

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

Sr.No.	ITA No.	Asstt. Year	Appellant	Respondent
1.	384/PUN/2019	2010-11	Maharashtra Ex-Servicemen Corporation Ltd.Raigad, Opp. National War memorial, Ghorpadi, Pune-411 001 PAN: AADCM 4072 G	The I.T.O. Ward 14(4), Pune
2.	245/PUN/2020	2017-18	-do-	The ITO Ward 14(1), Pune
3.	640/PUN/2019	2008-19	-do-	The I.T.O. Ward 14(4) Pune.
4.	641/PUN/2019	2009-10	-do-	-do-
5.	642/PUN/2019	2011-12	-do-	-do-
6.	643/pun/2019	2013-14	-do-	-do-
7.	644/PUN/2019	2014-15	-do-	-do-

Appellant by : Shri Kishor Phadke

Respondent by : S/Shri Ganesh Bare and Ramnath P. Murkude

Date of Hearing : 23-11-2022

Date of Pronouncement : 24-11-2022

ORDER

PER BENCH

This batch of seven appeals preferred by the assessee emanates from separate orders of the Id. CIT(A)-7, Pune dated 06-12-1018 for A.Y. 2010-11, dated 07-11-2019 for A.Y. 2017-18, dated 15-02-2019 for A.Y. 2011-12 & dated 06-12-2018 for A.Y. 2013-14, and separate orders of the Id. CIT(A)-9, Pune, dated 15-02-2019 for A.Y. 2008-09, A.Y. 2009-10, & 2014-15 as per the grounds of appeal on record.

2. The facts and circumstances and issues involved in all these appeals are absolutely identical and similar and therefore, these cases were heard together and are disposed of by this consolidated order.

3. That opening his arguments, the Id. Counsel for the assessee submitted that in the case of the assessee the Pune Bench of the Tribunal has passed an order in ITA No. 129/PUN/2021 dated 16-06-2021 wherein the issue before the Tribunal was whether the assessee is eligible to get registration u/s 12AA of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). In the said order, the Tribunal has remanded the matter back to the file of the Id. C.I.T. (Exemption) to re-adjudicate the issue on merits whether the assessee is eligible for registration u/s 12AA of the Act. It is the contention of the Id. Counsel that all these cases fixed before us for adjudication pertains to the assessments taken place prior to the order passed by Pune Bench of the Tribunal (supra). That whether now, the assessee would get registration u/s 12AA of the Act that would have a bearing on all these cases. Accordingly, he prayed that these matters may be remanded back to the file of Id. A.O with appropriate directions for re-adjudication as per law and based on the determination of the status of the assessee as regards the issue of grant of registration u/s 12AA of the Act. Accordingly, taking the totality of the facts and circumstances into consideration, the Id. A.O may pass necessary orders. The Id. D.R fairly conceded to these submissions.

4. We have heard the submissions of the parties in respect of all these appeals before us and have also considered the Pune Tribunal decision (supra) in assessee's case placed on record. The Pune Bench of the Tribunal in ITA No. 129/PUN/2021 (supra) observed and held as follows:

"9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the grant of registration u/s 12AA of the Act. We carefully gone through the MOA, we found that the appellant company is formed to provide reemployment to ex-servicemen etc. On perusal of clause set out in Memorandum of Association, we are unable to discern clause creating an interest in property in favour of the public for any of the object listed u/s 2(15) of the Act, which is sine qua non for creation of charity. In-fact, we may point out that covenant in the MOA does permit the appellant company to distribute the profits in the form of dividend amongst its members and does not set out a condition that the income earned by the appellant company shall be deployed for the objects of the company. This would make the appellant company a

commercial organization. However, the view of the Id. CIT (Exemption) that the appellant company is a commercial organization merely because it is generating huge revenue from year to year with mark-up on the cost of 10% to 12% cannot be upheld. The Id. CIT (Exemption) had not considered the matter in proper perspective. Therefore, in the interest of justice, the matter should be remanded back to the file of the Id. CIT (Exemption) for de-novo consideration of application on the touchstone of law laid down by the Hon'ble Supreme Court in the case of Ananda Social and Educational Trust vs. CIT, 272 Taxman 7 after giving due opportunity of being heard to the appellant. Thus, the grounds of appeal raised by the assessee are partly allowed for statistical purposes."

5. The Tribunal in the aforesaid decision has remanded the matter back to the file of the Id. CIT (Exemption). Therefore, it has to be seen what exactly is the status determined by the Id. CIT(Exemption) as regards to the assessee and whether the Id. CIT(Exemption) would grant registration u/s 12AA of the Act to the assessee or not. This decision thus certainly has a bearing on all these appeals placed before us. Therefore, without going into the merits of all these cases considering the submissions made before us and the aforesaid order of Pune Bench of the Tribunal (supra) in assessee's own case, we remand all these matters to the file of the Id. A.O to re-adjudicate the issue as per law on the basis of the findings of the Id. CIT (Exemption) determining the issue of grant of registration u/s 12AA of the Act vis-à-vis the assessee. The Id. A.O shall comply with the provisions of natural justice. Accordingly all the grounds of appeal in respect of these appeals are allowed for statistical purposes.

6. In the result, **all these appeals are allowed for statistical purposes.**

Order pronounced in the open Court on this 24th November 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 24th day of November 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A) 7/9, Pune
4. The Pr. C.I.T. 6, Pune
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune**/// TRUE COPY ///**

		Date	
1	Draft dictated on	23-11-2022	Sr.PS
2	Draft placed before author	23-11-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	24-11-2022	Sr.PS/PS
7	Date of uploading of order	24-11-2022	Sr.PS/PS
8	File sent to Bench Clerk	<u>24-11-2022</u>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		