

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.248/Viz/2020

(निर्धारणवर्ष/ Assessment Year :2007-08)

The Deputy Commissioner of  
Income Tax,  
Exemptions Circle,  
Vijayawada.

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of  
Pronouncement

Vs. M/s. Visakhapatnam Urban  
Development Authority (VUDA),  
Visakhapatnam.

PAN: AAALV 0082 F

(प्रत्यर्थी/ Respondent)

Sri A. Chakradhar, CA

Sri MN Murthy Naik, CIT-DR

06/07/2022

22/08/2022

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

1. This appeal filed by the Revenue is against the order of the Learned Commissioner of Income Tax (Appeals), Vijayawada [Ld. CIT(A)] in appeal No. 10119/CIT(A)/VJA/2019-20 dated 23/09/2020 arising out of the order passed U/s. 143(3) r.w.s 147

and 254 of the Income Tax Act, 1961 [“the Act”] for the AY 2007-08.

2. Brief facts of the case are that the assessee is an Urban Development Authority constituted under Andhra Pradesh Urban Area (Development) Act having registration U/s. 12AA of the Act w.e.f. 1/4/2003. The assessee filed its return of income for the AY 2007-08 on 31/10/2007 admitting total income of Rs. NIL after claiming exemption U/s. 11 of the Act in respect of its excess of income over expenditure of Rs. 1,44,77,293/-. The assessment U/s. 143(3) was completed on 30/03/2009 declaring total income of Rs. NIL after making certain adjustments by the AO. Subsequently, the assessment order was set aside by the CIT-1, Visakhapatnam vide order U/s. 263 dated 7/3/2011 with a direction to the AO to re-do the assessment de novo. Aggrieved by the said revision order of the Ld. CIT, assessee filed an appeal before the Hon’ble ITAT. The Tribunal vide order dated 8/8/2011 directed the AO to re-do the assessment de novo after examining the claim of the assessee in the light of the principles enunciated in the case law relied on by the assessee. Thereafter, the CCIT (OSD), Visakhapatnam (holding the charge of CIT-1, Visakhapatnam) passed an order U/s. 12AA(3) of the Act on

4/5/2017 cancelling the registration granted to the assessee U/s. 12AA from AY 2006-07 onwards by holding that the assessee is engaged in commercial activities with a profit motive. Consequent to the cancellation of registration U/s. 12AA of the Act, the AO completed the pending assessment U/s. 143(3) r.w.s 254 on 30/03/2013 determining the total income at Rs. 5,88,17,622/-. Aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee also raised additional grounds of appeal through e-proceedings on 1/9/2020. The Ld. CIT(A) while admitting the additional grounds of appeal allowed the appeal of the assessee and directed the AO to delete all the additions aggregating to Rs.5,88,17,622/-. The Ld. CIT(A) also observed that the assessee's representative has not pressed the original grounds raised in the appeal and accordingly dismissed all the original grounds of appeal. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

3. The Revenue has raised the following grounds of appeal:

*“(i) The Ld. CIT(A) erred in not considering the facts enumerated in the order of cancellation of registration U/s. 12AA(3) of the Act passed by the Hon’ble Chief Commissioner of Income Tax (OSD), Visakhapatnam vide order dated 4/5/2012 despite the fact that activities undertaken by the assessee authority cannot*

*be said to be charitable in nature in view of the proviso to section 2(15) of the Act.*

- (ii) Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is correct and justified in not considering the observation of the fact that the Chief Commissioner of Income Tax and deleted the additions made by the AO in the order dated 16/3/2015 by allowing the additional grounds of appeal despite the fact that activities undertaken by the assessee authority cannot be said to be charitable in nature in view of the proviso to section 2(15) of the Act.*
- (iii) Whether in the facts and circumstances fo the case and in law the Ld. CIT(A) is correct and justified in not considering the observation of fact by the Chief Commissioner of Income Tax and deleted additions and allowed the additional grounds of appeal in spite of proven fact that the assessee was engaged in commercial activity as it was auctioning the lands to the highest bidders in a gross violation of its objects and therefore the assessee's activities are not genuine.*
- (iv) The Ld. CIT(A) ought to have called for the remand report from the AO on the additional grounds of appeal filed by the assessee thereon ascertaining the status of the department on the order of the Hon'ble ITAT.*
- (v) The Ld. CIT(A) ought to have observed that the Hon'ble ITAT restored the registration of the assessee u/s. 12AA without any proven corroborative evidence except by holding that there is no material on record to establish that the assessee is carrying on commercial activities other than objects to the assessee.*
- (vi) The Ld. CIT(A) ought to have observed the fact that an amount of Rs. 1,57,27,028/- can be considered as application of income or not ; CIT(A) neither discussed nor called for remand report from the AO for the said expenditure whether the same can be considered as application of income or not even after considering the exemption u/s 11 to the assessee as per the ITAT directions.*
- (vii) Whether CIT(A) is correct in coming to the conclusion that depreciation of Rs. 78,94,909/- is to be allowed to*

*the assessee basing on the restoration of the 12A by the ITAT inspite of the fact that the same is challenged by the department in the High Court by considering the activities of the assessee are commercial in nature.*

- (viii) The Ld. CIT(A) ought to have considered the fact that expenditure of Rs. 3,47,600/- is disallowed by the AO on the ground that the same is not towards business expenditure of the assessee; hence how the same can be considered as application of income even after considering the exemption u/s. 11 to the assessee.*
- (ix) Whether CIT(A) is correct in coming to the conclusion that expenditure of Rs. 3,48,48,085/- towards capital expenditure is to be allowed to the assessee basing on the restoration of the 12A by the ITAT inspite of the fact that the same is challenged by the department in the high court by considering the activities of the assessee are commercial in nature.*
- (x) Any other grounds that may be urged at the time of hearing.”*

4. The Ld. DR argued that the assessee’s registration u/s. 12A of the Act was cancelled by CCIT, Visakhapatnam on 4/5/2012. The Ld. DR also submitted that under restoration of the Registration u/s. 12A of the Act, the Hon’ble ITAT on 20/03/2020 cannot auto invoke the provisions of section 11 of the Act. The Ld. DR supported the order of the Ld. AO.

Per contra, the Ld. AR submitted that the registration U/s. 12A of the Act was restored by the Hon’ble ITAT in ITA No.295/Viz/2012, dated 20/03/2020. The Ld. AR therefore pleaded that since the cancellation of the registration has been

restored the assessee is entitled to claim exemption u/s. 11 of the Act.

5. We have heard the rival submissions and perused the materials on record and the orders of the Ld. Revenue Authorities.

6. With respect to Grounds No. (i), (ii) & (iii) since the registration u/s. 12A of the Act was restored by the Hon'ble ITAT, the Ld. CIT(A) has rightly followed the directions of the Hon'ble ITAT and has directed the AO to delete the additions of Rs. 5,88,17,622/- which was passed vide assessment order u/s. 143(3) r.w.s 254 of the Act, dated 30/03/2011 consequent to the cancellation of the registration u/s. 12AA of the Act. We find that since the Hon'ble Tribunal has restored the registration u/s. 12A of the Act, the assessee is entitled to claim exemption u/s. 11 of the Act and hence the Ld. CIT(A) has rightly directed the AO to delete the additions made by the Ld AO. Accordingly, we therefore find no infirmity in the order of the Ld. CIT(A) on this ground and dismiss the grounds raised by the Revenue.

7. With respect to Grounds raised from (iv) to (ix) of the Grounds of appeal, we find that the Ld. CIT(A) has followed the directions of the Hon'ble Income Tax Appellate Tribunal in ITA No. 295/Viz/2022 (supra) wherein the order of the Ld. CIT passed U/s. 12AA was cancelled and the registration was restored to the assessee. We find that since the registration is restored by the Hon'ble ITAT, the assessee is entitled for claiming deduction U/s. 11 of the Act in the impugned assessment year. We also note from the grounds that the Department has challenged the decision of the ITAT in restoring the registration of the assessee u/s. 12A of the Act before the Hon'ble High Court, and therefore the Revenue has raised the ground that the assessee shall not therefore be allowed the deduction claimed U/s. 11 of the Act. We also note that as on date, the decision of the Hon'ble tribunal is valid until the final outcome of the High Court is pronounced. Accordingly, the directions of the Ld.CIT(A) to the AO to delete the additions is valid in law and hence no interference is required on the above grounds.

8. In the result, the appeal of the Revenue is dismissed.

Pronounced in the open Court on the 22<sup>nd</sup> August, 2022.

Sd/-

(दुव्वूरुआर.एलरेड्डी)  
(DUVVURU RL REDDY)

न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)  
(S.BALAKRISHNAN)

लेखासदस्य / ACCOUNTANT MEMBER

Dated : 22.08.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s. Visakhapatnam Urban Development Authority (VUDA), VUDA Junction, Siripuram, Visakhapatnam, Andhra Pradesh – 530003.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Exemptions Circle, 4<sup>th</sup> Floor, Stalin Corporate Building, 2<sup>nd</sup> Line, Industrial Estate, Auto Nagar, Vijayawada, 520007.
3. The Commissioner of Income Tax (Exemptions), Hyderabad.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals), Vijayawada.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam