

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL

' C ' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

एवं ए. मोहन अलंकामणी, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER &  
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.358/Chny/2018

निर्धारण वर्ष /Assessment year : 2010-11

**St.John's Educational Trust,**

No.13,New Colony, Porur,  
Chennai 600 116.

**[PAN AAITS 7349 L ]**

**(अपीलार्थी/Appellant)**

**Vs.** The Income Tax officer,

Exemptions, Ward -4,  
Chennai -34.

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.N.Devanathan,Advocate

प्रत्यर्थी की ओर से /Respondent by

: Mr.Clement Ramesh Kumar,  
Additional CIT D.R

सुनवाई की तारीख/Date of Hearing

: 11-10-2018

घोषणा की तारीख /Date of Pronouncement

: 11-10-2018

**आदेश / O R D E R**

**PER GEORGE MATHAN, JUDICIAL MEMBER**

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-17, Chennai in ITA No.267/2012-13 dated 24.08.2017 for the assessment year 2010-11.

2. Mr.N.Devanathan represented on behalf of the Assessee and Mr.Clement Ramesh Kumar represented on behalf of the Revenue.

3. It was submitted by Id.A.R that the assessee is a Trust formed on 19.12.2007 and runs schools. It was a submission that the

assessee had applied for registration u/s.12AA of the Act, and was granted registration from the assessment year 2011-12. It was a submission that when the assessment for assessment year 2010-11 was taken up, the Id. Assessing Officer on the ground that the assessee-trust was not registered u/s.12AA of the Act, refused to give the assessee the benefit of exemption under section 11 & 12 of the Act. It was a submission that in view of the proviso to section 12A(2), though the said proviso had been introduced with effect from 01.10.2014, the same has been held to be retrospective in operation by the Co-ordinate bench of Kolkata in the case of Sree Sree Ramkrishna Samity Vs. DCIT in ITA No.1680 to 1685/Kolkata/2012 dated 09.10.2015 wherein para 6.8 of the order, it has been held as follows:-

*" 6.8. It will be relevant to get into the Explanatory Notes to the Provisions of the Finance (No. 2), 2014 as given in CBDT Circular No. 01 / 2015 dated 21.1.2015 in reference F.No. 142/13 /2014-TPL which is reproduced herein below for the sake of convenience :-*

*Para 8 - Applicability of the registration granted to a trust or institution to earlier years Para 8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organizations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfill other substantive conditions. However, the power of condonation of delay in seeking registration was not available.*

*This clearly goes to prove that the first proviso to section 12A(2) was brought in the statute only as a retrospective effect with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by the said trust. The benefit of retrospective application alone could*

*be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No. 2) Act, 2014 issued by the Central Board of Direct Taxes vide its Circular No. 01 / 2015 dated 21.1.2015.*

*Apparently the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the Learned AO, unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to ITA Nos. 1680-1685/Kol/2012 Sree Sree Ramkrishna Samity provide that no action u/s 147 could be taken by the AO merely for non-registration of trust for earlier years."*

4. In reply, Id.D.R vehemently supported the orders of Id. Assessing Officer and the Ld.CIT(A). It was a submission that as the Id. Assessing Officer and the Ld.CIT(A) has not considered the provisions of first proviso to Section 12A(2) of the Act, the issue could be restored to the file of Id. Assessing Officer for adjudication.

5. We have considered the rival submissions. A perusal of the First proviso to Section 12A(2) shows it as follows:-

**"Provided** that where registration has been granted to the trust or institution u/s.12AA, then, the provisions of the sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Id. Assessing Officer as on the date of such registration, and the objects and activities of such trust or institution remain the same for such preceding assessment year."

A perusal of the decision of the Co-ordinate bench of Kolkata in the case of Sree Sree Ramkrishna Samity Vs. DCIT referred to supra,

which has been extracted above, clearly shows that the CBDT Circular No.1 of 2015 also specifies that the said proviso was introduced for assisting the genuine charitable trust carrying on genuine charitable objects, is no more dispute. In view of the fact, the assessee-trust has been granted the benefit of Section 12AA of the Act, respectfully following the principles laid down by the Co-ordinate bench of Kolkata in the case of Sree Sree Ramkrishna Samity Vs. DCIT referred to supra, the Id. Assessing Officer is directed to treat the assessee-trust as having the benefit of registration u/s.12AA of the Act for the impugned assessment year.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court after conclusion of hearing on 11<sup>th</sup> October, 2018, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A.MOHAN ALANKAMONY)

**लेखा सदस्य /ACCOUNTANT MEMBER**

Sd/-

( जॉर्ज माथन)

(GEORGE MATHAN)

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 11<sup>th</sup> October, 2018.

**K S Sundaram**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |