

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 2687/Del/2016

A.Y.: 2011-12

KHURJA DEVELOPMENT AUTHORITY,
YAMUNAPURAM COMMERCIAL COMPLEX,
MG ROAD, BHOOR,
BULANDSHAHR – 203001
(PAN: AAALK0805D)
(Appellant)

VS. ADDL. CIT,
EXEMPTION RANGE,
CGO BUILDING II,
HAPUR ROAD,
GHAZIABAD – 201 001
(Respondent)

Assessee by : None
Department by : Sh. S.S. Rana, CIT(DR)

ORDER

PER H.S. SIDHU, JM

The Assessee has filed this Appeal against the impugned order dated 24/2/2016 passed by the Ld. Commissioner of Income Tax(Appeals), Ghaziabad on the following grounds

:-

"1. *Because the order passed by Learned Commissioner of Income Tax (Appeals) is bad in Law and against the facts of the appeal.*

2. *Because the Ld. Commissioner of Income Tax (Appeals) was wholly unjustified in dismissing the appeal merely on the ground that the department has filed a SLP against the order of Hon'ble Allahabad High Court confirming the order of Hon'ble ITAT granting registration u/s 12A of the Act. Ld. Commissioner of Income Tax (Appeals) has also ignored the fact that Hon'ble Apex Court has accepted the SLP but not granted any stay against the order of Hon'ble Allahabad High Court.*

3. *Because the Ld. Commissioner of Income Tax (Appeals) erred both in law and on facts in dismissing the appeal of the appellant whereas the main ground in the appeal before Learned CIT (Appeal) was that the assessing officer has assessed surplus of 'receipts and expenditure accounts' merely on the basis of rejection of registration u/s 12A, by Commissioner of Income Tax, although the issue of registration was decided by Hon'ble ITAT, New Delhi in favour of the appellant and further confirmed by Hon'ble Allahabad High court by rejecting appeal filed by the department against the order of Hon'ble ITAT. Now the matter of registration u/s 12A is sub-judice before Hon'ble Supreme Court, as SLP filed by the department*

has been admitted but the stay against the order of Hon'ble Allahabad High Court was not granted by the Apex Court.

4. The appellant craves leave to add or alter any of the ground of appeal before or at the time of hearing."

2. The facts in brief are that assessee has filed its return of income in the status of AOP (Trust) showing taxable income at Rs. NIL after claiming exemption u/s 11 of the Income Tax Act, 1961 (hereafter referred as the Act) towards excess of income over expenditure at Rs. 3,46,79,596/-. In this case the return was processed u/s 143(1) of I.T. Act, 1961 on 20.12.2012 on returned income. Later, the case was selected under scrutiny through CASS and notice u/s 143(2) of I.T. Act, 1961 dated 08.8.2012 was issued and served upon the assessee. Further, notice u/s. 142(1) alongwith detailed questionnaire dated 22.8.2013 was issued to the assessee. In compliance to these notices the AR of the assessee attended the proceedings from time to time and furnished the required details / explanation. The books of account were produced and examined on test check basis. Thereafter, the AO observed that as the issue of registration u/s 12A of the assessee as on date is sub-judice before the appellate authorities, therefore the submission of the assessee is not acceptable. As on date, the assessee has no registration u/s 12A of the I.T. Act, 1961. Therefore, the assessee is not eligible for exemption u/s 11 of

the I.T. Act, 1961 and all the surplus income over the expenditure are taxable under the normal provisions of I.T. Act, 1961. Accordingly, the AO held that as per the Income & Expenditure a/c enclosed with the return, the assessee has shown surplus at Rs. 3,46,79,596/-. Accordingly, the assessment was completed vide order dated 31.10.2013 passed u/s. 143(3) of the Act on total income at Rs. 3,46,79,596/-. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 24.2.2016 has held that it is uncontroverted fact that as on date the assessee does not enjoy registration u/s. 12AA and such registration is mandatory for availing exemption u/s. 11 to 13 of the Act. The assessment order therefore, denying such exemption in absence of mandatory registration u/s. 12AA calls for no interference.

3. Aggrieved with the impugned order dated 24.2.2016 passed by the Ld. CIT(A), Ghaziabad, Assessee is in appeal before the Tribunal.

4. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the

assessee, therefore, we are deciding the present appeal ex parte qua assessee, after hearing the Ld. DR and perusing the records.

5. Sh. S.S. Rana, Ld. CIT (DR) appeared for the Department and relied upon the orders passed by the Revenue Authorities. Mr. Rana, stated that the issue involved in the present Appeal is exactly similar to the issue involved in the case of Jammu Development Authority vs. UOI (2014-TIOL-115-SC-IT) which has been decided in favour of the Revenue by the Hon'ble Supreme Court of India. Therefore, he requested that following the aforesaid precedent, the Appeal of the Assessee may be dismissed. For the sake of convenience, he filed the copy of the decision of the Hon'ble Supreme Court of India in the case of Jammu Development Authority vs. UOI (2014-TIOL-115-SC-IT).

6. We have heard the Ld. CIT (DR) and perused the records, especially the orders passed by the revenue authorities as well as relevant record, we are of the considered view that Ld. CIT(A) has rightly dismissed the appeal of the assessee by holding that as on date the Assessee is not in possession of registration u/s. 12AA of the Act, which is mandatory for availing the exemption u/s. 11 to 13 of the I.T. Act, 1961. We have also perused the Appeal File and we are of the view that assessee has not filed any Certificate of Registration granted u/s. 12AA of the I.T. Act, 1961, which is mandatory for availing the exemption u/s. 11 to 13 of the Act, before the AO as well as Ld. CIT(A) and even before the Tribunal. Therefore, in the absence of the same, we are unable to accept the request of the Assessee for grant of exemption u/s. 11 to 13 of the I.T. Act. Keeping in view of the facts and circumstances of the present case, we are of the view that no interference is called for in the well reasoned order passed by the Ld. CIT(A), because the issue involved in the present Appeal is exactly similar to the issue involved in the case of Jammu Development Authority vs. UOI (2014-TIOL-

115-SC-IT) in which Registration u/s. 12A of the I.T. Act was cancelled by the Ld. CIT(A) and order of the Ld. CIT(A) was upheld by the ITAT and Hon'ble Jammu & Kashmir High Court and finally an SLP filed by the Jammu Development Authority has also been dismissed by the Hon'ble Supreme Court of India. Therefore, respectfully following the Hon'ble Supreme Court of India decision in the case of Jammu Development Authority vs. UOI (2014-TIOL-115-SC-IT), we uphold the impugned order passed by the Ld. CIT(A) and reject the grounds raised by the Assessee by dismissing the Appeal filed by the Assessee.

7. In the result, the Appeal filed by the Assessee is dismissed.

Order pronounced on 04/12/2017.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 04/12/2017

"SRBHATNAGAR"
Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches