

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.47/PUN/2020  
निर्धारण वर्ष / Assessment Year : 2008-09

Vishwabharati Academy,  
Flat No. 201, 2<sup>nd</sup> Floor,  
Lotus Res., Plot No. 5,  
Opp. Lane to Joshi's Railway Museum,  
Kothrud, Pune – 411038

PAN : AAATV9417C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Dy. Commissioner of Income Tax,  
Circle – 7, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhay Shastri

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 20-09-2022

घोषणा की तारीख / Date of Pronouncement : 30-09-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 27-08-2019 passed by the Commissioner of Income Tax (Appeals)-10, Pune [‘CIT(A)'] for assessment year 2008-09.

2. I find that this appeal was filed with a delay of 80 days. The assessee filed notarized affidavit dated 13-01-2020 explaining the said delay. On perusal of notarized affidavit and hearing both the parties, I find

that the reasons stated by the assessee are bonafide which really prevented the assessee to file the present appeal in time. Therefore, the delay of 80 days is condoned.

3. The only issue is to be decided is as to whether the CIT(A) justified in confirming the order of AO in denying the exemption u/s. 11 of the Act treating the assessee as AOP instead of charitable trust in the facts and circumstances of the case.

4. The brief facts relating to the case are that the assessee is a trust formed on 09-04-2007 for educational purposes, for the benefit of all sections of society. According to the AO that the assessee applied for registration u/s. 12 of the Act vide application dated 19-02-2009 and the said application was rejected on 28-08-2009 by the CIT-IV, Pune. In reopening proceedings, the AO asked the assessee to explain why the receipts during the year should not be treated as taxable income in view of registration u/s. 12A of the Act. The assessee vide its letter dated 23-12-2010 explained the reasons for why the receipts should not be taxed. The AO considered the same and found explanation as not acceptable. He held the assessee is not eligible to claim exemption u/s. 11 of the Act. He determined the income of the assessee at Rs.10,23,447/- vide its order dated 28-12-2010 passed u/s. 143(3) r.w.s. 147 of the Act. The assessee challenged the same before the CIT(A). A contention was raised that the CIT-IV, Pune granted registration u/s. 12A of the Act in pursuance of directions of Tribunal and is eligible for exemption u/s. 11 of the Act. The CIT(A) held that year under consideration is not covered by the order of Tribunal as the registration u/s. 12A of the Act was granted w.e.f. 01-04-2008 i.e. A.Y. 2009-10. The CIT(A) confirmed the order of AO in denying

the exemption u/s. 11 of the Act. Aggrieved by the same, now, the assessee is before Tribunal by raising above said grounds.

5. Heard both the parties and perused the material available on record. Admittedly, the assessee filed application for registration u/s. 12A of the Act on 19-02-2009 concerning the preceding year F.Y. 2008-09 which was rejected by the CIT-IV, Pune. The Tribunal passed favourable order in favour of the assessee and in pursuance of which the CIT granted registration u/s. 12A on 26-03-2013 in terms of application dated 19-02-2009 concerning the F.Y. 2008-09 (A.Y. 2009-10). The CIT(A) discussed the non-applicability of exemption for the year under consideration i.e. A.Y. 2008-09 in para 6.1.2 which is as under for better understanding :

*“6.1.2 I have gone through the findings of the AO as emerging out from the assessment order and have also carefully perused the contentions put forth on behalf of the appellant during the course of appellate proceedings. It is apparent that the single issue of dispute that has arisen and needs to be adjudicated in these grounds of appeal pertains to the allowability of exemption u/ss. 11 to 13 of the Act to the appellant during the year under consideration. The dispute has arisen since AO was of the view that there is no active registration u/s 12A of the act with the appellant during the relevant previous year whereas the appellant's stand is that it had filed an appeal before the Hon ITAT Pune against the order of the then CIT IV Pune rejecting its application for grant of registration u/s 12A of the Act which had been decided in its favor vide order dated 01.03.2012 and subsequently the CIT-IV Pune had granted registration u/s 12A of the Act to the appellant vide order dated 26.03.2013. Prima facie, it appears that the appellant was not covered under the umbrella of exclusive provisions laid down u/ss. 11 to 13 of the Act for registered charitable trusts during the financial year 2007-08 since the registration u/s 12A of the Act so granted to it was w.e.f. 01.04.2008 i.e. from F.Y. 2008-09 only. Hence, even if the order of the Hon'ble ITAT Pune and consequent order of the CIT-IV Pune dated 26.03.2013 giving effect to Hon'ble ITAT's order is considered, it could not directly benefit the appellant since the said order granting registration u/s 12A of the Act to the appellant does not cover the period under consideration.”*

6. On a careful examination of above para, I do not find any infirmity in the finding recorded by the CIT(A) and the ld. AR was not disputed the facts therein. Therefore, I hold that the registration granted u/s. 12A of

the Act in response to the application dated 19-02-2009, is not application to the year under consideration i.e. A.Y. 2008-09.

7. Further, an alternative argument was raised before the CIT(A) regarding the applicability of proviso to sub-section (2) of section 12A of the Act, I note that the CIT(A) also discussed the same in the impugned order at pages 13 and 14 which are as under for better understanding :

*"An alternate contention has also been put forth by the appellant's A.R. during the course of appellate proceedings contending that the provisions of section 12A(2) of the Act, wherein it is stated that registration granted in subsequent years is applicable to those preceding years as well where assessment proceedings are pending, need to be applied in its case and as such the exemption granted even from 01.04.2008 would benefit it since the same was granted on 26.03.2013 when the appellate proceedings in the instant case were pending. In this regard, the appellant, placing reliance on the judgment of the Hon'ble Kolkata Tribunal in the case of St. Xaviers School Burdwan (supra) and stating that the appellate proceedings are in continuation to original proceedings & that the power of CIT (Appeals) is co-terminus with that of the AO, further contended that the pendency of appellate proceedings in its case as on date of grant of registration would amount to being 'pending before the Assessing Officer' and as such its case is covered by the proviso to section 12A(2) of the Act. At this juncture, I find it relevant to reproduce the said proviso for more clarity and better understanding on the issue involved.*

*"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"*

*The proviso of section 12A of the Act as highlighted by the appellant in its submission before me during the course of appellate proceedings and as reproduced above would also not be beneficial to it for the reasons enumerated hereinafter. Firstly, the said proviso has been introduced only w.e.f. F.Y. 2014-15 vide Finance Act 2014 and does not cover the period under consideration. Also, it is observable that the order of the CIT-IV Pune granting registration to the appellant u/s 12A of the Act w.e.f. 01.04.2008 was passed on 26.03.2013 itself that means even prior to the introduction and application of proviso to section 12A(2) of the Act and hence also no retrospective benefit could be derived by the appellant merely on the grounds that such proviso is placed in the Act as on date. Secondly, even if considering the benevolent provisions laid down in the Act for computation of income of registered trusts and the intention of the Legislature to provide benefits to genuine trusts, it is considered that the said provisos" are applicable to the appellant for the year under consideration, then also no advantage can be derived by it since it does not satisfy the conditions laid down under the said proviso for applicability of provisions of sections 11 & 12 of the Act. As per the said proviso, if the registration to trust has been granted u/s 12AA of the Act then benefit of sections 11 & 12 of the Act could*

*also be extended to the prior assessment years for which assessment is pending before the AO. It is an indisputable fact emerging out from the material available on record that the registration u/s 12AA of the Act was granted to the appellant w.e.f. A.Y. 2009-10 vide CIT-IV Pune's order dated 26.03.2013 only whereas the assessment proceedings in its case for the year under consideration had already been completed by the AO u/s 143(3) r.w.s. 147 of the Act on 28.12.2010 itself. As such, no assessment proceedings for the year under consideration were pending before the AO as on date of grant of registration u/ s 12AA of the Act, therefore, the said provisos would not be applicable to the appellant and benefit of sections 11 & 12 of the Act cannot be extended to the appellant for the relevant previous year.”*

8. On careful examination of the said finding, I note that admittedly the said proviso was introduced in Finance Act, 2014 w.e.f. F.Y. 2014-15 (A.Y. 2015-16). Since, the assessment year under consideration is A.Y. 2008-09, the CIT(A) held the said proviso is not applicable on the facts on hand. For the sake of brevity and repetition, I am not recording the separate finding on the same, but however, I agree with the findings of the CIT(A) which were reproduced here-in-above. Therefore, I do not find any infirmity in the order of CIT(A) regarding the non-applicability of proviso to sub-section (2) of section 12A of the Act.

9. Further, I note that the assessee also contended the benefit of getting exemption u/s. 11 should be extended to the prior assessment years which are pending before the AO also placed reliance in the case of St. Xaviers School Burdwan in ITA Nos. 2101 to 2105/Kol/2016 of Kolkata Tribunal. The CIT(A) answered the same by holding that no assessment for the year under consideration was pending before the AO as it was already completed on 28-12-2010. As discussed above that the CIT-IV, Pune granted registration in pursuance to the order of Tribunal on 26-03-2013 relevant to the assessment year i.e. A.Y. 2009-10, but not applicable to the year under consideration. Therefore, when there is no registration u/s. 12A of the Act for the year under consideration, the assessee is not entitled

to claim benefit of exemption u/s. 11 of the Act. Therefore, I find no infirmity in the order of CIT(A) in confirming the order of AO in denying the exemption u/s. 11 of the Act in the absence of registration u/s. 12A of the Act. Thus, the grounds raised by the assessee fails and are dismissed.

10. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 30<sup>th</sup> September, 2022.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> September, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur
4. The Pr. CIT-1, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune