

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No.25/Rjt/2022
निर्धारण वर्ष/Asstt. Years: 2018-2019

Late Shree Shantaben Chandrashankar Vyas Charitable Trust, 21/2, Madhav Residency, 150 Feet Ring Road, Near Kidvai Nagar, Rajkot-360005. PAN: AABTL6409M	Vs.	D.C.I.T, CPC, Bangaluru.
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Assessee by :	Shri J.R. Mankodi, A.R
Revenue by :	Shri Shramdeep Sinha, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **01/02/2023**
घोषणा की तारीख /**Date of Pronouncement**: **24/03/2023**

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), Rajkot, dated 16/12/2021 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-19.

2. The only issues raised by the assessee is that the learned CIT (A) erred in confirming the order of the CPC denying the benefit of provisions of section 11 and 12 of the Act.

3. The facts as emerging from the records available before us are that the assessee is a public charitable trust incorporated on 17-07-2017. The assessee applied for registration under section 12AA of the Act on 25-04-2018 which was granted as on 22-10-2018 w.e.f. A.Y. 2019-20. However, the assessee in the return filed for the year under consideration i.e. A.Y. 2018-19 dated 13-09-2018 claimed benefit of section 11 and 12 of the Act on account of corpus fund and voluntary contribution applied towards the objects. The CPC in the intimation generated under section 143(1) of the Act dated 30th September 2019 denied the benefit claimed u/s 11 and 12 of the Act.

4. Aggrieved assessee preferred an appeal to the learned CIT-A.

5. The assessee before the learned CIT (A) contended that on the date of registration under section 12AA of the Act, the assessment for the year under consideration was pending. Therefore, as per the proviso to section 12A(2) of the Act it is eligible for claiming the exemption under section 11 of the Act for the year under consideration.

6. It was also contended that audit report in form 10B required under section 12A(1) r.w.r. 17B was not received and furnished with the return of income for the reason that there was no registration under section 12AA of the Act was available during the year. However, as per the proviso to section 12A(2) of the Act it was entitled to claim such benefit exemption under section 11 of the Act.

7. The learned CIT-A after considering the submission of the assessee confirmed the disallowance made in the intimation under section 143(1) of the Act by observing as under:

4.2 The submission of the appellant is considered. In this regard, it is to be noted that proceedings under section 143(1) is not an assessment. The proceedings under section 143(1) is like preliminary checking of the return of income. At this stage, the total income or loss is computed after making the preliminary adjustments. Centralised processing center of the Income tax department carries out a preliminary assessment of all the returns filed and informs all the taxpayers of the result of such preliminary assessment. This primarily includes arithmetical errors, internal inconsistencies, tax calculation and verification of tax payment. In the process, the reasonableness and correctness of the return are verified by the department. The return gets processed online. The result of these adjustment is intimated to the taxpayers in writing or in the electronic mode. Such communication made by the Income tax department is called intimation issued under section 143(1) of the income Tax Act, 1961. This is not an assessment order. Thus, I find that the contention of the appellant that the assessment proceedings was pending before the Assessing Officer as on the date of such registration is not correct as processing of return under section 143(1) does not amount to pendency of assessment proceedings. Therefore, proviso-2 to Section 12A cannot be invoked in the instant case.

4.3 It is further noted that in the case of the appellant, in the order of registration under section 12AA of the Income Tax Act, 1961 issued by CIT(Exemption), Ahmedabad, it is clearly pointed out that the provisions of sections 11 and 12 are applicable from the Assessment Year 2019-20. Therefore, provisions of sections 11 and 12 cannot be applied for the AY 2018-19.

4.4. On perusal of the submission made by the appellant, it is seen that the appellant has not filed Form 10B along with the return as required as per Rule 17B of the Income Tax Rules, 1962. The appellant has submitted that as the registration u/s 12AA was not available as on the date of filing the return, audit report in Form 10B could not be obtained and e-filed for AY 2018-19. From the perusal of the details submitted, it is seen that the return of income for the AY 2018-19 was filed on 13-09-2018 and the order of registration under section 12AA was issued on 22-10-2018. Therefore, I notice that on the day of issue of order of registration under section 12AA, the appellant still had time to file form 10B as the due date of filing of return in the case where the return is subject to audit is 31.10.2018 (the date as extended by CBDT). However, the appellant did not make an effort to file form 10B either within the due date or belatedly. Therefore, this contention of the appellant also cannot be accepted. As per Section-12A(1)(b) of Income tax Act read with 1st Proviso to Rule 12(2) of the Income Tax Rules, where the total income of the trust or institution without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax, the audit report in Form-10B has to be E-filed along with the return of income. In case the appellant has not E-filed the Audit Report in Form 10B along with or before the due date of filing of the Return of income or belatedly, the exemption u/s-11 and 12 cannot be not allowed.

4.5 Therefore, in view of the above discussion, I am of the view that the stand of the CPC is correct. Therefore, the grounds raised by the appellant is dismissed.

5.0 In the final result, appeal filed by the appellant is treated as dismissed.

8. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

9. The learned AR before us filed a paper book running from pages 1 to 59 and contended that the assessment as on the date of registration of the

application under section 12AA of the Act for the year under consideration was pending and therefore, the assessee is eligible for exemption under section 11 of the Act.

10. On the contrary, the learned DR contended that the intimation generated under section 143(1) of the Act is not an assessment and therefore the benefit of proviso 2 to section 12A of the Act cannot be granted. The Id. DR vehemently supported the order of the lower authorities.

11. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee being a trust was registered in the year 2017 as Public Trust with Charity commissioner, Rajkot. The assessee has filed the application for the registration under section 12AA of the Act vide application dated 25th April 2018 which was approved by the learned CIT exemption by granting the registration under section 12AA of the Act vide order dated 22nd October 2018 which was effective from the assessment year 2019-20. Thus, there is no ambiguity to the fact that the benefit of the exemption as provided under section 11 and 12 of the Act shall be available to the assessee from the assessment year immediately following the financial year in which the application for registration under section 12AA of the Act was made in pursuance to the provisions of sub section (2) of section 12AA of the Act. However, there is an exception provided in the proviso attached to sub section (2) of section 12AA of the Act which states that the benefit of the provisions of section 11 shall also be applicable to the trust with respect to the income derived from the property held under trust for any preceding assessment year of which the assessment is pending before the assessing officer as on the date of such registration application and there was no change in the objects and activities of such trust. Thus, the 1st controversy arises whether the assessment was pending before the assessing officer as on the date of registration granted by the learned CIT exemption. First of all, it has to be seen whether intimation generated under the provisions of section 143(1) of the Act is an assessment in the manner as provided under the

proviso attached to section 12A(2) of the Act. This question has been answered by the Hon'ble Gujarat High Court in the case of S.R. Kosthi vs. CIT reported in 276 ITR 165 wherein it was held as under:

On a plain reading of the Explanation to section 143 which was omitted by Finance Act, 1999, with effect from 1-6-1999, it became clear that even for the limited period when the Legislature wanted the intimation to be deemed to be an order, it was for limited purpose, namely, for the purposes of appeal under section 246 and revision at the instance of an assessee under section 264. Thus, even when the said Explanation was on the statute book, the power to invoke the provision of section 263 could not be exercised in the circumstances. For the year under consideration, admittedly, the said Explanation was not on statute book. The Commissioner, therefore, could not have, in the circumstances, treated the intimation as an order for the purposes of non-suiting the assessee by treating intimation dated 28-3-2002 as being an order of assessment and, thus, denying the assessee a statutory right to file a revised return within the period of limitation. The revised return was filed within the period of limitation and was hence, valid. In those circumstances, the finding recorded by the Commissioner under section 263 that the revised return was non est in law, could not be sustained and was, accordingly, held to be bad in law. [Para 12]

11.1 In view of the above, we hold that the intimation generated under section 143(1) of the Act is not an assessment and therefore we hold that the benefit as provided under the 1st proviso to subsection (2) of section 12AA of the Act is unavailable to the assessee. Hence, the ground of appeal of the assessee is hereby dismissed.

12. In the result, the appeal of the assessee is hereby dismissed.

Order pronounced in the Court on 24/03/2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 24/03/2023
Manish