

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA Nos. 481 & 1142/Chd/2017

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

The DCIT Circle-1 (Exemptions) Chandigarh	बनाम	Daya Nand Math G.T. Road, Dina Nagar Gurdaspur
स्थायी लेखा सं./PAN No: AAATD8892K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by

: Shri. Dinesh Shastri

राजस्व की ओर से/ Revenue by

: Smt. Chandrakanta

सुनवाई की तारीख/Date of Hearing

: 27/09/2018

उदघोषणा की तारीख/Date of Pronouncement

: 16/11/2018

आदेश/Order

PER BENCH:

Both the above appeals have been filed by the Revenue against the separate orders of the Ld. CIT(A)-2, Amritsar.

2. Revenue has raised the following grounds in ITA No. 481/CHD/2017 for the A.Y. 2013-14 :

(1) Whether on facts and circumstances of the case and in law the CIT(A) has erred in deciding the issues in favour of the assessee even when it was not submitted registration certificate during the course of assessment proceedings u/s 12AA, which is basic condition for exemption u/s 11 of I.T. Act, 1961.

(2) Whether on facts and circumstances of the case and in law the CIT(A) has failed to consider the issue that assessee is running manufacturing unit of Ayurvedic pharma products on commercial basis and earning huge profits.

(3) Whether on facts and circumstances of the case and in law the CIT(A) has failed to consider consistency is not required in assessment proceedings because that each assessment is a separate assessment for an assessment year it was decided in the case of Nishith Madanlal Desai. Vs Commissioner of Income-Tax and others (368 ITR 649) as per Hon'ble Bombay High Court.

(4) Whether on facts and circumstances of the case and in law the order passed by the CIT(A) is contrary to the evidence and material on the record of the case and therefore, perverse.

2.1 Revenue has raised the following grounds in ITA No. 1142/CHD/2017 for the A.Y. 2014-15 :

i. *That the Ld. CIT(A)-2, Amritsar has erred in law in deciding the issues in favour of the assessee even when the registration certificate u/s 12AA was not submitted during the course of assessment proceedings u/s 143(3), which is basic condition for exemption u/s 11 of the I.T. Act, 1961.*

ii. *That the Ld. CIT(A)-2, Amritsar has erred in law while not considering the issue that assessee is running manufacturing unit of Ayurvedic pharma products on commercial basis and earning huge profits.*

iii. *That the Ld. CIT(A)-2 Amritsar has erred in law while not considering that consistency is not required in assessment proceedings because that each assessment is a separate assessment for an assessment year as was decided in the case of Nishith Madanlal Desai v/s Commissioner of Income Tax and others as per Hon'ble Bombay High Court.*

iv. *That the Ld. CIT(A)-2, Amritsar has erred in law in passing the order as contrary to the evidence and material on the record of the case and therefore, perverse.*

3. Since the issues raised in both the above appeals are same therefore they are being disposed off by way of this common order. For dealing with the case we shall take ITA No. 481/CHD/2017 as a lead case.

4. Facts taken from the order of the Ld. CIT(A) are that during the assessment proceedings, the assessee was asked to produce the registration certificate u/s 12AA of the Act as the assessee was claiming exemption u/s 11 of the Act. But the assessee failed to produce the certificate u/s 12AA. The reply filed by the assessee to the notices issued by the AO were not accepted as it had failed to produce the registration certificate u/s 12AA of the Act. Therefore in absence of registration certificate u/s 12AA, the AO denied the claim of exemption u/s 11 of the Act.

4.1 Further it was held that, the Assessee was manufacturing and selling pharma products in a shop under Trust. The AO held that the activity was not covered u/s 2(15) of the Act. The AO rejected the reply of the assessee that it was doing charitable activities u/s 2(15) under medical and education limb of section 2(15) because running a pharma shop is not an education activity and medical relief, because the assessee is running this shop for profit motive. Accordingly the AO rejected the claim of exemption u/s 11 of the Act.

5. In the written submissions filed by the assessee in the proceedings before the Ld. CIT(A), it was stated that the trust was created in the year 1946 and got registered with the Income Tax Department vide letter no. CIT/ASR/HG/3431 dated 29-07-1982 at Sr. No. 22D. However, due to change in management as well as tax advisors, it could not be possible for the present management to lay hand on the certificate of registration.

