

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No. 779/PUN/2016

Shree Maruti Devasthan,
Marutinagr, Warge,
Pune-411 052.
PAN :AAFTS3197P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Exemption),
Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 780/PUN/2016

Raghavdas Educational & Medical
Foundation and Research Centre,
Marutinagar, Warge,
Pune-411 052
PAN : AAATD8864F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Exemption),
Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri S. N. Puranik
Respondent by : Shri Rajeev Kumar

सुनवाई की तारीख / Date of Hearing : 26.04.2018	घोषणा की तारीख / Date of Pronouncement : 24.05.2018
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आदेश / ORDER**PER SUSHMA CHOWLA, JM**

Out of two appeals, ITA No.779/PUN/2016 is filed by assessee, Shree Maruti Devasthan against the order of Commissioner of Income Tax (Exemptions), Pune dated 10.03.2016 passed under section 12AA(1)(b)(i) of the Income Tax Act, 1961 (in short 'the Act').

Another appeal being ITA No.780/PUN/2016 is filed by the assessee, Raghavdas Educational & Medical Foundation & Research Centre, against the order of Commissioner of Income Tax (Exemptions), Pune dated 10.03.2016 passed under section 12AA(1)(b)(i) of the Income Tax Act, 1961 (in short 'the Act').

2. In ITA No.779/PUN/2016, the assessee has raised following grounds of appeal.

"1. Commissioner of Income Tax (Exemption) has erred in not issuing certificate granting Registration u/s.12AA in Form 12AA from year 2002-03, Appellant prays to grant the same.

2. Without prejudice to ground No.1 above, CIT Exemption has erred in granting registration from Financial Year 2016-17 as per application date 03/02/2016 as against from Financial Year 2015-16.

3. Appellant prays to grant certificate of registration at least for and from Financial Year as referred to in Order u/s 143(3).

4. Commissioner (exemption) has erred in granting registration as Religious Trust as against Charitable and Religious Trust.

5. Appellant prays to grant registration as Charitable Religious Trust. Appellant prays to add after around, modify, clarify and/ or withdraw the ground/s, as accession may demand."

3. Both the appeals connected to the different assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of

convenience. However, in order to adjudicate the issue, reference is being made to facts and issue in ITA No.779/PUN/2016.

4. Briefly in the facts of the case, the assessee-trust was established under Trust Deed and was registered with the Asst. Charity Commissioner, Pune on 05.10.1953 vide No.A-576 and had filed an application for registration under section 12AA of the Act in Form No.10A on 03.02.2016. The CIT after considering the material on record granted registration to the trust from Financial year 2016-17 onwards. The assessee is aggrieved by the order of the Commissioner of Income Tax in not issuing the certificate granting registration under section 12AA of the Act from Financial Year 2001-02 i.e. in view of the application dated 25th March, 2002.

5. The Ld. AR for the assessee pointed out that it had originally applied for registration of the Trust under section 12A of the Act vide application dated 25th March, 2002. He further pointed out that while completing assessment for assessment year 2003-04, the Assessing Officer vide order passed under section 143(3) r.w.s. 147/148 of the Act had recorded reason for reopening (12A registration). However, the Assessing Officer on satisfaction had passed assessment order stating the trust to be registered. The assessee, however, pointed out that the certificate of registration was not with the assessee. Hence, the application dated 03.02.2016 was made to the Commissioner which referred to the earlier application dated 25th March, 2002 and order passed under section 143(3) of the Act and a request was made to grant registration from assessment year 2002-03. However, the Commissioner granted registration to the trust w.e.f. Financial Year 2016-17 onwards. The Ld. AR for the assessee further pointed out that in view of the ratio laid down by the Hon'ble Supreme Court of India in the case of CIT, Kanpur Vs. Society for Promotion of Education, 382 ITR 6 (SC), once the application under section 12A of the Act was not rejected, then registration is deemed to be granted to

the assessee-trust w.e.f year under which first application was made. In this regard, he further pointed out that the assessment order under section 143(3) r.w.s. 147 of the Act for assessment year 2003-04 was passed on 30.12.2010 assessing the income at Nil accepting computation under section 11 and 12 of the Act as if registration was granted where the reason for re-opening assessment was non-registration. He further pointed out before the Commissioner that the application was made on 03.02.2016 along with request to pass an order in relation to the earlier application made. The Commissioner of Income Tax has failed to consider the earlier application and granted registration w.e.f. Financial year 2016-17 onwards.

6. On the other hand, the Ld. DR for the Revenue has placed reliance on the orders of Authorities below.

7. We have heard the rival contentions and perused the record. The issue raised in the present appeal is against non granting of registration from original date of application for registration made under section 12A of the Act. It is not undisputed fact that the assessee is entitled to be registered under section 12A of the Act. The issue raised before us is the date from which registration is to be granted to the assessee-trust. The order under section 12AA(1)(b)(i) of the Act dated 10.03.2016 as passed by Commissioner pertains to an application for registration under section 12A of the Act along with covering letter dated 03.02.2016, wherein the registration was requested as per application under section 12A of the Act submitted on 25.03.2002. The said application along with enclosures is placed at page 1 to 5 of the paper book. A perusal of the application dated 03.02.2016 reveals that an application for registration under section 12A of the Act was filed on 25th March, 2002 with the Commissioner of Income Tax and nothing had been heard on the said application till date. Reference was made under section 12AA(2) of the Act which

stated that every order granting or refusing registration under clause (b) of sub section (1) shall be passed before the expiry of six months from the end of month in which the application was received under clause(a) of section 12A of the Act. It was further held that till date nothing has been heard on the said application and hence registration under section 12A(a) of the Act is deemed to be granted to the trust. The deeming provision for grant of registration has been confirmed in two decisions namely, *Karnataka Golf Association Vs. Director of Income Tax (2004) 91 ITD 1 (Bang)* and *Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust Vs. Commissioner of Income Tax (2007) 17 SOT 281 (Del) (SB)*. It was also held that for A.Y. 2003-04 notice under section 148 of the Act was issued and served by the then ACIT, Circle 6 on 12.08.2010. The reason for issue of notice under section 148 of the Act was stated as the assessee trust was not registered under section 12AA of the Act. The assessment was completed under section 143(3) r.w.s.147 on 30.12.2010. The assessment order was passed deeming the assessee trust as registered under section 12A, considering the application for registration under section 12A filed on 25th March, 2002. The assessee made request for issuing registration certificate against the application dated 25th March, 2002. He also requested that in case any certificate/order/ or refusal order was already issued or passed, then the same may be issued to the assessee, for which copying charges of Rs. 50/- were paid by assessee and challan was enclosed. This is the first part of the said application dated 03.02.2016. Thereafter, the assessee, without prejudice of the same and as an abundant precaution filed duplicate application for registration under section 12A(a) of the Act and a request was made to issue registration under section 12(a) of the Act to the trust from 1st April, 2002 as per original application dated 25th March, 2002. The assessee, thereafter, enclosed certain documents along with the application for registration. The Commissioner of Income Tax on the basis of said application has granted registration to the assessee trust vide order dated 10.03.2016 w.e.f Financial year 2016-17 onwards. Once the

assessee has made an application under section 12A of the Act as on 25.03.2002 which have not been disposed off, would imply that deemed registration has been granted to the assessee from the year in which the application has been made. Thus, Commissioner having not considered the explanation of the assessee, has erred in passing order dated 10.03.2016 granting registration to the assessee trust from Financial year 2016-17 onwards. With regard to grant of registration from the date of the application filed before the Commissioner, the Ld. AR pointed out that pending of the earlier application filed on 25th March, 2002 under section 12A of the Act and also pointing that since nothing was heard on the said application, registration was deemed to be granted to the assessee trust under section 12A of the Act. The Commissioner has failed to consider the application of assessee and has erred in passing order granting registration to the assessee trust from Financial year 2016-17 onwards. In view of the ratio laid down by the Hon'ble Supreme Court of India in the case of CIT Kanpur Vs. Society for Promotion of Education (supra.), if the order granting or rejecting registration has not been passed within six months from the end of the month in which application under section 12A of the Act was made then registration is deemed to be granted to the assessee trust. Accordingly, we direct the Commissioner of Income tax to grant registration to the assessee by a speaking order in line with the ratio laid down by the Hon'ble Supreme Court in the case of CIT Kanpur Vs. Society for Promotion of Education (supra.) w.e.f. date of filing of original application under section 12A of the Act i.e. 25th March, 2002. The Commissioner of Income Tax is directed to issue the certificate of registration to the assessee trust under section 12AA of the Act, accordingly.

8. Before parting, we may refer another aspect of the case that reasons were recorded for issuance of notice under section 148 of the Act relating to assessment year 2003-04 which is placed at page 6 of the paper book. The reason which was recorded for re-opening of assessment was non-granting registration to the trust.

Thereafter, assessment proceedings were taken up by Assessing Officer and assessment order passed under section 143(3) r.w.s. 147 of the Act dated 30.12.2010 assessing Nil income accepting computation of income under section 11 and 12 of the Act as granting deemed Registration. Where assessment for particular year has been taken up on the issue of registration of trust and assessment order was passed under section 143(3) r.w.s. 147 of the Act, it cannot be said that the trust was not registered under section 12AA of the Act. Accordingly, we find no merit in the order of the Commissioner of Income Tax dated 10.03.2016. As mentioned in the above paragraph, the Commissioner of Income Tax is directed to register the trust w.e.f. the date of filing application 25.03.2002 and issue certificate in this regard. The Commissioner of Income Tax shall afford reasonable opportunity of hearing to the assessee. Accordingly, grounds raised by assessee are allowed.

9. As facts and issues raised in ITA No.780/PUN/2016 are identical to ITA No. 779/PUN/2016, our decision in ITA No.779/PUN/2016 would apply mutatis-mutandis to ITA No.780/PUN/2016.

10. In the result, both the appeals of different assessee are allowed.

Order pronounced on this 24th day of May, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th May, 2018
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Exemption), Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.