

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH: AMRITSAR
BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A Nos. 383, 139 & 125/ASR/2018& 2020
(ASSESSMENT YEARS: 2014-15 to 2016-17)**

Lord Mahavira Homoeopathic Medical College and Hospital, DR. Haneman Chowk, Kitchlu Nagar, Ludhiana [PAN:AAATL1645C] (Assessee)	Vs.	Income Tax Officer, (Exemption), Jalandhar (Revenue)
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Assessee by	Sh. Sudhir Sehgal, Adv.
Revenue by	Sh. S. M. Surendranath, D. R.

Date of Hearing	16.09.2021
Date of Pronouncement	21.09.2021

ORDER

Per Laliet Kumar, JM:

These present appeals filed by the assessee feeling aggrieved by the order of Ld. CIT(A)-4,Ludhiana dated 26.04.2018, 28.09.2018 & 12.02.2020 for A.Ys. 2014-15 to 2016-17.

2. **The assessee has raised the following grounds of appeal in ITA**

No. 383/Asr/2018

1. "That the Ld. Commissioner of Income Tax (Appeals)-4, Ludhiana has erred in confirming the order of Assessing Officer and bringing to tax excess of income over expenditure amounting to Rs. 14,99,088/- as per income and expenditure account.
2. That the Ld. CIT(A) has also erred in confirming the action of the Assessing Officer in framing the assessment of the assessee in the status of AOP and taxing the excess of income over expenditure as per audited profit and loss account.
3. That the CIT(A) has failed to appreciate the fact that the assessee had originally applied for registration u/s 12A on 12.05.1998 and wherein, the documents and clarification were also submitted to the Assessing Officer concerned and other correspondence of having applied for registration u/s 12-A and which have been ignored summarily by the CIT(A).
4. That the Ld. CIT(A) has erred in not considering the fact that as per the judicial pronouncement that if the CIT does not pass an order on the application made u/s 12AA within the prescribed period of six months, then the said exemption shall be deemed to have been allowed as per the judgment of Apex Court in the case of CIT Vs Society for Promotion of Educational reported in 382 ITR 06 (SC) and in the case of the assessee, the exemption deemed to have been granted.
5. That the taxing of excess of income over expenditure as made by the CIT(A) and confirmation of status as AOP is against the facts and circumstances of the case.
6. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

3. The assessee has raised the following grounds of appeal in ITA

Nos. 139 & 125/Asr/2020

- "1. That the Ld. Commissioner of Income Tax (Appeals)-4, Ludhiana has erred in confirming the order of Assessing Officer and bringing to tax excess of income over expenditure amounting to Rs. 47,44,901/- as per income and expenditure account.
2. That the Ld. CIT(A) has also erred in confirming the action of the Assessing Officer in framing the assessment of the assessee in the status of AOP and taxing the excess of income over expenditure as per audited profit and loss account.

3. That the CIT(A) has failed to appreciate the fact that the assessee had originally applied for registration u/s 12A on 12.05.1998 and wherein, the documents and clarification were also submitted to the Assessing Officer concerned and other correspondence of having applied for registration u/s 12-A and which have been ignored summarily by the CIT(A).
4. That the Ld. CIT(A) has erred in not considering the fact that as per the judicial pronouncement that if the CIT does not pass an order on the application made u/s 12AA within the prescribed period of six months, then the said exemption shall be deemed to have been allowed as per the judgment of Apex Court in the case of CIT Vs Society for Promotion of Educational reported in 382 ITR 06 (SC) and in the case of the assessee, the exemption deemed to have been granted.
5. That the taxing of excess of income over expenditure as made by the CIT(A) and confirmation of status as AOP is against the facts and circumstances of the case.
6. That no reasonable opportunity had been granted by the CIT (A) and also at times, the assessee was presented by sufficient/reasonable cause in not appearing before the AO on some dates.
7. That the Ld. CIT(A) had not pronounced the order on merits and thus dismissing the appeal is against the facts and circumstance of the case.
8. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

Brief Facts

1. This is a case of charitable society, which is running a Homeopathic Medical College and Hospital since 1998 and had rendered an exemplary service, even during the course of COVID 19 by distributing free medicines. The society had been filing the returns year after year and there is an assessment order u/s 143(3) for Asstt. Year 2003-04, which copy has been placed at pages 31 to 32 of the Paper Book, wherein, the said exemption of income had been granted and, thus, no doubt has been cast about the aims and objects of the society and genuineness of Trust. This is a registered society as per evidence placed at page 1 of the Paper Book, which certificate is dated 20.07.1998. Copy of the Trust

deed and rules and regulations have been enclosed in the Paper Book at pages 2 to 12.

2. The said society had moved an application for registration u/s 12A on the prescribed form 10A on 12.05.1998 as per copy placed at page 13 and enclosed all the documents therein and there have been certain correspondence, with the concerned Assessing Officer then the Commissioner of Income Tax , placed at pages 16 to 22 of the Paper Book, which proves beyond any iota of doubt that all such documents had been submitted for the purpose of registration u/s 12A and clarification was also made as desired.
3. During the course of assessment proceedings u/s 143(3), the assessee could not trace the necessary certificate of registration u/s 12A, which had been mentioned in para 3 of the order of Assessing Officer and, therefore, the Ld. Assessing Officer has taken the status as "AOP" and without doubting the aims and objects and genuineness of the society, the excess of income over expenditure on the basis of audited books of accounts as per page 24 of the paper Book, amounting to Rs. 14,99,088/- was subjected to tax, meaning thereby that no adverse view was taken with regard to the genuineness/aims and objects of the society.
4. The matter was carried to the CIT (Exemptions) and before the CIT(Exemptions), the assessee could locate the correspondence to the fact that it had applied for registration u/s 12A and placed the evidences before her, which have been enclosed from pages 13 to 22 of the paper book and it was brought to the notice of the Ld. CIT that there has been amendment to section 12AA and as per clause (2) of section 12AA, which have placed in the paper book at page 21, where by way of clause (IA) read with clause (2) w.e.f. 1.6.1999, it had stated that all the applications u/s 12A, which have been pending before the Chief Commissioner of Income Tax shall be transferred to PCIT, who shall proceed with such application and by way of clause (2), it had been mentioned that the order granting or refusing registration shall be passed before the expiry of six months.

5. The assessee had also relied upon the judgments, that if the twin objects of genuineness of Trust and activities are found in order, then the registration should be granted. The Assessing Officer in his remand report reproduced at page 4 & 5 of the order has tried to find fault in the correspondence that complete documents had not been submitted and such fact have been wrongly interpreted, because of the following facts:-
- a). After the receipt of application on Form No. 10,, there is a letter, dated 21.05.1998 signed by the concerned Assessing Officer at page 14, asking for certain details.
 - b). We replied to that and enclosed the documents therein, as per page 15 of the paper book vide letter, dated 08.06.1998.
 - c). There is a letter, dated 17.07.1998 of the ITO, placed at page 16 of the paper book, asking for some more information.
 - d). There is a reply to that, which is placed at page 17 of the Paper Book, dated 23.07.1998 and the necessary documents as desired had been filed.
 - e). Then again there is another letter, dated 12.08.1998 at page 18 of the paper book, confirming that the information had already been filed, which were again reiterated as per letter, dated 15.09.1998 at page 19 of the paper book and, though, the letter was addressed to the CIT (Exemptions), but copies were endorsed to concerned DCIT and Income Tax Officer.
6. The Ld. Assessing Officer in his remand report to the CIT(A) has wrongly mentioned that the letter, dated 12.08.1998 was only a request for granting registration, which is patently wrong as stated above. Further, no doubt has been

raised either by the CIT(A) and the Assessing Officer about the authenticity of such documents.

FINDING OF THE CIT(A)

7. The CIT has also mentioned the same facts and wrongly interpreted that information has not been filed in para 5.3 of the order, which is proved from the reply at page 17, 18 & 19 of the paper book.

8. It is submitted that the Commissioner was duty bound to either registered the assessee u/s 2A or refuse the registration, but since no order u/s 12 appears to have been passed and there is mention of word "SHALL" and the registration should be deemed to have been granted automatically, on the expiry of six months. This view has been confirmed by the Apex Court, Hon'ble Kerala High Court and the Jurisdictional, Amritsar Bench, copy of the judgments have been placed at following pages of the paper book:

Page 52 The Judgement of Apex Court in the case of CIT Vs. Society for Promotion of Edn, Allahabad, it has been held as under:-
'Section 12A, read with section 12AA of the Income-tax Act, 1961- Charitable or religious trust- Registration of (Deemed registration)- Whether where assessee- society filed an application under section 12 A for grant of registration on 24.02.2003 and same was not responded to within six months, registration of application was to be deemed to have taken effect from 24.08.20030 Held, yes.'

Page 53 to 56. The Kerala High Court in the case of CIT, Cochin Vs TBI Education Trust, has taken the same view.

Page 57- 70. The Bangalore Bench of the ITAT, after considering the number of judgments have followed the judgment of 'Apex Court' about the deemed registration, which copy has been placed at pages 57 to 70

of Paper Book. Relevant pages are 69 to 70, in which, the same view has been taken.

- Page 71-81 The Amritsar Bench of the ITAT in a judgment placed at pages 71-81, after considering the arguments from both the sides had considered this issue at length and the finding has been given at page 79 and 80 in para 14 of the judgment, where in the judgment of the Apex Court has been followed. Similar is the judgment placed at pages 82 to 83.
- Page 37-45. There is even judgment of 'Rajasthan High Court' on the same issue, which copy is placed at pages 37 to 45 and the relevant finding is at pages 44 to 45, in which, following the judgment of 'Apex Court' and ITAT Lucknow Bench of the Tribunal, it has been held that if no orders are passed within six months, as laid down in the Act, granting or refusing the registration, it should be deemed to have been granted.
9. The 2nd argument of Ld. CIT (A) that the registration was not granted subsequently by the CIT (Exemption). It is submitted that after the case was set aside by the Hon'ble ITAT to the file of the CIT(A). The CIT (Exemptions) had granted the registration as per order placed at pages 33 to 36 of the paper book. Therefore, both the arguments of the CIT are misplaced.
- 10 We also rely upon the judgment of Jurisdictional Bench of the ITAT, following earlier judgment of 'Amritsar Bench', it has been held that if the registration has been granted for any of the year, then it is deemed to be registered for any other year, for which, the proceedings are pending at any Appellate stage. This finding has been given in the judgment of Amritsar Bench in the case of "Tilla Baba Farid Religious and Charitable Society", copy of the judgment placed at pages 46 to 51 of the paper and the relevant finding is at page 49 of the Paper Book.

11. In view of the above said facts, the registration u/s 12A may, please, be granted and oblige.
12. Alternatively, it is submitted that the status has been taken as AOP and the entire surplus alongwith corpus donations have been taxed. It is submitted herewith that if the income has been charged to tax as per the normal provisions of the Act, ignoring the exemption u/s 11 & 12, then the assessee is entitled to set off brought forward losses as per computation of income and the same needs to be allowed as per the judgment of Chandigarh Bench of the ITAT in the case of M/s Patiala Urban Planning & Development Authority, in ITA No. 1408/Chd/2018 and in ITA No. 55/Chd/2018. Copy of the judgment is being filed herewith and relevant finding is in para 18:-

Para 18: *“ In view of the above, we hold, that the assessee not being eligible for exemption u/s 11 & 12 of the Act, the other provisions applicable to exempt entity will also not apply to it. In other words, we hold that the normal provisions of the Act will be applicable in such circumstances and the assessee is entitled to set off of losses as provided for under the normal provisions of the Act.”*

13. For the assessment year 2015-16, the assessee had filed the following written submissions in support of its case:

“ 1. This is an appeal filed by the assessee against the order of CIT(A), who had decided the case of the assessee exparte. Though, the appeal has been decided exparte on the basis of facts as per Assessment order for the year under consideration and for the earlier years i.e. for Asstt. Year 2014-15 and 2015-16. The issue is that the assessee is a registered charitable society and had applied for registration u/s 12A on 12.05.1998 and lateron, the there has been correspondence between the department and assessee, wherein certain details were filed and no doubt has been raised by the department that the assessee is carrying the charitable activity and the only issue as per the assessment order is that since the society had not been registered u/s

12A of the Income Tax Act and, therefore, surplus as per income and expenditure account is to the tune of Rs. 47,44,901/-.

2. There is no other issue in the present case, because the receipts and expenses have been accepted by the department and regarding the genuineness of activity and aims and objects, there is no whisper in the order of Assessing Officer and meaning thereby, that if there would have been registration u/s 12A, then the surplus as per Profit and Loss Account would not be taxable at all.

3. We have already filed appeal for Asstt. Year 2014-15, where similar issue is there and as per the decision of Apex Court in the case of CIT Vs Society for Promotion of Edn., Allahabad as reported in [2016] 67 taxmann.com 264 (SC), in which, it has been held as under:-

‘Section 12A, read with section 12AA of the Income-tax Act, 1961- Charitable or religious trust- Registration of (Deemed registration)- Whether where assessee- society filed an application under section 12 A for grant of registration on 24.02.2003 and same was not responded to within six months, registration of application was to be deemed to have taken effect from 24.08.20030 Held, yes.’

4. Even, the Hon’ble Kerala High Court in the case of CIT, Cochin Vs TBI Education Trust as followed the judgment of Apex Court and has held as under:-

“In such circumstances, respectfully following the decision of the Hon’ble Supreme Court, we answer the question in favour of the assessee and against the revenue and reject the appeal. The registration however is applicable only from the date of expiry of the six months from the date of application. There shall be no order as to costs.

5. While giving this judgment, the Hon'ble Supreme Court has relied upon the circular of CBDT.

6. The same is the judgment of Bangalore Tribunal, which has also taken the same view.

7. The Jurisdictional Bench was also ceased with the same issue and had followed the judgment of Apex Court.

8. The same view has been taken in the case of Lakha Singh Charitable Trust by the Amritsar Tribunal. Reliance is also being placed earlier judgment of 'Amritsar Bench', it has been held that if the registration has been granted for any of the year, then it is deemed to be registered for any other year, for which, the proceedings are pending at any Appellate stage. This finding has been given in the judgment of Amritsar Bench in the case of "Tilla Baba Farid Religious and Charitable Society", copy of the judgment placed at pages 46 to 51 of the paper and the relevant finding is at page 49 of the Paper Book.

9. In view of above said submissions, bringing to tax the excess of income over expenditure is bad in law.

10. Alternatively, it is submitted that the status has been taken as AOP and the entire surplus alongwith corpus donations have been taxed. It is submitted herewith that if the income has been charged to tax as per the normal provisions of the Act ignoring the exemption u/s 11 & 12, then the assessee is entitled brought forward losses as per computation of income and the same needs to be allowed as per the judgment of Chandigarh Bench of the ITAT in the case of M/s Patiala Urban Planning & Development Authority, in ITA No. 1408/Chd/2018 and in ITA No. 55/Chd/2018. Copy of the judgment is being filed herewith. Copy of the judgment is being filed herewith and relevant finding is in para 18:-

Para 18: “ In view of the above, we hold, that the assessee not being eligible for exemption u/s 11 & 12 of the Act, the other provisions applicable to exempt entity will also not apply to it. In other words, we hold that the normal provisions of the Act will be applicable in such circumstances and the assessee is entitled to set off of losses as provided for under the normal provisions of the Act.”

12. In respect of the assessment year 2016-17, the assessee had filed the following written submission in support of its case:-

“ This is an appeal filed by the assessee against the order of CIT(A), who had decided the case of the assessee exparte. Though, the appeal has been decided exparte on the basis of facts as per Assessment order for the year under consideration and for the earlier years i.e. for Asstt. Year 2014-15 and 2015-16. The issue is that the assessee is a registered charitable society and had applied for registration u/s 12A on 12.05.1998 and later on, there has been correspondence between the department and assessee, wherein certain details were filed and no doubt has been raised by the department that the assessee is carrying the charitable activity and the only issue as per the assessment order is that since the society had not been registered u/s 12A of the Income Tax Act and, therefore, surplus as per income and expenditure account to the tune of Rs. 39,21,913/- and corpus donation of Rs. 3,19,050/- has been brought to tax.

2. There is no other issue in the present case, because the receipts and expenses have been accepted by the department and regarding the genuineness of activity and aims and objects, there is no whisper in the order of Assessing Officer and meaning thereby, that if there would have been registration u/s 12A, then the surplus as per Profit and Loss Account would not be taxable at all.

The remaining contention raised by the assessee are common as raised by the assessee for the assessment year 2013 – 14 ”

13. The Ld.AR for the assessee had submitted that the assessee was entitled to the deemed registration under the act as the lower authority has failed to court

the registration within a statutory. Six months from the date of application. It was also the contention of the Ld.AR that that assuming the first contention of the assessee is not accepted by the Tribunal, then it was submitted that the assessee had been granted registration on 12.11.2020 on the application filled on 21.8.2017 however it was submitted that prior thereto the assessee had all along been granted the benefit of registration by from 1998, except for the years under considerations. On the basis of the freshly granted registration by the CIT exemption, it was submitted that the exemption be granted from the date of the application or in any case for the assessment year 2013 – 14, as the nature of activities continues to be the same and even the assessing officer and the Ld. CIT has not disputed the nature of activities of the assessee. It was submitted that the lower authorities have accepted that the activities of the assessee are charitable however, on the pretext of non-production of the registration certificate, the lower authorities have not granted the benefit of the registration. It was submitted that after the insertion of the proviso to the section 12 AA, the registration can be granted retrospectively by the Tribunal.

14. Per contra DR for the revenue had vehemently relied upon the order passed by the assessing officer as well as by the CIT (A). It was submitted by the DR that the assessee was not entitled to the deeming registration under the provisions of the Act as the assessee failed to comply with the requirement as indicated in the notice sent to the assessee on various occasions prior to transferring the pending application to the CIT exemption. Further, it was submitted that the alternative argument raised by the assessee is not maintainable on the ground that the assessee ever raised no such plea either before the lower authorities or before this tribunal in the form of grounds. It was submitted that the case of the assessee is required to be dismissed.

15. We have considered the rival contention of the parties and perused the material available on record, including the judgments

cited at bar during the course of hearing by both the parties. In this case, the assessee has drawn our attention to the communication dated 17.07.1998 whereby the ITO has asked the assessee to provide certain information. The said information was provided by the assessee vide letter dated 23.07.1998 (page 17 of the paper book). Thereafter the assessee has also drawn our attention to return to remand to the ITO for grant of registration vide letter dated 15.09.1998. The ITO vide letter dated 05.07.1999 had asked the assessee to get the trust deed registered and sent the copy of the registered deed to the office of the ITO for the purposes of facilitating the registration. It is the case the assessee is that the assessee had provided a copy of the registered deed to the ITO.

16. Our attention was drawn to the certificate of registration granted to the assessee vide order dated 20.07.1998 bearing no. 45 to 49 (page 1 of the paper book). On the basis of the above, it was submitted that the assessee has completed all the requisite applications and nothing was required to be done as at the end of the assessee.

17. Further, during the argument the assessee has submitted that by the amendment, w.e.f., 01.06.1999, clause 2 in section 12AA was inserted with the following effect page 21 is as under:

“2. Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) [or clause (ab)] of sub-section (1)] of section 12A.]

18. Based on the above said amendment, it was submitted that it was incumbent upon the lower authorities to grant the registration within 6 months of applying for registration u/s 12A of the Income Tax Act. It was submitted that under the law as applicable, the assessee should have been deemed to have been granted the registration by the registration authority in case, the registration application was not decided within the period of 6 months from the date of application.

19. The issue of deem registration in the case that the assessee's application is not adjudicated within 6 months had been considered time and again by the Tribunal, High Court and also by the Hon'ble Supreme Court and the Hon'ble Supreme Court in the matter of Society for Promn. of Education, Allahabad at page 52 of the paper

book vide decision reported as 67 taxmann.com 264 (SC) had held as under:

“3. The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

4. The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.

5. We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003. “

20. Similarly Hon'ble Kerala High Court in the matter of TBI Education Trust 96 taxmann.com 356 (Kerala) as decided by the Kerala High Court is held as under:

“4. Since the assessee is engaged in the activity of imparting education since its establishment, it moved two applications, one on 08-10-1998 seeking recognition under section 80G of the Act and other on 25-05-1999 seeking registration under section 12A with effect from 01-04-1998. However, while granting recognition under section 80G on 18-07-2002, the CIT did not take any action on application filed for registration under section 12A of the Act. Though the assessee had written a letter to CIT vide letter dated 21-02-2002 for grant of registration under section 12A and recognition for exemption under section 80G but no action was taken by the CIT. Later on the assessee has moved a new application for registration under **section** 12A on 26-05-2012 but this application was rejected by the CIT vide its order dated 26-12-2012 on sole ground that the University had failed to incorporate certain clauses in the VTU Act. The appeal filed against the

said order of the CIT was also dismissed for the same reason. The AO has also reopened the assessment under section 147 of the Act for the assessment years 2008-09 and 2009-10, 2004-05 to 2007-08 and 2010-11 to 2013-14. During the reassessment proceedings, the assessee has again filed the third application for registration under section 12A on 5-11-2014 along with the resolution passed by the Executive Council of the University approving certain amendments to the VTU Act, as desired by the CIT. However, the CIT insisted on production of the amendments enacted by the state legislature. According to the assessee, this constrained him to withdraw the application on 27-05-2015 with a liberty to file a fresh application. The amendment came to be eventually enacted by the state legislature on 13-08-2015 and shortly thereafter on 25-08-2015 the assessee filed its 4th application for registration under section 12A of the Act. After the amendments approved by the University's Executive Council, enactment was made by both Houses of the State Legislature with retrospective effect from 01-04-1998 and having received the Hon'ble Governor's assent on 13-08-2015, the Government of Karnataka notified the same as the VTU (Amendment) Act, 2015 (the Amendment Act), vide its notification dated 18-08-2015. Again the assessee made another application for registration under section 12AA and this application was duly accompanied by certified copies of the VTU Act, the Amendment Act and other documents such as (i) list of officers of the University; (ii) a note on the University's activities; (iii) certificate of non-infringement of section 13(l)(c); (iv) returns of income and financial statements for AYs 2012-13 to 2014-15; (v) reasons for delay in filing the application; (vi) details of investments; and (vii) details of centres of the University. Through this application, assessee sought registration with retrospective effect from 01-04-1998. After making detailed verification, the CIT granted the registration vide its order dated 08-12-2015 w.e.f. 01-04-2016 without recording the reasons for not acceding the University's request for grant of registration with retrospective effect from 01-04-1998. Before the CIT(A), assessee has placed all the relevant evidences with regard to the objects of the University and its activities and the CIT was satisfied with the statement of accounts and the activities conducted by the assessee but it has granted the registration from prospective date i.e., from 01-04-2016 and not from retrospective date i.e., from 01-04-1998 without recording reasons. Against this order, the assessee preferred the present appeal."

21. In the present case admittedly, the application of the assessee was pending since 1998, and no order was passed against the assessee for grant of registration, however, the Assessing Officer

continues to treat the assessee as a charitable entity for the period ending up to the assessment year 2013-14. In our considered opinion, once the registration application is pending before the Registration Authority under the Income Tax Act, then the assessee has the right to know the reasons within reasonable time for not according to the registration.

22. In the present case as mentioned hereinabove till date, no order had been passed by the lower authorities either accepting or rejecting the application of registration filed by the assessee on 12.05.1998; however it is undeniable that the assessee continues and imparts the education in the field of Homeopathic Medical College and Hospital and running Graduate, under Graduate and post Graduate courses under the name of M/s Mahavira Homeopathic Medical College and Hospital. In our considered opinion, though there is a lapses on the part of the assessee for not pursuing the registered application after the insertion of the amendment whereby the record of the registration was transferred from ITO to CIT(E) and thereafter .However the negligence on the part of the assessee cannot legalize the action on the part of the Assessing Officer/CIT(E) for not passing appropriate order on the application of registration dated 12.05.1998. Admittedly, until the assessment year under

consideration, the assessee continued to be treated as a charitable entity without any formal registration order by the lower authorities. Even in the assessment years under review, the Assessing Officer has not denied that the assessee is charitable and imparting education within the four corners of section 2(15) of the Income Tax Act.

23. In any case, the assessee's registration application should have been decided expeditiously and more particularly within the period of 6 months after the insertion of the amendment capping the time limit for grant of registration. Then the authorities are obliged to decide the application within 6 months. Failure on the part of the CIT(E) / ITO to decide the application, gave rise to crystallize right in favour of the assessee for treating the assessee, as deemed charitable society. The registration should have been considered to have deemed to have been granted to the assessee u/s 12AA of the Income Tax Act. Our view is fortified by the decision of the Hon'ble Supreme Court of India in the matter of Society for Prpmn. of Education, Allahabad 67 taxmann.com 264 (SC) (page 52 of the paper book) in our view, therefore the assessee is deemed to be registered u/s 12AA for all the assessment years 2014-15 to 2016-17 and till the registration is subsequently granted by the CIT(E) vide order dated 12.11.2020.

24. Another argument raised by the assessee before us was that the assessee had filed a second application for grant of registration on 21.08.2017 which was rejected by the CIT(A) vide order dated 27.02.2018 against the said rejection order; the assessee had filed an appeal before the ITAT. ITAT vide order dated 30.06.2020 in ITA No. 57/Asr/2018 had remanded back the matter to CIT(E).

25. Considering the direction and the material available on record. The Ld. CIT(E) vide order dated 12.11.2020 had granted the registration from the assessment year 2018-19 however, at the time of giving registration, CIT(A) in clause 12 had mentioned at page 34 of the paper book is as under:

“12. Litigation pending at any level before nay prior to Assessment Year 2018-19 will not have any impact by this order.”

26. We may further like to point out in view of the amended provisions inserted to Act u/s 12A by the Explanation, the registration can be granted retrospectively if the activities of the assessee continue that the same activities of the assessee. Recently in the matter of Vishwa MitterSekhri in ITA No. 75/Asr/2016 the Tribunal order dated 13.07.2021 relying upon the decision of the Jaipur,

Tribunal and Rajasthan High Court in the matter Shyam Mandir Committee has held in paragraph 28 to 29 is as under:

“28. In our considered opinion, the purpose of insertion of the new proviso in the act was to mitigate the hardship of the society/trust like assessee who were into charitable activities, and on account of some technical reasons, the registration has not been accorded or sought in time. Admittedly the assessee was running the educational institution and was having the requisite approval under section 10(23) for the year prior to the year under consideration and the assessee was granted the registration under section 12 A of the Act with effect from 25.9.2009. In the year under consideration, the assessee was neither having registration under section 12 A of the Act nor was having approval under section 10 (23) of the Act. However, the activities of the assessee continued to be charitable and there was no change in activities of the assessee. In our view the assessee, though was registered on 25.9.2009, however the assessee, was entitled to the benefit of section 11, 12 and 13 of the income tax Act for the assessment year 2007-08 under consideration in terms of the proviso to section 12 A of The Income Tax Act. For the above said purposes we may rely upon the decision of the coordinate bench in the matter of SHYAM MANDIR COMMITTEE, Jaipur v. ACIT, Sikar (supra) wherein one of the member(namely Judicial member) was a party, in the said decision it was held as under:

“5.1. For the purpose of adjudicating the additional ground, it is necessary to reproduce section 12A of the IT Act, which provides as under:-

“12A. Conditions for applicability of sections 11 & 12. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely :- (a) The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1 st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA. Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution, - (i) From the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons; (ii) From the 1 st day of the financial year in which the application is made, if the Commissioner is not so satisfied. Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1 st day of June, 2007. (aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1 st day of June, 2007 in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA. (b) Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. (2) Where an application has been made on or after the 1 st 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.”

The Finance Act No. 2 of 2014 has inserted the proviso to sub-section (2) of section 12A with effect from 1.10.2014. We are reproducing herein below sub-section (2) of section 12A first proviso, second proviso and third proviso for the sake of clarity. [Provided 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. 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.]” A bare reading of the proviso clearly provides that if at the time of grant of registration under section 12A the assessment proceedings are pending before AO and the object and activities of the Trust remain the same for such preceding assessment years, then the benefit of registration for sections 11 & 12 are required to be given to the Trust on the income derived from the property held under the Trust. In the present case as mentioned herein above, the appellant has filed application for grant of registration 16.03.2009 and the registration was directed to be granted by the order of the Tribunal with effect from 1.4.2008. The return of income was processed under section 143(1) on 13.3.2010 .The assessment order was passed on 26.12.2011 under section 143(3) read with section 147 of the IT Act and. Thus when the order was passed by the Tribunal on 28.01.2010 the assessment proceedings were pending before the AO. Therefore, the benefit of registration is required to be given for the preceding assessment years i.e. 2007-08. The Id. Counsel for the assessee relied upon the judgment of ITAT in ITA No. 503 to 506 & 569/Coch/2014 in the matter of SNDP Yogam vs. The ADIT (Exemption) wherein in para 7, 7.1 and 7.2 it has been held as under :- 7. We have carefully considered the rival submissions, perused the relevant materials on record and the case law on which the learned AR had placed strong reliance. The primary issue for our consideration is whether the CIT (A) is justified in confirming the AO’s action, for all the assessment years under consideration, in assessing the entire incomes of the assessee from all the institutions at the maximum marginal rate. In this context, it is appropriate to refer the amendment to section 12A(2) of the Act and its proviso. For ready reference the same is reproduced below: (Section 12A(2) & its proviso.

“(2) Where an application has been made on or after the 1 st 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 ITA No. 651/JP/2013 Shree Shyam Mandir Committee vs. ACIT immediately following the financial year in which such application is made:” [Provided 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. 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.]”

We have gone through the provisions of the Act and have also gone through the record. In our view, the proviso to sub-section (2) of section 12A has retrospective application and has been inserted in the Act to remove the hardship of the charitable trusts/institutions. Admittedly, in the present case when the registration was granted on 05.03.2010 with effect from 01.04.2008, the assessment proceedings for 2007-08 were pending before the AO. Therefore, the assessee cannot be treated as Association of Persons and is required to be treated as Registered Trust under section 12A of the IT Act. We find no reason to disagree with the judgment passed by the coordinate Bench (supra) where the coordinate bench has given the benefit of registration of the trust for the A.Y. 2006-07 though the application for registration was granted on 29.07.2013.

Respectfully following the judgment of the coordinate bench, we are of the view that the assessee before us is also required to be treated as Registered Trust for the A.Y. 2007-08 de hors the direction issued by the Tribunal to grant the registration with effect from 1.4.2008, in the light of new amendment referred herein above and also in view of the judgment of coordinate bench. We may like to add that though the Tribunal vide order dated 28.1.2010 has directed to grant the registration from 1.4.2008, in our view when there is a conflict between the order passed by the Tribunal and the subsequent legislature which is beneficial in nature, the subsequent legislature and the benefit flowing from the subsequent legislature should be given to the assessee. It is none of the party's case that the assessment proceedings have reached to the finality and, therefore, in view of the change in law, the beneficial legislation should be applied to the benefit of the assessee. Even otherwise, in the matter of Howrah Municipal Corporation & Ors. v. Ganges Rope Co. Ltd. & Ors., (2004) 1 SCC 663 it has been held by the Hon'ble Supreme Court that if there is a change in law during the pendency of the appeal, the change in law should be

*made applicable and should be applied to the pending appeals. In the present case the appeal is pending before the Tribunal for the year 2007-08 and there is a change in law with effect from 1.10.2014. **Therefore, the benefit which are available to the assessee on account of insertion are required to be extended or passed on to the assessee.** We, therefore, hold that the assessee is entitled to benefit under section 11 & 12 for the A.Y. 2007-08 on account of the fact that the assessment proceedings are pending. In view thereof, now we will deal with the reopening under section 147/148 of the IT Act.”*

29. In the light of the above said discussion we are of the opinion that, the benefit of section 11 and 13 of the income tax Act considering the assessee as charitable institution should be accorded. In the result the 2nd ground raised by the assessee is liable to be allowed.”
27. In light of the above, we held that the assessee is entitled to the registration u/s 12AA on the basis of deeming provision and also on account of Explanation to section 12A.
28. In the result, the assessee’s grounds of appeal are required to be allowed for all the three appeals, however, for computation for all these assessment years; we remand the matter back to the file of the Assessing Officer with a direction to the Assessing Officer to treat the assessee as a charitable institution for all the assessment years. The assessee is directed to produce the books of account etc., before the Assessing Officer and the Assessing Officer, after considering the assessee as a charitable institution, shall grant the benefit of sections

11 and 13 to the assessee in accordance with law and complete the assessment.

29. In the result, all the three appeals of the assessee is partly allowed.

Order pronounced in the open court on 21/09/2021.

**Sd/-
(DR. M.L. MEENA)
ACCOUNTANT MEMBER**

**Sd/-
(LALIET KUMAR)
JUDICIALMEMBER**

Dated 21/09/2021

GP/Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

True Copy
By Order