

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री राजपाल यादव, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VP & SHRI , RAJPAL YADAV, VP

आयकर अपील सं./ ITA Nos. 938 & 939/Chd/2019
निर्धारण वर्ष / Assessment Years : 2009-10 & 2011-12

Improvement Trust Khanna G.T. Road, Khanna	बनाम	The ITO Ward-IV, Khanna
स्थायी लेखा सं./PAN NO: AAALI0030N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Y.K. Sud, CA
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 22/06/2021
उद्घोषणा की तारीख/Date of Pronouncement : 23/06/2021

आदेश/Order

PER RAJ PAL YADAV, VICE PRESIDENT

These two appeals are directed at the instance of Assessee against the separate orders of the Ld. CIT(A) dt. 27/03/2019 passed for the A.Y. 2009-10 and 2011-12.

2. With the assistance of Ld. Representative we have gone through the records carefully. We find that there is chequered history of the litigation between the assessee and the revenue in these assessment years, these are the second round of litigation upto the Tribunal. Ld. Counsel for the assessee has prepared the list of events demonstrating the incident happened in the assessment proceedings of the assessee trust in these assessment years. He placed on record the event in seriatim, the letter produced before us exhibiting the various stages of litigation, read as under:

Most Respectfully submitted as under

At the time of last hearing on 19.05.2021 the undersigned counsel was directed by the Hon'ble Bench to make the submissions in writing regarding the history and events in the abovesaid appeal. In compliance to the same the undersigned counsel submits as following:

1. That the registration u/s 12A applied by the Improvement Trust was declined by CIT Ludhiana vide order dated 25.04.2006.
2. That on appeal before the ITAT in ITA No. 530/Chandi/2006 the same was allowed by the ITAT vide order dated 31.01.2008.
3. That after the amendments in section 2(15) w.e.f. 01.04.2009 the CIT Ludhiana vide order dated 07.02.2013 cancelled the registration granted u/s 12A w.e.f 1-4-2009.
4. That the order of the CIT of cancellation of registration was confirmed by the ITAT in ITA No. 406/Chd/2013 dated 26.11.2014 by dismissing the appeal of the assessee.
5. That the ITO subsequently reopened the assessment u/s 147 of Asst. Year 2009-10 to disallow the exemption u/s 11 and passed an order making assessment at income of Rs. 13680572/- and gave a finding in para 4.3 at page 4 of his order that exemption claimed u/s 11 is disallowed on the basis of the cancellation of Registration granted by CIT-2 Ludhiana w.e.f. 01.04.2009.
6. That the assessee challenged the order before the CIT(A) and in appeal CIT(A) vide his order dated 07.07.2016 dismissed the appeal of the assessee.
7. That thereafter the assessee filed the appeal before the ITAT challenging the disallowance of exemption u/s 11 and also the other additions of Rs. 515000/- sustained by the CIT(A).
8. That the ITAT passed an order dated 27.03.2019 remanding the matter before the CIT(A) with directions which have been reproduced by the CIT(A) in para 2 of his order.
9. That one of the finding given by ITAT was as under:

"Regarding the issue of withdrawal of registration under section 12AA, the order of the Ld.CIT(A) **was** confirmed by the ITAT in ITA No.406/Chd/2013 dated 26.11.2014. Since there is no material difference in the facts and circumstances of the case for the year under consideration, we hereby confirm the revocation of registration under section 12AA."
10. That in the mean while the order of the ITAT for confirming the withdrawal of exemption was challenged before the P&H High Court and the Hon'ble High Court restored the matter back to the file of ITAT with directions and the Hon'ble ITAT in ITA No. 406/Chd/2013 in the second round allowed the appeal of the assessee setting aside the revocation of the registration u/s 12A by CIT Ludhiana. As a result the trust was duly registered u/s 12A as per the original registration granted by CIT(E).
11. That while the appeal was being decided by CIT(A) in the second round she has noticed this fact **in** para 3.3 of her order that ITAT has restored the registration u/s 12AA in ITA No. 406/Chd/2013 dated 21.02.2019 but failed to pass a speaking order again for allowing the exemption u/s 11 of the **Income** Tax Act 1961.

Although the addition of Rs. 515000/- was deleted by her. Hence the action of CTT(A) for not allowing the exemption u/s 11 is now challenged before the ITAT.

3. A perusal of the above would indicate that originally the assessee applied for grant of registration under section 12A of the Income Tax Act, 1961 this registration was denied to the assessee. Thereafter the assessee went in appeal before the Tribunal in ITA No. 530/Chd/2006 and the Tribunal has allowed this appeal vide order dt. 31/01/2008. The Tribunal has granted the registration to the assessee however after amendment in section 2(15) w.e.f 01/04/2009 the Revenue has harboured a belief that the activities of the assessee are not charitable in nature, and therefore the Ld. Commissioner initiated the proceeding of cancellation of registration granted under section 12A of the Income Tax Act, 1961, ultimately that registration was cancelled and appeal to the Tribunal against the order of the Ld. Commissioner dt. 07/02/2013 was dismissed vide ITA No. 406/Chd/2013 dt. 26/11/2014. Meanwhile the assessment for A.Y. 2009-10 was reopened by treating the status of the assessee as non- charitable entity and accordingly the assessment order was framed.

4. The order of the ITAT was challenged before the Hon'ble High Court and the Hon'ble High Court has remitted the issue back to the Tribunal. Thereafter the Tribunal vide order dt. 21/02/2019 allowed the appeal of the assessee i.e; ITA No. 406/Chd/2013 which was remanded back by the Hon'ble High Court vide order dt. 22/10/2018, the Tribunal has allowed the appeal of the assessee and the relevant part of the order of the Tribunal read as under:

4. Both the parties have fairly agreed that the issue is now covered by the decision of the Higher Courts including of the Hon'ble Jurisdictional High Court in the case of 'CIT Vs. Moga Improvement Trust', (2017) 390 ITR 547 and of the Hon'ble Bombay High Court in 'DIT (Exemptions) Vs. M/s Khar Ghykhana', ITA No. 2349 of 2013 order dated 6.6.2016 wherein, it has been held that the development activity carried out by improvement trust falls within the definition of objects of general public utility, however, taking into consideration the subsequent amendments in the relevant provisions of the Act, the allowability of quantum income from the activity of the assessee is a question of assessment of income which can be considered while framing assessment u/s 11 of the Act. So far as the issue relating to registration of the assessee 'improvement trust' is concerned, the issue is now settled that the registration cannot be cancelled on this account. We, therefore, set aside the order of the lower authorities in cancelling the registration and order to restore registration to the assessee 'improvement trust'. However, our findings given above are restricted to the

restoration of registration of the assessee Trust u/s 12A of the Income Tax Act. However, the assessment of income shall be subject to application of the relevant statutory provisions/law. No other ground has been raised or pressed by the counsel.

In the result, the appeal of the assessee is treated as allowed

5. On the strength of this order, the Ld. Counsel for the Assessee submitted that the Ld. CIT(A) has decided the appeal after this order of the Tribunal in both the years, the moment registration under section 12A has been restored to the assessee then apart from other details, the Ld. CIT(A) ought to have considered allowance of revocation of registration to the assessee. This aspect has not been gone through by the First Appellate Authority and therefore the order of the Ld. CIT(A) are not sustainable.

6. On the other hand Ld. DR relied upon the orders of the Ld. Revenue authorities.

7. We have duly considered the rival contentions and gone through the records carefully the assessment orders were framed in both the years when the issue regarding the status of the assessee being charitable or non charitable was pending for adjudication. The A.O. on the strength of the ITAT order took a view that since the assessee is not enjoying the benefit of registration under section 12A therefore it is not entitled for benefits of section 11 & 12 while assessing its income. The order of the ITAT was set aside by the Hon'ble' High Court and the issue was remitted by the Hon'ble High Court to ITAT. The Tribunal has allowed the appeal of the assessee. The registration earlier granted to the assessee and cancelled by the Ld. CIT(A) was restored, thus the income of the assessee required to be reassessed by treating its status as registered trust under section 12AA, therefore, in the interest of justice we deem it appropriate to set aside all the impugned orders in both the assessment years and remit the issue back to the file of the A.O. for redetermination of income of the assessee after treating the assessee as a registered trust under section 12AA of the Act.

No doubt when there is an irregularity crept in the proceedings then the proceedings should be restored at that level. Ld. Counsel for the assessee submitted that issue be restored to the file of the CIT(A) because after the order of the ITAT dt. 21/02/2019, the Ld. CIT(A) has decided both the appeals though took note of the fact that the registration has been granted, but failed to give logical end to the assessment

proceedings. In other words, she failed to give consequential benefit of section 11 and 12. If we remit this issue to the file of CIT(A) then to our mind that will only enhance multiplicity of litigation at different platform. Ld. CIT(A) would call for the report from the A.O. and only thereafter will be in a position to adjudicate the issue. Considering this aspect we deem it appropriate to set aside this issue to the file of the A.O. The observation made by us will not impair or injure the case of the A.O. and will not cause any prejudice to the interest of the assessee while reassessing the taxable income of the assessee in both these years. The Assessee will be at liberty to submit any other details or explanation before the A.O.

8. In the result both the appeals of the Assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 23/06/2021)

Sd/

**एन.के.सैनी,
(N.K. SAINI)**

उपाध्यक्ष / VICE PRESIDENT

AG

Date: 23/06/2021

Sd/-

**राजपाल यादव
(RAJPAL YADAV)**

उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File