

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos. 176 & 177/Ind/2022
Assessment Years: 2016-17 and 2017-18

Madhya Pradesh Council for Vocational Education & Training, 1, Gas Rahat ITI Bhawan, Govindpura, Bhopal (Assessee / Appellant)	<u>बनाम/</u> Vs.	Exemption Circle, Bhopal (Revenue / Respondent)
PAN: AACAM8149H		
Assessee by	Ms. Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.10.2023	
Date of Pronouncement	26.10.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by two separate appeal-orders, both dated 29.03.2022, passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["Ld. CIT(A)"], which in turn arise out of respective assessment-orders dated 19.12.2018 and 05.12.2019 passed by Exemption Circle, Bhopal u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Years ["AY"] 2016-17 & 2017-18, the assessee has filed these appeals on following effective grounds:

ITA No. 176/Ind/2022 – A.Y.2016-17:

1. *That on facts and in the circumstances of the case, the Ld. CIT(A) during the pendency of 12A registration before Hon'ble CIT(E) on remanding back the matter by Hon'ble ITAT for deciding afresh, has wrongly denied the claim of assessee to compute income as per the provisions of sections 11, 12 and 13, thereby wrongly treating receipt minus expenditure as income of the assessee.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in making addition of Rs. 1,20,34,618/- and wrongly treating as surplus of assessee ignoring the submissions made on record.*
3. *That, on the facts and in the circumstances of the case and in law, the Id. AO erred in making addition of liability of Rs. 76,36,365/- as income of assessee on wrong basis and ignoring submissions made on record.*

ITA No. 177/Ind/2022 – A.Y.2017-18:

1. *That on facts and in the circumstances of the case and in law, the Ld. AO erred in making addition of Rs. 1,01,77,928/- income of assessee on wrong basis and ignoring submissions made on record.*
2. *That on the facts and in the circumstances of the case and in law, the Ld. AO erred by wrongly treating the surplus of Rs. 1,01,77,928/- as taxable income, ignoring the submissions made on record."*
2. Heard the learned Representatives of both sides at length and case-records perused.
3. The registry has informed that these appeals are delayed by 25 days and therefore time-barred. Ld. AR submits that the assessee-society is a wing of State Govt. of Madhya Pradesh. It has filed an application for condonation of delay supported by an affidavit on stamp. On perusal of the application/affidavit, we observe that the assessee has made averment that the work for filing of these appeals was entrusted to CA Pradeep Soni but due to his sudden high blood pressure and sugar level, the appeal could not be filed in time. Ultimately, he informed the assessee on 15.06.2022 about non-filing of appeal. On coming to know this, the assessee immediately arranged to file appeals without further delay. Ld. AR submitted that there occurred a small delay of 25 days due to this reason beyond control of assessee. Ld. AR very humbly submits that there is no deliberate lethargy,

negligence or mala fide intention of assessee in making delay and the assessee does not stand to derive any benefit because of delay. Ld. DR left the matter to the wisdom of Bench. We have considered the explanation of assessee and in absence of any contrary fact or material on record, the assessee is found to have a reasonable cause for delay in filing the present appeal. Placing reliance on the decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with appeal.

4. Brief facts culled out from orders of lower-authorities are such that the assessee is a society formed by the state Govt. of Madya Pradesh under M.P. Societies Registration Act, 1973 on 26.07.2010 for promotion of vocational education, training, management, etc. and run various Govt. schemes of skill development in the state of Madhya Pradesh. Thus, the assessee is stated to be a wing of state Govt. of Madhya Pradesh. The Chief Minister of State is stated to be the Chairman of assessee-society and the activities are headed by Principal Secretary in the Govt. of Madhya Pradesh. On 31.03.2018, the assessee-society applied to Income-tax Department for grant of registration u/s 12A w.e.f. 01.04.2017 as per provisions of Income-tax Act. The assessee's application was, however, rejected by order dated 17.09.2018, passed by CIT(Exemption), due to non-attendance. Against such rejection, the assessee filed next appeal to ITAT, Indore Bench which was registered as **ITA No. 888/Ind/2018**.

5. The assessee filed returns of AY 2016-17 and AY 2017-18, involved in these appeals, on 31.03.2018 declaring total income of Rs. Nil in both

returns, after claiming exemption u/s 11/12. The returns were subjected to scrutiny assessments through notices u/s 143(2)/142(1). During scrutiny proceeding, the assessee submitted that its issue of registration u/s 12A was pending before ITAT, Indore; that it was expecting to get registration; and that once registration is granted from 01.04.2017 (i.e. from previous year 2017-18, AY 2018-19), it will also be entitled to exemption u/s 11/12 for preceding AY 2016-17 and 2017-18 on the basis of proviso to section 12A(2). Therefore, the exemption claimed by it ought to be allowed. But, the AO passed assessment-orders of AY 2016-17 and AY 2017-18 on 19.12.2018 and 05.12.2019 respectively without giving exemption u/s 11/12 for want of registration u/s 12A.

6. Aggrieved, the assessee carried matter in first-appeal but the CIT(A) did not grant any relief precisely for the reason, as mentioned in Para No. 5.4.2 / 5.4 of his order, that the assessee's application for registration u/s 12A stood rejected by CIT(Exemption) and till disposal of appeal by him, the decision of CIT(Exemption) had not been reversed by ITAT.

7. Still aggrieved, the assessee has come in next appeal before us.

8. Ld. AR for assessee firstly submitted the factual development in this case that the ITAT has already decided **ITA No. 888/Ind/2018** vide order dated 10.02.2022 in favour of assessee and pursuant to ITAT's order, the CIT(Exemption), Bhopal has also passed Order dated 15.07.2022 granting registration u/s 12A to assessee w.e.f. 01.04.2017. Copies of orders of ITAT and CIT(Exemption) are placed on record. Thus, the assessee-society stands registered u/s 12A w.e.f. 01.04.2017. Now, the limited controversy for

adjudication by us is whether or not the assessee shall be eligible to get benefit of exemption u/s 11/12 for preceding AY 2016-17 and 2017-18 under consideration in present appeals?

9. The assessee claims that it is entitled to benefit of exemption on the basis of 1st Proviso to section 12A(2). For ready reference, the provision of section 12A(2) as existing at the relevant time, is re-produced below:

“12A(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 object and activities of the 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.”

[Emphasis supplied]

10. Thus, to get the benefit of first proviso for preceding AY 2016-17 and 2017-18 in these appeals, three conditions have to be satisfied viz. (i) the registration must have been granted to assessee, (ii) the preceding year must be such whose assessment-proceedings were pending before the Assessing Officer as on the date of such registration, and (iii) the object and activities of the trust or institution remain the same for such preceding assessment year. Admittedly, the assessee has been granted registration by department w.e.f.

01.04.2017, thus condition (i) is satisfied. With regard to condition (ii), the factual matrix is such the registration was granted vide order dated 15.07.2022 and on that date, the assessee's cases of AY 2016-17 and 2017-18 were concluded by AO but pending before ITAT, Indore in these appeals. Hence, a question would arise as to whether it can be said that the assessment-proceeding were pending before AO in such a situation? In this regard, there is a direct decision of Co-ordinate Bench of ITAT, Indore settling identical controversy in **M/s. Barkatullah Vishwavidyalaya, Bhopal Vs. PCIT, ITA No.924/Ind/2018**, order dated 30.06.2022, relevant paras are re-produced below:

"8. Ld. AR, thereafter, made an alternative claim that the assessee has also received registration u/s 12A(1)(aa) read with section 12AA from AY 2019-20 onwards vide Order No. ITBA/EXM/S/12AA/2019-20/1016373495(1) dated 17.06.2019 issued by CIT(Exemption), Bhopal. Ld. AR invited our attention to the copy of registration-order. Ld. AR then referred to the section 12A(2) which reads as under:

"12A(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 object and activities of the trust or institution remain the same for such preceding assessment year."

*Analyzing the above Proviso, the Ld. AR submitted that once the registration has been granted u/s 12AA, the exemption u/s 11 and 12 shall apply in respect of any preceding assessment-year for which the assessment-proceeding is pending before the AO on the date of registration. Ld. AR submitted that in the present case, the assessee has been granted registration u/s 12AA on 17.06.2019 for assessment-year 2019-20 onwards. Ld. AR submitted that the present appeal of assessee pertaining to assessment-year 2014-15 was pending on 17.06.2019 before this Bench. Hence the benefit of the Proviso is available to the assessee. Ld. AR gainfully referred the decision of ITAT, Ahmedabad in **Shri Bhanushali Mitra Mandal Trust Vs. ITO, ITA No. 2515/Ahd/2015 dated 22.02.2016** where it was held thus:*

"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/s147 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 with.

Moreover, under the Scheme of the Act, sections 11 and 12 are substantive provisions which provide for exemptions to a religious or charitable trust. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemptions under sections 11 and 12 by the assessee and the grant or rejection of such application by the commissioner. Thus, in my view, sections 12A and 12AA are only procedural in nature. Hence, it is not the registration u/s 12AA by itself that offers immunity from taxation. A receipt whether it is revenue or capital in nature is to be decided at the assessment stage. Being procedural in nature, in my view, liberal interpretation will give effect to the intention of the amendment, thereby removing the hardship in genuine cases like the present assessee under consideration.

7.5 I am also supported by the order of **Kolkata Bench of ITAT in case of Sree Sree Ramkrishna Samity vs. DCIT (ITA No. 1680/2012, order dated 09.10.2015)** where it was held that amendment to Section 12A w.e.f. 01.10.2014 is retrospective. The relevant finding of the Hon'ble Kolkata Bench in case of Sree Sree Ramkrishna Samity vs. DCIT (supra) read as follows:

"6.10. We hold that it is an established position in law that a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole and accordingly the said insertion of first proviso

to [section 12A\(2\)](#) of the Act with effect from 1.10.2014 should be read as retrospective in operation with effect from the date when the condition of eligibility for exemption under [section 11 & 12](#) as mentioned in [section 12A](#) provided for registration u/s.12AA as a pre-condition for applicability of [section 12A](#)."

Ld. AR argued that the assessee is entitled to the benefit of this decision and therefore the assessment-year 2014-15 pending before this Bench in appeal must be construed as an assessment-year for which proceeding is pending before assessing officer. For the sake of completeness, Ld. AR also submitted that the assessee is a university established under the legislation of Madhya Pradesh Govt. and since beginning it is engaged in the very same objects and activities, therefore the objects and activities remained same. With these submissions, the Ld. AR argued that the assessee fully satisfies the requirement of aforesaid Proviso to section 12A(2) and therefore perfectly eligible for exemption u/s 11 / 12. Hence the Ld. AR requested to direct the Ld. AO to allow exemption u/s 11 / 12 to the assessee, if for any reason the exemption u/s 10(23C)(iiiab) is not allowed.

9. Per contra, the Ld. DR strongly supported the orders of lower authorities qua the disallowance of exemption u/s 10(23C)(iiiab). Ld. DR submitted that the receipts from government grant is just 3.50% and therefore the assessee is very far from the entitlement of section 10(23C)(iiiab). Accordingly, Ld. DR requested to uphold the disallowance made by lower authorities. However, the Ld. DR did not make any opposition to the alternative claim of exemption u/s 11 / 12 made by Ld. AR.

10. We have considered rival submissions of both sides, perused the records, considered the provisions of law and judicial precedents. We would first deal with the claim of exemption u/s 10(23C)(iiiab).
XXX (not reproduced being ir-relevant in present appeal).

11. Now we proceed to examine the alternative claim of exemption u/s 11 / 12 demanded by the assessee. On perusal of the Proviso to section 12A(2) and the decision of Hon'ble Co-ordinate Bench of ITAT, Ahmedabad in Shri Bhanushali Mitra Mandal Trust (supra), we agree to the proposition that the assessee is entitled to the benefit of exemption u/s 11/12 for the assessment-year 2014-15 under consideration as the requirements prescribed in the Proviso stand satisfied, viz. (i) the revenue had already granted registration u/s 12AA from assessment-year 2019-20, (ii) the assessment-year under consideration is 2014-15 which falls within "any preceding assessment year", and (iii) the objects and activities of the assessee remain same. We also find that the Ld. DR did not make any objection to this claim argued by Ld. AR. But, however, we have to ascertain one important aspect i.e. can we entertain this new claim made by assessee for the first time before us? In this respect we find that the Hon'ble Supreme Court has held in Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC) that a fresh claim can be made only by filing a revised return. But various courts have already analysed the impact of this decision and vehemently held that a fresh claim before appellate authorities is not barred. It is constantly held in several decisions that a legal claim can be made by the assessee before appellate authorities even if the same was not claimed during assessment-proceedings. We also observe that the provisions

of section 11 / 12 grant exemption to the assessee and such exemption, if not allowed, would result in illegal collection of tax from the assessee, which is never an objective of the Income-tax Act, 1961. In view of this position of law, we do not find any difficulty in accepting the alternative claim of assessee to allow exemption u/s 11 / 12. However, the claim of exemption u/s 11 / 12 involves a different type of working based on application and accumulation of income. Therefore, we feel that it would be more appropriate to refer this matter back to Ld. AO who shall give an opportunity to the assessee to provide the necessary information for computation of exemption u/s 11 / 12. Based on such information, the Ld. AO shall allow the exemption as admissible u/s 11 / 12 to the assessee.

12. *In the result, this appeal of assessee is allowed for statistical purpose."*

11. Thus, the Co-ordinate Bench of ITAT Indore, following the decision of ITAT, Ahmedabad in ***Shri Bhanushali Mitra Mandal Trust Vs. ITO (Supra)***, has accepted in principle that going by the purposive interpretation of statues, 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 to section 12A(2). Therefore, the condition (ii) is also satisfied. Now what remains is the last condition (iii) according to which the object and activities of the assessee should remain same for preceding assessment year i.e. AY 2016-17 and 2017-18 in these cases. Ld. AR submitted that the assessee is a Govt. owned society and its object and activities remained same year after year. We prima facie find merit in the submission of Ld. AR but still the AO should get an opportunity to verify this condition (iii). Moreover, the claim of exemption u/s 11/12 involves a different type of working based on application and accumulation of income which the AO has not verified till now because he did not grant exemption for want of registration u/s 12A. For these reasons, we feel it most appropriate to remand these matters back to the file of AO for carrying out

verification of fulfillment of condition (iii) discussed above and if that is held to be satisfied, to verify and allow exemption u/s 11/12. Needless to mention that the AO shall give necessary opportunities to assessee and pass order in accordance with law without being influenced by his previous order. Ordered accordingly.

12. Resultantly, these appeals of assessee are allowed for statistical purpose.

Order pronounced in the open court on 26.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :26.10.2023

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore