



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.42/CTK/2023

Assessment Year : 2015-16

Modern English School Education Society, Parabada, Jeypore, Dist: Koraput	Vs.	ITO (Exemption Ward) Berhampur
PAN/GIR No.AACAM 7223 Q		
(Appellant)	..	(Respondent)

Assessee by : S/Shri P.K.Mishra, Adv/Kailash Panigrahi, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 18 /04/2023

Date of Pronouncement : 18 /04/2023

ORDER

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi, dated 26.11.2021 in Appeal No. ITBA/NFAC/S/250/2021-22/1037251859(1) for the assessment year 2016-16.

2. Shri P.K.Mishra, Adv and Shri Kailash Panigrahi, CA appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. The appeal is barred by limitation by 385 days. The assessee has filed condonation petition supported by affidavit, wherein, it is stated that

during the corona pandemic, the school remained closed as per the direction of Government of Odisha. During the said period, two notices were issued by Id CIT(A), NFAC, Delhi as per the appeal order. As there was no response, the Id CIT(A) has passed the order exparte. When the appellant received the penalty order on 3.2.2023, it was known that the appeal before the Id CIT(A) was disposed. It was in this backdrop that the appeal could not be filed within the due time and consequently, there was delay of 385 days. It is submitted that there is no evil intention of the appellant society in not filing the appeal. It was the prayer that the delay in filing the appeal be condoned. Ld SR DR opposed the condonation petition.

4. After hearing both the sides, I observe that the condonation petition supported by affidavit filed by the assessee has not been found to be false and wrong. Consequently, I condone the delay of 385 days in filing the appeal and admit the appeal for adjudication.

5. It was submitted by Id AR that the assessee has been granted registration u/s.12AA(1) of the Act w.e.f. 30.3.2015 relevant to assessment year 2015-16. It was the submission that when the assessment order was passed, the registration u/s.12AA was not available but when the order of the Id CIT(A) was passed, the assessee had the registration u/s.12AA of the Act. It was the submission that on identical circumstances, the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2014-15 in ITA No.76/CTK/2018 order dated 10.8.2018 had restored the

issue to the file of the Assessing officer for re-adjudication in view of the fact that the assessee had been granted registration u/s.12AA of the Act. It was the prayer that on identical ground, the issue in the appeal may be restored to the file of the Assessing Officer for readjudication as the assessee has been granted registration u/s.12AA of the Act vide order dated 26.3.2018 w.e.f. 30.3.2015.

6. In reply, Id Sr DR submitted that when the assessment proceedings were pending, the assessee did not have the registration u/s.12AA of the Act. It was the submission that the order of the AO and that of the Id CIT(A) is liable to be upheld.

7. I have considered the rival submissions. A perusal of the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2014-15 (supra) shows that the Co-ordinate Bench vide paras 13 to 16 in its order referred to supra has held as follows:

"13. We find that the first proviso to sub-section (2) of Section 12 reads as under:

"Provided that where registration has been granted to the trust or "institution under section 12AA, then, the provisions of sections 11 & 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year."

14. We find that the Ahmedabad Bench of the Tribunal in the case of Shri Bhabushali Mitra Mandal vs ITO in ITA No.2515/Ahd/2015 for the assessment year 2011-12 order dated 22.2.2016 has held as under:

"7.1 To examine the first issue, necessarily I have to analyze the relevant provision, namely, the amendment to Section 12A by Finance Act, 2014 w.e.f. 01.10.2014 by way of insertion of provisos to Section 12A(2) of the Act which is reproduced below for ready reference:

"[(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:] [Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.]"

7.2 It is also relevant to reproduce the explanatory notes to the provisions of Finance (No.2) Act, 2014 as given in CBDT Circular No.01/2015 dated 21.01.2015 in reference F. No. 142/13/2014-TPL, which read as follows:

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

This clearly goes to prove that the first proviso to section 12A(2) was brought in the statute only as a retrospective effect with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by the said trust. The benefit of retrospective application alone could be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No.2) Act, 2014 issued by the Central Board of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015. Apparently the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the Id. A.O., unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to provide that no action u/s 147 could be taken by the AO merely for ' non-registration of trust for earlier years.

7.3 In the instant case, it is not in dispute that registration was granted w.e.f. 17.12.2013 by the order of CIT(A) dated 08.05.2014. It is also not in dispute that objects and activities of the assessee trust are charitable in nature during the relevant financial year. When Section 12A of the Act was amended by introducing new provisos to sub-section (2) of Section 12A by Finance Act, 2014 with effect from 01.10.2014, the assessment orders Asst. Year 2011-12 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 17.12.2013 w.e.f. the assessment year 2013-14. The appeal is 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 were two well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, 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.

7.4 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."

15. In the instant case, it is not in dispute that the objects and activities of the trust or the year under consideration are same as were on 30.3.2015 when registration u/s.12AA was granted to the assessee by the CIT(Exemption) vide his order dated 26.3.2015. Further, as held by Ahmedabad Bench in the case of Shri Bhanushali Mitra Mandal (supra) that the appeal is the continuation of the assessment proceedings and going by the principle of purposive interpretation of statutes, 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 first proviso to Sub-section (2) of Section 12A. 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 u/s 11 of the Act.

16. For the reasons quoted above, we set aside the orders of lower authorities and remand matter back to the file of the Assessing Officer to compute the income of the assessee afresh after allowing exemption u/s.11 & 12 of the Act to the assessee. Hence, the grounds of appeal of the assessee are allowed.

8. The issue decided in the assessee's own case for the assessment year 2014-15 is on the basis of the same set of facts granting registration u/s.12AA of the Act. In these circumstances, as there is no change in the facts in the present assessment year, respectfully following the decision of the Co-ordinate Bench in assessee's own case for the assessment year

2014-15(supra) on identical findings, the issue is restored to the file of the AO to recompute the income of the assessee afresh after allowing exemption u/s 11 & 12 of the Act. I also clarify that the claim of depreciation as claimed by the assessee is covered once the registration u/s.12AA is granted.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 18/04/2023.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 18/04/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Modern English School
Education Society, Parabada, Jeypore, Dist:
Koraput
2. The Respondent: ITO (Exemption Ward)
Berhampur
3. The CIT(A)-NFAC, Delhi
4. Pr.CIT-,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack