

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'SMC BENCH :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.720/PUN/2023
(A.Y. 2001-02)

Solapur Panjarpole and Seth Veerchand Deepchand Anathalay, 112, Shri Panjarpole Bhavan, Budhwar Peth, Pune. PAN: AADTS 5199 R	vs	ITO, Ward-2(4), Solapur.
Appellant		Respondent

Assessee by	:	Shri Pramod Shingte, CA
Revenue by	:	Shri Ganesh Budruk, DR
Date of hearing	:	04/09/2023
Date of pronouncement	:	20/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 28.03.2023 for A.Y.2001-02 as per the grounds of appeal on record.

2. That, on perusal of the grounds of appeal, it is seen that the assessee was denied exemption of income u/sec. 11 & 12 of the Income Tax Act, 1961 (for short, 'the Act') by the Department, which resulted into disallowance of expenses claimed by the assessee. That, on perusal of the findings of NFAC for each of the grounds of the assessee, the main reason why the addition was sustained was that

the assessee was registered under 12AA of the Act w.e.f. 01/04/2003 i.e. for F.Y. 2003-04 relevant to the A.Y. 2004-05. This is the case for A.Y. 2001-02. Since during the year under consideration assessee was not eligible for exemption u/sec. 11 to 13 of the Act and since the exemption as per registration u/sec. 12AA was from the date of granting of registration i.e. from A.Y. 2004-05, therefore, in the relevant A.Y.2001-02 all the disallowances made by the AO were upheld by the NFAC in the hands of the assessee.

3. At the time of hearing, Id.AR for the assessee submitted that though they have got registration u/sec. 12AA of the Act from 1st April, 2003 i.e. from A.Y. 2004-05, their contention still before the Department is that they should get registration under 12AA from the date of inception of the trust. In this regard, Id.AR placed before us an order of this Tribunal in assessee's own case in ITA Nos. 902, 1472 to 1474/PN/2008 for A.Ys. 2000-01 to 2003-04, order dated 25/05/2010. In the said order, the assessee has contended that registration has been granted w.e.f. 01/04/2003 u/sec. 12AA of the Act from the date of creation of the trust. It was the prayer by the assessee before the Id. CIT(E) that grant of registration would be from the date of creation of trust and after condonation of delay from 19/02/1953 to 01/04/2003, but the Id. CIT(E) has not condoned the delay and has not granted the registration retrospectively. In this scenario, the Tribunal held as follows:-

"3. We have heard both the parties and perused the order of the CIT dt. 7.4.2004 and the Paper Book filed before us. We find that the preliminary issue of the appeal relates to the prayer for condonation of the delay of 1457 days. This issue has not been attended to by the Commissioner before denial of registration for the period prior to 1.4.04. Both the parties have fairly mentioned that delay in filing appeal is not without adequate reasons and they pleaded considering the quality of impugned order, it is judicious to refer the issue to the file of the CIT for passing a speaking order; after examining the reasons for delay of 14157 days before us. In favour of the request for setting aside the appeal to the files of the CIT, the Ld Counsel relied on Pune Bench decision in the case of Phaltan Education Society, ITA No.188/PN/2008, A.Y. 2000-01 to 2005-06 where it has given the following finding:

"When the Trust was granted all the benefits such as exemption u/s 11, eligibility u/s 80G etc., for past as many as 30 years, merely for the reason that the assessee Trust is not able to produce the age-old registration certificate u/s.12A, the Department cannot now take a stand that the Trust was not granted registration u/s 12A for all the past years. The burden is on the revenue to demonstrate that such registration was not granted earlier....."

3. In view of peculiar facts, the CIT was directed to examine afresh the registration u/s 12AA by condoning delay."

Considering the above precedent on the issue, we are of the opinion, the matter has to be set aside to the files of the CIT. There is need for giving reasons by the CIT in not granting the registration from the date of creation of the trust. The assessee is also directed to submit the reasons why request for grant of Registration was not made to the Commissioner with proper representation, what are the reasons for not seeking formal registration from the date of inception of the Trust instead of resorting to bona fide belief, why there is a delay in filing appeal before us from the date of order of CIT i.e. 7.4.2004 till 10.6.2003, the date of appeal before us, The CIT would examine all the above issues afresh after according reasonable opportunity of being heard to the assessee. Accordingly, the Ground of appeal is set aside."

This Tribunal has also held as follows:-

"5. Both the parties mentioned that these appeals should be referred to the Commissioner (A)-III, Pune, for the reason that the decision of the CIT on the issue of registration discussed above has nexus to these appeals. We have, in this regard, seen the Grounds as well as orders of the Revenue and find that the issues in these appeals revolve around rejection of the claim of exemption u/sec. 11 of the Income Tax Act in the re-assessment proceedings. We find merit in the prayers of the parties and therefore, all the issues raised in these appeals are also set aside to the files of the CIT(A). The CIT(A) is directed to await the order of the CIT on the issue of registration in compliance of our directions in appeal No.902/PN/2008 above before these three appeal are adjudicated by him. Accordingly, all the grounds in these three appeals are set aside."

4. Therefore, as observed for the earlier assessment years as held by the Tribunal (supra), the subject matter on merits have been remanded to the file of the Id. CIT(A) to await for the order of Id.CIT(E) on the issue of registration and then, adjudicate the issue on merits as per law complying with the principles of natural justice. This is important because whether the registration is given to the assessee u/sec. 12AA from the date of inception or only from 01/04/2003 i.e. relevant to A.Y. 2004-05, that shall have an impact on all the issues on merits in these assessment years. Therefore, in the interest of justice, for the sake of completeness and consistency and following our order in assessee's own case (supra), we restore this matter also to the file of the Id. CIT(A) with similar direction as has already been given in earlier order of the Tribunal (supra). Grounds of appeal of the assessee stands allowed for statistical purposes.

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

Order pronounced in open Court on 20th September, 2023.

Sd/-
(G.D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 20th September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "SMC" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.