

**आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, CHENNAI**  
**BEFORE SHRI C.M. GARG, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.2802/Chny/2019**  
**(निर्धारण वर्ष / Assessment Year : 2009-10)**

C.R. Anand Educational Trust, No. 34, Ganeshapuram, K. Pudur, Madurai – 625 007.	V S	ITO, Exemption, Madurai.
PAN No. : <b>AABTC1675J</b>		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri S. Sankaralingam, CIT (Rtd) and Shri B. Gopalakrishnan, Advocate AR
राजस्व की ओर से / Revenue by	:	Shri G. Johnson, Addl. CIT DR

सुनवाई की तारीख / Date of Hearing	:	15/02/2022
घोषणा की तारीख / Date of Pronouncement	:	22/02/2022

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

This appeal of the assessee is directed against the order of Commissioner of Income Tax (Appeals) -2, Madurai dated 29.07.2019 for the assessment year 2009-10.

2. The brief facts of the case are that the assessee is a charitable educational trust formed on 02-12-2008 and registered under Trust Act and running an engineering college by name C.R. Anand Engineering College at Madurai. The assessee filed a return of income on 09.05.2011 admitting Nil income. The trust also applied for registration under section 12AA of the Act on 05.02.2010 and the

same was rejected by CIT by the order dated 03.08.2010. On appeal, the ITAT set aside the above order for reconsideration by CIT. The learned CIT again rejected the application on the ground that the assessee did not respond to notices. Again on appeal before the ITAT, the Tribunal set aside the above order back to the file of the CIT. The learned CIT granted registration under section 12AA on 21-06-2013 with effect from AY 2010-11. In the meantime the assessing officer reopened the assessment for AY 2009-10 on 30-08-2010 on the ground that the assessee trust was not entitled to registration for AY 2009-10. The assessing officer completed the assessment on 18-07-2011 by denying the benefit of section 11 and 12 on the ground that the assessee was allowed registration only from AY 2010-11 and not for this assessment year.

3. On appeal, the CIT (Appeals)-I, Madurai issued a remand order and the ITO, Exemption, Madurai submitted remand report dated 31.12.2015 on which the CIT (Appeals) sought further clarification and the same was submitted on 26.06.2015 as mentioned in para 6 of the Appellate order. However, copies of the above remand order and remand reports were not supplied to the assessee's representative for his objection/comments and, therefore, the impugned order suffers from violation of natural principals of justice. The CIT (Appeals) confirmed the order on the

ground that the assessee was not granted registration for this assessment year by relying on the Honourable Supreme Court decision and the Honourable Delhi High Court decision cited in the appeal order and, therefore, the assessee preferred the present appeal against the order of the CIT (Appeals) before the Tribunal.

4. The grievances of the assessee in the form of grounds of appeal read as under:

1. *The impugned order opposed to the facts and contrary to law and therefore liable to be quashed.*
2. *The learned CIT (Appeals) failed to consider the amendment by way of insertion of three provisos to section 12A (2) by Finance Act( No. 2) with effect from 1-10-2014, which shall have retrospective effect being a beneficial amendment as explained in various judicial pronouncements.*
3. *The learned CIT (Appeals) failed to note that the registration granted on 21-06-2013 should be treated as granted on 3-08-2010 as order giving effect to the appeal order modified the earlier order.*
4. *The learned CIT (Appeals) ought to have held that as the registration was treated as granted on 03.08.2010, the assessing officer could not have reopened the assessment under section 1.48 on 30-08-2010 by virtue of the second proviso to section 12A(2) which barred the reopening merely because registration was not available for earlier assessment year and therefore should have cancelled the reassessment proceedings.*
5. *Even otherwise the learned CIT (Appeals) ought to have held that the appeal proceedings are only continuation of the assessment proceedings and therefore the first proviso to section 12A(2) is applicable and therefore should have granted registration for this assessment year and deleted, the addition made by the assessing officer.*
6. *The learned CIT (Appeals) failed to appreciate the intent and purpose of the amendment by way of insertion of three provisos to section 12A (2) by Finance Act ( No 2) with effect from 1-10-2014, which shall have retrospective effect being a beneficial amendment as explained in various judicial pronouncements.*

7. *The learned CIT (Appeals) erred in passing the impugned order without supplying the copies of the remand reports submitted by the AO and therefore the order is liable to be quashed for violation of principles of natural justice.*
8. *The appellant prays for leave to add, amend, alter or modify any or all the grounds before or at the time of hearing.*

5. Ld. AR of the assessee filed paper book containing pages 1 to 32 and drew our attention to page 5 of the paper book wherein chronology of events have been mentioned, the same reproduced as under:

#### **CRHONOLOGY OF EVENTS**

- |   |                   |
|---|-------------------|
| 1. <i>Trust Created on</i>  | <i>02.12.2008</i> |
| 2. <i>Application for Registration Filed on</i>                           | <i>05.02.2010</i> |
| 3. <i>Rejection order of Registration by CIT</i>                          | <i>03.08.2010</i> |
| 4. <i>Notice u/s.148 issued by AO</i>                                     | <i>30.08.2010</i> |
| 5. <i>Reassessment Order u/s.143(3) r.w.s147 passed on</i>                | <i>18.07.2011</i> |
| 6. <i>Date of order of the ITAT setting aside the order of CIT</i>        | <i>01.08.2011</i> |
| 7. <i>Date of filing of appeal against reassessment order</i>             | <i>23.08.2011</i> |
| 8. <i>Date of order of CIT again rejecting the registration</i>           | <i>21.10.2011</i> |
| 9. <i>Date of order of the ITAT setting aside the order of CIT</i>        | <i>14.12.2012</i> |
| 10. <i>Date of order of CIT granting registration w.e.from AY 2010-11</i> | <i>21.06.2013</i> |
| 11. <i>Date of order of CIT(A) dismissing the appeal</i>                  | <i>29.07.2019</i> |

Ld. AR further submitted that when the AO initiated proceedings u/s.148 of the Act, the registration u/s.12A of the Act had not been granted to the trust. Even when the AO completed the reassessment

proceedings, and passed the assessment order on 18.07.2011 the registration had not been granted. But when the CIT(A) passed the appellate order on 29.07,2019, the registration granted on 21.06.2013, was in place, accordingly the Ld CIT(A) should have cancelled the reassessment proceedings or at least he should have allowed exemption u/s.11 & 12 of the Act. The CIT(A) has relied on the decision of the Hon'ble Supreme Court in the case of U.P. Forest Corporation (2008) 297 ITR 1 and the decision of Hon'ble Delhi High Court in the case of Pt. Kanahya Lal Punj Charitable Trust, 297 ITR 66 but these decisions were rendered before the amendment by insertion of proviso to section 12A(2) by Finance Act (No.2) 2014, and, therefore, it is not applicable. It was also submitted by the Id. AR of the assessee that the CIT(A) has nowhere referred to the above amendment in the impugned order, thereby coming the mistake of applying a decision which was no longer applicable in view of the above amendment. Accordingly, Id. AR of the assessee submitted that the CIT(A) ought to have held that as the registration was treated as granted on 03.08.2010, the AO could not have reopened the assessment under section 148 of the Act on 30.08.2010 by virtue of the first proviso to section 12A(2) which barred the reopening merely because registration was not available for earlier assessment year and, therefore, should have cancelled

the reassessment proceedings. Finally, Id. AR submitted that the impugned order deserves to be quashed.

6. On the other hand, Id. Sr. DR relied on the orders of the authorities below and pointed out that the reassessment order u/s.143(3) r.w.s.147 of the Act was passed on 18.07.2011 and registration u/s.12A of the Act was granted to assessee on 21.06.2013 w.e.f. A.Y.2010-2011, therefore, in the year under consideration i.e. A.Y.2009-10, the assessee was not having registration u/s.12A of the Act. He also contended that the first proviso to section 12A(2) of the Act cannot be applied to the present assessee as on the date of grant of registration i.e. on 21.06.2013 no assessment proceedings were pending before the AO, therefore, the registration u/s.12A of the Act cannot be given effect in A.Y.2009-2010.

7. Placing rejoinder to the above, the Id. Counsel relied on para 30 of the order of ITAT Amritsar Bench dated 21.02.2017 passed in M.A.Nos.1, 2 & 3/ASR/2017 in the case of St. Joseph Convent School Vs. ACIT (arising out of ITA Nos.746, 747 & 748/ASR/2013, order dated 18.03.2014) and submitted that the registration was granted on 21.06.2013 and the Id. CIT(A) decided appeal on 29.07.2019, therefore, the assessment proceedings has to be deemed as proceedings as the appellate proceedings are in

continuation of assessment proceedings. Therefore, first proviso to Section 12A(2) of the Act is applicable to the present case.

8. Having heard to the rival parties and considering the relevant materials available on record, we find in the instant case that the assessee trust was created on 02.12.2008. Its first assessment was done by Ld. AO u/s. 148 on 18.07.2011, however, while passing the re-assessment u/s. 143(3) r.w.s. 147 of the Act, the assessee was not in a possession of registration u/s. 12AA of the Act. Accordingly, the AO has disallowed the exemption u/s. 11 & 12 of the IT Act and treated the assessee as an AOP and applied the rates applicable and assessed the income of Rs. 1,43,48,060/- and raised the payment of Rs.70,58,490/-. Aggrieved thereby the assessee filed an appeal with the CIT(A), Madurai.

9. On perusal of the facts and records available and after considering the contention of the parties, it is clear that CIT, Madurai granted registration on 21.06.2013, it goes to modify his earlier order dated 03.08.2010 in which he rejected the registration, meaning thereby the registration is deemed to have been granted on 03.08.2010 from A.Y.2010-11. On further perusal of the amendment brought to the Finance (No.2), Act, 2014 by inserting first proviso after subsection (2) to Section 12A of the Act w.e.f. 01.10.2014, it is amply clear that the legislature in its wisdom has provided that

where the registration has been given to the trust or institution u/s.12AA of the Act, then, the provisions of Sections 11 & 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.

10. Before us, Id. AR relied on the decision of the Amritsar Tribunal in the case of St. Joseph's Convent School Vs. ACIT, M.A. No.1, 2 & 3/ASR/2013, order dated 21.02.2017 (arising out of ITA Nos.746, 747 & 748/Asr/2013, order dated 18.03.2014), wherein the Tribunal at para 30 and 31, held that when the impugned orders were passed after the respective dates of grant of registration, subsequent grant of registration operate retrospectively for the relevant assessment year under consideration. For more clarity, the para 30 and 31 of the said order are read as under:

*30. This brings us to the next question, i.e., whether the assessment proceedings "pending before the Assessing Officer", as stated in the first proviso to [Section 12A\(2\)](#) can be taken as "pending in appeal", or, in other words, whether proceedings pending in appeal can be taken to be proceedings pending before the Assessing Officer. This issue also stands answered in favour of the assessee by 'Shreee Bhanushali Mitra Mandal Trust', (supra), wherein, it was held that appeal is a continuation of the original proceedings and assessment proceedings pending before an appellate authority should be deemed to be "assessment proceedings pending before the Assessing Officer" within the meaning of [Section 12A](#). 'SNDP Yogum', (supra), is to the same*

*effect. Again, no contrary decision has been brought to our notice. Accordingly, it is held that the appellate proceedings before the appellate authorities are deemed to be assessment proceedings pending before the Assessing Officer.*

*31. In all these cases, the impugned orders were passed after the respective dates of grant of registration. Thus, we hold that subsequent grant of registration in all these cases operate retrospectively for all the relevant years under consideration.*

11. In the instant case also the appellate proceedings before the appellate authorities are deemed to be assessment proceedings pending before the Assessing Officer. Accordingly, respectfully following the above order of Amritsar Bench of the Tribunal in the case of St. Joseph's Convent School (supra), we hold that the subsequent grant of registration will operate retrospectively for the assessment year under consideration also i.e. A.Y.2009-2010 as the appeal before the CIT(A) against reassessment order dated 18.07.2011 was pending before CIT(A) which was decided on 29.07.2019 and on the date of grant of registration u/s.12A of the Act i.e. on 21.06.2013, the first appeal was pending which has to be considered as in continuation of reassessment proceedings. Therefore, respectfully following the order of the ITAT Amritsar Bench in the case of St. Joseph's Convent School. (supra), we hold that the assessee/appellant trust was entitled to enjoy benefits of registration u/s.12A of the Act w.e.f. A.Y.2009-2010 under the benefit of first proviso to Section 12A(2) of the Act inserted by the Finance Act (No.2), 2014 w.e.f. 01.10.2014. The authorities below

have decided the matter considering that the assessee was not having registration u/s.12A of the Act for A.Y.2009-2010 but as per foregoing discussion, we have reached to a logical conclusion that the benefit of registration u/s.12A of the Act is available for the assessee for A.Y.2009-2010 also after insertion of first proviso to Section 12A(2) of the Act. Therefore, the orders of the authorities below are set aside and the case is restored back to the file of the AO for *de novo* reassessment keeping in view that the assessee was entitled to have benefit of registration u/s.12A of the Act for A.Y.2009-2010. In view of the above, we allow the appeal of the assessee with the direction to the AO as noted above.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the court on 22/02/ 2022.

**Sd/-**  
**(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

Chennai; दिनांक Dated 22/02/2022

Prakash Kumar Mishra, Sr.P.S.(on tour)

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

1. अपीलार्थी / The Appellant-  
C.R. Anand Educational Trust,  
No. 34, Ganeshapuram,  
K. Pudur, Madurai – 625 007.
2. प्रत्यर्थी / The Respondent-ITO,Exemption, Madurai
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Chennai / DR,  
ITAT, Chennai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)  
ITAT Chennai Benches, Chennai