

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE-PRESIDENT AND  
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 308/Bang/2019
Assessment Year : 2011-12

M/s. Maria Social Service Society, Vinobhanagara, 1 <sup>st</sup> Stage, Shivamogga – 577 204. <b>PAN: AAAAM5488P</b>	Vs.	The Deputy Commissioner of Income Tax, Circle – 1, Shivamogga – 577 204.
APPELLANT		RESPONDENT

Assessee by	:	Shri Narayana Murthy, CA
Revenue by	:	Dr. P.V. Pradeep Kumar, Addl. CIT (DR)

Date of hearing	:	16.08.2019
Date of Pronouncement	:	22.08.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A), Davangere dated 05.11.2018 for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under.

*“1. The order of the learned CIT(Appeals) is opposed to law, facts and weight of evidence in this case.*

*2. The learned CIT(A) has erred in law in confirming the assessment order.*

*3. The learned CIT(A) has erred in law in rejecting the application for condonation of delay in filing the appeal before him.*

*4. The learned CIT(Appeals) erred in wholly ignoring the written submission, though the same was filed in his office and the fact of filing written submission has also been mentioned in the appellate order.*

*5. The learned CIT(Appeals) erred in not appreciating the fact that the written submission filed by the appellant was sufficient to come to the*

*conclusion that the order of assessment is unsustainable.*

*6. The learned CIT(A) ought to have taken notice of the order of the ITAT dated 19.08.2016 whereby the order cancelling registration U/s 12AA was set aside.*

*7. The learned CIT(A) erred in ignoring the fact that the Hon'ble High Court of Karnataka in its order No. ITA 488 of 2017 dated: 19th July, 2018 has dismissed the appeal filed by the Department, thus upholding the grant of registration u/s 12AA of the Income tax Act.*

*8. The learned CIT(A) erred in law in taxing the entire receipts including corpus donations and foreign contributions.*

*9. The appellant craves leave to add to, delete, amend, alter or modify any of the above grounds.*

*10. For these and such other grounds as may be advanced on or before the date of hearing, the appellant prays that the impugned order be cancelled and justice rendered.”*

3. Brief facts are that it is noted by the AO in the assessment order that the registration granted by the department u/s. 12AA of the IT Act has been withdrawn on 19.12.2013 and because of this, the AO held that the assessee is not eligible for exemption u/s. 11. The assessee carried the matter in appeal before Id. CIT(A). As per the impugned order of Id. CIT(A), it is stated by him on page no. 7 of his order that the application for condonation of delay is rejected but thereafter, in para nos. 4 to 7 of the impugned order, the Id. CIT(A) has decided the issue on merit also and as per the same, it is held by Id. CIT(A) that the AO's order is confirmed because there is nothing wrong in the order of AO. Now the assessee is in further appeal before us.
4. Before us it was submitted by Id. AR of assessee that the Id. CIT(A) has erred in law in rejecting the application for condonation of delay in filing the appeal before him. The assessee also submitted that as per the Tribunal order in ITA No. 1361/Bang/2014 dated 19.08.2016, the Tribunal has set aside the order of Id. CIT(A) regarding cancellation of registration u/s. 12AA(3) of the IT Act and the copy of this Tribunal order is available on pages 28 to 39 of the paper book. He further submitted that against this order of Tribunal, appeal was filed by the revenue before Hon'ble Karnataka High Court and as

per its judgment dated 19.07.2018 in ITA No. 488 of 2017, Hon'ble Karnataka High Court has dismissed the appeal of the revenue and hence, exemption u/s. 11 of the IT Act should be granted to the assessee. At this juncture, it was pointed out by the bench that since assessee's eligibility for exemption u/s. 11 of the IT Act was not examined by the authorities below in view of cancellation of registration u/s. 12A at that point of time, this issue has to go back to the file of AO for fresh decision in respect of assessee's eligibility for exemption u/s. 11. In reply, it was submitted by Id. AR of assessee that since the cancellation of registration u/s. 12AA (3) has already been set aside by the Tribunal and that Tribunal order has been confirmed by Hon'ble High Court, the issue in dispute should be decided in favour of the assessee. The Id. DR of revenue supported the orders of authorities below.

5. We have considered the rival submissions. First of all, we deal regarding this aspect of the matter as to whether the delay in filing the appeal before Id. CIT(A) should be condoned or not. We find that even after rejecting the assessee's application for condonation of delay by Id. CIT(A), he has proceeded to decide the issue on merit and it should be presumed that delay in filing the appeal by assessee before Id. CIT(A) has been condoned by Id. CIT(A) because if the delay was not condoned, then there was no need or purpose to decide the issue on merit.
6. Regarding allowing the exemption u/s. 11 of the IT Act, we find that the assessee's claim for exemption u/s. 11 was rejected by the AO merely on this basis that assessee is not having registration u/s. 12A of the IT Act and therefore, the benefit of section 11 of the IT Act is not allowable to the assessee. Now this order of Id. CIT(E) u/s. 12AA(3) of the IT Act cancelling the registration earlier granted u/s. 12AA is already set aside by the tribunal and such Tribunal order is upheld by Hon'ble Karnataka High Court and therefore, we feel it proper to restore the matter back to the file of AO to decide the issue on merit regarding the eligibility of assessee for exemption u/s. 11 of the IT Act. We order accordingly. We want to make it clear that the AO should pass necessary order as per law after providing adequate opportunity

of being heard to assessee. We do not make any comment regarding the allowability of exemption to the assessee u/s. 11 of the IT Act.

7. In the result, the appeal filed by the assessee is allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(N.V. VASUDEVAN)  
Vice-President

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 22<sup>nd</sup> August, 2019.  
/MS/

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.