

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.7874/Del./2017
(ASSESSMENT YEAR : 2013-14)**

**ITA No.7875/Del./2017
(ASSESSMENT YEAR : 2014-15)**

Artificial Limbs Manufacturing Corporation vs. JCIT (Exemption)
of India, Ghaziabad.
Village Naramau, G.T. Road,
Kanpur – 208 016.

(PAN : AABCA8899F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay Kumar, CA
Shri Akash Garg, Advocate
REVENUE BY : None

Date of Hearing : 06.09.2018
Date of Order : 14.09.2018

ORDER

PER BENCH :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Artificial Limbs Manufacturing Corporation of India (hereinafter referred to as 'the assessee') by filing the

present appeals, sought to set aside the impugned order dated 11.10.2017 passed by Ld. CIT (Appeals)-II, Kanpur qua the assessment years 2013-14 & 2014-15 on the grounds inter alia that:-

“1. BECAUSE the "CIT(A)" has erred in law and on facts in holding that

- a) activities carried on by the appellant involved "carrying on of activity in the nature of trade, commerce or business or any other activities rendering service in relation to any trade, commerce or business for a cess or fee or any other consideration" as hit by proviso to sub-section (15) of section (2) of the Act; and***
- b) in-concurring with the finding/ decision given by the ld. First Appellate Authority vide appellate orders dated 08.12.2015 and 30.06.2016 passed for the assessment year 2011-12 and 2012-13 (preceding years) respectively.***

so as to uphold denial of appellant's claim for exemption under section 11 read with section 12 of the Act.

2. BECAUSE on a due appreciation and consideration of very comprehensive submission made during the year under appeal here, it deserves to be held that in pursuance of its object clauses, the activities carried on by the appellant aimed at;

- a) providing 'relief to the poor';***
- b) providing "medical relief" by rehabilitating the patients to lead a normal life at work and leisure; and***
- c) setting up centres equipped with training facilities and technical know-how for fabrication of "device" and 'fitment', falling in the realm of education'***

and accordingly the proviso to section 2(15) was not attracted in its case and view to the contrary is wholly

erroneous being inconsistent with the facts of the case and law applicable thereto.

3. *BECAUSE applicability of proviso to section 2(15) of the Act stood specifically excluded in the instant case by virtue of Circular no.11 of 2008 dated 19.12.2008 issued by CBDT which was binding on the authorities below situated under the overall control of the said apex body in the Direct taxes administration.*

4. *BECAUSE the surplus arising out of activities carried on by the appellant was liable to be ploughed back for the objectives of (i) providing relief to the poor, (ii) medical relief and (iii) education and accordingly the proviso to section 2(15) is ousted from its applicability in the instant case.*

5. *BECAUSE in any case it is pleaded that looking to the undisputed facts that*

- a) *the appellant is a company wholly owned by the Central Government, through President of India;*
- b) *it had been approved by Government of India under section 25 of the Companies Act 1956;and*
- c) *by virtue of prohibition on distribution of 'dividend' as is contained in the approval itself*

it could not be said or held that activities carried on by it (the appellant) were motivated by 'consideration' (as envisaged in the proviso to section 2(15) of the Act, and according the disqualification contained therein section 2(15) was not applicable in the instant case.

6. *BECAUSE the pleading as aforesaid stood fully supported by large number of judicial pronouncements, some of which had been referred to also in the submissions made during the course of appellate proceedings and on a correct and due appreciation of the same, the appellant deserved to be held to be eligible for exemption under section 11 of the Act, by virtue of its being already registered under section 12AA of the Act.*

7. *BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice.”*

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee Corporation is a Government of Undertaking engaged in the business of manufacturing of artificial limbs, components and rehabilitation aids and related services. Assessee claimed exempt income under section 11 of the Income-tax Act, 1961 (for short 'the Act') on the basis of registration granted u/s 12AA of the Act. However, AO denied the benefit of section 11 of the Act to the assessee on the ground that since manufacture and sale of artificial limbs etc. is the main business of the assessee, it is not incidental to the aims and objects of the assessee corporation and as such, the income derived from manufacture and sale of artificial limbs is not eligible for exemption u/s 11 of the Act and thereby assessed the total income of the assessee corporation at Rs.18,30,93,780/- and Rs.35,12,41,340/- for AYs 2013-14 & 2014-15 respectively.

4. Assessee carried the matter by way of appeal before the Id. CIT (A) who has dismissed the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. The Revenue department has not preferred to put in appearance and consequently, we proceeded to decide the present

appeal with the assistance of the Id. AR for the assessee as well as on the basis of documents available on the file.

6. We have heard the Id. Authorized Representative for the assessee to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. At the very outset, it is brought to our notice that primarily the benefit of section 11 has been denied by the AO as well as Id. CIT (A) on the ground that the issue as to the grant of registration u/s 12AA is pending decision before the Hon'ble Allahabad High Court and as such, status of the assessee corporation was held as "company". Relevant sub-para of para 5 at page 7 of the assessment order is extracted as under for ready perusal :-

"Therefore, keeping in view the facts as discussed above, the status of the assessee is taken as company and total income is computed in accordance with normal provisions of the Income tax Act, 1961 applicable in the cases of Domestic Companies. Further Id. Commissioner of Income-tax-II, Kanpur vide his order dated 8.12.2008 granted certificate u/s. 12AA of the Act in accordance with the directions issued by Hon'ble IT A T granted registration to the Institution w.e.f. 30.11.1972, subject to provisions contained u/s. 12AA (3) of the Income Tax Act, 1961. The issue of grant of registration u/s. 12AA is sub-judice before Hon'ble Allahabad High Court, therefore, the status of the assessee as discussed in above paras is taken as "Company". The assessee's claim of exemption u/s 11 is denied in view of discussion in above paras. As the assessee had furnished inaccurate particulars of

income as per return, penalty proceedings u/s 271(1)(c) is also considered separately.”

8. Hon’ble Allahabad High Court vide order dated 17.07.2017, available at pages 16 & 17 of the paper book, has affirmed the order passed by the Tribunal affirming the registration accorded to the assessee company by the Commissioner. So, since the issue as to the registration granted to the assessee company u/s 12AA has been decided, we deem it necessary to set aside these cases to the file of the AO to decide afresh in the light of the fact that the assessee is registered under “non-profit making entity” under section 25 of the Companies Act and has been providing artificial limbs to the needy persons without earning any profit. Needless to say that the AO shall provide an opportunity of being heard to the assessee before deciding the issue.

9. Resultantly, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in open court on this 14th day of September, 2018.

**Sd/-
(G.D. AGRAWAL)
PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 14th day of September, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-II, Kanpur.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.