

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.288/PUN/2020

निर्धारण वर्ष / Assessment Year : 2016-17

Sansthan Shree Eknath Maharaj Vishwastha Mandal At Post Paithan, Tal. Paithan, Dist. Aurangabad PAN : AACTS2993L	Vs.	ITO (Exemption), Aurangabad
Appellant		Respondent

Assessee by Shri Prasad S Bhandari
Revenue by Shri M.G. Jasnani

Date of hearing 02-02-2022
Date of pronouncement 03-02-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by CIT(A)-2, Aurangabad on 05.12.2019 in relation to the assessment year 2016-17.

2. The assessee is aggrieved by the denial of exemption u/s 11 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) which was denied by the authorities below on the ground that the registration granted subsequently by the ld. CIT(E) was not operative to the year under consideration.

3. Tersely stated, the facts of the case are that the assessee-trust filed its return declaring Nil income on 17.01.2017 after claiming the benefit of exemption u/s 11 of the Act. The AO observed that the registration was granted by the Id. CIT(E) u/s 12AA to the assessee on 16.05.2017. The assessee's contention that section 12A(2) entitled it to the exemption for the year under consideration also, did not find favour with the AO, who held that for availing such a benefit, the assessment proceedings must be pending when the registration is granted. Since notice u/s 143(2) of the Act for the instant year was issued for the first time on 20.09.2017, i.e. after the grant of registration, no such exemption could be allowed. The Id CIT(A) echoed the assessment order on this count.

4. I have heard both the sides in Virtual Court and gone through the relevant material on record. There is no dispute on the fact that the assessee filed its return of income on 17.01.2017 for the year under consideration. The approval was granted by the Id. CIT(E) u/s 12AA on 16.05.2017. At this stage, it is relevant to take note of the mandate of sub-section (2) of section 12A granting benefit of exemption to the years prior to the grant of registration, which provides through the second proviso that : `where registration has been granted to the trust or institution under section

12AA or section 12AB, 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.’ A bare perusal of the proviso amply transpires that where the subsequent registration has been granted u/s 12AA, then the benefit of such registration will also be conferred to earlier years for which assessment proceedings are pending before the AO as on the date of such registration. The crucial words used in the second proviso are the pendency of *assessment proceedings*. To put it simply, if the assessment proceedings are pending before the AO when the registration is granted by CIT(E), the registration so granted will also have effect and the AO will be obliged to grant exemption u/s 11 in respect of such assessment year. The authorities below have taken note of the mandate of the second proviso but interpreted the term ‘assessment proceedings’ as commencing with the issuance of notice u/s 143(2) of the Act. That is the *raison d`etre* for denying the benefit of exemption in

the extant case on the premise that notice u/s 143(2) was issued on 20.09.2017 and by that time the registration had already been granted by the Id. CIT(E) on 16.5.2017. In my opinion, the connotation of commencement, continuation and termination of 'assessment proceedings' is fairly settled by authoritative pronouncement from the highest Court of the land in *Auto & Metal Engineers And Ors. Vs. Union of India & Ors. (1998) 229 ITR 399 (SC)* in which it has been held by the Hon'ble Summit Court that the process of assessment commences with the filing of return or by issuance by the AO of notice to file a return and it culminates with the issuance of notice of demand u/s 156 of the Act. It is thus, manifest that the assessment proceedings commence with the filing of return and not when notice is issued for the first time u/s 143(2). Issuance of such a notice and passing of assessment order are parts of entire assessment proceedings which commences with the filing of return.

5. Adverting to the facts of extant case, I find that the assessee filed its return for the year under consideration on 17.01.2017. The approval was granted by the Id. CIT(E) u/s 12AA on 16.05.2017. It is, *ergo*, glaringly patent that the assessment proceedings for the year under consideration, which commenced with the filing of

return on 17.01.2017, were pending on the date of grant of registration by the Id. CIT(E) on 16.05.2017. I, therefore, hold, in principle, that the assessee is eligible for exemption u/s 11 of the Act.

6. It is observed that the AO denied the benefit of exemption u/s 11 on the threshold by holding that the registration granted to the assessee was not applicable for the year under consideration. He, therefore, did not examine the amount of income actually entitled to exemption in terms of section 11 on merits. Since I have set aside the view of authorities below on the question of availability of exemption, I set aside the impugned order and restore the matter to the file of the AO for examining the amount of claim of exemption u/s 11 on merits. Needless to say, the assessee will be accorded a reasonable opportunity of hearing.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 3rd February, 2022.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 3rd February, 2022
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Aurangabad
4. The CIT-Exemption, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे /
DR 'SMC', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	02-02-2022	Sr.PS
2.	Draft placed before author	03-02-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*