

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 378/VIZ/2018  
(Asst. Year : 2013-14)**

ITO (Exemptions),  
Rajahmundry.

vs.

M/s. Rural India Self  
Development Trust,  
D.No. 90-1-5/1, Swaraj  
Nagar, Alcot Gardens,  
Rajahmundry.

(Appellant)

PAN No. AAATR 3046 F  
(Respondent)

**C.O.No.117/VIZ/2018  
(Arising out of ITA No. 378/VIZ/2018)  
(Asst. Year : 2013-14)**

M/s. Rural India Self  
Development Trust,  
D.No. 90-1-5/1, Swaraj  
Nagar, Alcot Gardens,  
Rajahmundry.

vs.

ITO (Exemptions),  
Rajahmundry.

PAN No. AAATR 3046 F  
(Appellant)

(Respondent)

Assessee by : Shri C. Subrahmanyam, FCA.

Department By : Shri T.S.N. Murthy, Sr.DR

Date of hearing : 25/09/2019.

Date of pronouncement : 04/10/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the Revenue and the Cross Objection by the assessee are directed against the order of Commissioner of

Income Tax (Appeals), Rajamahendravaram, dated 27/04/2018 for the Assessment Year 2013-14.

**2.** Facts of the case, in brief, are that assessee is a registered trust, registered under the Society Registration Act on 12/03/1985. The assessee has filed its return of income admitting NIL income by claiming exemption u/sec. 11 of the Act. The assessee-trust has applied for registration u/sec.12A on 06/08/1990 and the exemption was being allowed year after year till the impugned assessment year. The assessee-trust did not possess the registration number, but uploaded the return. The CPC, Bangalore processed the same u/sec. 143(1) and considered the entire gross receipts of Rs.2,23,86,990/- as income liable for tax and determined the tax payable at Rs. 84,07,853/- on the ground that the registration number of the trust has not been mentioned in the return. The CPC processed the return considering the status of the trust as "AOP Trust" as against the claim of "Trust" in the return of income.

**3.** On being aggrieved, assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) by following the judgment of the Hon'ble Supreme Court in the case of *CIT & Ors. Vs. Society for the Promotion of Education* [(2016) 382 ITR 06 (SC)] directed

the Assessing Authority to grant relief to the assessee. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"7. I have perused the orders of the Hon'ble Supreme Court of India in the case of Society for the Promotion of Education, Allahabad Vs. Commissioner of Income Tax, Kanpur (CA No. 1478/2016) and Hon'ble ITAT, Ahmedabad Bench in the case of Sri Bhanushali Mitra Mandal Vs. ITO (ITA No. 2515/Ahd/2015) and as per the provisions of section 12AA(2) of the Income Tax Act, 1961, which is reproduced as under:-*

*"Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) of sub-section (1) of section 12A]"*

*It is settled law that once any Trust has submitted its application in Form No. 10A unless the appropriate Authority passed any order refusing registration categorically within the prescribed time of six months, it is deemed to be registered u/s 12AA of the Income Tax Act, 1961.*

*8. In view of the above decisions of the Hon'ble Apex Court and the Hon'ble ITAT, Ahmedabad and as per section 12AA(2) of the Income Tax Act, 1961, the issue is decided in favour of the appellant and accordingly, the Assessing Authority is directed to grant relief to the appellant.*

*9. In the result, the appeal of the appellant for the Asst. Year 2013-14 is ALLOWED."*

**4.** On being aggrieved, Revenue carried the matter in appeal before this Tribunal.

**5.** Ld.AR has submitted that the assessee-trust applied for registration u/sec. 12A on 06/08/1990 and thereafter exemption u/sec.11 was allowed year after year till the impugned assessment

year. He pointed out from the page Nos. 8 & 9 of the paper book to support his argument. He also further submitted that as per section 12AA(2), if the application is pending with the authorities, registration u/sec. 12A has to be granted before the expiry of six months otherwise it is deemed registration. For this he relied on the judgment of the Hon'ble Allahabad High Court in the case of *Society for the Promotion of Education Adventure Sport & Conservation of Environment Vs. CIT & Ors.* [(2015) 372 ITR 222 (All.)] and also the judgment of the Hon'ble Apex Court in the case of *Society for the Promotion of Education* (supra).

**6.** On the other hand, Id.DR strongly supported the order of the Assessing Officer.

**7.** We have heard both the sides, perused the material available on record and orders of the authorities below.

**8.** The assessee is a trust applied for registration u/sec. 12A of the Act on 06/08/1990. The case of the assessee is that his application for grant of registration u/sec. 12A is pending with the authorities, however, every year exemption u/sec. 11 was granted to the assessee u/sec. 143(3) of the Act. To support his argument, he placed reliance on the assessment orders for the A.Y. 1997-98 at page No. 5 & 6 and A.Y. 1996-97 at page Nos. 7 & 8 and A.Y.

1993-94 at page No. 9 of the paper book. From the above, it is very clear that the Department is allowing the assessee's income as exempt u/sec. 11 by considering that the assessee is already having a registration u/sec. 12A of the Act. For the assessment year under consideration, the assessee has filed a return of income whereas the CPC, Bangalore processed the return u/sec. 143(1) and considered the entire gross receipts as income liable for tax on the ground that registration number of the Trust was not mentioned in the return form. We find that once the assessee is enjoying the benefit of section 11 by the Department, the subsequent years without scrutiny, it cannot simply reject on the ground that registration number of the Trust is not mentioned. The CPC Bangalore ought to have referred the matter to the Assessing Officer for examination of the entire issue. Without that, the CPC Bangalore added the entire gross receipts as income liable for tax. Under these circumstances, the coordinate bench of the tribunal in the case of *Andhra School of Preaching Vs. CIT(A)* in ITA No. 36/VIZ/2017, dated 09/08/2017 has held that since the adjustment made by the CPC (AO) is debatable, which requires verification from the assessment records and there was no evidence to show that the registration applied for was rejected or

cancelled, the intimation u/sec. 143(1) is beyond the scope of section 143(1) of the Act and set aside the order passed by the CPC (AO) u/sec. 143(1) and deleted the addition made by the Assessing Officer. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee is a society registered under the Societies Act. The society has applied for registration u/s 12AA of the Act, which was evident from the scrutiny assessment order passed by the A.O., for the assessment year 1996-97 vide order dated 29.12.1998. The A.O. has allowed the exemption u/s 11A of the Act. Further, the assessee placed evidences of having filed the returns of income for earlier years and the intimations were issued by the Income Tax Department u/s 143(1) and the exemption u/s 11 of the Act, was allowed by the revenue. Though assessee has not mentioned the registration number, equal responsibility casts up on the revenue to maintain proper records and to trace the registration number and to determine the correct status of the assessee before making any such adjustment. In this case, there was an evidence having filed application for registration but there was no evidence with the income tax department to show whether the revenue has rejected the assessee's application for registration or not but allowed the exemption claimed by the assessee. Therefore, it is evident that the society has been granted the registration or deemed to have been granted the registration and the department has not cancelled the registration subsequently. The return of income was processed u/s 143(1) of the Act and the adjustment made by the income tax department withdrawing the exemption claimed u/s 11 of the Act unilaterally without putting the assessee on notice. The Act permits the adjustments u/s 143(1) of the Act, which are apparent from record. For ready reference, we extract relevant part of section 143(1) of the Act:*

*"Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-*

- (a) the total income or loss shall be computed after making the following adjustments, namely:-*
  - i. any arithmetical error in the return; [or]*
  - ii. an incorrect claim, if such incorrect claim is apparent from any information in the return;*
- (b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);*

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee;

**Provided** that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

**Provided further** that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

*Explanation—For the purpose 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;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no such is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

6. Since the adjustment made by the AO is debatable, which requires verification from the assessment records and there was no evidence to show that the registration applied for was rejected or cancelled, we hold that the adjustment made by the revenue in the intimation u/s 143(1) is beyond the scope of section 143(1) of the Act and accordingly, we set aside the orders of the lower authorities and delete the addition made by the A.O.

7. In the result, the appeal filed by the assessee is allowed."

9. Insofar as, the decisions relied on by the Id.AR in the case of Society for the Promotion of Education Adventure Sport & Conservation of Environment (supra) is concerned, the Hon'ble

Allahabad High Court has held that non-consideration of the application for registration u/sec. 12A within the time fixed u/sec. 12AA(2) would be a deemed grant of registration. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"Taking the view that non-consideration of the registration application within the time fixed by s. 2AA(2) would result in deemed registration, may at the worst cause loss of some revenue or income-tax payable by the individual assessee. On the other hand, taking the contrary view and holding that not taking a decision within the time fixed by s. 12AA(2) is of no consequence would leave the assessee totally at the mercy of the IT authorities, inasmuch as the assessee as not been provided any remedy under the Act against non-decision. Besides, the above view does not create any irreversible situation, because under s. 12AA(3), the registration can always be cancelled by the CIT, if he is satisfied that the objects of such trust or institution are not genuine or the activities are not being carried out in accordance with the objects of the trust or institution. The only drawback is that such cancellation would operate only prospectively. Therefore, if a view is taken that non-consideration of the registration application within the time fixed by s. 12AA(2) would amount to deemed grant of registration, the only adverse consequence likely to flow from such a view in respect of any case of that assessee arising in future would at best be some loss of revenue from that individual assessee from the date of expiry of the limitation under s. 12AA(3) till the date of cancellation of that registration, if such cancellation is called for. Moreover this view furthers the object and purpose of the aforesaid statutory provision. For the interpretation of a statute 'purposive construction' of the enactment which gives effect to the legislative purpose/intendment, if necessary must be followed and applied. Considering the pros and cons of the two views by far the better interpretation would be to hold that the effect of non-consideration of the application for registration within the time fixed by s.12AA(2) would be a deemed grant of registration. There is no good reason to make the assessee suffer merely because the IT Department is not able to keep its officers under*

*check and control, so as to take timely decisions in such simple matters such as consideration of - applications for registration even within the large six month period provided by s. 12AA(2). Accordingly the respondents are directed, subject to any order which may be passed under s. 12AA(3), to treat the petitioner society as an institution duly approved and registered under s. 12AA and to recompute its income by applying the provision of s. 11. Accordingly, a formal certificate of approval will be issued forthwith to the petitioner by the respondent No. 2.—Chet Ram Vashist vs. Municipal Corporation AIR 1981 SC 653 distinguished; R. (Haw) vs. Secretary of State for the Home Department (2006) 3 All ER 428 applied.”*

On appeal by the Department, the above view of the Hon'ble Allahabad High Court has been upheld by the Hon'ble Supreme Court. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"1. The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.*

*2. The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of 'the respondent, since .the date of application was Of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.*

*3. We see no basis for such 'an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent-shall take effect from 24.08.2003.”*

**10.** Therefore, respectfully following the judgments of the Hon'ble Supreme Court and the Hon'ble Allahabad High Court in

the case of *Society for the Promotion of Education Adventure Sport & Conservation of Environment* (supra) and also the decision of the coordinate bench of the tribunal in the case of *Andhra School of Preaching* (supra), we find no merit in the grounds raised by the Revenue. Thus, this appeal filed by the Revenue is dismissed.

**11.** So far as cross objection filed by the assessee is concerned, it is only supportive to the order of the Id. CIT(A). As no grievance against the order of the Id. CIT(A), the C.O. filed by the assessee has become infructuous and is dismissed accordingly.

**12.** In the result, appeal filed by the Revenue and the Cross Objection filed by the assessee are dismissed.

Order Pronounced in open Court on this 04<sup>th</sup> day of Oct., 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 04<sup>th</sup> October, 2019.**

**vr/-**

*Copy to:*

1. *The Assessee – M/s. Rural India Self Development Trust, D.No. 90-1-5/1, Swaraj Nagar, Alcot Gardens, Rajahmundry.*
2. *The Revenue – ITO (Exemptions), Rajahmundry.*
3. *The Pr.CIT (Exemptions), Hyderabad.*
4. *The CIT(A), Rajamahendravaram.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.