



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

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.16/CTK/2022
Assessment Year : 2016-17

People Forum foundation, Plot No.44, Dharma Vihar- 751030	Vs.	ITO (Exemption) Bhubaneswar
PAN/GIR No.AABTP 5882 A		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Agarwala, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 24/04/2023
Date of Pronouncement : 24/04/2023

O R D E R

This is an appeal filed by the assessee against the order of the Id
CIT(A) , NFAC, Delhi, dated 9.12.2021 in Appeal
No.ITBA/NFAC/S/250/2021-22/1037650259(1) for the assessment year
2016-17.

2. Shri S.K.Agarwalla, CA appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is a charitable trust running a public school. It was the submission that the assessee had filed application for registration u/s.12A of the Act on 1.2.2019 and the assessee was granted registration u/s.12A of the Act on 1.10.2021 consequent to the order of the Tribunal dated 15.7.2020. It was the submission that the order of the CIT(A) is 9.12.2021 and as the proceedings before the CIT(A) is an extension of the assessment proceedings, in view of the provisions of sub-section (2) of Section 12A of the Act, the assessee is held to be having registration u/s.12A of the Act. It was the submission that the Assessing Officer has taken a stand that the assessee does not have the registration u/s.12A of the Act. It was the submission that the issues in the appeal may be restored to the file of the Assessing Officer for re-adjudication after considering that the assessee has the registration u/s.12A. Id AR also placed reliance on the decision of the Hon'ble Rajasthan High Court in the case of CIT (Exemptions) vs Shree Shyam Mandir Committee, 400 ITR 466 (Raj), wherein in para 30, it has been held as follows:

"30. This brings us to the next question, i.e. whether the assessment proceedings "pending before the AO" as stated in the first proviso to section 12A(2) can be taken as "pending in appeal", or, in other words, whether proceedings pending in appeal can be taken to be proceedings pending before te AO. This issue also stands answered in favour of the assessee by Shree Bhanushali Mitra Mandal (supra),

wherein, it was held that appeal is a continuation of the original proceedings and assessment proceedings pending before an appellate authority should be deemed to be "assessment proceedings pending before the AO" within the meaning of S.12A SNDP Yogam (supra), is to the same effect. Again, no contrary decision has been brought to our notice. Accordingly, it is held that the appellate proceedings before the appellate authorities are deemed to be assessment proceedings pending before the AO."

4. In reply, Id Sr DR submitted that in view of the decision of the Hon'ble Allahabad High Court in the case of CIT (Exemptions) vs Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan, 422 ITR 468 (All), the provisions of sub-section(2) of Section 12A refers to assessment proceedings pending before the Assessing Officer. It was the submission that admittedly, the assessment proceedings u/s.143(3) of the Act came to be completed on 24.8.2018 and the assessee is not entitled to be treated as having registration u/s.12A of the Act for the assessment year 2016-17. He drew my attention to paras 18 to 21 of the order of the Hon'ble Allahabad High Court in the case of Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan,(supra), which read as follows:

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18. The proviso to sub-section 2 applies in a given circumstances, but cannot by making main provision of section 12 A as redundant. In the instant case, the application for registration was then submitted on 15.12.2014. The registration was given on 08.06.2015. Since registration has been given on 08.06.2015, the benefit of Section 11 & 12 would be available for the following financial year in which application was made if the assessment proceedings for the relevant assessment year was pending till the date of registration. It cannot be for the assessment year 2011-12 due to pendency of the appeal before the Tribunal. If the benefit of Section 11 and 12 is extended for the assessment year 2011-12, despite submission of the application for registration on 15.12.2014, it would be in contravention of sub-section 2 of Section 12. By virtue of the interpretation taken by the Tribunal the main provision has been made redundant on the facts of the case, though not permissible. The proviso has to be read along with main proviso and not in isolation and contradiction.

19. The Tribunal even ignored the fact that proviso not only require registration of the Trust or the Institution while the assessment proceedings are pending, but it refers to assessment proceedings before the assessing authority and not elsewhere. In a common parlance, whenever matter is pending before the Tribunal in appeal, considered to be pendency of the assessment proceedings. The aforesaid principle would be applicable in the instant case is another question because proviso qualifies not only pendency of the assessment proceedings, but should before the Assessing Officer not else where, if in the proviso words "pendency of the assessment proceedings", would have been used then pendency of the appeal against the assessment could have been considered to be pendency of the assessment proceedings, but in the instant case the words used are "pendency of the assessment proceedings before the Assessing Officer". The assessment proceedings of the year 2011-12 was not pending before the Assessing Officer, but before the Tribunal. The observation aforesaid is relevant on the facts of this case. This Court has otherwise given proper interpretation to the substantive provision as well as the proviso.

20. We have further gone through the instruction of the CBDT and find it to be contrary to the proviso to Section 12 A of the Act, 1961. The instruction of the CBDT cannot be forfeited, if it is against the statutory provisions. The provision is not to extend benefit in case assessment is pending but it should be before the Assessing Officer. In that case, pendency of the assessment can be treated to be pending before the Assessing Officer though pending before the Tribunal in Appeal. It cannot be in those cases where provision is very specific, because proviso not only refers to the pendency of the assessment when it is pending before the Assessing Officer. In few cases, the assessment proceedings is considered to be pending before the Tribunal due to pendency of the appeal but it is applicable in those cases where words used are pendency of the assessment proceedings and not with words "pending before the Assessing Officer". The interpretation therein is in reference to the words 'pendency of the assessment' and not in reference to the pendency of the assessment before the Assessment Officer. The instruction of CBDT can not be applied if seems counter the statute.

21. Accordingly the judgment of Gujarat High Court in *Mayur Foundation (supra)*, would not apply. The view expressed therein cannot be applied to the facts of this case, otherwise an anomalous situation may emerge in a given case where for one or the other reason assessment proceedings before the Tribunal remain pending for years together or on a remand or for any other reason it comes before the Assessing Officer and such cases also subsequent application for registration and acceptance would result to extend benefit of Section 11 and 12 creating anomalous position if not meant for. This was not the object sought to be achieved by the legislature. If for one or the other reason, the proceedings in reference to the assessment years 1998-99 remains pending and the application for registration under Section 12AA of the Act, 1961 is filed in the year 2014-15 followed by registration, if the proviso is applied, then benefit of Section 11 and 12 of the Act, 1961 would be given to the Trust or the Institution even for the year 1998- 99, though the legislatures have not provided such arrangement or to extend the benefit in such cases. The provision is candid to govern only those cases where the application for registration is submitted followed by registration, to extend the benefit to the assessee from the following financial year of the date of application. Taking aforesaid into mind, we find reasons to allow the appeal preferred by the revenue and the substantial questions of law framed herein above are answered in favour of the Revenue and thereby we set-aside the order passed by the Tribunal.

22. The appeal is accordingly allowed with the aforesaid.

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5. In reply, Id AR submitted that as there are contrary decisions, the decision in favour of the assessee is to be considered in view of the decision of the Hon'ble Supreme Court in the case of Vegetable Products, 88 ITR 192 (SC).

6. I have considered the rival submissions. The facts of the present case clearly show that the assessee has been granted registration w.e.f 1.10.2021. Admittedly, the assessment order has been passed as early as 24.8.2018. The assessee has applied for registration u/s.12A of the Act on 1.12.2019 and after prolonged litigation, the assessee has been granted registration on 1.10.2021. The CIT(A)'s order admittedly is on 9.12.2021. The Hon'ble Rajasthan High Court in the case of Shree Shyam Mandir Committee(supra) has categorically held that the proceedings before the Id CIT(A) are extension of assessment proceedings. The Hon'ble Allahabad High Court in the case of Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan (supra) has held that the proceedings must be pending before the Assessing Officer. We are faced with two contrary decisions. Consequently, in view of the principles laid down by the Hon'ble Supreme Court in the case of Vegetable Products (supra), the view in favour of the assessee is being adopted and respectfully following the decision of Hon'ble Rajasthan High Court in the case of Shree Shyam Mandir Committee(supra), the issues in the appeal are restored to the file of the Assessing Officer for

re-adjudication after considering that the assessee has registration u/s.12A of the Act.

7. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 24/04/2023.

Sd/-

(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 24/04/2023

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. People Forum foundation,
Plot No.44, Dharma Vihar-751030
2. The Respondent: ITO (Exemption)
Bhubaneswar
3. The CIT(A)-,NFAC, Delhi
4. Pr.CIT-,Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack