

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.896/PUN/2019

Khed Lions Education Society,
At Post- Khed, Dist. Ratnagiri
Pin-415709
PAN : AABTK5214H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Exemption)
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri B. Kishore

सुनवाई की तारीख / Date of Hearing : 07.01.2020

घोषणा की तारीख / Date of Pronouncement : 07.01.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Exemption), Pune dated 30.05.2019 passed u/s.12AA(1)(b)(ii) of the Income Tax Act, 1961 as per the grounds of appeal on record.

2. The crux of the grievance of the assessee is rejection of application for registration u/s.12AA of the Act in respect of the assessee trust.

3. The brief facts in this case are that the assessee trust had E-filed Form 10A for registration of the Trust u/s.12AA of the Act on 15.11.2018. The trust is registered under BPT Act, 1950 vide registration number F-279/Ratnagiri dated 30.06.1979. The assessee has uploaded his submission along with certified copy of trust deed and copy of BPT registration along with Form 10A. That on perusal of the memorandum of association uploaded along with Form 10A, it was observed by the Ld. CIT(Exemption) that the main object of the assessee trust is to provide education and to establish primary, secondary, high school and colleges. Thereafter, the assessee trust was called upon to furnish information/clarification on 17.01.2019 for the purpose of verifying existence and genuineness of its activities and utilization of trust fund towards objects of the society in order to process application for registration u/s.12AA of the Act. Thereafter, it was observed by the Ld. CIT(Exemption) that the assessee trust had generated huge surplus in all years and no details were furnished with respect to the fact that the surplus generated was ploughed back to the beneficiaries or utilized for the charitable purposes. Further, no submission was made in respect of income tax returns of last three years along with computation of income. Considering the facts of the case and non submission of any explanation by the assessee trust, the Jt. CIT(Exemption), Pune was asked to carry out a survey action on the assessee to find out the relevant facts on the case and to get necessary evidences in this regard. Accordingly, a survey u/s.133A of the Act was carried out on the assessee on 22.05.2019. Further, the Jt. CIT(Exemption), Pune was asked to submit factual report vide letter dated 28.05.2019 on the basis of findings of the survey, so as to conclude present 12AA proceedings by the Ld. CIT(Exemption)'s Office. The Jt. CIT (Exemptions), Pune has submitted factual report to the office of the Ld. CIT(Exemption) on 29.05.2019.

4. The Ld. Counsel for the assessee vehemently argued that the Ld. CIT(Exemption) in his order while rejecting the application for granting registration u/s.12AA of the Act in respect of assessee trust has merely relied on the survey report submitted by the Ld. Jt. CIT(Exemption). The assessee was not given any opportunity to make their submission in respect of that survey report. That further, the Ld. CIT(Exemption) has not brought out his findings regarding relevant documentary evidences submitted and furnished before him. He has just placed reliance on the survey report of the Ld. Jt. CIT(Exemptions) and denied the registration of the assessee trust. The survey report was submitted by the Ld. Jt. CIT(Exemptions) on 29.05.2019 and the very next day i.e. on 30.05.2019, the Ld. CIT(Exemption) passed the order rejecting the application for registration u/s.12AA of the Act with regard to the assessee trust. There has been huge lapse in terms of natural justice.

4.1 The Ld. Counsel for the assessee further placed reliance on the decision of the Pune Bench of the Tribunal in ITA No.1977/PUN/2018 wherein, the Tribunal has referred to the decision of the Hon'ble Kerala High Court in the case of Shri Anjaneya Medical Trust Vs. CIT (2016) 382 ITR 399 (Ker.) on the issue of the scope of inquiry by the Ld. CIT(Appeal) for the registration u/s. 12A and 12AA of the Act which is as follows:

“It is clear from a plain reading of sections 12A and 12AA of the Act that what is intended thereby is only a registration simpliciter of the entity of a trust. This has been made a condition precedent for the claiming of benefits under the other provisions of the Act regarding exemption of income, contribution, etc. No examination of the modus of the application of the funds of the trust or an examination of the ethical background of its settlers is called for while considering an application for registration. The stage for consideration of the relevance of the object of the trust and the application of its funds arises at the time of assessment. Where benefits are claimed by the assessee in terms of sections 11 and 12 of the Act, the question as to the nature of such contribution and income can be looked into. At the time of registration of the trust, going by the binding judgments of the apex court, what is to be looked into is whether

the trust is a genuine one and whether it is a sham institution floated only to avail the benefits of exemption under the Act. There is no such finding in the impugned order.”

Thereafter, the Tribunal had restored the issue back to the file of Ld. CIT(Exemption) to decide the issue of registration u/s.12AA of the Act in accordance with law and after granting reasonable opportunity of hearing to the assessee. The Ld. Counsel thereafter prayed that the present matter may be remitted back to the file of Ld. CIT(Exemption) for proper adjudication.

5. Per contra, the Ld. DR placed reliance on the order of the Ld. CIT(Exemption) but principally was agreeable if the matter is restored back to the file of Ld. CIT(Exemption) for re-adjudication in accordance with law.

6. We have perused the case records and heard the rival contentions. We have also given considerable thought to the facts and circumstances in this case. We find that the survey report was furnished to the office of the Ld. CIT(Exemption) on 29.05.2019 and the entire decision of the Ld. CIT(Exemption) is based on this particular survey report. That further, the order passed by the Ld. CIT(Exemption) was on the very next date i.e. 30.05.2019. Nowhere in the order of the Ld. CIT(Exemption), it comes out that the assessee was given opportunity to counter the survey report or to make any submission in respect thereof before the Ld. CIT(Exemption). That further, opportunity was also not possible since the very next day i.e. on 30.05.2019, the Ld. CIT(Exemption) has passed his order rejecting the application of the assessee trust. The Ld. CIT(Exemption) has not come out with a reasoned order and his findings as per the relevant documentary evidences submitted are missing wherein he has only relied on the survey report and even did not provide the assessee any opportunity to make

submissions regarding the said survey report. We take guidance from the judgment of the Hon'ble Kerala High Court in the case of Shri Anjaneya Medical Trust Vs. CIT (supra.) and considering the totality of facts and circumstances, in the interest of justice, we set aside the order of the Ld. CIT(Exemptions) and restore the matter back to his file to adjudicate the issue in accordance with law and as per the principles laid down in the findings of the Hon'ble High Court decision (supra.) after providing reasonable opportunity of hearing to the assessee trust.

7. In the result, **appeal of the assessee trust is allowed for statistical purposes.**

Order pronounced on 07th day of January, 2020.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07th January, 2020.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Exemption), Pune.
4. The CIT, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	07.01.2020	Sr.PS/PS
2	Draft placed before author	07.01.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		