

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.464/Asr/2017

Assessment Year: 2014-15

Dussehra Committee Amritsar Vs. Assistant Commissioner of
North, Office # 4, 3rd Floor, Income Tax (CPC), Bangalore.
SRK Mall, Kennedy Avenue,
Mall Road, Amritsar-143001.

[PAN:AABAD6696D]

(Appellant)

(Respondent)

Appellant by: None

Respondent by: Sh. Charan Das (DR)

Date of hearing: 12.06.2019

Date of pronouncement: 14.06.2019

ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Amritsar dated 04.05.2017 wherein the assessee has taken the following grounds of appeal:-

- "1. That the learned Commissioner of Income Tax (Appeals)-2, Amritsar has erred in confirming the order of CPC, Bangalore u/s 143(1) dated 16.03.2016 in not allowing exemption u/s 11 of Income Tax Act, 1961.*
- 2. That the learned Commissioner of Income Tax (Appeals)-2, Amritsar has erred in not allowing the benefit of provisions of section 12A as amended w.e.f. 01.10.2014.*

3. That the learned Commissioner of Income Tax (Appeals)-2, Amritsar has failed to appreciate that only excess of Income over expenditure could be brought to tax."

2. Briefly stated, the facts of the case are that the assessee society filed its return of income for the impugned assessment year u/s 139 on 12.02.2015 claiming exemption u/s 11 and 12 of the Act. Prior to that, the assessee society had moved an application u/s 12AA before Id. CIT(E), Amritsar on 19.08.2014 seeking the registration u/s 12AA of the Act. The said registration was granted by the Id.CIT(E), Chandigarh vide order dated 20.02.2015. Subsequently, the return of income so filed by the assessee society was processed by the CPC u/s 143(1) on 16.03.2016 denying exemption u/s 11 and 12 of the Act whereby the entire gross receipts were brought to tax and demand of Rs. 11,95,960/- was raised on the assessee society. Against the said intimation cum demand notice u/s 143(1), the assessee moved an appeal before the Id. CIT(A) and submissions were made drawing support from the first proviso to section 12AA of the Act.

3. The Id CIT(A) referring to first proviso to section 12AA of the Act agreed that at the time of grant of registration u/s 12AA to the assessee society by the CIT(E), the processing of the return of income of Assessment Year 2014-15 was pending. However, in the proceedings u/s 143(1) of the Act, the Assessing Officer could make only limited adjustments enumerated in section 143(1)(a) of the Act but was not empowered to examine the objects and activities of the assessee society as to whether the objects are same in the relevant earlier assessment year and the assessment year relevant to the year of grant of registration and could not examine the books of account bill and vouchers of the appellant, which the Assessing Officer is empowered to do only in the scrutiny assessment u/s 143(3) of the Act. Accordingly, the Id CIT(A) held that there is no error in the order u/s 143(1)

dated 16.03.2016 passed by the CPC in case of the appellant for A.Y 2014-15 denying the exemption u/s 11 & 12 of the Act by treating the assessee in whose case where registration u/s 12A of the Act had been denied. Against the said finding of the Id. CIT(A), the assessee is now in appeal before us.

4. No one appeared on behalf of the assessee, however, an adjournment application was filed by the Id.AR stating that he is away to Delhi for some urgent work, hence he will not be able to attend to the scheduled hearing. pending hearing after taking into consideration. We find that in the past, the matter has been adjourned on number of occasions and no useful purpose would be served by adjourning matter any further. It was accordingly decided to reject the adjournment application and decide the matter on merit after considering the material available on record.

5. We have heard the contentions of the Id DR and perused the material available on record. The relevant provisions under consideration are contained in section 12A(2) of the Act which reads as under:-

"(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of [sections 11 and 12](#) shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

Provided *that where registration has been granted to the trust or institution under [section 12AA](#), then, the provisions of [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 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:*

Provided further that no action under [section 147](#) shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under [section 12AA](#)."

6. Undisputedly, the assessee society has been granted registration u/s 12AA by order of the Id CIT(E) dated 20.02.2015 and as on the said date of grant of registration u/s 12AA of the Act, the assessment proceedings in respect of return of income filed on 12.02.2015 for A.Y 2014-15 were pending. Therefore, the first limb of the second proviso is satisfied in the instant case.

7. As regards the second limb which requires the objects and activities to be the same for the impugned assessment year and the assessment year relevant to the year of grant of registration, the Id CIT(A) has stated that the powers of the AO u/s 143(1) are limited as compared to section 143(3) and the said facts cannot be examined. In this regard, we refer to section 143(1) which provides that where the return has been filed u/s 139, the return shall be processed and total income or loss after making adjustment towards any arithmetical error or any incorrect claim apparent from any information in the return. The term "incorrect claim" has been defined in the explanation which reads as under:-

"Explanation- For the purposes of this sub-section-

- (a) *"an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,-*
- (i) *of an item, which is inconsistent with another entry of the same or some other item in such return;*
 - (ii) *in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or*
 - (iii) *in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction."*

8. The incorrect claim thus includes a claim in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished. In the instant case, the assessee has claimed exemption under section 11 and 12 while filing the return and at that time, the application seeking registration u/s 12AA was already filed and given that registration was pending, the details regarding such registration were apparently not filed. Therefore, such claim was made on the belief that the assessee society shall be granted registration and the said registration will be equally applicable for the impugned assessment year in terms of second proviso to section 12A(2). Therefore, the basis of such claim of exemption u/s 11 and 12 is grant of registration u/s 12AA with a retrospective effect. To our mind, such basis of claim is in consonance with the spirit and language of section 12A which provides that once registration has been granted u/s 12AA of the Act, the same will be equally applicable to pending assessment proceedings.

9. Now, coming back to the contentions of the Revenue, if we were to agree with the findings of the Id CIT(A), the provisions of section 12A read with second proviso thereto will become *otiose* where there are no regular assessment proceedings under section 143(3) of the Act. The Courts have

also held that the provisions should be read in a manner where the spirit and intent behind such provisions is not vitiated. Therefore, on conjoint reading of the provisions of section 143(1) and 12A(2), we are of the considered view that the AO is very much empowered to take into consideration the fact regarding grant of registration u/s 12AA subsequent to the filing of return of income. Given that CPC merely processes the return and cannot carry out further verification, the matter relating to examination of the objects and activities is set-aside to the file of Assessing Officer to examine the same after providing reasonable opportunity to the assessee society and where the same is found to be the same, grant the necessary exemption u/s 11 and 12 as so sought by the assessee society in its return of income.

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

Order pronounced in the open Court on 14 .06.2019.

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Dated: 14.06.2019

Ganesh Kr. PS

Copy of the order forwarded to:

Dussehra Committee Amritsar North Office, Amritsar

(2) The ACIT (CPC), Bangalore.

(3) The CIT(A)-2, Amritsar

(4) The CIT concerned

(5) The SR DR, I.T.A.T., Amritsar

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By order