

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.157/Bang/2019
Assessment year: 2015-16

Institute Management Committee (IMC), Govt. ITI College, Bilagri Cross, Bilagi Dist. Bagalkot – 587 116. Karnataka. <b>PAN: AAAAI 2631N</b>	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, S.V., Advocate
Respondent by	:	Smt. R. Premi, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.06.2020
Date of Pronouncement	:	19.06.2020

**ORDER**

*Per N.V. Vasudevan, Vice President*

This is an appeal by the Assessee against the order dated 05.12.2018 of the CIT(Appeals), Belagavi relating to assessment year 2015-16.

2. The assessee is a society registered under the Karnataka Societies Registration Act with specific aim of upgradation of Industrial Training Institute into a centre of excellence in such a way that the training provided in ITI is improved and becomes demand driven leading to better employability of passing out ITI graduates.

3. For the AY 2015-16, the assessee filed a return of income on 23.11.2015 claiming exemption u/s. 10(23C)(iiiad) of the Income-tax Act, 1961 [the Act] as an educational institution. The denied the benefit of exemption u/s. 10(23C) of the Act and taxed the surplus income of Rs.29,82,425 by an order u/s. 143(3) dated 29.8.2017.

4. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(Appeals). Pending proceedings before the CIT(Appeals), the assessee has applied for registration u/s. 12AA on 21.09.2017 in Form No.10. By an order dated 9.3.2018, the CIT(Exemptions), Bangalore [CIT(E)] granted registration u/s. 12AA of the Act to the assessee. The assessee contended before the CIT(Appeals) that proviso to section 12A(2) states that, *“where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year”*. The said proviso is squarely applicable to the assessee’s case. The assessee contended that proceedings pending before the CIT(Appeals) is to be considered as assessment proceedings pending before the Assessing Officer as the power/jurisdiction of the CIT(Appeals) are co-extensive with the powers of the Assessing Officer and therefore the CIT(Appeals) should allow the benefit of registration to the assessee. It was contended that since the assessee society obtained registration u/s. 12AA, hence the exemption u/s. 11 is applicable to assessee society for all the preceding assessment years of the previous year in which registration u/s. 12AA is granted.

5. The CIT(A), however, rejected the plea of the Assessee observing that the registration was granted to the Assessee only on 9.3.2018 but the order of AO was passed on 29.8.2017. Therefore the assessment proceedings were not pending as on 9.3.2018 and therefore the benefit of proviso to Sec.12A(2) of the Act cannot be extended to the Assessee. The following were his observations in this regard:-

“5. In the written submissions AR of the appellant stated that the assessee proviso to section 12A(2) states that, where registration has been granted to the trust or institution under section 12AA, then the provisions of section 11 and 12 shall apply in respect of any income derived from property held under trust of any Asst. year preceding the aforesaid Asst. year for which Asst. proceedings are pending before the A.O as on the date of such registration and the object and activities of such trust or institution remain the same for such preceding Asst. year.

6. I have carefully considered the facts of the case, the submissions made by the appellant and also perused the Assessment order.

7. Application for 12AA registration was made by the appellant on 21/09/2017. Assessment under consideration was passed on 29/08/2017. Here Assessment was not pending during the pending of registration process of 12AA. Hence provision to 12A is not applicable to the assessee present case. Hence exemption under section 11 is not admissible to the assessee. The A.O has correctly taxed the surplus as income from other sources. The order of the A.O is correct and in accordance with law and appellant having no case, I therefore have no reason to interfere with the order of the A.O. The addition made by the A.O is confirmed.

8. In the result, the appeal of the appellant is dismissed.”

6. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned counsel for the Assessee submitted that Section 12[(2) reads as follows:

“Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:”

7. He brought to our notice that the following proviso was inserted the Finance (No. 2) Act, 2014, w.e.f. 1-10-2014:-

“Provided further that no action under section 147 shall be taken by the assessing officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.”

8. He also drew our attention to the explanatory note to the provisions of the Finance (No.,2) Act 2014 as given in CBDT No.1/15 dated 21.1.2015:-

"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."

9. It was contended by him that assessment proceeding which is pending in appeal before appellate authority should be deemed to be 'assessment proceedings pending before Assessing Officer' within the meaning of that term as envisaged under proviso to section 12A(2) and therefore an Assessee which obtained registration under section 12AA

during pendency of appeal was entitled to exemption claimed under section 11 of the Act.

10. The learned counsel for the Assessee in this regard placed reliance on a decision of the *ITAT Cochin Bench in SNDP Yogam v. Assistant Director of Income-tax (Exemption) [2016] 68 taxmann.com 152 (Cochin - Trib.)*. The facts of the case were that the Assessee which was a charitable institution had not obtained the benefit of registration u/s.12A of the Act for AY. 2006-07 to 2009-10 & 2011-12. On 29.7.2013, the Assessee was granted registration u/s.12A of the Act. Prior to 29.7.2013, the assessment for AY 2006-07 to 2009-10 & 2011-12 were concluded by the AO and the benefit of Sec.11 & 12 was denied to the Assessee because the Assessee did not have registration u/s.12A of the Act. Against the orders of assessment for the aforesaid AYs, the Assessee filed appeal before the first appellate authority. During pendency of appeal before first appellate authority, assessee obtained registration under section 12AA i.e., on 29.7.2013 and claimed exemption under section 11. It was contended that assessment proceeding which is pending in appeal before appellate authority should be deemed to be 'assessment proceedings pending before Assessing Officer' within meaning of that term as envisaged under proviso to section 12A(2) and therefore an Assessee which obtained registration under section 12AA during pendency of appeal was entitled to exemption claimed under section 11. The Tribunal held as follows:-

“7.2 When section 12A of the Act was amended by introducing new provisos to sub-section (2) of s. 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 29.07.2013 w.e.f. the assessment year 2013-14. Those appeals were 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 [ADIT (Exemption) in the present case] 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.

7.3 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 our 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 our 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.

7.4 Taking into account the above facts and circumstances of the issue, we are of the view that the AO was not justified in taking a stand that registration u/s 12A was not applicable to the assessee for the AYs under dispute and the condonation petition for delay in filing the application for registration u/s 12A [for the AYs under dispute] has not yet been decided by the CBDT and, therefore, the total incomes of the assessee were to be assessed as per commercial principles. The CIT (A) was also not justified in taking a similar stand that of the AO, without taking cognizance and intention of the amendment to s. 12A of the Act. If no judicious or a liberal view is not taken either by the assessing authority or the appellate authority as in the case under consideration, the very purpose for which such an amendment to s. 12A of the Act enacted, in our view, would be defeated.....”

11. The learned counsel relying on the aforesaid decision submitted that the Assessee should be allowed the benefit of exemption u/s.11 of the Act.

12. The learned DR relied on the order of the CIT(A) and submitted that the registration was granted to the Assessee only on 9.3.2018 but the order of AO was passed on 29.8.2017. Therefore the assessment proceedings were not pending as on 9.3.2018 and therefore the benefit of proviso to Sec.12A(2) of the Act cannot be extended to the Assessee.

13. We have carefully considered the rival submissions. The decision of the ITAT Cochin Bench in the case of *SNDP Yogam (supra)* is on identical facts of the case of the Assessee in this appeal and therefore the ratio laid down therein will apply to the present case also. As laid down therein, if during pendency of appeal before first appellate authority, assessee obtained registration under section 12AA and claimed exemption under section 11, the Assessee should be allowed the benefit of the proviso to Sec.12A(2) which provides that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment

year for which assessment proceedings are pending before the assessing officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year. It has to be held that an assessment proceeding which is pending in appeal before appellate authority should be deemed to be 'assessment proceedings pending before Assessing Officer' within meaning of that term as envisaged under proviso to section 12A(2). Consequently, an Assessee which obtained registration under section 12AA during pendency of appeal was entitled to exemption claimed under section 11.

14. In the present case, however, we find that the Assessee did not claim benefit of exemption u/s.11 of the Act before the AO and the AO did not have the benefit of examining such a claim. Mere existence of registration u/s.12A will not confer benefit of exemption u/s.11 of the Act and the other conditions for availing benefit of exemption u/s.11 of the Act has to be examined by the AO. In the given facts and circumstances of the case, we are of the view that it would be just and proper to set aside the order of the CIT(A) and remand to the AO the question of allowing exemption u/s.11 of the Act as by reason of the proviso to Section 12A(2), the Assessee should be deemed to have had registration u/s.12A of the Act. The registration u/s. 12AA(1)(b)(i) of the Income Tax Act, 1961 does not automatically exempt the income of the Trust/Institution. The question of taxability of the income of the Trust/Institution shall be examined and decided upon by the Assessing Officer based on the activities, compliance with various statutory and other requirements, etc., as referred to in Sections 2(15), 11, 12 & 13 of the Income Tax Act, 1961. The AO will afford opportunity of being heard to the Assessee in the set aside proceedings.

15. In the result, appeal of the Assessee is treated as allowed for statistical purposes.

Pronounced in the open court on this 19<sup>th</sup> day of June, 2020.

Sd/-

( B R BASKARAN )  
ACCOUNTANT MEMBER

Sd/-

( N V VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 19<sup>th</sup> June, 2020.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.