

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A Nos. 361 & 362/Agra/2014
(ASSESSMENT YEAR: 2007-08 & 2009-10)**

Manas Sewa Samiti, 63, Vishnupuri, Aligarh. PANNo.AABTM4363M (Assessee)	Vs.	Addl. CIT, Range-1, Aligarh. (Revenue)
---	------------	---

Assessee by	Shri Anurag Sinha, AR.
Revenue by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	11.09.2017
Date of Pronouncement	23.11.2017

ORDER

PER, BENCH:

I.T.A No. 361/Agra/2014

This is assessee's appeal for A.Y. 2007-08, taking the following grounds:

- “1. *BECAUSE, Penalty order as had been passed by the 'AO' is void ab-initio in view of the fact that the Initiation of Penalty and Notice as was issued to the 'appellant' was not in conformity with the law as laid down by the Hon'ble Courts in this regard.*

2. *BECAUSE, the learned authorities below were not justified in imposing and sustaining penalty ignoring the fact that 'appellant' application under section 12AA of the Act has not been rejected by the Ld CIT, which amounted to appellant Society status being 'Deemed Registered Society' under section 12AA of the Act.*
3. *BECAUSE, upon due consideration of the matter and in the overall circumstances of the case no penalty under section 271(l)(c) can validly be sustained owing to the fact that appeal against quantum addition stood admitted by the Hon'ble High Court which itself is an evidence of addition representing difference of opinion .*
4. *BECAUSE, denying of deduction under section 11 in the peculiar facts and circumstances of the case do not lay down a sound basis for imposition of penalty under section 271 (1)(c) of the Act.”*

2. As per Ground No. 3, the penalty in question is not sustainable, since the assessee's appeal against the addition as confirmed by the ITAT stands admitted by the Hon'ble High Court.

3. This contention of the assessee is found to be correct. The addition forming the basis for the penalty in question was confirmed by the Tribunal. The assessee's appeal against that order of the ITAT stands admitted by the Hon'ble High Court,

vide order dated 15.03.2013. A copy of the said High Court order has been placed on record at APB 31. That, being so, the issue is hitherto a debatable issue.

4. In view of the above, the penalty is deleted.

ITA No. 362/Agra/2014

5. This is assessee's appeal for A.Y. 2009-10, taking the following grounds:

- “1. *BECAUSE, Penalty order as had been passed by the 'AO' is void ab-initio in view of the fact that the Initiation of Penalty and Notice as was issued to the 'appellant' was not in conformity with the law as laid down by the Hon'ble Courts in this regard.*
2. *BECAUSE, the learned authorities below were not justified in imposing and sustaining penalty ignoring the fact that 'appellant' application under section 12AA of the Act has not been rejected by the Ld CIT, which amounted to 'appellant' Society status being 'Deemed Registered Society' under section 1 2AA of the Act.*
3. *BECAUSE, upon due consideration of the matter and in the overall circumstances of the case no penalty under*

section 271(1)(c) can validly be sustained owing to the fact that appeal against quantum addition stood admitted by the Hon'ble High Court which itself is an evidence of addition representing difference of opinion .

4. *BECAUSE, denying of deduction under section 11 in the peculiar facts and circumstances of the case do not lay down a sound basis for imposition of penalty under section 271 (1)(c) of the act.*
5. *BECAUSE, in any view of the matter the penalty order is bad on facts and in law.”*

6. The Id. Counsel for the assessee submits, as also stated in the Synopsis filed that:

“Subsequent to filing of this appeal on 09.12.2014 before Hon'ble ITAT the Ld CIT(Exemption), Lucknow upon application dated 29.01.2009 granted Registration to the Society vide Certificate dated 17.02.2016 effective from 01.04.2008 (A.Y 2009-10). (PBP- 35-37) On the basis of which addition itself was deleted by the Ld CIT(A) Aligarh in Appeals for subsequent A.Y. 2010-11, 2011-12 & 2012-13 too.

2. *The Certificate so granted under section 10 (23C)(vi) exempts the assessee from Tax and since being granted with retrospective effect or with effect from the date of filing application on 29.01.2009 (A.Y.-2009-10) no penalty under section 271(l)(c) can be sustained that too for concealment of Income as initiated in the Assessment Order for A.Y. 2009-10.*
3. *Vide Assessment Order dated 05.12.2011 penalty was initiated for raising non- admissible claim under section 10 (23C) (vi) of the Act. In view of the development of facts as stated in above para no penalty is exigible as the claim of exemption was bona fide and genuine and held to be so. In recognition of the genuine and bona fide claim of exemption Certificate dated 17.02.2016 was granted by the Ld Commissioner of Income Tax (Exemption) making it effective from 01.04.2008 (A.Y 2009-10).*
4. *The ITAT while deciding appeal as on today cannot ignore the Certificate granted by the Income Tax Department through Ld Commissioner of Income Tax (Exemption) which Certificate has material bearing to the issue under appeal and relates to A.Y. 2009-10, the year for which appeal is to be adjudicated. Even the Ld CIT(A) in Appeals for A.Y 2010-11,2011-12 and 2012-13 has allowed appeals on the strength of Certificate, dated*

17.02.2016 against which Revenue has not even preferred appeal before the Hon'ble ITAT. Thus, objection that the benefit arising out of Certificate dated 17.02.2016 granted by the Ld CIT, Exemption, cannot be given in the instant appeal is bereft of substance.”

7. The Certificate (supra) dated 17.02.2016, as placed at APB 35-37, shows that registration was granted to the assessee by the Id. CIT(E), Lucknow, w.e.f. 01.04.2008, i.e., in the year under consideration. The only objection of the Id. DR is that this grant of registration to the assessee is an event subsequent to the passing of the impugned order. Relying on ‘Brij Mohan vs. CIT’, 120 ITR 1 (SC), it has been contended that the return of income in this case was filed on 29.09.2009, on which date, no such Certificate u/s 10(23C) (vi) was in existence and the Certificate now being produced cannot absolve the assessee of the levy of the penalty in question. According to the Id. DR, as per ‘Brij Mohan’ (Supra), the act of concealment is committed on the date of filing the return of income.

8. This contention of the Department, however, is found to be incorrect. ‘Brij Mohan’ (Supra), was a case where the law had undergone a change. It was in the backdrop of this, that their Lordships held that it is the law operating on the date when the return is filed, is applicable. Thus, the case of the Department does not get furthered by ‘Brij Mohan’ (Supra).

9. So far as regards the present case, admittedly, the Certificate of registration, dated 17.02.2016, specifically grants registration to the assessee w.e.f. 01.04.2010, the year under consideration. This Certificate, thus, has a direct bearing on the facts of the present case. Though this Certificate has been granted post the passing of the impugned order and even after the filing of the present appeal itself, this does not prejudice the case of the assessee at all. The Certificate so granted u/s 10(23C)(vi) of the Act, as rightly contended, exempts the assessee from tax. That being so, the assessee is correct in submitting, that no concealment penalty is sustainable. There is no force in the argument of the Department that this subsequent event cannot be taken into consideration for deciding the present appeal. As observed, the registration granted to the assessee is effective in the year under consideration, though this event of grant of registration has come about only now, i.e., after the filing of the appeal. Appellate proceedings, it is trite, are a continuation of the assessment proceedings. Penalty proceedings are, in fact, an offshoot of the assessment proceedings.

10. It is also noted that on the basis of this very Certificate dated 17.02.2016, the Id. CIT(A) has allowed the assessee's appeals for the succeeding three assessment years, i.e., AYs. 2010-11 to 2012-13. Remarkably, the Department has not preferred any appeal/(s) against the said orders of the Id. CIT(A).

11. In view of the above facts, finding the penalty in question to be unsustainable, the same is deleted.

12. In the result, both the appeals are allowed.

Order pronounced in the open court on 23/11/2017.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated: 23/11/2017

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT AGRA**