6. It was stated that the assessee trust was running number of institutions besides the main trust named and styled as Dayanand Math, was having a pharmacy of Ayurvedic medicines which are given to patients free of cost as well as at a price. That all the institutions under the trust named and styled Swami Sarvanand College of Education for B Ed Course, a college named and styled as Swami Sarvanand Institute of Education and Technology for MBA/MCA/BBA/BCA/B tech Studies. All these institutions as well as Pharmacy are located close by on the main G T Road.

7. It was stated by the assessee that the trust has been claiming exemption u/s 11, 12,13 of the Act and the trust has been assessed as a charitable trust a number of times u/s 143(3) in the past. The last assessment under section 143(3) was made in A Y 2012-13 and exemption u/s 11, 12 and 13 has been consistently granted till last year.

7.1 It was stated that the accounts of the trust are being audited regularly and the return of income was being filed as charitable trust. It was stated that the trust is not carrying on any business as such. The trust is having a pharmacy in the main building of the trust which sells the ayurvedic medicines manufactured by the staff of the pharmacy under guidance of Swami Sada Nandji Maharaj the president of the trust. There is hardly any machinery involved in the process and the trust has got permission / sanction for manufacturing from the concerned Departments. The medicines can be had from the only one outlet at the premises of the trust at Dina Nagar and not sold anywhere in the market.

7.2 It was stated that attempt was made to get the certificate of registration u/s 12AA of the Act from the CIT-II, Amritsar who denied having any record of the year of issue of the original certificate in 1982. The appellant had submitted before the AO the copies of old letters written in 1982 and 1983 to the I T Department in which the reference to the registration had been given wherein reference to the registration accorded to the trust by the I T Department vide

letter no. CIT/ASR/HG/3431 dated 29-07-1982 as Sr. No. 22B or 22D was made. Moreover the assessee had been assessed as a charitable trust a number of times in the past, last being in the year A Y 2012-13. That the assessment was made u/s 143(3) in the A Y 2005-06, 2010-11 and 2012-13 and the exemption u/s 11 of the Act was not denied in all these orders. That the officers who made assessments as early as 1984-85 and 1985-86 must have ensure the validity of registration of the trust u/s 12A before applying the provisions of section 11 of the Act.

8. The last assessment under section 143(3) was made in A Y 2012-13 and exemption u/s 11, 12 and 13 has been consistently granted till last year. It was stated that the accounts of the trust are being audited regularly and the return of income was being filed as charitable trust which has not been denied by the AO in the assessment order.

9. The Ld. CIT(A) based on the above submissions held that consistency should be followed in the assessment year under consideration in view of the fact that the activity of running the pharmacy having sale & purchase of Ayurvedic medicines by the appellant trust was not new in the year under consideration and had been duly considered by the department in all the earlier assessment years and the exemption u/s 11 was allowed u/s 143(3) in A Y 2010-11 and 2012-13 to the appellant. Moreover, in all the earlier assessment years made u/s 143(3) in the case of the appellant for A Y 1984-85, 1985-86, 2010-11 and 2012-13, the registration of the trust u/s 12AA had been accepted by the Department. It is also not the case of the AO passing the impugned assessment order that the registration u/s 12AA granted to the appellant in the past had been withdrawn by the CIT, Amritsar. Holding thus he deleted the addition made by the Assessing Officer.

10. Before us the Ld. AR reiterated the submissions made before the Ld. CIT(A) while Ld. DR relied on the order of the Assessing Officer.

11. Owing to the facts detailed above that the trust was created in the year 1946 and obtained the registration by the Income Tax Department in the 1982 and the fact that the assessee could provide the all the details pertaining to the registration except the certificate perse, and given reasons for not producing the certificates, keeping in view that the assessments for the year 1984-85, 1985-86 and for the periods of 2005-06, 2010-11, 2012-13 have been completed under

section 143(3) accepting the registration and keeping in view that there is no change in the activity of providing of Ayurvedic Medicine to the patients manufactured in their pharmacy, the various pleas taken by the Revenue that the Registration Certificate was not submitted, the trust was running business on commercial basis and res judicata is not applicable to the Income Tax cases cannot be accepted by going through the merits of the case and the well reasoned order of the Ld. CIT(A). Hence, the appeal of the Revenue is hereby dismissed.

12. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open Court.

Sd/-
दिवा सिंह
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member
AG
Date: 16/11/2018

Sd/-
डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File