

आयकर अपीलीय अधिकरण, विशाखापट्टणम पीठ, विशाखापट्टणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ I.T.A. No.91/Viz/2023

(निर्धारण वर्ष / Assessment Year :2018-19)

Sree Krishna Educational Society, Vs. Income Tax Officer, Visakhapatnam. Exemption Ward, PAN: AAABS 1467 K Visakhapatnam. (अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)	
अपीलार्थी की ओर से/ Appellant by : Sri G.V.N. Hari, AR	
प्रत्यर्थी की ओर से / Respondent by : Sri Sankar Pandi, Sr. AR	
सुनवाई की तारीख / Date of Hearing : 22/05/2023	
घोषणा की तारीख/Date of Pronouncement : 15/06/2023	

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1049738450(1), dated 14/02/2023

arising out of the order passed U/s. 271B of the Income Tax Act, 1961 [the Act] for the AY 2018-19.

2. The facts of the case are that the assessee is a society registered under Societies Registration Act to run an educational institution. The assessee filed its return of income for the AY 2018-19 in ITR-7 on 30/10/2018 declaring NIL income after claiming exemption U/s. 10(23C) of the Act. The scrutiny assessment was completed on 7/4/2021 vide order U/s. 143(3) r.w.s 143(3A) & 143(3B) of the Act assessing the total income at Rs. 7,56,350/-. The Ld. AO during the scrutiny proceedings noticed that the assessee had gross receipts of Rs. 2,84,51,500/- which is exceeding the statutory limit for tax audit as per section 44AB of the Act and noticed that the assessee has not filed any report prescribed U/s. 44AB of the Act. Therefore, the Ld. AO initiated penalty proceedings U/s. 271B of the Act and show cause notice dated 7/4/2021 was issued and served on the assessee. Thereafter, one more show cause notice dated 15/07/2021 was also issued and served on the assessee. In response, the assessee submitted that the Ld. AO has assessed the income under 'income from other sources' during the scrutiny assessment proceedings and hence it is not required to be

audited U/s. 44AB of the Act. After carefully considering the submissions of the assessee, the Ld. AO being not convinced, rejected the assessee's reply and proceeded to levy penalty of Rs. 1,42,260/- U/s. 271B of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the NFAC.

3. On appeal, the NFAC confirmed the order of the Ld. AO. Aggrieved by the order of the NFAC, the assessee is in appeal before us and raised 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 deciding the appeal ex parte.*
- 3. The Ld. CIT(A) is not justified in sustaining the penalty of Rs. 1,42,260/- levied by the Assessing Officer U/s. 271B of the Act.*
- 4. Any other grounds may be urged at the time of hearing."*

4. The only issue arises from the above grounds is sustenance of penalty of Rs. 1,42,260/- levied by the Ld. AO U/s. 271B of the Act.

5. At the outset, the Ld. AR argued that the assessee filed its return of income declaring it as income from other sources. The CPC while processing the return U/s. 143(1) of the Act has also considered the income of the assessee as income from other

sources. The Ld. AO during the scrutiny assessment proceedings in his computation sheet has treated the income as income from other sources. The Ld. AR therefore pleaded that since the income of the assessee has been consistently treated as income from other sources, the provisions of section 44AB of the Act which are applicable to the Profit & Gains of Business or Profession cannot be applied in the instant case. He therefore pleaded to delete the penalty levied by the Ld. AO.

Per contra, the Ld. DR fully supported the orders of the Ld. Revenue Authorities.

6. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities. Admittedly, while filing the return of income, the assessee has disclosed its income as income from other sources as demonstrated in page 6 of the paper book in SI. No.13(iv) of the ITR-7. Subsequently, we also find that the intimation U/s. 143(1) also considered it as income from other sources. During the scrutiny assessment proceedings, the Ld. AO also in his computation sheet which is available in page 42 of the paper book treated the income of the assessee as income from other sources. Section 44AB(a) of the Act clearly states that *Every*

person,—(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds the prescribed limits". In the instant case, since the income has been treated as income from other sources and not as income from profit & gains of business or profession, the provisions of section 44AB of the Act, in our considered view, are not applicable. We therefore have no hesitation to delete the penalty of Rs. 1,42,260/- levied by the Ld. AO and direct the Ld. AO accordingly.

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

Pronounced in the open Court on the 15th June, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :15.06.2023

OKK - SPS

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

1. निर्धारिती/ The Assessee – Sree Krishna Educational Society, D.No. 3-286, Adarsh Nagar, Old Dairy Farm, Visakhapatnam, Andhra Pradesh 530040.

2. राजस्व/The Revenue – Income Tax Officer, Exemption Ward, Income Tax Office, Infinity Towers, Sankaramatham Road, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam