

आयकर अपीलीय अधिकरण, 'ए' / SMC न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' /SMC BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT

आयकरअपीलसं./I.T.A.No.588/Chny/2022

(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s. Alpha Educational Trust No.2/310, Jeeva Street, Mondiamman Nagar, Red Hills, Chennai-600 052.	Vs	The DCIT (Exemptions), Chennai.
PAN: AACTA 9230A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. N.Arjunraj, C.A for Mr.S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. S.Chandrasekaran, JCIT

सुनवाईकीतारीख/Date of hearing	:	08.03.2023
घोषणाकीतारीख /Date of Pronouncement	:	10.03.2023

आदेश / ORDER

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1043261992(1) dated 31.05.2022. The assessment was completed by the DDIT (Exemptions)-II, Chennai, for the relevant assessment year 2011-12 u/s.143(3) r.w.s 147 of the Income Tax Act, 1961(hereinafter "the Act") vide order dated 24.03.2014.

2. The first jurisdictional issue raised by the assessee is with regard to reassessment and assumption of jurisdiction u/s.147 of the Act. At the outset, learned counsel for the assessee stated that he is not prosecuting this issue and

hence, same may be dismissed as not pressed. The DR has no objection for the same and accordingly, the said issue is dismissed as not pressed.

3. The only surviving issue is that the CIT(A) erred in confirming action of the Assessing Officer in not allowing claim of exemption u/s.11 of the Act holding that the assessee trust is not a registered trust u/s.12AA of the Act and treated the assessee as an AOP and taxed income at maximum marginal rate. For this issue, the assessee has raised various grounds which are argumentative and factual, hence, need not be reproduced.

4. Brief and admitted facts are that the assessee is a registered charitable trust running educational institution viz. Alpha Matriculation Higher Secondary School. The assessee is also conducting various charitable activities like giving scholarship to poor students, helping poor students to study in educational institution and engaging in various charitable activities under the name & style of Alpha Education Trust. The assessee filed its return of income for the relevant assessment year 2011-12 on 09.03.2012 claiming exemption u/s.11 of the

Act. The Assessing Officer denied claim of exemption and assessed the assessee as an AOP by observing in para 5 as under:-

“The Hon’ble Madras High Court in the case of New Life in Christ Evangelistic Association v CIT reported in (2000) 246 1TR 532 (Mad) has held that registration is mandatory for claiming exemption u/s.11 of the IT Act. The Hon’ble Supreme Court also in the case of UP Forest Corporation Vs. DCIT (2007) reported in 185 taxman 533 (SC) has held that, registration is a condition precedent for availing exemption. As the assessment is getting barred by limitation as on 31-03-2014 and at present as the trust is not registered u/s.12AA of the Act, the assessee is treated as AOP and the excess of income over expenditure is Rs.15,78,597/- is taxed at maximum marginal rates.”

Aggrieved, the assessee preferred an appeal before the CIT(A).

5. The CIT(A) also confirmed action of the Assessing Officer by holding that 2nd proviso to section 12A of the Act is prospective and not retrospective. For this, the CIT(A) observed in para 5.6 and 5.7 as under:-

“5.6 The reliance of the appellant on Para 8 of the Explanatory Notes to the Provisions of the Finance (No.2) Act, 2014 has been considered and it is found that it is not applicable in the appellant's case as these amendments have taken effect from 01.10.2014, whereas the relevant previous year in the instant case is Financial Year 2010-11 i.e. the period covering from 01.04.2010 to 31.03.2011. The assessment order u/s 143(3) of the I.T. Act has been passed on 24.03.2014. Therefore, the amendments in the form of proviso to section 12A of the I.T. Act are not applicable in the instant case and the appellant's reliance on these notes are misplaced and not relevant.

5.7 In view of the clear judgement of the Supreme Honourable

*Court in the case of UP Forest Corporation (2007) 165 taxmann 533(SC), in which it held that registration is a condition precedent for availing exemption and similar view was also upheld by the various High Courts, the appeal filed by the appellant is **dismissed** and the disallowance of Rs.15,78,597/- by the AO is upheld.”*

Aggrieved, now the assessee is in appeal before the Tribunal.

6. Before me, the learned counsel for the assessee argued that the assessee submitted Form No.10A regarding grant of registration u/s.12AA of the Act in the year 1991 and the same has not yet been disposed of. The learned counsel for the assessee relied on Hon'ble Supreme Court judgement in the case of CIT Vs Society for Promotion of Education (2016) 330 ITR 6 (SC) and stated that the Hon'ble Supreme Court has approved deemed registration u/s.12A/12AA of the Act in the event of non-disposal of application by the statutory authority within the statutorily prescribed time limit. The learned counsel for the assessee argued that this aspect was brought to the notice of the CIT/DIT (Exemptions) vide various petitions enclosed in the assessee's paper book. Therefore, he argued that by operation of law declared by the Hon'ble Supreme Court, registration u/s.12AA of the Act is available for the present assessee for the assessment year under consideration

and accordingly, prayed for allowance of appeal. The learned counsel for the assessee stated that assessment order passed on 24.03.2014, whereas order granting registration u/s.12AA of the Act w.e.f. 01.04.2011 was passed on 28.10.2015. The learned counsel filed complete dates and events in regard to creation of trust till date which reads as under:-

Sl. No	Date	Particulars
1.	01.11.1985	Creation of Trust
2.	13.12.2010	Amendment of the Trust Deed
3.	23.03.2011	1 st Application u/s 12AA of the Act before the CIT(E)
4.	30.09.2011	Order of the CIT(E) rejecting the 1 st application
5.	09.03.2012	2 nd Application u/s 12AA of the Act before the CIT(E)
6.	03.08.2012	Clarification sought by the CIT(E)
7.	27.08.2012	Reply to the CIT(E) for the clarification sought
8.	28.09.2012	Order of the CIT(E) rejecting the 2 nd Application u/s 12AA of the Act
9.	28.02.2013	ITAT, Chennai in the ITA No. 2157/MDS/2012 setting aside the order of the CIT(E) dated 28.09.2012 and directing the CIT(E) to decide afresh
10.	09.03.2012	Return of Income filed for the A.Y. 2011 - 12, declaring NIL
11.	11.12.2012	Notice u/s 148 issued
12.	06.01.2014	Reply to the notice issued u/s 148, requesting the return filed on 09.03.2012 to be treated as return u/s 148
13.	17.01.2014	Notice u/s 143(2) issued
14.	24.03.2014	Assessment Order passed u/s 143(3) of the Act assessing taxable total income at Rs.17,78,597/-
15.	09.06.2014	Form No. 35 filed against the assessment order passed u/s 143(3) of the Act dated 24.03.2014
16.	28.10.2015	Order u/s 12AA of the Act granting registration w.e.f. 01.04.2011
17.	31.05.2022	First Appellate Authority's order / Impugned Order passed u/s 250 of the Act

In term of the above, learned counsel stated that there are two facets of argument i.e., first, original application filed by the assessee is alive which was filed in 1991 by submitting Form

No.10A u/s.12A of the Act and which is still pending not adjudicated by the revenue authorities and the issue is covered by judgement of the Hon'ble Supreme Court in the case of CIT Vs Society for Promotion of Education (supra). Secondly, the proviso i.e. 2nd proviso to section 12AA of the Act has brought into by Finance (No.2) of the Act, 2014 w.e.f. 01.10.2014 is applicable retrospectively and not prospective. For this proposition, the learned counsel relied on the following decisions of co-ordinate Benches of this Tribunal:-

- i. ITAT.,Kolkatta Benches in the case of Sree Sree Ramkrishna Samity Vs. DCIT, Siliguri (2016) 156 ITD 746.
- ii. ITAT., Ahmedabad Benches in the case of Shree Bhanushali Mitra Mandal Trust Vs. ITO, Vapi (2016) 68 taxmann.com 250.
- iii. ITAT., Cochin Bench in the case of SNDP Yogam Vs. ADIT (Exemptions) (2016) 161 ITD 1.
- iv. ITAT., Bangalore Bench in the case of Vishvesvaraya Technological University Vs. CIT (Exemptions) (2018) 171 ITD 414.

7. On the other hand, learned Sr.DR relied on the order of the Assessing Officer and that of the CIT(A) and argued that registration was granted by CIT(Exemptions), Chennai vide order dated 28.10.2015 passed u/s.12AA of the Act granting registration w.e.f 01.04.2011 and the assessee's case does not fall within the assessment year 2011-12. Hence, he asked the Bench to confirm orders of the lower authorities.

8. After hearing rival contentions and going through case records, including case laws cited by the learned counsel for the assessee, I noted the fact that the assessee is a registered charitable trust running educational institution namely Alpha Matriculation Higher Secondary School. Admittedly, the assessee moved an application for registration before the CIT(Exemptions) in Form No.10A for granting registration u/s.12AA of the Act in the year 1991. This fact is admitted by the Revenue vide letter issued by the Assistant Commissioner (HQ) (Exemptions), O/o.Director of Income Tax (Exemptions), Madras vide letter No.DIT(E)/2(202)/91-92 dated 15.12.1992. Again, the assessee moved before the CIT(Exemptions) by filing

2nd application u/s.12AA of the Act on 09.03.2012 and this application was acted upon by the Revenue and allowed registration u/s.12AA of the Act by the CIT(Exemptions), Chennai vide order No.UR No.AACTA9230A/05/15-16/T-0052 dated 28.10.2015. This registration was granted retrospective w.e.f. 01.04.2011. Now, the question arises whether this registration granted is to be read as prospective or retrospective in term of 2nd proviso to section 12A of the Act. The insertion of 2nd proviso to section 12A of the Act has been explained by Explanatory Notes to provisions of Finance (No.2) Act, 2014, and it is provided that same is applicable to earlier assessment years which are pending before the Assessing Officer as on date of such registration. The relevant para 8.3 Explanatory Notes as reproduced in the order of CIT(A) reads as under:-

“8.3 In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Income-tax Act has been amended to provide that in a case where a trust or institution has been granted registration under section 12AA of the Income-tax Act, the benefit of sections 11 and 12 of the said Act shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.”

9. This issue has been explained by the above noted orders of the Tribunal, particularly decision of the ITAT., Cochin Bench in the case of SNDP Yogam Vs. ADIT (Exemptions) (2016) 161 ITD 1, where the Tribunal had considered this aspect vide para No.7.2 to 7.4, which reads as under:-

“7.2 When section 12A of the Act was amended by introducing new provisos to sub-section (2) of s. 12A by Finance Act, 2014 with effect from 01.10.2014, the assessment orders passed by the assessing officer in respect of the present assessee were pending in appeal before the first appellate authority. During such pendency, the assessee was granted registration u/s 12AA of the Act on 29.07.2013 w.e.f. the assessment year 2013-14. Those appeals were the continuation of the original proceedings and that the power of the Commissioner of Income-tax was co-terminus with that of the assessing officer [ADIT (Exemption) in the present case] were two well established principles of law. In view of the above and going by the principle of purposive ITA Nos 503 to 506 & 569/Coch/2014 10 interpretation of statues, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be ‘assessment proceedings pending before the assessing officer’ within the meaning of that term as envisaged under the proviso. It follows there-from that the assessee which obtained registration u/s 12AA of the Act during the pendency of appeal was entitled for exemption claimed u/s 11 of the Act.

7.3. The explanatory Memorandum to Finance (No.2) Bill, 2014 which sought to amend section 12A explains the objects and reasons for making such amendments. The explanation makes

it clear that it was in order to provide relief to such trusts in respect of which, due to absence of registration u/s 12AA tax liability got attached though otherwise they were eligible for exemption by fulfilling other substantive conditions that the amendment was brought in. That being so, denying such benefit to a trust like the assessee who had obtained registration u/s 12AA during the pendency of the appeals filed against the orders of the assessing authority, by narrowly interpreting the term, 'pending before the assessing officer' so as to exclude its pendency before the appellate authority, will be doing violence to the provisions of the Statute and, as such, liable to be interfered with. Moreover, under the Scheme of the Act, sections 11 and 12 are substantive provisions which provide for exemptions to a religious or charitable trust. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemptions under sections 11 and 12 by the ITA Nos 503 to 506 & 569/Coch/2014 11 assessee and the grant or rejection of such application by the commissioner. Thus, in our view, sections 12A and 12AA are only procedural in nature. Hence, it is not the registration u/s 12AA by itself that offers immunity from taxation. A receipt whether it is revenue or capital in nature is to be decided at the assessment stage. Being procedural in nature, in our view, liberal interpretation will give effect to the intention of the amendment, thereby removing the hardship in genuine cases like the present assessee under consideration.

7.4. Taking into account the above facts and circumstances of the issue, we are of the view that the AO was not justified in taking a stand that registration u/s 12A was not applicable to the assessee for the AYs under dispute and the condonation petition for delay in filing the application for registration u/s 12A

[for the AYs under dispute] has not yet been decided by the CBDT and, therefore, the total incomes of the assessee were to be assessed as per commercial principles. The CIT (A) was also not justified in taking a similar stand that of the AO, without taking cognizance and intention of the amendment to s. 12A of the Act. If no judicious or a liberal view is not taken either by the assessing authority or the appellate authority as in the case under consideration, the very purpose for which such an amendment to s. 12A of the Act enacted, in our view, would be defeated. We are also supported by the order of Kolkata Bench of ITAT in case of Sree Sree Ramkrishna Samity vs. DCIT (ITA No. 1680/2012, order dated 09.10.2015) where it was held that amendment to Section 12A w.e.f. ITA Nos 503 to 506 & 569/Coch/2014 12 01.10.2014 is retrospective. The relevant finding of the Hon'ble Kolkata Bench in case of Sree Sree Ramkrishna Samity vs. DCIT (supra) read as follows:

"6.10. We hold that it is an established position in law that a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole and accordingly the said insertion of first proviso to section 12A(2) of the Act with effect from 1.10.2014 should be read as retrospective in operation with effect from the date when the condition of eligibility for exemption under section 11 & 12 as mentioned in section 12A provided for registration u/s.12AA as a pre-condition for applicability of section 12A."

Further, the Kolkata Tribunal observed as under:

"6.11. We also hold that though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. It is only elementary that a statutory

provision is to be interpreted ut res magis valeat quam pereat, i.e to make it workable rather than redundant. Applying this legal maxim, it would be just and fair to hold that the amendment in section 12A is brought in the statute to confer benefit of exemption u/s 11 of the Act on the genuine trusts which had not changed its objectives and had carried on the same charitable objects in the past as well as in the current year based on which the registration u/s.12AA is granted by the DIT (Exemptions).”

10. The facts being identical in the present case also, respectfully following co-ordinate Bench of this Tribunal, as noted above, I allow claim of the assessee u/s.11 of the Act granting exemption holding that registration granted to the assessee trust is retrospective and not prospective. Hence, I reverse orders of the lower authorities and allow appeal of the assessee.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 10th March, 2023

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 10.03.2023

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.