

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH: CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1756/Chny/2019
निर्धारण वर्ष /Assessment Year: 2015 - 2016

M/s. Josephs Educational Trust,
No.2/23A, Kohilallam,
Sasthankarai, Colachel,
Kanyakumari – 629 251
[PAN: AABTJ 0852A]
(अपीलार्थी/Appellant)

The Income Tax Officer
(Exemptions),
Vs. Income Tax Department,
SH0-40, Rehmath Nagar East,
Kamaraj Nagar, Tirunelveli – 627 002.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. Arjun Raj.C.A.
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anita, JCIT

सुनवाई की तारीख/Date of Hearing : 01.02.2021
घोषणा की तारीख /Date of Pronouncement : 03.02.2021

आदेश / ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is against the order of the learned Commissioner of Income Tax (Appeals)-2, Madurai in I.T.A No.0129/2017-18 dated 29.04.2019 relevant to the Assessment Year 2015 - 2016.

2. The brief facts in this case is that the Assessee Trust is running an Educational Institution in the name and style of M/s.

Josephs Educational Trust filed its return of income for the Assessment Year 2015 – 2016 by admitting a total income as 'NIL'. The case of the Assessee was selected for scrutiny under CASS. A notice u/s.143(2) was issued on 07.07.2017. On verification of the objects of the Trust and by considering all other details, the learned Commissioner of Income Tax (Exemptions) has granted registration u/s.12AA on 23.11.2016 with effect from 01.04.2016. The Assessing Officer has asked the Assessee as to why the exemption for assessment year 2015 – 2016 should not be disallowed and society be considered as AOP. It is submitted before the Assessing Officer that as per the 2nd proviso to Section 12A of the Income Tax Act, 1961, when the assessment is pending before the Assessing Officer, the Assessee is entitled for the registration for the preceding assessment year also. However, the Assessing Officer has not agreed with the same and had rejected the registration for the assessment year 2015 – 2016.

3. On appeal, the learned CIT(A) has confirmed the order of the Assessing Officer.

4. On being aggrieved, the Assessee has carried the matter before the Tribunal.

5. The learned Counsel for the Assessee has submitted that the Assessee has filed his return of income for the assessment year 2015-16 on 16.05.2016 and the assessment is pending before the Assessing Officer and therefore the 2nd proviso to Section 12A of the Income Tax Act, 1961 is applicable to the Assessee and registration u/s.12A of the Income Tax Act, 1961 has to be extended to the pending assessment years also and he further submitted that the Assessee has not changed any objects.

6. The learned Departmental Representative said that the Assessing Officer had issued a notice u/s.143(2) of the Income Tax Act, 1961 only on 07.07.2017 and the learned Commissioner of Income Tax (Exemptions) has granted exemption already on 23.11.2016 and therefore no assessment is pending and therefore for the assessment year 2015 – 2016 no registration u/s.12A of the Act to be extended to the Assessee. Further he submitted that the Assessee has deleted some of the objects and therefore it is amounting to change of objects and therefore registration u/s.12A of the Act cannot be extended for the assessment year 2015 – 2016.

7. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below.

8. The objects of the Trust are as under:

Sl.No.	Objects Prior to amendment	Objects after the amendment
(1)	To establish or assist in establishing educational institutions such as schools and colleges.	To establish or assist in establishing educational institutions such as schools and colleges.
(2)	To set up Training Schools, Technical Training-cum-Production Centres, Audit Education Centres, Reading Rooms.	Deleted
(3)	To establish Printing Presses, Publication Centres and Book Stalls in order to publish and disseminate resource materials for education and research.	Deleted
(4)	To conduct classes for the promotion of all sorts of arts and crafts.	Deleted

From the above, it is clear that the Assessee has deleted the object No.2, 3 & 4.

9. By considering the above, prima facie, we are of the opinion that deletion of objects 2, 3 & 4 not amounting to change of the objects, for the reason that the main objects of the Trust is to establish or assist in establishing educational institutions such as

schools and colleges is the same. Therefore, the Assessing Officer is not justified in denying Section 11 of the Income Tax Act, 1961 for the Assessment Year 2015 – 2016 on this ground.

10. In so far as the pending of assessment year is concerned, the Assessee has already filed his return of income on 16.05.2016 and the registration was granted to the Assessee by the learned Commissioner of Income Tax (Exemptions) on 23.11.2016.

11. In this case, the Assessing Officer has completed the assessment on 27.12.2017 and therefore it is a pending assessment. Once the assessment is pending, as per the 2nd proviso to Section 12AA of the Income Tax Act, 1961 which provides that “where the registration has been granted to the Trust or Institution u/s.12AA of the Income Tax Act, 1961, then, the provisions of Section 11 & 12 of the Income Tax Act, 1961, shall apply in respect of any income derived from the property held under the Trust of any assessment year preceding the aforesaid assessment year, for which the assessment proceedings are pending before the Assessing Officer, as on the date of such

registration and the objects and activities of the Trust or institution remain the same for such preceding assessment year.”

12. In the instant case, the assessment proceeding is not finalized and that the objects of the Trust are also not changed. Therefore, the benefit of the above proviso to Section 12AA of the Income Tax Act, 1961 shall be extended to the Assessee.

In view of the above, the order passed by the learned Commissioner of Income Tax (Appeals) is reversed and the appeal filed by the Assessee is allowed.

13. In the result, the appeal of the Assessee in I.T.A No.1756 /Chny/2019 is allowed.

Order pronounced on 3rd February, 2021 in Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 3rd February, 2021

IA, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF