

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5243/Del/2016
AY: 2012-13

Artificial Limbs Manufacturing Corporation of India (ALIMCO) G.T.Road Naramau Kanpur 209 217 PAN: AABCA8899F (Appellant)	vs.	ACIT (E) Circle Ghaziabad U.P. Pin: 201 002 (Respondent)
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Department by : Sh. S.N.Pandey, Sr.D.R.
Assessee by : Sh. Sanjay Kumar, FCA &
Sh. Akash Garg, Adv.

Date of Hearing : 15/05/2019
Date of Pronouncement: 17/05/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 30/06/16 passed by Ld.CIT(A)-2, Kanpur for assessment year 2012-13 on following grounds of appeal:

1. *BECAUSE the CIT(A) has erred in law and on facts in upholding denial of appellant's claim for exemption under section 11 read with section 12 of the Act by simply referring to and relying upon the appellate order dated 08.12.2015 for the assessment year 2011-12 (preceding year).*

2. *BECAUSE in support of its claim for exemption, the appellant had made very comprehensive submission in the year under appeal, which went on to prove conclusively that :*

a) *it had been engaged since inception in the activities connected with "medical relief" and "relief to the poor" and also imparting "education";*

b) *the activities falling in such categories were outside the purview of proviso to section 2(15) of the Act as per Circular/Instruction issued by CBDT; and the 'Authorities' below have committed a grave error of law as also facts, by denying exemption under section 11 of the Act.*

3. *BECAUSE, while denying /upholding the denial of appellant's claim for exemption under section 11 of the Act, the authorities below have failed to appreciate that*

a) *the activities carried on by the appellant were meant to provide "relief to the poor" and "medical relief" which are wholly outside the purview of proviso to section 2(15) of the Act, as has been placed on the Statute Book by the Finance (No.2) Act 2009;*

b) *part of the activities fall in the category of imparting 'education' also in the field of rehabilitation; and*

c) *in any case the activities that are being carried on by the "appellant", were solely meant to feed the 'charity', and accordingly the proviso section 2(15) was not applicable.*

4. *BECAUSE the activities carried on by the appellant (a detailed resume of which has been given in the submissions made before the authorities below) stood specifically excluded from the ambit of the proviso to section 2(15) of the Act in terms of Circular No.11 of 2008 dated 19.12.2008 issued by CBDT.*

BECAUSE such circular has got binding effect and the CIT(A) has grossly erred in upholding the denial of the appellant's claim for exemption, utter disregard of CBDT instruction as aforesaid.

6. *BECAUSE section 13(8) as had been applied by the CIT(A), while deciding the appeal for the preceding year (assessment year 2011-12) was not applicable in the instant case.*

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

2. Brief facts of case are as under:

Assessee is engaged in activity of manufacturing and sale of artificial limbs and was registered under section 25 of Companies Act as non-profit making entity. It has been submitted that assessee makes available artificial limbs to needy persons. Assessee claimed exemption under section 11 of the Income Tax Act, 1961 (the Act) on basis of registration granted under section 12 AA of the act for year under consideration. Ld. AO denied benefit of section 11 on the ground that, since manufacture and sale of artificial limbs etc is main business of assessee, proviso to section 2 (15) would be applicable. Ld. AO thus rejected exemptions provided under section 11 and 12 of the Act to assessee. Aggrieved by said order of Ld.AO assessee preferred appeal before Ld.CIT(A) who upheld order of Ld.AO by relying upon order passed by erstwhile Ld.CIT(A)-II, Kanpur for assessment year 2011-12.

3. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now.

4. Ld.AR submitted that similar disallowance was made for assessment year 2013-14 and 2014-15 wherein this Tribunal in assessee's own case dealt as under:

"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 Ld. 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.”

5. This Tribunal for A.Y. 2013-14 & 2014-15 has set aside issue back to Ld.AO for determining deduction to be claimed under section 11 and 12 of the Act, as registration granted to assessee

under section 12 AA has become finality by virtue of decision of *Hon'ble Allahabad High Court* vide order dated 17/07/2017 passed in an appeal filed by revenue.

6. Ld.AR placed before us order dated 17/07/17 passed by *Hon'ble Allahabad High Court* in assessee's own case in *ITA No. 99/2015*, wherein *Hon'ble High Court* upheld registration under section 12 A of the act.

7. Respectfully following same, we are of considered opinion that Ld. AO has to decide exemption that would be available to assessee under section 11 and 12 of the Act. Accordingly we set aside this issue to Ld. AO for determining the same. Needless to say that proper opportunity to assessee would be granted to assessee as per law.

8. In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 17th May, 2019.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 17th May, 2019

***GMV**

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	<i>Date</i>
<i>Draft dictated on Dragon</i>	<i>16.5.19</i>
<i>Draft placed before author</i>	<i>16.5.19</i>
<i>Draft proposed & placed before the second member</i>	
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<i>Date on which file goes to the AR</i>	
<i>Date on which file goes to the Head Clerk.</i>	
<i>Date of dispatch of Order.</i>	