

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos. 262 & 263/RPR/2022

निर्धारण वर्ष / Assessment Years : 2015-16 & 2016-17

Shivom Vidyapeeth Shikshan Samiti
214, Shivom Vihar,
Raipur (C.G.)-492 013
PAN : AAHTS6464M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Exemption-2, Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S Agarwal, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.03.2023

घोषणा की तारीख / Date of Pronouncement : 17.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The captioned appeals filed by the assessee are directed against the orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 26.10.2022, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated Nil for the assessment year 2015-16 and for the assessment year 2016-17 dated 23.12.2018. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.262/RPR/2022 for assessment year 2015-16 and the order therein passed shall apply mutatis mutandis for the purpose of disposing off the other appeal i.e. ITA No.263/RPR/2022. The assessee has assailed the impugned order for A.Y.2015-16 on the following grounds of appeal before me:

“1. That under the facts & the law, the Ld. CIT (A) erred in confirming the order of the Ld. AO who assessed the income at Rs.11,47,592/-as against the returned of income at Nil, without giving the opportunity of being heard and by not allowing the deduction u/s.11, observing that appellant is not

registered u/s 12AA. Prayed that appellant is entitled for deduction u/s 11, the income be assessed at Nil.

2. 2. That under the facts & the laws, the Ld. CIT (A) further erred in rejecting the explanation that the deduction u/s.11 was allowable as registration was granted u/s.12AA vide order of Ld. CIT (Exemption), Bhopal dt. 20/04/2017 from AY 2017-18 and on above date of registration, assessment proceedings for the year so under consideration were pending before the Ld. AO, objects & activities of institution were same on which basis registration was granted, ignoring the explanatory note to the provisions of Finance (No. 2) Bill, 2014 which amended Sec.12A. Prayed that deduction u/s.11 be allowed and income be assessed at Nil as returned.”

3. Succinctly stated, the assessee which is an educational society registered under Madhya Pradesh Society Adhiniyam, 1973 had e-filed its return of income for A.Y.2015-16 on 07.12.2015, declaring an income of Rs. Nil. Subsequently the case of the assessee society was selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings, it was observed by the A.O that the assessee had claimed deduction of Rs.11,47,592/- u/s.10(23C)(iiiad) of the Act. The A.O was of the view that as the gross receipts of the assessee society during the year under consideration were Rs.1,31,77,714/-, therefore, it was ineligible for deduction u/s.10(23C)(iiiad) of the Act. On being confronted with the fact as regards its ineligibility for deduction u/s.10(23C)(iiiad) of the Act, it was submitted by the assessee society that it had applied for registration under Sec.10(23C)(vi) of the Act

with the CIT(Exemption), Bhopal in Form 56D on 27.07.2015, which, however, was rejected by him on 20.07.2016. It was submitted by the assessee before the A.O vide its letter dated 08.12.2017 that it had also vide Form 10A on 26.06.2016 applied for registration u/s.12A of the Act with the CIT(Exemption), Bhopal, which thereafter, was revised in new format in Form 10A on 30.09.2016. It was also brought to the notice of the A.O that the CIT(Exemption), Bhopal had granted the registration u/s.12AA of the Act vide his certificate No. CIT (Exemption) Bhopal/12AA/2017-18 dated 20.04.2017 a/w. registration u/s.80G vide his approval No. CIT (Exemption) Bhopal/80G/2017-18/A/10009 dated 20.04.2017. It was observed by the A.O that registration u/s.12AA dated 20.04.2017 was applicable w.e.f. A.Y.2017-18. It was further observed by the A.O that not only the assessee had failed to apply for registration u/s.10(23C)(vi) or u/s.12A of the Act for the year under consideration i.e. A.Y.2015-16 but had also wrongly raised a claim for exemption u/s.10(23C)(iiiad) of the Act to which it was not entitled. The A.O considering the aforesaid facts declined the assessee's claim for exemption u/s.10(23C)(iiiad) of the Act and made an addition of the surplus amount of Rs.11,47,592/- to its returned income.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Exemption), but without success. The CIT(Appeals) while

upholding the view taken by the A.O was of the view that as the assessee society was not registered either u/s.12A of the Act or u/s.10(23C)(vi) of the Act, therefore, it was not eligible for claiming exemption of the surplus amount of Rs.11.47,592/-. During the course of proceedings before the CIT(Appeals), the assessee society had in order to support its claim of exemption u/s.12AA of the Act relied on the CBDT Circular No.1/2015 dated 21.01.2015, which, however, did not find favour with him. On a perusal of the order of the CIT(Exemption) it transpires that he was of the view that as the assessee society had failed to place on record any documentary evidence which would prove that as on the date of registration i.e. on 20.04.2017 any assessment proceedings for the earlier assessment year was pending before the A.O, therefore, the issue of availability of exemption u/s.12AA of the Act for the earlier assessment years could not be decided only on the basis of the aforesaid Circular No.1/2015 (supra).

6. The assessee being aggrieved with the order of the CIT(Exemption) has carried the matter in appeal before me.

7. It was submitted by the Ld. Authorized Representative (for short 'AR') that as the assessee society had applied for registration u/s.12AA of the Act in the succeeding assessment year i.e. A.Y.2016-

17 on 26.06.2016/30.09.2016 (in the new format) in Form 10A which was granted by the CIT(Exemption), Bhopal vide his order dated 20.04.2017, i.e., at a time when assessment for A.Y.2015-16 was pending before the A.O, therefore, in light of the aforesaid CBDT Circular No.1/2015 dated 21.01.2015 the assessee was duly entitled for benefit of Section 11/12 of the Act. My attention was drawn by the Ld. AR to the CBDT Circular No.01/2015 dated 21.01.2015, Page 6-7 of APB. Taking me through Para 8.2 & Para 8.3 of the aforesaid circular, it was submitted by the Ld. AR that in light of clearly worded CBDT Circular No. 01/2015, dated 21.01.2015, i.e., a benevolent circular that was binding on the department there was no justification for the lower authorities to have declined the assessee's claim for deduction u/ss.11/12 of the Act. My attention was further drawn by the Ld. AR to the demand notice u/s.156 of the Act dated 21.12.2017 which therein proved that on 20.04.2017, i.e., the date of registration u/s.12AA of the Act by the CIT (Exemption), Bhopal, the assessment in the case of the assessee for the year under consideration was pending. It was submitted by the Ld. AR that a reference to the aforesaid demand notice u/s.156 of the Act was necessitated for the reason that the A.O had in the body of the assessment order failed to make a mention of the date on which the order was passed by him. The Ld. AR in order to buttress his

aforesaid entitlement for deduction u/ss.11/12 of the Act had drawn support from the following judicial pronouncements:

(i) CIT, Exemption Vs. Karnataka State Students Welfare Fund (2022) 141 Taxman.com 419 (Karnataka).

(ii) Sai Wiran Wali Educational Trust Vs. DCIT, Jalandhar, ITA No.104 (ASR) 2015.

(iii) Sree Sree Ramkrishna Samity Vs. DCIT, Siliguri, ITA Nos. 1680-1685/Kol/2012.

(iv) Shree Bhanusali Mitra Mandal Trust Vs. ITO Vapi (2016) 68 taxmann.com 250 (Ahmedabad-Trib.)

8. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. Mr. Piyush Tripathi, Ld. Sr. DR took through the order of the ITAT, Amritsar passed in the case of Langar Committee Hanuman Mandir Vs. Income Tax Officer, ITA No.516/(Asr)/2017. It was submitted by the Ld. DR that if a trust/society is not registered u/s.12AA of the Act, then it would not be entitled for exemption u/s.11 of the Act. Also the Ld. DR had drawn support from the judgment of the Hon'ble Supreme Court in the case of the Commissioner of Income Tax Vs. The Nagpur Hotel Owners, Appeal (Civil) Nos. 1662-1663/1994 dated 113.12. 2000. It was submitted by the Ld. DR that the Hon'ble Apex Court in its aforesaid order had held that in case if a trust is not registered u/s.12AA of the Act then the excess/surplus income is liable for addition in the hands of the assessee. Referring to the facts involved

in the case before me, it was submitted by the Ld. DR that as the assessee society was not registered u/s.12AA of the Act, therefore, no infirmity could be attributed to the orders of the lower authorities who had rightly declined the assessee's claim of exemption u/s.11 of the Act.

9. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

10. I have given a thoughtful consideration to the facts involved in the case before me in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties and the orders of the lower authorities. Admittedly, it is a matter of fact borne from record that the assessee society had applied for registration u/s.12AA of the Act in Form 10A on 26.06.2016, which, thereafter, was revised by him in the new format on 30.09.2016. As is discernible from the record the CIT(Exemption), Bhopal had vide its order dated 20.04.2017 granted registration u/s.12AA of the Act to the assessee society. Also, it is an admitted fact that the order of registration u/s.12AA of the Act dated 20.04.2017 specifically makes a mention

that the provisions of Sections 11/12 of the Act shall apply from A.Y.2017-18. Although, the order of registration u/s.12AA of the Act dated 20.04.2017 reveals that the provisions of Sections 11/12 of the Act would only be applicable to the assessee from A.Y.2017-18 onwards, but the CBDT Circular No.01/2015 (supra) as had been pressed into service by the Ld. AR comes the rescue of the assessee. Before proceeding any further it would be relevant to cull out the CBDT Circular No.01/2015 dated 21.05.2015, which reads as under:

“8. Applicability of the registration granted to a trust or institution to earlier years

8.1 The provisions of section 12A of the Income-tax Act, before amendment by the Act, provided that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA of the said Act has been granted. In case of trusts or institutions which apply for registration after 1st June, 2007, the registration shall be effective only prospectively.

8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfil other substantive conditions. However, the power of condonation of delay in seeking registration was not available.

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.

8.4 Further, it has been provided that no action for reopening of an assessment under section 147 of the Income-tax Act shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year.

8.5 However, the above benefits would not be available in the case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA of the Income-tax Act or a registration once granted was cancelled.

8.6 Applicability: - These amendments take effect from 1st October, 2014.”

On a careful perusal of the aforesaid CBDT Circular No.01/2015 (supra), it transpires that in order to remove hardships in genuine cases caused due to non-application of registration for the period prior to the year of registration, the same comes to the rescue of the assessee for a period prior to the year of registration. On carefully scrutinizing the aforesaid CBDT Circular No.01/2015 (supra), I find that as pursuant to the amendment to Section 12A of the Act vide the Finance Act, 2007 w.e.f. 01.06.2007, in a case where registration is applied after 1st June, 2007 the benefit arising therefrom is to be allowed only prospectively, therefore, the legislature in all its wisdom had carved out an exception to the same as per which the benefit of Sections 11/12 of the Act would be available to an assessee for a period prior to the year of registration despite the fact that no application for registration for the said period had been filed. The only rider/pre-condition which is required to be satisfied for bringing

a case within the realm of the CBDT Circular No.01/2015 (supra) is that the assessment proceedings for the said earlier assessment year are pending before the A.O on the date of registration u/s.12AA of the Act.

11. Although the assessee society in the course of assessment proceedings had brought the fact as regards the grant of registration by the CIT(Exemption), Bhopal vide his order dated 20.04.2017 to the notice of the A.O, but the same was brushed aside by him without giving any cogent reason. At this stage, we are reminded of the CBDT Circular No. 14 (XL-35) dated 11.04.1955, wherein the officers of the department have specifically been directed not to take advantage of ignorance of an assessee about his rights. It is therein stated that it is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. It is therein specifically stated that the officers should take initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. Admittedly, it is a fact that the present assessee before us had though brought it to the notice of the A.O that he had applied for registration u/s.12AA of the Act for the A.Y.2016-17, but at the same time he had not pressed into service the CBDT Circular No.01/2015 dated 21.01.2015. Be that as it may, I am of the considered view that the A.O could not

have taken benefit of the ignorance of the assessee. In fact, I am unable to comprehend that now when the CBDT Circular No.01/2015 (supra) was brought to the notice of the CIT(Exemption) who is vested with powers which are co-terminus with that of the A.O, the latter, however, instead of acting as per the mandate of law had declined the assessee's claim for exemption u/s.11 of the Act for the reason that there was no evidence to prove that any assessment for an earlier assessment year was pending before the A.O on the date of grant of registration i.e. on 20.04.2017. In my considered view what was required to be looked into by him was as to whether or not any assessment for the year under consideration i.e. A.Y.2015-16 was pending on the date of which registration was granted, i.e., on 20.04.2017, which material aspect I am afraid had absolutely been lost sight of by him while disposing off the appeal. As observed by me hereinabove, it is matter of fact borne from record that assessment proceedings in the case of the assessee which were initiated vide notice u/s.143(2) dated 29.07.2016 and had culminated vide order passed u/s.143(3) dated 21.12.2017, were very much pending on 20.04.2017, i.e., the date on which the order granting registration u/s.12AA of the Act for A.Y.2016-17 was passed by the CIT(Exemption), Bhopal. As the CBDT circular No.01/2015 (supra) being a benevolent circular is binding on the department,

therefore, it is difficult for me to comprehend as to why effect to the same had not been given by the lower authorities.

12. At this stage, I may herein observe that Shri G.S Agrawal, Ld. AR on being specifically queried as to whether or not at any stage registration of the assessee society was refused u/s.12AA of the Act, had answered in the negative. Although the registration in the case of the assessee society was declined by the CIT(Exemption), Bhopal u/s.10(23C)(vi) of the Act, vide his order dated 20.07.2016 for the year under consideration i.e. A.Y.2015-16 onwards, but the same to my understanding will not have any bearing on the assessee's entitlement for the relief contemplated by the CBDT Circular No.01/2015 (supra), as the same carves out as an exception the non-applicability of the same only in a case where registration on an earlier occasion was refused to the assessee u/s.12AA of the Act.

13. Considering the totality of the facts involved in the present case, I am of the considered view that in the backdrop of the CBDT Circular No.01/2015, dated 21.01.2015 the assessee would duly be entitled for the benefit of Sections 11/12 of the Act for the year under consideration i.e. A.Y. 2015-16. However, as the A.O had in the course of the assessment proceedings summarily rejected the assessee's claim for exemption u/ss.11/12 of the Act, i.e., without

looking into the other aspects, therefore, the matter in all fairness requires to be restored to his file for framing of a fresh assessment in light of my aforesaid observations. Before parting, I may herein observe that the observations recorded hereinabove are confined to the assessee's entitlement for the relief contemplated in CBDT Circular No.01/2015 (supra) and the same would not come in the way of the A.O as regards making of further verifications as regards the assessee's entitlement for exemption u/ss. 11/12 of the Act for which, he shall remain at a liberty to carry out necessary verifications. Accordingly, the matter is restored to the file of the A.O with a direction to frame a fresh assessment.

14. In the result, the appeal of the assessee in ITA No. 262/RPR/2022 for A.Y.2015-16 is allowed for statistical purposes in terms of my aforesaid observations.

ITA No.263/RPR/2022
A.Y.2016-17

15. As the facts and issue involved in the present appeal remains the same as were there before us in its appeal in ITA No.262/RPR/2022 for A.Y.2015-16, except for that the assessee in its return of income for the year under consideration i.e. A.Y.2016-17 had raised a specific claim for exemption u/s.11 of the Act, therefore, my findings recorded while disposing off the appeal in ITA

No.262/RPR/2022 for A.Y.2015-16 shall *mutatis-mutandis* apply for disposing off the present appeal, i.e, ITA No.263/RPR/2022 for A.Y.2016-17.

16. In the result, the appeal of the assessee in ITA No.263/RPR/2022 for A.Y.2016-17 is allowed for statistical purposes in terms of my aforesaid observations.

17. In the combined result, both the appeals of the assessee are allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 17th day of March, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 17th March, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur