

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA Nos.2065, 2066 and 2067/Hyd/2018		
Assessment Years: 2003-04, 2004-05 & 2005-06		
Agricultural Market Committee, Kubeer PAN: AAALA0853F	Vs.	Income Tax Officer, Ward-1 Nirmal
(Appellant)		(Respondent)
Assessee by:	Smt. S. Sandhya	
Revenue by:	Sri Sunku Srinivas,DR	
Date of hearing:	13/11/2019	
Date of pronouncement:	15 /11/2019	

ORDER

This are assessee's appeals for the A.Ys 2003-04 to 2005-06 against the order of the CIT (A)-5, Hyderabad, dated 13.08.2018 denying the claim of exemption u/s 11 of the I.T. Act to the assessee.

2. Brief facts of the case are that the assessee was a local authority and was eligible for exemption u/s 10(20) of the Act upto the A.Y 2002-03. Consequent to the insertion of Explanation below Section 10(20) by the Finance Act, 2002 w.e.f. 01.04.2003, the incomes of 'Local Authority' not specified in the said explanation are no longer exempt from tax. The AO therefore, issued notice u/s 148 of the Act, dated 28.08.2007 requiring it to file the return of income for the A.Y 2003-04. The assessee filed the return of income on 31.12.2008. Further, as the assessee had not been registered u/s 12A, the exemption u/s 11 was denied to the assessee. The assessee thereafter filed an application for

registration u/s 12A of the Act. The DIT (E) dismissed the assessee's application. Thereafter, the assessee filed an appeal before the ITAT and the ITAT directed the DIT (E) to condone the delay in filing of the application u/s 12A and adjudicate the issue afresh. Meanwhile, the AO took up the return of income of the assessee for assessment and the AO completed the assessment by denying exemption u/s 11 of the Act. Aggrieved, the assessee preferred an appeal before the CIT (A) who observed that consequent to the ITAT order, the DIT (E) has granted registration u/s 12A of the Act only w.e.f. 30.05.2007 i.e. the date of application filed by the assessee in Form No.10A. Therefore, the CIT (A) held that the assessee is not eligible for exemption prior to such date. Thus, the assessee was denied exemption for the relevant A.Y and is in appeal before us.

3. The learned Counsel for the assessee submitted that similar issue had come up before the Tribunal in the case of AMC Bodhan and the Tribunal by following the decision of the Coordinate Bench at Ahmedabad in the case of Shree Bhanushali Mitra Mandal Trust vs. ITO (2016) 68 taxmann.com 250 (Ahmedabad Trib) has taken note of first proviso of section 12A of the Act and has directed the AO to allow the assessee's claim of exemption u/s 11 A of the Act even for the A.Y prior to the date of registration if the assessments for those assessment years were pending or were reopened subsequently u/s 147 of the Act provided, the assessee satisfied the other conditions of section 11.

4. The learned DR however, supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, I find that the issue before me is exactly the same as in the case of AMC, Bodhan. For the sake of clarity and ready reference, the relevant paras are reproduced hereunder:-

“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/s147 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 there-from 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 assessees are treated as allowed for statistical purposes”.

6. Respectfully following the same, I find that the first appeal before the CIT (A) was pending when the registration u/s 12A was granted on 11.4.2014 and the CIT (A) has also reproduced the said order of registration u/s 12A in the appellate order. Therefore, I direct the AO to allow exemption u/s 11 of the Act to the assessee for the A.Ys before us as the first appeals for the relevant A.Ys were pending before the CIT (A) at the time the registration u/s 12A was granted by the CIT (A).

7. In the result, assessee's appeals are allowed.

Order pronounced in the Open Court on 15th November, 2019.

Sd/-

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

Hyderabad, dated 15th November, 2019.

Vinodan/sps

Copy to:

- 1 Agricultural Market Committee, Kubeer, Kubeer Mandal, Adilabad Distt.
- 2 ITO Ward-1 Nirmal, Adilabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order