

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.	Asst. Year	Appellant	Respondent
509/Hyd/15	2006-07	Hyderabad Cricket Association, HYDERABAD [PAN: AAATT6229Q]	Jt. Director of Income Tax, (Exemptions), HYDERABAD
531/Hyd/15		Asst. Commissioner of Income Tax, (Exemptions) i/c, Circle, HYDERABAD	Hyderabad Cricket Association, HYDERABAD [PAN: AAATT6229Q]
510/Hyd/15	2007-08	Hyderabad Cricket Association, HYDERABAD [PAN: AAATT6229Q]	Jt. Director of Income Tax, (Exemptions), HYDERABAD
532/Hyd/15		Asst. Commissioner of Income Tax, (Exemptions) i/c, Circle, HYDERABAD	Hyderabad Cricket Association, HYDERABAD [PAN: AAATT6229Q]

For Assessee : Shri C.S. Subrahmanyam,
Shri V. Siva Kumar, ARs

For Revenue : Smt S. Narsamma, CIT-DR

Date of Hearing : 20-09-2017

Date of Pronouncement : 25-10-2017

ORDER

PER S. RIFAUR RAHMAN, A.M. :

These cross-appeals are by Assessee and Revenue against the order(s) of the Commissioner of Income Tax (Appeals)-9,

Hyderabad, for the AYs. 2006-07 & 2007-08. Since the issues are common in both the assessment years, we decide the same by this common order. For the sake of convenience, the facts in AY. 2006-07 are taken.

AY. 2006-07:

2. Brief facts of the case are that assessee is a cricket association, affiliated to the Board of Control for Cricket in India (BCCI) with the primary object of promoting, organizing, management and conduct of the game of cricket within its jurisdiction in the State of Andhra Pradesh. Assessee was granted registration u/s. 12AA of the Income Tax Act [Act] vide order of the DIT(E) in F. No. I/28/12A/12 13/DIT(E) dt.16-01-2003 w.e.f. 01-04-2002 and later, it was modified to be granted w.e.f. 20-01-1997 pursuant to the directions of the ITAT dt. 26-12-2008. Assessee filed its return of income for the AY. 2006-07 on 07-11-2006 declaring NIL income. The return was processed u/s. 143(1) of the Act on 29-03-2007.

3. A survey u/s. 133A of the Act was conducted on 21-10-2011 in the office premises of the assessee located at Rajiv Gandhi International Cricket Stadium, Uppal, Hyderabad. It was found that the assessee was carrying on activities which are not charitable in nature. It was observed that the assessee was deriving income from various commercial sources including receipts from league fees, sale of tickets of One Day International matches, IPL matches, advertisement charges, franchise fees and sponsorship fees from various companies.

4. In view of the above, DIT(E) was of the opinion that the assessee has lost its character as a charitable society in view of the first proviso to Section 2(15) of the Act. Therefore, the assessee was issued a show cause letter dt. 17-11-2011 for withdrawal of the registration granted earlier u/s. 12AA of the Act.

5. Considering the above factual matrix, Assessing Officer (AO) reopened the assessment and notice u/s. 148 of the Act was issued on 08-03-2013. In response to the notice u/s. 148, assessee filed a letter dt. 12-03-2013 stating that the return filed on 11-12-2006 vide acknowledgement No. 2706 may be treated as return filed in response to notice u/s. 148.

6. Further, AO noticed by referring to the annual report and material found during survey u/s. 133A, assessee is in receipt of income from the following sources:

		Amount (Rs)
1.	Sale of corporate boxes (Received during the year)	2,09,90,001
2.	Receipt from in-stadia advertisement rights	
3.	Receipt of TV subsidy from BCCI	3,45,00,000
4.	Receipt from sale proceeds of tickets for One Day International Cricket match – Gross receipt	1,66,91,350
5.	Receipt from corporate sponsorship (Visaka industries – Rs. 1 Crore received during the year)	
6.	Ground fee collections	5,33,190

7. By considering the above findings, AO observed that the assessee has no valid registration u/s. 12AA of the Act for the AY. 2006-07 in view of its cancellation by DIT(E), even if such registration were available, the exemption u/s. 11 is not allowable

in view of the assessee's activities which are neither charitable nor allowed by its own Memorandum of Association. Accordingly, exemption u/s. 11 is denied by the AO.

8. Further, assessee was asked to produce its books of account to be assessed as an AOP under normal provisions of the Income Tax Act. The assessee has submitted copy of accounts in CD format and further the assessee has submitted before the AO that it could not submit bills and vouchers and other records due to the fact that all the above records were seized by Anti-Corruption Bureau (ACB) and they were able to produce only some bills/vouchers with regard to cash payments. After considering the information submitted by the assessee, AO has made following additions due to non-submission of relevant bills and vouchers before him:

- i. Disallowance u/s. 40A(3) (Gross) Rs.7,19,372/- [disallowance of 20% of the above expenditure] i.e., Rs. 1,43,874/-;
- ii. Expenditure disallowed (10%) of the total expenditure which was not substantiated;
- iii. Disallowed depreciation [10%] of the value of assets for which no evidence submitted to the value of Rs. 96,237/-;

9. Aggrieved with the above order, assessee preferred an appeal before the CIT(A) and CIT(A) after considering the submissions of the assessee has adjudicated in favour of assessee by observing that in view of the order of the ITAT dt. 31-05-2012, the matter was remanded back to the file of DIT(E), which amounts to registration of assessee stands restored as of date. Therefore, exemption u/s.

11 cannot be denied to the assessee for the reason of absence of registration. Further, after considering the various submissions of assessee, he found that the activities and sources of income of assessee are similar to the facts of the Tamil Nadu Cricket Association, following the decision of Hon'ble Madras High Court in the case of Tamil Nadu Cricket Association, assessee was found to be not engaged in activities in nature of trade and commerce or business. Therefore, assessee is eligible for exemption u/s. 11 of the Act.

10. Aggrieved with the above findings of the CIT(A), Revenue is in appeal before us with the following grounds:

“1. The order of the Ld. CIT(A) is erroneous both on facts and in law.

2. The Ld.CIT(A) erred in holding that the registration of the assessee stands restored as on date, and that exemption u/s. 11 cannot be denied to the assessee for reasons of absence of registration.

3. The Ld.CIT(A) ought to have appreciated that, when the Hon'ble ITAT in its order in ITA No.1228/Hyd/2012 dt.26.03.2014, have set aside the earlier dated 31.05.2012 of the DIT(E) passed u/s.12AA(3) cancelling registration in the case of the assessee, with a direction to him to pass a fresh order giving an opportunity to the assessee, under that circumstances, it cannot be said that registration of the assessee stands restored as on date.

4. The Ld.CIT(A) ought to have appreciated that when following the said order of the Hon'ble ITAT in ITA No.1228/Hyd/2012 dt.26.03.2014, the matter of cancellation of registration in the case of the assessee was pending before the CIT(E) (formerly DIT(E)), the Ld.CIT(A) was not correct in holding that the registration of the assessee stands restored as on date.

5. The Ld.CIT(A) erred in holding that the activity and sources of income in the case of the assessee are similar to that of the Tamil Nadu Cricket Association and that the assessee was not engaged in activities in the nature of trade, commerce or business and therefore, is eligible for exemption u/s.11.

6. The Ld.CIT(A) ought to have appreciated that the assessee has carried on several activities which are not in accordance with its objects as discussed in the order dated 31.05.2012 of the DIT(E), which entailed cancellation of registration u/s.12AA(3) in the case of the assessee, and while setting aside the said order of the DIT(E), directing him to pass fresh order after giving an opportunity to the assessee, the Hon'ble ITAT has not given any decision on the merit of such finding given by the DIT(E).

7. At this stage, it may be further mentioned that consequent to the said order of the Hon'ble ITAT in ITA No.1228/Hyd/2012, the CIT(E), in the mean time, vide his order dated 13.03.2015, passed u/s.12AA(3) afresh, has cancelled the registration in the case of the assessee w.e.f. 01.10.2004 and hence, the assessee is not eligible for exemption u/s. 11 of the Act for the Asst. Year 2006-07.

8. Any other ground that may be urged at the time of hearing of the appeal”.

11. With regard to disallowance of various expenditures, Ld.CIT(A) has sustained the addition and also enhanced the addition as below:

11.1. Disallowance u/s. 40A(3): During the appellate proceedings, assessee submitted that the cash payments were less than Rs. 20,000/- each, are payments to several persons and had been collected together while making entries in the books. Assessee admitted that out of the cash payment of Rs. 7,19,372/- listed in the assessment order, assessee was unable to produce cash vouchers for Rs. 3,48,900/- due to the fact that various documents had been seized by ACB and could not be traced. Ld.CIT(A) referred the matter back to the file of AO for verification. The AO submitted that apart from the expenses to the extent of Rs. 3,48,900/-, for which assessee has admittedly failed to produce the vouchers, further to the extent of Rs. 86,050/- also not substantiated with proper evidence. Considering the AO's remand

report, Ld.CIT(A) confirmed the amount of Rs. 4,34,950/- as disallowances.

11.2. Disallowance of depreciation: Ld.CIT(A) sustained the addition made by the AO in this regard.

11.3. Disallowance of expenditure of Rs. 8,82,856/-:

Since assessee could not produce any supporting evidence for the value of Rs. 88,28,563/-, Ld.CIT(A) has confirmed the addition of Rs. 88,28,563/- as not applied for charitable purpose. Even though, AO has disallowed only to an extent of 10% of the expenditure which was not substantiated with evidence.

12. Aggrieved with the above order, assessee preferred an appeal before us raising the following grounds:

“1. The order of the learned Commissioner of Income tax(Appeals) [C.I.T(A)], Hyderabad is erroneous in law and on the facts of the case.

2. The learned C.I.T(A) erred in holding that the assessee's claim of having incurred expenditure for charitable purposes cannot be accepted to the extent of Rs.88,28,563/-, Rs.4,34,950/- and Rs.96,237/- on the ground that the assessee did not produce evidence for the said amount.

3. The learned C.I.T(A) failed to appreciate that the Assessing Officer [A.O]not only examined books of account but also vouchers produced by the assessee and recorded that out of cash payments of Rs. 1,18,41,188/- for which evidence was sought, the assessee produced details and vouchers for payments aggregating to Rs. 1,15,85,588/and in the face of such level of compliance, it was not rational and reasonable to hold that the assessee's case was one of absence of evidence.

4. The learned C.I.T(A) ought to have appreciated that the A.O exercised judicious discretion and made disallowance at 10% based on the state of accounts and after taking into all the facts and circumstances of the case and same ought not to have been uprooted in a summary manner.

5. *The learned C.I.T(A) ought to have appreciated that the assessee got its accounts audited u/s.12A(b) of the Act and furnished a report in Form No.10B quantifying the amount applied for charitable purposes and that there were no qualifications in the said report about any unvouched expenditure warranting a sweeping finding that an amount of Rs.88,28,563 cannot be accepted as spent for charitable purposes.*

6. *Without prejudice to the preceding grounds of appeal, the learned C.I.T(A) is not justified in enhancing the disallowance mentioned in ground No 2 above without affording an opportunity to the assessee.*

7. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary”.*

13. Considered the rival submissions and material facts on record. The Revenue is in appeal before us aggrieved with the findings of the Ld.CIT(A) that assessee is eligible for deduction u/s. 11 of the Act. It is pertinent to note that the registration was cancelled following the survey conducted in the premises of the assessee on 21-10-2011. Aggrieved with the above cancellation, assessee preferred an appeal before the Co-ordinate Bench and the same was remitted back to the file of DIT(E) directing him to communicate to the assessee all the issues arise in his order and give a reasonable opportunity to assessee to explain on those issues and after considering the assessee's submission, decide the issue in accordance with law.

14. Considering the above direction, DIT(E) held that assessee is carrying on activities not according to its objects and further that it is carrying on commercial activities. Therefore, it is not eligible for registration u/s. 12AA of the Act. At this stage, Revenue has filed the present appeal which is under consideration. However, aggrieved with the order of the DIT(E), assessee filed an appeal before the Co-ordinate Bench of this Tribunal challenging the

cancellation of the registration u/s. 12AA. The Co-ordinate Bench has passed the order in ITA No. 649/Hyd/2015 dt. 13-10-2016, setting aside the order of the DIT(E) for withdrawal of registration u/s. 12AA(3) of the Act. Further, in the above order, it has opined that the expenditure which is not supported by bills and vouchers also that which can only lead to disallowance and not for withdrawal of registration u/s. 12AA(3) of the Act. With the above direction, registration of the assessee is restored w.e.f. 20th January, 1997. Since the present appeal is filed by Revenue before the findings of the Co-ordinate Bench in ITA No. 649/Hyd/2015, in our considered view, at this stage, the appeal of the Revenue is not maintainable considering the findings of the Co-ordinate Bench in the order in ITA No. 649/Hyd/2015 and accordingly appeal filed by the Revenue is dismissed.

15. In the result, appeal of Revenue for the AY. 2006-07 is dismissed.

16. Coming to the assessee's appeal for the AY. 2006-07, assessee has filed additional evidence before us praying that the additional evidence contains the relevant supporting vouchers/bills which were seized by the ACB. Assessee has collected and collated from the ACB officials mainly to submit before us, the same was accepted as additional evidence by the Bench which was not submitted before Revenue authorities. Hence, accordingly, for the sake of justice, we are remitting this additional evidence to the file of AO for verification. It is in line with the directions of the Co-ordinate Bench in its earlier order in ITA No. 649/Hyd/2015, dt. 13-10-2016, as per which the expenditure which is not

supported may lead to disallowance. Accordingly, we are directing the AO to verify the additional evidence in order to justify the claim of assessee and also the 12AA registration is in place, the expenditure supported with proper evidence can be considered for deduction u/s. 11 of the Act. With this limited purpose of verification of additional evidence, we remit this to the file of AO and needless to say that assessee may be given property opportunity of being heard. Accordingly, the grounds raised by assessee are allowed for statistical purposes.

17. In the result, appeal of assessee for the AY. 2006-07 is allowed for statistical purposes.

AY. 2007-08:

18. Since the issues are common in this assessment year also (cross appeals of both Assessee and Revenue), as per our earlier discussion for the AY. 2006-07 in this order above, the appeal of Revenue is dismissed and appeal of assessee is allowed for statistical purposes.

19. To sum-up, both the appeals of assessee for the AYs. 2006-07 & 2007-08 are allowed for statistical purposes and both the appeals of Revenue for the AYs. 2006-07 & 2007-08 are dismissed.

Order pronounced in the open court on 25th October, 2017

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 25th October, 2017

TNMM

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy to :

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- 2. Jt. Director of Income Tax (Exemptions), Hyderabad.*
- 3. Asst. Commissioner of Income Tax (Exemptions) i/c, Circle, Hyderabad.*
- 4. CIT (Appeals)-9, Hyderabad.*
- 5. CIT(Exemptions), Hyderabad.*
- 6. D.R. ITAT, Hyderabad.*
- 7. Guard File.*