

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

**दुव्वूरु आर एल रेड्डी, उपाध्यक्ष, एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE VICE PRESIDENT**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.Nos.381 to 396/VIZ/2024
(निर्धारण वर्ष/ Assessment Years: 2005-06 to 2015-16, 2017-18 & 2018-19)**

Asst. Commissioner of Income Tax Stalin Corporate 4th Floor, Vijayawada – 520007 Andhra Pradesh	v.	Visakhapatnam Urban Development Authority Siripuram, Visakhapatnam Andhra Pradesh [PAN: AAALV0082F]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri S. Ravi, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	14.08.2025
घोषणा की तारीख/Date of Pronouncement	:	20.08.2025

आदेश /O R D E R

PER DUVVURU RL REDDY, HON'BLE VICE PRESIDENT

1. All these appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] as listed below:

Sl.No.	ITA No.	A.Y.	DIN & Order No.	Dated	Nature of Appeal
1.	381/VIZ/2024	2005-06	ITBA/NFAC/S/250/2024-25/1066391658(1)	04.07.2024	143(3) r.w.s 263
2.	382/VIZ/2024	2006-07	ITBA/NFAC/S/250/2024-25/1066391896(1)	04.07.2024	143(3) r.w.s. 263
3.	383/VIZ/2024	2007-08	ITBA/NFAC/S/250/2024-25/1066390766(1)	04.07.2024	115WF r.w.s. 115WG
4.	384/VIZ/2024	2008-09	ITBA/NFAC/S/250/2024-25/1066391033(1)	04.07.2024	115WF r.w.s. 115WG
5.	385/VIZ/2024	2008-09	ITBA/NFAC/S/250/2024-25/1066409021(1)	04.07.2024	143(3)
6.	386/VIZ/2024	2009-10	ITBA/NFAC/S/250/2024-25/1066408244(1)	04.07.2024	143(3) r.w.s. 147
7.	387/VIZ/2024	2009-10	ITBA/NFAC/S/250/2024-25/1066391184(1)	04.07.2024	115WF r.w.s. 115WG
8.	388/VIZ/2024	2009-10	ITBA/NFAC/S/250/2024-25/1066407481(1)	04.07.2024	143(3) r.w.s. 254
9.	389/VIZ/2024	2010-11	ITBA/NFAC/S/250/2024-25/1066406999(1)	04.07.2024	143(3) r.w.s. 263
10.	390/VIZ/2024	2011-12	ITBA/NFAC/S/250/2024-25/1066394469(1)	04.07.2024	143(3)
11.	391/VIZ/2024	2012-13	ITBA/NFAC/S/250/2024-25/1066395027(1)	04.07.2024	143(3)
12.	392/VIZ/2024	2013-14	ITBA/NFAC/S/250/2024-25/1066395800(1)	04.07.2024	143(3)
13.	393/VIZ/2024	2014-15	ITBA/NFAC/S/250/2024-25/1066441518(1)	05.07.2024	143(3)
14.	394/VIZ/2024	2015-16	ITBA/NFAC/S/250/2024-25/1066397192(1)	04.07.2024	143(3)
15.	395/VIZ/2024	2017-18	ITBA/NFAC/S/250/2024-25/1066397547(1)	04.07.2024	143(3)
16.	396/VIZ/2024	2018-19	ITBA/NFAC/S/250/2024-25/1066392194(1)	04.07.2024	143(3)

2. At the outset, it is noticed from the appeal records that there is a delay of 9 days in filing the appeals before the Tribunal. Explaining the reasons for belated filing of the appeal, the Ld.DR drew our attention to the affidavit filed by the revenue along with a petition seeking for condonation of delay and read out the contents of the petition which is as under: -

“1. Dr. Mayuri Mukherjee, D/o Asimananda Mukherjee aged about 32 years, having office at 4th Floor, Stalin Corporate Building, Autonagar, Vijayawada, do hereby solemnly and sincerely state as follows:

2. *I am, the Asst. Commissioner of Income Tax, Exemptions Circle, Vijayawada and well acquainted with the facts and circumstances of the case.*

3. *The order of the learned CIT(A), NFAC, Delhi, in ITA Nos.ITBA/NFAC/S/250/2024-25/1066391658(1) dated 04/07/2024 was received by the Commissioner of Income tax (Exemptions), Hyderabad on 04/07/2024 for the assessment year 2005-06 and since the limitation for filing a tax case appeal is 60 days, the appeal ought to have been filed on or before 03.09.2024, but is being filed only on 12-09-2024, with a delay of (09) days. The reasons for the delay are as follows:*

4. *The miscellaneous records in this case could not be traced during the period of delay inspite of best efforts put by this office due to the fact that the said records pertains to very old year and got mixed up with other records in the record room.*

5. *It is submitted that the delay in filing appeal is neither wanton nor willful, but only because of the above reasons.*

6. *In view of the above, it is humbly prayed that this Hon'ble ITAT may be please to condone the delay of 09 days in filing the above appeal."*

3. On perusal of the contents of the affidavit filed by the revenue as well as the submission of the Ld. DR, we find that the revenue is prevented by a reasonable and sufficient cause in filing the appeals beyond the prescribed time limit with a delay of 9 days. Therefore, we hereby condone the delay of 9 days in filing the appeals before the Tribunal and proceed to adjudicate the appeals on merits in the following paragraphs.

4. Since the grounds raised by the revenue for all these appeals are identical in nature, both for the income tax appeals / Fringe Benefit Tax appeals, these appeals are being clubbed and heard together and a consolidated order being passed. We now take up the appeal in ITA No. 381/VIZ/2024 for the A.Y.2005-06 as a lead appeal and the facts are culled out therefrom.

ITA No. 381/VIZ/2024 (A.Y. 2005-06)

5. Brief facts of the case are that, assessee was registered as a charitable institution under section 12AA of Income Tax Act, 1961 (in short 'Act') filed his return of income for the A.Y. 2005-06 on 26.10.2005 by admitting a total income of Rs. (-) 2,23,71,199/-. Subsequently, assessee revised its return of income on 03.12.2007 declaring total income of Rs. (-) 2,23,71,199/-. Ld.Assessing Officer [hereinafter in short "Ld. AO"] completed the assessment under section 143(3) of the Act on 28.12.2007 by assessing the total income at Rs. (-) 2,21,50,483/-. Subsequently, CCIT(OSD) cancelled the 12AA registration of the assessee vide order dated 04.05.2012. On appeal, the Hon'ble ITAT, Visakhapatnam vide its order dated 20.03.2020 restored the registration under section 12AA of the Act. Meanwhile, the Commissioner of Income Tax (Exemption), Hyderabad (in short "Ld.CIT(E)") passed an order under section 263 of the Act on 31.03.2015 directing the Ld. AO to make fresh assessment against which assessee also on appeal before the ITAT, Visakhapatnam. In consequence to order under section 263 of the Act, Ld. AO made various additions. The Tribunal has set-aside the 263 order of the Ld.CIT(E) on the basis of which order in ITA No.295/VIZ/2012 dated 20.03.2020 restoring of Registration under section 12AA of the Act. Since the order of the Ld.CIT(E) under section 263 of the Act was set aside, the consequential order passed under section 143 r.w.s. 263 of the Act become

infertuous thereby the Ld. CIT(A) allowed the appeal of the assessee for the impugned assessment year.

6. On being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal: -

“1. Whether the CIT(A) is correct in allowing the grounds of the assessee basing ITAT order restoring the 12AA registration without going into merits of the case.

2. The CIT(A) ought to have upheld the order of AO basing on the decision of Hon'ble Apex Court Decision in the case of Ahmedabad Urban Development Authority & other in Civil Appeal No.21762 of 2022 dt.19.10.2022 as assessee is undertaking commercial activity out of advancement of any other object of general public utility and receipts from those commercial activities are in excess of 20% of total receipts.

3. The CIT(A) ought to have considered the fact that the department has preferred further appeal before Hon'ble High Court against the ITAT order restoring the 12AA registration.

4. Any other ground that may be urged at the time of hearing of the case.”

7. At the outset, it was the submission of the Learned Departmental Representative (in short “Ld. DR”) that the Ld. CIT(A) has not considered the decision of the Hon’ble Supreme Court in the case of ACIT(Exemptions) v. Ahmedabad Urban Development Authority [2022] 449 ITR 389 (SC) and passed the order. He therefore pleaded to set-aside the order passed by the Ld.CIT(A) for the Assessment Year under consideration and remit the matter back to the file of the Ld. CIT(A) to examine this issue by following the ratio laid down by the Hon’ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra).

8. On the other hand, the Learned Authorized Representative (in short “Ld.AR”) did not raise any objection to remit the matter back to the file of the Ld. CIT(A).

9. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities and also the decisions relied on by the both the Learned Counsels. Before us, the Ld. DR pleaded for remitting the matter back to the file of the Ld. CIT(A) since the Ld.CIT(A) did not consider the decision of the Hon’ble Supreme Court in the case of ACIT (E) v. Ahmedabad Urban Development Authority (supra) and passed the order. The Ld. AR also did not object to the submission of the Ld.DR for remitting the matter back to the Ld. CIT(A). Therefore, considering the facts and circumstances of the case, we set-aside the order of the Ld. CIT(A) for the assessment year under consideration and remit the matter back to the file of the Ld. CIT(A) with a direction to consider the decision of the Hon’ble Supreme Court in the case of ACIT (E) v. Ahmedabad Urban Development Authority (supra) in the light of the facts and circumstances of the present case and pass a detailed speaking order. It is ordered accordingly.

10. In the result, the appeal filed by the Revenue is allowed for statistical purposes as indicated herein above.

I.T.A.Nos.382, 385, 386, 388 to 396/VIZ/2024

11. The grounds raised by the revenue in all these Income Tax appeals are identical to grounds raised in ITA No. 381/VIZ/2024 for the A.Y. 2005-06, accordingly the decision in ITA No. 381/VIZ/2024 shall mutatis mutandis applies to ITA Nos.382, 385, 386, 388 to 396/VIZ/2024.

I.T.A.Nos.383, 384 & 387/VIZ/2024

12. The grounds raised by the revenue in all these Fringe Benefit Tax appeals are identical to grounds raised in ITA No. 381/VIZ/2024 for the A.Y. 2005-06, accordingly the decision in ITA No. 381/VIZ/2024 shall mutatis mutandis applies to ITA Nos.383, 384 & 387/VIZ/2024.

13. In the result, appeals filed by the Revenue are allowed for statistical purposes.

14. To sum-up, all the appeals filed by the revenue are allowed for statistical purposes.

Order pronounced in the open court on 20th August, 2025.

<p>Sd/- (एस बालाकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (दुव्वूरु आर एल रेड्डी) (DUVVURU RL REDDY) उपाध्यक्ष/ VICE PRESIDENT</p>
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Dated:20.08.2025
Giridhar, Sr.PS

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

1. निर्धारिती/ The Assessee : **Visakhapatnam Urban Development Authority**
Siripuram
Visakhapatnam
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. Commissioner of Income Tax**
Stalin Corporate
4th Floor, Vijayawada – 520007
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