

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, AM & Shri Manomohan Das, JM

ITA No.897/Coch/2022: Asst.Year:2013-2014

Sankaramkulangara Devaswom Kannattukara Thrissur – 680 011. [PAN: AAAJS4346K] (Appellant)	vs.	The Income Tax Officer Ward 2(5) Thrissur. (Respondent)
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Appellant by: Sri.Prasanth Srinivas, CA
Respondent by: Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing : 16.08.2023	Date of Pronouncement: 31.08.2023
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ORDER

Per Sanjay Arora, AM:

This is an appeal preferred by the Assessee, a religious trust, agitating the order dated 18.7.2022 by National Faceless Appeal Centre, Delhi (NFAC), confirming its assessment under section 143(3) of the Income-tax Act, 1961 ('the Act' hereinafter) for assessment year (AY) 2013-2014, vide order dated 28.3.2016.

2. The assessee's case before us was that no proper opportunity was granted by the first appellate authority before passing the impugned order. Even as hearing was fixed for 20.07.2022 vide notice of hearing dated 15.07.2022 (copy on record/Annexure-5), the order was passed on 18.07.2022, a fact also borne out by para 4.1 of the impugned order. The matter, setting it aside, be accordingly restored back to the file of the first appellate authority for consideration afresh. The appeal, Sh.Prasanth, the learned counsel for the assessee, would continue, could also be decided on merits. This is as the applicant's case is fully covered under the proviso to sec.12A(2) [as amended by Finance (No.2) Act, 2014, w.e.f. 01.10.2014], providing for the applicability of ss.11 and 12 of the Act to the income derived from property held under trust for any year where registration u/s.12AA has been granted

to the assessee-trust at the time when the proceedings for the relevant year are pending before the Assessing Officer (AO). Registration u/s.12AA stands granted to the assessee on 27.4.2015 (Ann. 2), i.e., when the assessment proceedings, pursuant to the return filed by the assessee on 30.9.2014, were pending before the AO. The assessee shall, accordingly, i.e., by virtue of s.12A(1) r/w s. 12A(2), be eligible for benefit of ss.11 and 12. Smt.Devi, the Id. Sr.DR, would concede that there has been an omission by the first appellate authority in passing the order under appeal without the assessee being allowed proper hearing. She was equally agreeable to the matter being decided on merits inasmuch as the assessee's claim is purely legal.

3. We have heard the parties, and perused the material on record.

3.1 At the outset, we may clarify that even granting the assessee's plea as to the applicability of ss.11 and 12, the matter shall necessarily have to travel to the file of the AO for determination of the deduction u/s.11 r.w.s. 12. There being no claim for the same before him, there was no examination thereof, much less on quantum; the exemption u/s.11 being not with reference to the income arising, but only on its application for the object/s of the trust/institution. That registration would not by itself imply an exemption u/s. 11, which is to be examined by the AO in assessment, is well-settled, clarified per para 3 of the registration order u/s.12AA itself.

3.2 Section 12A(2) stands rightly clarified by Sh. Prasanth. The principle at work in the mandate of *proviso* to s.12A(2) is that matters of procedure have no bearing on the substantive law on determination of income for any particular year, so that, where found eligible for registration even later, the same would be taken cognizance of by the assessing authority, seized of the matter, in the absence of any change in facts. The assessment proceedings initiated in the instant case by the issue of notice u/s. 143(2) on 03/9/2015, would be governed by the amended procedure, effective 01/10/2014. The same, however, comes with a caveat, i.e., that the objects and the activities of the trust/institution for the relevant year are the same as on the date on

which the registration is granted. This is, again, something that the AO shall have to examine and issue finding/s on, which shall, where favourable, entitle the assessee to press the claim u/s.11 r/ws. 12 for the current year. Another fact that is relevant is that the assessee ought not to have, prior to its grant, been refused registration at any time earlier, or where granted, not been cancelled.

4. The matter, accordingly, is restored to the file of the AO for examining the assessee's claim for exemption u/s.11 r/ws.12 of the Act. He shall, needless to add, do so by issuing definite findings of fact after hearing the assessee, in accordance with law, regarding it as a trust registered u/s.12AA. We are, in doing so, conscious that the application for registration u/s.12AA has been made only on 08.12.2014, i.e., after the close of the year on 31.3.2013. We do not, however, think this to be by itself of any consequence where the condition/s of *proviso* to s.12A(2) – which shall be examined by the AO in the set aside proceedings, is satisfied.

5. In the result, the assessee's appeal is allowed on the aforesaid terms.

Order pronounced on August 31, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: August 31, 2023
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

Assistant Registrar
ITAT/Cochin