delay, it is implied that the delay involved in the appeal has been condoned. Therefore, we are of the considered view that, there is a merit in the arguments advanced by the Learned Counsel for the Assessee on the issue of delay and thus, we condone the delay(s) in filing of the appeals before the learned CIT(A) for all assessment years.

8. Having said so, let us come back to the issue on merits. The assessee society is registered under the Societies Registration Act. The assessee has obtained PAN and as per the PAN issued by the Department, the date of registration of the society was 30.09.2014. Before the registration of the Society under Societies Act, The Zoo Authority of Andhra Pradesh was registered u/sec.12A and approved u/sec.80G of the Income Tax Act, 1961. After partition of Andhra Pradesh State, the Government of Telangana has approved name change from The Zoo Authority of Andhra Pradesh to The Zoos and Parks Authority of Telangana to continue the conservation of wildlife and environment activities of incumbent Zoo Authority of Andhra Pradesh. There was no change either in objects of the assessee society or activities. Further, only there was a change in name. After change in name, the assessee society has not applied for registration u/sec.12A of the Act. In absence of registration u/sec.12A, the assessee society has claimed exemption u/sec.11 of the Act in respect of it's total income. The Assessing Officer-CPC,

Bengaluru has processed the return u/sec.143(1) of the Act and rejected the exemption u/sec.11 of the Act on the ground that assessee society is not registered u/sec.12A of the Act. In our considered view, once the society is not registered u/sec.12A of the Act, then, the said society/trust cannot claim the benefit of exemptions u/sec.11 and 12 of the Act. Therefore, we are of the considered view that, there is no error in the order of the Assessing Officer/CIT(E) in rejecting the benefit of exemption u/sec.11 of the Act to the assessee society for all assessment years. Thus, we upheld the rejection of exemption u/sec.11 of the Act.

9. Having said so, let us come back to the assessment of income of the assessee society. The Assessing Officer having rejected the exemption u/sec.11 of the Act has considered gross receipts of the assessee society for the purpose of taxation. It was the argument of the Learned Counsel for the Assessee that, in case exemption is denied u/sec.11 of the Act, then, income of any trust or institution or society should be considered under normal provisions of the Act and ought to have allowed the expenditure/

deduction and only net income as per the financial statements should be brought to tax. In this case, the Assessing Officer after rejecting exemption u/sec.11 of the Act has taxed gross receipts without allowing deduction towards expenditure. It is well settled principle of law that, once the income of any Trust/Institution or Society is considered as AOP and assessed under normal provisions of the Act, then, all permissible deductions including expenditure incurred out of said income should be allowed as deduction. This view is supported by the decision of ITAT-C-Bench, Chennai in the case of Kingston Educational Trust vs., DCIT (supra) where the Tribunal after considering certain judicial precedents in light of Judgment of Hon'ble Madhya Pradesh High Court in the case of Kaluram Ganeshram (HUF) vs., CIT [1988] 172 ITR 154 (MP) held that, only net income needs to be taxed. Therefore, we are of the considered view that, the Assessing Officer and the learned CIT(A) are erred in taxing gross receipts of the assessee society instead of net income as per the financial statements. However, fact remains that since the

assessment order is u/sec.143(1), the Assessing Officer does not have an occasion to verify the correctness of various expenditure claimed by the assessee. Therefore, in our considered view, the matter needs to go back to the file of Assessing Officer for further verification. Thus, we set aside the orders of the learned CIT(A) and restore the issue back to the file of Assessing Officer for reconsideration of the issue. The Assessing Officer is directed to verify the claim of the assessee society in light of relevant books of accounts and financial statements furnished by the assessee society and allow the claim of deduction towards various expenditure out of income and tax only the net income as per the financial statements of the assessee filed for all the assessment years. Accordingly, all the appeal of the assessee society are allowed for statistical purposes.

10. In the result, all the 05 appeals ITA.Nos.114 to 118/Hyd./2025 of the assessee are partly allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 06.05.2025.

Sd/-
[RAVISH SOOD]
JUDICIAL MEMBER

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 06th May, 2025

VBP

Copy to

1.	The Zoos and Parks Authority of Telangana, Nehru Zoological Park, Kishenbagh, Hyderabad - 500 064. Telangana.
2.	The Deputy Commissioner of Income Tax, Exemption Circle-1(1), Aaykar Bhavan, Basheerbagh, Hyderabad. PIN 500 004. Telangana.
3.	The Addl./JCIT(A)-1, Guwahati.
4.	The DR ITAT "B" Bench, Hyderabad.
5.	Guard File.

//By Order//

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