

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.70/Bang/2019
Assessment year : 2015-16

Mujtaba Foundation, No.101/10, 9 th Cross, Wilson Gardens, Bengaluru-560 027. PAN – AADTM 83350N.	Vs.	The Income Tax Officer Ward-7(2)(2), BMTC Building, Koramangala, Bengaluru-560 095.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narayana Murthy, CA
Respondent by	:	Shri T Shering Ongda, JCIT (DR)(ITAT), Bengaluru.

Date of hearing	:	06.02.2019
Date of Pronouncement	:	20.02.2019

ORDER

Per N.V Vasudevan, Vice President

This is an appeal by the assessee against the order dated 12/11/2018 of CIT(A)-7, Bengaluru relating to asst. year 2015-16.

2. The assessee is a public charitable trust which came into existence on 10/12/2012. For asst. year 2015-16, the assessee filed return of income declaring total income of Rs.2,85,774/- . The assessee had declared income under the head 'income from house property' for Rs.20,05,786/- . After setting off of current year losses, total income of Rs.2,85,774/- was

declared in the return of income. The asst. proceedings u/s 143(3) of the Act was concluded by the AO on 22/12/2017. On that date, the assessee did not enjoy benefit of registration u/s 12A of the Act. The assessee however by letter dated 20/12/2017 informed the AO that the trust applied for registration before the CIT(A) (Exemption) on 20/11/2017 and the copy of the registration certificate will be filed the moment it is granted by the competent authority. In the said letter, the assessee also requested the AO to keep the assessment proceedings in abeyance till the assessee receives copy of the registration certificate u/s 12A of the Act from the competent authority. The AO however after noticing that the assessee did not have the benefit of registration u/s 12A of the Act brought to tax entire income from house property and also sum of Rs.2,40,000/- which was income derived by the assessee from other sources.

3. The assessee preferred an appeal before the CIT(A) against the order of the AO. The appeal was filed on 26/1/2018 and was heard by the CIT(A) on 25/10/2018. Before the CIT(A), the assessee pointed out that identical assessments made by the AO for asst. year 2014-15 was challenged by the assessee before the Hon'ble ITAT and the Hon'ble ITAT in ITA No.1757/Bang/2018 order dated 13/7/2018 has held that the assessee should get the benefit of registration u/s 12A of the Act for asst. year 2014-15 and subsequent asst. years till asst. year 2018-19. The relevant observations of the Tribunal in this regard were as follows:-

"In my opinion, these facts are very crucial that the appeal was pending before CIT(A) on 01.03.2018 and on that date, a request was made by the assessee before CIT(A) to keep the appeal in abeyance till the assessee's application for registration is disposed of by Id. CIT(E) and ultimately on 16.05.2018, the CIT(E) granted the registration to the assessee but CIT(A) has

disposed of the appeal of the assessee on 12.03.2018 without waiting for the disposal of the assessee's application for registration u/s. 12AA of IT Act. Hence I feel it proper that in the facts of the present case, as discussed above, the assessee should get the benefit of registration granted by CIT (E) on 16.05.2018 and such benefit should not be denied to the assessee only because of this reason that in spite of the assessee's request for keeping the appeal in abeyance, the appeal of the assessee was disposed of by the CIT (A). Respectfully following the Tribunal order in the case of *SNDP Yogam Vs. Assistant Director of Income-tax (supra)* and in turn also following another Tribunal order rendered in the case of *Sree Sree Ramakrishna Samity Vs. Dy. CIT* as reported in *TS-6208-ITAT-2015(Kolkata)*, **I hold that in the facts of present case, the assessee should get the benefit of registration granted subsequently because this is not the case of the AO that the assessee trust is not a genuine trust and this is also not the case of the AO that the trust has changed its objectives.** This is admitted position that in the earlier years also, before granting of registration u/s. 12AA, the assessee was having the same charitable objectives, based on which the registration u/s. 12AA was granted by CIT(E). Hence in line with para 7.5 of this Tribunal order as reproduced above, **I direct the CIT(E) to grant exemption to assessee for all the Assessment Years being Assessment Year 2014-15 which is under dispute in present appeal and subsequent Assessment Years prior to Assessment Year 2018-19 for which the registration is already granted by CIT(E) subject to the same conditions which are prescribed by Tribunal in the case of *SNDP Yogam Vs. Assistant Director of Income-tax (supra)* as reproduced above. If the registration is granted by CIT (E) for the present year, then the income of the assessee should be assessed afresh u/s. 11 as per law. "**

4. It can be seen from the aforesaid directions of the Tribunal that the Tribunal has set aside the order of assessment and remanded the asst. to be done afresh by applying the provisions of sec. 11 of the Act. But the CIT(A) however refused to give the benefit of registration u/s 12A of the Act for the following reasons.

“4.3 It is seen that the Honble ITAT has directed the CIT(E) to grant exemption to the assessee for AY 2014-15 and subsequent assessment years prior to AY 2018-19 from which year the registration is already granted by the CIT(E). The Honble SMC Bench has further directed that “if the registration is granted by CIT(E) for the present year, then the income of the assessee should be assessed afresh u/s 11 as per law”. However, the appellant has not produced any evidence during the appeal proceedings to show that the exemption for AY 2014-15 and for subsequent years has been granted by the CIT(E). In absence of the same, it will not be possible to accede to the contention of the appellant that the benefit of exemption is available in its case for AY 2015-16.”

Thereafter the CIT(A) proceeded to confirm the order of the AO.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal.

6. I have considered the rival submissions. The Id counsel for the assessee relied on the order of the tribunal referred to for asst. year 2014-15. The Id DR relied on the order of the CIT(A). After considering the rival submissions, I am of the view that the facts and circumstances of the present asst. year are identical to the facts and circumstances as it prevailed in asst. year 2014-15 and therefore the order of the Tribunal rendered in asst. year 2014-15 should apply with equal force in the present asst. year also. In line with the directions of the Tribunal for asst. year 2014-15, I am of the view that the assessee should be treated as being

eligible for the benefits of registration u/s 12A of the Act for the present assessment year 2015-16 also and thereafter the income of the assessee should be assessed afresh u/s 11, as per the law.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on this **20th February, 2019.**

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 20th February, 2019.

/ Vms /

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore.