

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, AM
&
SHRI RAM LAL NEGI, JM

ITA No.3377 & 3378/Mum/2018
(Assessment Years :2013-14 & 2014-15)

Lilavati Kirtilal Mehta Medical Trust A-791, Bandra Reclamation Bandra (W), Mumbai-400 050	Vs.	DCIT, Central Circle-2(1) 8 th Floor, Room No.804, Old CGO Building Pratiksha Bhawan, M.K.Road, Mumbai-400020
PAN/GIR No.AAATL1398Q		
Appellant)	..	Respondent)

Assessee by	Vijay Mehta
Revenue by	Anadi Verma
Date of Hearing	16/07/2019
Date of Pronouncement	24/07/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These two appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax Appeals-48, Mumbai, dated 28/03/2018 for Assessment Years 2013-14 and 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both assessment years. For the sake of brevity, the grounds of appeal filed for AY 2013-14 are reproduced as under:

1. *On the facts and under the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [CIT(A)] erred in passing the*

order dated March,28, 2018 pending disposal of appeal filed with Hon'ble Income-Tax Appellate Tribunal relating to cancellation of Trust registration u/s 12AA(3) of the Income-Tax Act [the Act] violating the principles of natural justice

The Appellant prays that the order of the Learned CIT(A) be declared bad in law and void ab initio.

2. On the facts and under the circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of Deputy Commissioner of Income-Tax, Central Circle-2(1) ('the learned AO') in denying the benefit of Section 11 of the Act to the Appellant.

The Appellant prays that the learned AO be directed to grant the benefit of Section 11 of the Act

3. on the facts and under the circumstances of the case and in law, the Learned AO has erred in levying interest under Section 234C of the Act. The Appellant prays that the learned AO be directed to delete the impugned levy of interest under Section 234C of the Act.

3. The brief facts of the case are that the assessee trust is registered u/s 12A of the I.T.Act, 1961 on 22/01/1979. The assessee trust has filed its return of income for AY 2013-14 on 30/09/2013 declaring total income at 'Nil', after claiming exemption u/s 11 of the I.T.Act, 1961. The case has been selected for scrutiny and during the course of assessment proceedings the AO noticed that the CIT, Central Circle-1, Mumbai, vide order u/s 12AA(3) of the I.T.Act, 1961 dated 28/03/2014 cancelled registration granted u/s. 12A of the Act, to the trust with effect from AY 2001-02 for various reasons including, violations referred to in section 11 and 13 of the I.T.Act, 1961. Therefore, rejected exemption claimed by the assessee u/s 11 of the I.T.Act, 1961 and treated assessee as an association of person and accordingly, the excess of income over

expenditure has been assessed under the head income from business or profession.

4. Aggrieved by the assessment order, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee sought adjournments on various occasions for the reason that it has challenged order of the CIT-Central withdrawing registration u/s 12A of the I.T.Act, 1961 before the ITAT and the appeal filed by the assessee is pending for disposal. The Ld. CIT(A) disposed-off appeal filed by the assessee for both AY's on the ground that, the approval granted u/s 12A of the I.T.Act, 1961 stands withdrawn for these AY's and hence, there is no reason to interfere in the findings of the AO in rejection of exemption claimed u/s 11 of the I.T.Act, 1961. The relevant findings of the Ld. CIT(A) are as under:

4.2 The assessee has been asking adjournments since a very long time. Vide letter dated 17-08-2017 it was stated that the order of cancellation of Certificate u/s 12A is pending before ITAT. Further adjournments were filed vide letter dated 19-03-2018 and 26-03-2018 wherein assessee has reiterated the same matter that order of CIT(A) is pending before ITAT. Now assessee has stated that next date of hearing on 19-06-2018. The assessee has not submitted any substantive details and merely stated that case is pending in ITAT. Since the order of CIT(C) withdrawing registration u/s 12A and Sec.11 stands valid as on today and AO has assessed income on the basis of such order of CIT(C), hence on the basis of facts of the case as on today, it is fair to adjudicate that there is no infirmity in the order of the AO. Needless to say that as and when, appeal of assessee against of CIT(C) is adjudicated by Hon'ble ITAT, the fact may change or may not change. Thus in view of facts of the case for both the assessment years, there is no force in the various grounds of appeal.

5. The Ld. AR for the assessee submitted that although, the AO has denied exemption claimed u/s 11 on the basis of order of the CIT-Central, but fact remains that the ITAT has restored registration granted u/s 12A of

the I.T.Act, 1961 to the assessee, from the date of approval granted i.e on 22/01/1979. Therefore, assessment of income under the head income from business towards excess of income over expenditure cannot survive because, the assessee is continue to enjoy the benefit of registration with effect from the date of approval. The Ld. AR further submitted that if you go through assessment order passed by the AO, it is very clear that the AO never pointed out any violations referred to in section 11 or 13, but exemption has been denied solely on the basis of order of the CIT-Central, therefore once order of the CIT, Central has been set aside by the ITAT, there is no reason for the AO to deny benefit of exemption claimed u/s 11 A of the I.T.Act, 1961

6. The Ld. DR, on the other hand submitted that no doubt, the ITAT has restored cancellation of registration from the date of approval, but fact remains that the Ld. CIT(A) has not discussed the issue on merits therefore, the matter may be set aside to the file of the Ld.CIT(A) to consider the issue of exemption in light of facts brought out by the CIT-Central in its order in respect of violation referred to in section 11 and 13 of the I.T.Act, 1961 because, the eligibility for exemption u/s 11 of the Act, shall be examined for each assessment year irrespective of the fact that the trust is registered u/s 12A of the I.T.Act,1961.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. CIT(A) has dismissed the appeal filed by the assessee, on the sole

basis of cancellation of registration granted u/s 12A of the I.T.Act, 1961 by the CIT-Central vide its order dated 28/03/2014. We further noted that the ITAT, Mumbai 'A' Bench in ITA No. 2827/Mum/2014 has restored registration cancelled u/s 12AA(3) of the I.T.Act, 1961 by the CIT-Central with effect from AY 2001-02. No doubt, once the assessee is registered u/s 12A of the Act, 1961, then it is entitled for exemption u/s 11 of the I.T.Act, 1961, but entitlement of exemption u/s 11 should be examined for each assessment year in light of activities of the assessee and provisions of section 11 and 13 of the Act, 1961, irrespective of the fact that the trust is registered u/s 12A of the I.T.Act, 1961. In this case, the main reason for cancellation of registration u/s 12A of the I.T.Act, 1961 as per CIT-Central is violations of provisions of section 11 and 13 of I.T.Act, 1961. In our consider view, entitlement of exemption should be considered in light of violation referred to under section 11 and 13 of the I.T.Act, 1961. Although, the Ld. AR for the assessee pointed out that there is no specific instances of violations referred to u/s 11 and 13 was brought out by the lower authorities in their orders, but keeping in view of the fact that reasons for cancellation of registration u/s 12A was solely on the basis of violations referred to u/s 11 and 13, we are of the considered view that the issue needs to be re-examined by the Ld. CIT(A), in light of order of the ITAT in ITA No.2827/Mum2014 dated 12/06/2019 and provision of section 11 and 13 of I.T.Act, 1961. Hence, we set aside both appeals to the file of the Ld. CIT(A) and direct him to reconsider the issue in light of objects of

the assessee and activities carried out during the year to decide the eligibility of exemption u/s 11 of the I.T.Act, 1961

8. In the result, the appeals filed by the assessee for both assessment years are treated as allowed for statistical purposes.

Order pronounced in the open court on this 24 /07/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 24/07/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai