

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.290/AHD/2022  
निर्धारण वर्ष/Asstt. Year:2012-2013

Shree Vasupujya Swami Gruh Chaitya Samiti, F-13, Mehul Society No.2, Subhanpura, Vadodara.  <b>PAN: AAIT54999L</b>	Vs.	Income Tax Officer, Ward(Exemption), Vadodara.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Deepak Shah, A.R
Revenue by :	Shri Atul Pandey, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **12/10/2022**  
घोषणा की तारीख / **Date of Pronouncement**: **31/10/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi, dated 25/05/2022 arising in the matter of assessment order passed under s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

1. *The NFAC erred in law and in the facts of the case in confirming the order of the AO in not granting benefit of registration u/s 11 and 12 of the act in view of the 2<sup>nd</sup> proviso to S. 12A(2) of the act.*

2. *The NFAC erred in law and in the facts of the case in confirming the order of the AO in disallowing exemption of Rs. 7,67,010/- u/s 11(1)(d) of the act.*

3. *The NFAC erred in law and in the facts of the case in confirming the order of the AO in not allowing deduction of expenses of Rs. 4,89,572 towards donation.*

4. *The NFAC erred in law and in the facts of the case in confirming the order of the AO in not computing the income of the appellant as per the accounting principles.*

3. The interconnected issue raised by the assessee in this appeal is that Id. CIT(A) erred in not granting exemption u/s 11 and 12 of the Act and accordingly sustaining the addition of Rs. 7,67,010/- and further disallowing the deduction of expenses of Rs. 4,89,572/- against the donation receipt.

4. Briefly stated facts are that the assessee in the present case is a religious trust and claiming exemption u/s 11 of the Act. The assessee during the year has shown a receipt of Rs. 16,14,652/- and applied the income towards its object for Rs. 15,54,529/- only. The AO on verification found that the bank of the assessee was credited for Rs. 19,59,914/- out of which an amount aggregating to Rs. 11,92,904/- shown as income whereas the remaining amount of Rs. 7,67,010/- was shown as corpus fund being "Dedraya Fund A/c". However, the AO during the assessment proceedings observed that the assessee was not registered under section 12A of the Act, therefore corpus fund is not eligible for deduction u/s 11(1)(d) of the Act and disallowed the claim of the assessee made u/s 11(1)(d) of the Act for Rs. 7,67,010/- and added to the total income of the assessee.

5. The AO also observed that the assessee claimed deduction under section 11 of the Act for Rs. 4,89,572/- being expenses towards its object. However, the AO disallowed the same for the reason that the assessee is not registered under section

12A of the Act, hence not entitled to get the benefit of section of 11 and 12 of the Act.

6. Aggrieved, assessee preferred an appeal before Id. CIT(A) who also confirmed the action of the AO by holding that the assessee was not registered under the provision of section 12A of the Act

7. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before me.

8. The learned AR before me submitted that the registration under section 12 A of the Act was pending during the assessment proceedings and therefore the assessee should be allowed the benefit of exemption under section 11 of the Act.

9. On the hand, the learned DR before me vehemently supported the order of the authorities below.

10. I have heard the rival contentions and perused the material available on record. In the instant case, the AO denied the exemption claimed by the assessee u/s 11 of the Act on the reason that the assessee was not registered u/s 12AA of the Act at that point of time. Therefore, the AO treated corpus donation of Rs. 7,67,010/- as income and also disallowed the donation expenses of Rs. 4,89,572/- only. The view taken by the AO was subsequently confirmed by the Id. CIT(A).

10.1 Regarding the non-availability of registration certificate u/s 12AA of the Act, we note that the assessee has applied for registration u/s 12AA of the Act which was accorded by the Id. CIT(exemption) vide order dated 23-09-2021. The copy of the certificate granted u/s 12AA of the Act is available on record. On perusal of the same, it was noted that the same is effective from the AY 2022-23. Now the issue arises whether the exemption u/s 11 can be granted on the basis of the certificate

issued in the F.Y. 2021-22. In this regard, we note that there was an amendment in the first proviso of Section 12A(2) of the Act stating that the provision of section 11 and 12 shall be made applicable for the assessment year pending before the AO as on the date of registration. However, the courts have held that such amendment is applicable retrospectively even the proceedings are pending before the higher authorities. In this regard, we find support and guidance from the order of Amritsar Tribunal in the case of St. Jude's Convent School reported in 77 taxmann.com 173, wherein it was held as under:

*30. This brings us to the next question, i.e., whether the assessment proceeding "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 Shree 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 Yogam (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.*

10.2 In this regard we also find support and guidance from the judgment of Hon'ble Gujarat High Court in case of CIT vs. Mayur Foundation reported in 274 ITR 562 where it was held as under:

*When the matter was pending before the Tribunal by way of an appeal it could be said that the assessment proceeding was pending. The assessing authority is empowered and is duty bound, to pass an order giving effect to the order of the Tribunal for the purposes of assessing the tax liability of the assessee for the assessment year which was under consideration before the Tribunal. In these circumstances, it could not be contended by the revenue that the assessment proceedings came to an end when the assessment order was framed.*

*The proceedings before the Tribunal are meant to correctly assess the tax liability of an assessee. If this be so, it follows that the assessment proceedings cannot be said to be complete and is pending till the appeal is heard and disposed of by the tribunal and the order of the Tribunal is given effect to by the assessing authority by computing the correct tax liability of an assessee. In other words, whether an assessee is required to pay tax or becomes entitled to a refund, would be ascertained by the assessing authority after giving effect to the order of the Tribunal.*

10.3 Thus, we hold that the proceedings pertaining to the A.Y. 2012-13 were pending at the time of registration under section 12A of the Act. Therefore, the benefit of exemption u/s 11 of the Act will be extended to the assessee. However,

such benefit provided under section 11 of the Act shall be subject to the provisions contained therein. In other words, the AO while granting the benefit of exemption provided under section 11 of the Act shall adhere the relevant provisions of the Act. Hence, the ground of appeal of the assessee is allowed for the statistical purposes. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

**Order pronounced in the Court on 31/10/2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
31/10/2022