

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER**

ITA No.394/Hyd/2019		
Assessment Year: 2005-06		
Agricultural Market Committee, Bodhan. PAN: AAALA 0787 C	Vs.	Income Tax Officer, Ward-2, Hyderabad.
(Appellant)		(Respondent)

ITA No.395 to 398/Hyd/2019		
Assessment Years: 2003-04 to 2006-07		
Agricultural Market Committee, Khanapur. PAN: AACTA 4398 K	Vs.	Income Tax Officer, Ward-1, Nirmal.
(Appellant)		(Respondent)

ITA No.403 & 404/Hyd/2019		
Assessment Years: 2005-06 to 2006-07		
Agricultural Market Committee, Madnoor. PAN: AANFA 4232 H	Vs.	Income Tax Officer, Ward-2, Nizamabad.
(Appellant)		(Respondent)

ITA No.405 to 408/Hyd/2019		
Assessment Years: 2004-05 to 2007-08		
Agricultural Market Committee, Banswada. PAN: AAALA 0681 P	Vs.	Income Tax Officer, Ward-2, Nizamabad.
(Appellant)		(Respondent)

Assessee by:	Sri S. Rama Rao
Revenue by:	Shri Nilanjan Dey, DR
Date of hearing:	08/05/2019
Date of pronouncement:	29/05/2019

**ORDER****PER BENCH:**

In all these appeals, the grievance of all the assesseees is that the CIT(A) ought to have considered the fact that the registration u/s 12A was granted w.e.f 01/4/2007 since the appeals against the assessments completed u/s 143(3) were pending as on 01/04/2007.

2. Brief facts of the case are that the assesseees were exempt from tax u/s 10(20) of the Act in the status of 'Local Authority' till the A.Y. 2002-03. By virtue of insertion of the explanation below section 10(20) of the Act by Finance Act, 2002 w.e.f 1/4/2003, the income of the assessee was no longer exempt from tax. Therefore, the assessee filed an application for registration u/s 12AA of the Act which was rejected by the DIT(E). On appeal against the order of rejection, ITAT remanded the matter to the DIT(E), who granted registration w.e.f 01/04/2007 vide orders dated 26/05/2008, but did not pass any order with regard to the assessee's request for condonation of delay in granting of registration u/s 12AA of the Act w.e.f 01/04/2003. The assessee filed an appeal to ITAT and, vide order dated 30/03/2009, ITAT directed the DIT(E) to pass appropriate orders in the matter. Meanwhile, the A.O. noticed that the assesseees have not filed their returns for the A.Y. 2005-06 and therefore, issued notices u/s 148 on 13/04/09, i.e., after the order of ITAT, dated 30/03/2009. The A.O., thereafter, completed the

assessments u/s 143(3) making certain disallowances. The respective assessee filed appeals before the CIT(A) who held that the registration was granted to the assessee only w.e.f 01/04/2007 and therefore, the assessee is not eligible for exemption u/s 11 for the years prior to the said date. Thereafter, he considered the assessee's grounds of appeal on merits and confirmed the disallowances made by the A.O. Aggrieved, the respective assessee is in appeal before us by raising the following grounds of appeal which are similar in all the appeals except for the quantum:-

1. *The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*
2. *The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the registration u/s 12A was granted with effect from 1.4.2007 and the Hon'ble ITAT set aside the grant of registration with effect from 1.4.2002 to the file of the Director of Income-Tax (Exemptions) .*
3. *The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that by the time the assessment was completed, the registration u/s 12AA was available for the appellant as the assessment for the assessment year 2005-06 was completed u/s 143(3) on 29.10.2010 and the registration u/s 12AA was granted with effect from 1.4.2007 and that, therefore, the appellant is entitled for exemption u/s 11 of the I.T Act.*
4. *As an alternate, the appellant submits that when the Hon'ble Tribunal directed the Director of Income-Tax (Exemptions) to pass an order for condonation of delay and when the matter was pending for more than six months the delay is deemed to have condoned and registration is deemed to have been granted with effect from 1.4.2002.*
5. *The learned Commissioner of Income-Tax (Appeals) ought to have found that the appellant incurred expenditure of Rs.1,71,92,638/- on development works like spill over, new works, link roads and purchase of machinery which are allowable as a deduction u/s 36(1)(xii) of the IT. Act.*
6. *The learned Commissioner of Income-Tax (Appeals) ought to have seen that the appellant incurred an expenditure of Rs.78,99,000/- under the special scheme Rythu Bandu Pathakam which should have been allowed by the Assessing officer.*
7. *The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of interest u/s 234B of the IT. Act."*

3. Upon hearing both the parties, we find that under the proviso to sub-section (2) to section 12A of the Act, the provisions of section 11 & 12 shall apply even in respect of the Assessment Years prior to the year in which the registration u/s 12A was granted, provided the Assessments for those years are pending as on the date of registration and the objects and activities of such trust or institution remain the same for such preceding A.Y. The second proviso prohibits any action u/s 147 for any A.Y. preceding the A.Y. in which Registration is granted only for non-registration of such trust or institution for the said AYs and the third proviso states that the first and second provisos shall not apply in case of any trust or institution which has been refused registration or the registration granted was cancelled at any time u/s 12AA of the Act. The SMC Bench of ITAT at Ahmedabad has considered the effect of these provisos in the case of Shree Bhanushali Mitra Mandal Trust vs. ITO [2016] 68 taxmann.com 250 (Ahmedabad-Trib.) and at paras 7.2 to 7.4 has held as under:

**“7.2** *It is also relevant to reproduce the explanatory notes to the provisions of Finance (No.2) Act, 2014 as given in CBDT Circular No.01/2015 dated 21.01.2015 in reference F. No.142/13/2014-TPL, which read as follows:*

*"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 ld. A.O., unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to provide that no action u/s 147 could be taken by the AO merely for non-registration of trust for earlier years.

- 7.3** *In the instant case, it is not in dispute that registration was granted w.e.f. 17.12.2013 by the order of CIT(A) dated 08.05.2014. It is also not in dispute that objects and activities of the assessee trust are charitable in nature during the relevant financial year. When Section 12A of the Act was amended by introducing new provisos to sub-section (2) of Section 12A by Finance Act, 2014 with effect from 01.10.2014, the assessment orders passed by the assessing officer in respect of the present assessee were pending in appeal before the first appellate authority. During such pendency, the assessee was granted registration u/s. 12AA of the Act on 17.12.2013 w.e.f. the assessment year 2013-14. The appeal is the continuation of the original proceedings and that the power of the Commissioner of Income-tax was co-terminus with that of the assessing officer were two well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the assessing officer' within the meaning of that term as envisaged under the proviso. It follows therefrom that the assessee which obtained registration u/s 12AA of the Act during the pendency of appeal was entitled for exemption claimed u/s 11 of the Act.*
- 7.4** *The explanatory Memorandum to Finance (No.2) Bill, 2014, which sought to amend section 12A explains the objects and reasons for making such amendments. The explanation makes it clear that it was in order to provide relief to such trusts in respect of which, due to absence of registration u/s 12AA tax liability got attached though otherwise they were eligible for exemption by fulfilling other substantive conditions that the amendment was brought in. That being so, denying such benefit to a trust like the assessee who had obtained registration u/s 12AA during the pendency of the appeals filed against the orders of the assessing authority, by narrowly interpreting the term, 'pending before the assessing officer' so as to exclude its pendency before the appellate authority, will be doing violence to the provisions of the Statute and, as such, liable to be interfered with. Moreover, under the Scheme of the Act, sections 11 and 12 are substantive provisions which provide for exemptions to a religious or charitable trust. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemptions under sections 11 and 12 by the assessee and the grant or rejection of such application by the commissioner. Thus, in my view, sections 12A and 12AA are only procedural in nature. Hence, it is not the registration u/s 12AA by itself that offers immunity from taxation. A receipt whether it is revenue or capital in nature is to be decided at the assessment stage. Being procedural in nature, in my view, liberal interpretation will give effect to the intention of the amendment, thereby removing the hardship in genuine cases like the present assessee under consideration."*

4. In the case of HMDA, the Coordinate Bench of this Tribunal, wherein one of us (JM) is a signatory to the order, considered the above decision and has held that once registration is granted, proviso to section 12A(2) was applicable even to the pending appeals for the Assessment Years prior to registration. For the sake of convenience and ready reference, the relevant portion of the Tribunal's order is reproduced hereunder:

*"13. However, since this issue is to be considered in the assessments u/s 143(3) of the IT Act, we refrain from giving any finding on this issue at this stage. As regards the assessee's prayer to grant registration w.e.f. 01-04-2002 as the assessments for the relevant assessment years were pending as on the date of registration is concerned, we find that the assessee has placed reliance upon the decision of the Single Member Case 'SMC' at Ahmadabad in the case of Shri Bhanushali Mitramandali Trust Vs ITO reported in (2016) 68 taxman.com 205 Ahmadabad Tribunal wherein it was held that where the registration is granted in the subsequent year, the benefit of the same has to be applied in the earlier assessment years also under the first proviso to Sec. 12A(2) of the Act, and that such proviso is applicable even to appeals pending before the CIT(E).*

*14. The Ld. Counsel for the assessee had submitted that the application u/s 12A of the IT Act was initially rejected by the CIT(E) and the issue was restored to the file of the CIT(A) by the ITAT, and therefore, the earlier order of the CIT(E) got nullified and the assessee's application for registration got restored and has to be considered as pending for consideration by the CIT(E). He submitted that at the time when the CIT(E) was considering the assessee's application afresh, the assessee had filed a letter seeking registration w.e.f. 01-04-2002 and therefore the issue was very much before the CIT(E) while granting registration w.e.f. A.Y 2007-08. He submitted that as per the first proviso of 12A(2) of the IT Act, the registration granted in the subsequent year shall be applied to the earlier assessment years also, wherever the assessment proceedings are pending before the A.O. He submitted that the assessments in the case of the assessee for all the assessment years from 2003-04 onwards were pending before the A.O and hence the proviso was applicable and assessee should be granted registration w.e.f 01-04-2002.*

*15. The Ld. Sr. Standing Counsel for the Department, on the other hand, submitted that assessee's application was already rejected by the CIT(E) and in the earlier application the assessee had never claimed the exemption w.e.f 01-04-2002 nor has it filed any application for condonation of delay giving reasons as to why the application could not be filed earlier.*

*16. Having regard to the rival contentions and the material on record, we find that by virtue of remand to the CIT(E) for re-consideration of the assessee's application for registration u/s 12A*

*of the IT Act, the assessee's application has been revived. As on the date when the CIT(E) was considering the application for registration pursuant to the remand by the ITAT, the proviso to Sec. 12A(2) of the IT Act has come into the statute book and therefore it is very much applicable to all the pending assessments before the A.O. The SMC Bench of this Tribunal at Ahmadabad, in the case of Shri Bhanushali Mitramandali Trust Vs ITO (cited supra) has also held so. Particularly in the case of hand, we find that there is no change in the objects of the assessee from the earlier and in the subsequent assessment years and there is no finding that the assessee has carried on any activity not in accordance with its objectives. In view of the same, we are of the opinion that the assessee is eligible for registration u/s 12A of the IT Act w.e.f 01-04-2002 and accordingly, we direct the CIT(E) to modify the order of registration u/s 12AA of the Act w.e.f. 01-04-2002 i.e from A.Y 2003-04 onwards. In the result the assessee appeal in ITA No. 03/HYD/2017 is allowed."*

5. Following the above decision, we set-aside the assessments and remand the same to the file of the Assessing Officer with a direction to allow the assessee's claim of exemption u/s 11 of the Act even for the assessment years prior to the date of Registration where the assessments were pending or were reopened subsequently u/s 147 of the Act, provided, the assessee satisfied the other conditions of section 11, particularly, since the application for grant of registration w.e.f 01/04/2012 is still pending before the DIT (E). Therefore, all the appeals of the respective assessee are treated as allowed for statistical purposes.

6. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> May, 2019.

Sd/-

Sd/-

**(S. RIFAUZ RAHMAN)**  
**ACCOUNTANT MEMBER**

**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 29<sup>th</sup> May, 2019

**OKK**

Copy to:-

- 1) (i) Agricultural Market Committee, 1-3-3, Azam Gunj, Bodhan, Nizamabad Dist; (ii) Agricultural Market Committee, Market Yard, Khanapur (M), Nirmal District (iii) Agricultural Market Committee, Madnoor, Nizamabad Dist; (iv) Agricultural Market Committee, 1-4-111/9, Market Yard, Nanswada, Nizamabad Dist.
- 2) (i) ITO, Ward-2, Aayakar Bhavan, Subash Nagar, Nizamabad; (ii) Income Tax Officer, Ward-1, Lalithamba Complex, Old Bus Stand Road, Nirmal; (iii) ITO, Ward-2, Nizamabad; (iv) ITO, Ward-2, Nizamabad.
- 3) The CIT(A)-6, Hyderabad
- 4) The Pr. CIT-6, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File