आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)

श्री एन के चौधरी,न्यायिक सदस्य एवं श्री डि.एस .सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.169/Viz/2020**
(निर्धारण वर्ष**/Assessment Year:2006-07)**

Agricultural Market Committee, Akividu West Godavari Dist. **[PAN : AAKFA8420C]**	Vs.	Income Tax Officer (Exemptions) Rajahmundry
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

निर्धारिती की ओरसे / Assessee by	:	Shri G.V.N.Hari, AR
राजस्व की ओर से /Revenue by	:	Shri B.Satyanarayana Raju, DR Shri Sukumar, ITO/AO
सुनवाई की तारीख / Date of Hearing	:	15.06.2021
घोषणा की तारीख/Date of Pronouncement	:	23.06.2021

आदेश /O R D E R

Per D.S.Sunder Singh, Accountant Member :

Condonation of Delay

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Guntur in ITA No.10057/GNT/CIT(A)-2/2015-16 dated 29.01.2020 with the delay of 149 days. The assessee filed petition for condonation of delay stating that the appeal ought to have been filed on or before 28.03.2020, but could not be filed in time due to nation-wide lockdown due to COVID-19 pandemic, hence requested to condone the delay and admit the appeal. Having heard the both the parties and since, the delay in filing the appeal was due to the reasons beyond the control of the assessee, the delay is condoned and the appeal is admitted for hearing.

Grounds of Appeal :

1. The order in ITA No.10057/GNT/CIT(A)-2/2015-16 dt.29.01.2020 of the Commissioner of Income Tax (Appeals)-2, Guntur in PAN : AAKFA8420C, for the asst.year 2006-07 is contrary to law, the weight of evidence and probabilities of the case.

2. The Ld.Commissioner of Income Tax (Appeals) erred in denying the benefits of registration u/s 12A and exemption u/s 11 and 12 of the Act to the appellant.

3. The Ld.Commissioner of Income Tax (Appeals) ought to have seen that the income derived by the appellant for charitable purposes during the previous year was Rs.2,11,98,654/- and the income applied to such purposes during the year was Rs.3,16,67,572/-. Hence there is no violation of the provisions of sec.11(2) as the appellant spent more than 85% of its income during the year itself and hence there are no accumulations and there is no obligation on the appellant to file Form No.10.

4. The Ld.Commissioner of Income Tax (Appeals) failed to see the submissions of the appellant made before her and the AO in this regard during the proceedings.

5. The Ld.Commissioner of Income Tax (Appeals) ought to have seen that there is no accumulation of income and hence specification of the purposes would not arise.

6. The Ld.Commissioner of Income Tax (Appeals) should have seen that the revised form No.10 and 10B clearly indicated that there were no accumulations.

7. The Ld.Commissioner of Income Tax (Appeals) should have seen that the Hon'ble ITAT order does not contain any direction with respect to filing of Form 10B or its examination and the AO travelled beyond the directions of the Hon'ble ITAT with regard to the filing of Form 10B, Form No.10 and spending of the accumulated surplus as per section 11(2).

8. Without prejudice to the above, the Ld.Commissioner of Income Tax (Appeals) having observed that Form No.10B was filed along with the return, should have allowed time to rectify the mistakes in it, if any.

9. Without prejudice to the above, Ld.Commissioner of Income Tax (Appeals) should have seen that there is no violation of section 13 of the Act and hence the adoption of maximum marginal rate of tax on the total income is not called for.

10. The Ld.Commissioner of Income Tax (Appeals) should have seen that the total income assessed of Rs.1,29,23,361 has no relevance.

11. For these and others that may be urged at the time of appeal hearing, appellant prays the appeal be allowed.

3. All the grounds of appeal are related to denying the benefits of registration u/s 12A and exemption u/s 11 and 12 of the Income Tax Act, 1961 (in short 'Act'). The assessee is an agricultural market committee, filed its return of income admitting loss of Rs.1,28,72,720/- and the assessment was completed on 31.12.2008 determining total income of Rs.1,37,17,180/-. The assessee went on appeal and the matter travelled to the Income Tax Appellate Tribunal and the ITAT, Visakhapatnam in it's

order No.271/V/2009 dated 11.12.2013 directed the AO to examine the issue of Claim u/s 11(2) and accordingly restored the matter back to the file of the AO. For the sake of clarity we, extract the relevant part of the order of Hon'ble ITAT in para No.8 which reads as under :

> "*8. Respectfully following principles laid down by the above, we direct the assessing officer to consider the claim of section 11(2) afresh in the light of the judgements on the issue. Therefore, the issue of accumulation of income as per provisions of section 11(2) is restored to the file of the assessing officer with a direction to examine and allow the claim after affording due opportunity of being heard to the assessee."*

4. As directed by the ITAT in its order dated 11.12.2013, the AO passed consequential order u/s 143(3) r.w.s. 254 on 30.03.2015 and completed the assessment on total income of Rs.1,29,23,361/-. The AO made the addition of Rs.1,29,23,361/- relating to income over expenditure but not furnished the details for arriving at the taxable income of Rs.1,29,23,361/- in the assessment order.

5. Against the order of the AO, the assessee went on appeal before the Ld.CIT(A) and in appeal grounds in ground No.5 the assessee raised the issue relating to mismatch of receipts relating to charitable purpose and income applied for charitable purposes during the year and submitted that there was no case for addition. Ground No.5 raised before the Ld.CIT(A) reads as under :

> *5. The Assessing Officer should have seen that the income derived by the appellant for charitable purposes during the previous year was Rs.2,11,98,654/- and the income applied to such purposes during the year was Rs.3,16,67,572/-. Hence, more than 85% of the income derived was spent during the year and hence there is no accumulation during the year.*

5.1. Though the Ld.CIT(A) dismissed the appeal of the assessee, but not adjudicated the issue raised in Ground No.5.

6. Against the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal. Assailing ground No.3 in this appeal relating to computing the income, the Ld.AR of the assessee submitted that the receipts received during the year for charitable purpose was Rs.2,11,98,654/- as against the expenditure incurred by the assessee amounting to Rs.3,16,67,572/- and there was no violation of section 11(2) of the Act. The Ld.AR further submitted that the assessee has spent more than 85% of the income during the year itself, and hence, there were no accumulations and no obligation on the assessee to file Form No.10 before the income tax authorities. Accordingly argued that the addition made in the assessment is uncalled for, hence, requested to delete the addition made by the AO and allow the appeal of the assessee.

7. Per contra, the Ld.DR vehemently placed reliance on the orders of lower authorities.

8. We have heard both the parties and perused the material placed on record. From perusal of the assessment order dated 17.03.2015 passed u/s 143(3) r.w.s. 254 of I.T. Act, in para No.5 of page No.5, it is found that the AO had allowed the claim of the assessee and given a finding that the assessee has spent the sum of Rs.2,33,06,707/- and accordingly held that the assessee has spent the amount as per the direction of the Director Marketing, thus, the claim of the assessee was allowed. For the sake of clarity and convenience, we extract relevant part of the order of the AO in para No.5 which reads as under :

> *"5. During the course of hearing the case, the directions of the Director of Marketing, Government of Andhra Pradesh, Hyderabad, as produced by the assessee have been examined. The amount of Rs.2,33,06,707/- was remitted as per the directions contained in the orders of the Director of Marketing. There is no dispute in concluding that the said amount is expended as per the order of the State Government. Hence, the claim of the assessee is allowed as per the directions of the ITAT, Visakhapatnam."*

8.1. From the order of the AO, there is no dispute that the AO had accepted the claim of the assessee with regard to spending the sum of Rs.2,33,06,707/- and the same was allowed. On perusal of the statement of receipts and payments, it is seen that the total receipts of the assessee for the year under consideration was Rs.2,11,98,654/- and the total payments were Rs.3,16,67,572/- and the AO had accepted the claim of the assessee. Thus, the assessee has spent more than the actual receipts, accordingly, it is seen that the AO has not made out a case of violation of provisions of section 11(2). Once it is accepted that the expenditure of Rs.2,33,06,707/- is allowable against the total receipts of the year for charitable purpose of Rs.2,11,98,654/-, it is established that the assessee has spent more than 85% of the receipts and thus there is no case for making further addition. Hence, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 23rd June, 2021.

Sd/-	Sd/-
(एन के चौधरी)	**(डि.एस .सुन्दर सिंह)**
(N.K.CHOUDHRY)	**(D.S.SUNDER SINGH)**
न्यायिक सदस्य/ JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated : 23 .06.2021
L.Rama, SPS

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

1. निर्धारिती/ The Assessee -Agricultural Market Committee, Akividu, West Godavari Dist.
2. राजस्व/The Revenue –Income Tax Officer (Exemptions), Rajahmundry
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-2, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam