

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.327/Chny/2023

Cheyar Virutcham Educational Trust, Vs. The Assistant Commissioner of
73, Arani Koot Road, Cheyyar, Income Tax (H.Qrs)
Thiruvannamalai, (Exemptions),
Tamil Nadu 604 407. Chennai.
[PAN:AABTC8538N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N.V. Balaji, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 17.01.2024
घोषणा की तारीख /Date of Pronouncement : 24.01.2024

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax/ CIT, Chennai, dated 06.04.2022 in not granting the registration from the assessment year 2021-22 as assessee's registration under section 12AB of the Income Tax Act, 1961 ["Act" in short] shall apply from the assessment year 2021-22 onwards.

2. The appeal of the assessee is filed with a delay of 283 days in filing the appeal before the Tribunal. The assessee has filed a petition for

condonation of delay in the form of an affidavit mentioning the reasons for delay in filing the appeal. By referring to the above affidavit, the Id. Counsel for the assessee has submitted that since the assessee was pursuing alternative remedy of rectification, thereby, the delay was occurred. By filing copy of the rectification petition dated 27.09.2022, 09.12.2022 as well as copy of the rectification order passed under section 154 of the Act dated 19.12.2022, the Id. Counsel has submitted that there was reasonable cause for the delay and the delay in filing the appeal is neither wilful nor wanton and prayed for condonation of delay and to admit the appeal for adjudication. Against the above submissions, the Id. DR has not raised any serious objection. Considering the facts and circumstances, we hereby condone the delay in filing the appeal and to admit the appeal for adjudication subject to the condition that the assessee should pay ₹.500/- to the State Legal Aid Authority, Hon'ble Madras High Court and produce necessary proof of payment of cost before the ITO (Exemption), Ward 3, Chennai.

3. Brief facts of the case are that the assessee is a trust and application in Form 10A filed on 28.03.2018. The same was considered by the Id. CIT(E) for registration under section 12AA of the Act and granted registration vide his order dated 31.08.2018.

3. Subsequently, there was an amendment to the Income Tax Act i.e., Clause (ac) to section 12A(1) of the Act was inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (“TOLA”) with effect from 01.04.2021. Sub-clause (i) of the said provision mandated that existing charitable trust should apply for registration under section 12AB of the Act which was also inserted by TOLA. The time limit for making the application under the said provision was 30.06.2021 and was further extended up to 31.03.2022 as per CBDT Circular No. 12 of 2021 dated 25.06.2021 and CBDT Circular No. 16 of 2021 dated 29.08.2021. The assessee had filed the application in Form 10A on 30.03.2022 well within the said time limit and the registration has been granted by the Commissioner vide order in Form 10AC on 06.04.2022. In the said order, the assessment year or years for which the Trust or institution is registered is mentioned as “From AY 2022-23 to AY 2026-2027”.

4. The Id. PCIT/CIT, vide order dated 06.04.2022, granted registration from the assessment year 2022-23 to 2026-27 for the reason that the CPC processed the return filed by the assessee dated 14.03.2022, wherein, the CPC has noted as under:

In Schedule Part A General – “Details of registration or approval under Income Tax Act” details of Section 12AB or 10(23C)(iv)/10(23C)(v)/

10(23C)(vi)/10(23C)(via) is not provided in the column "Section under which the registration is applied". The Act has been amended from 01/06/2020, and all the entries have to get new registration/approval u/s 12AB or 10(23C)(iv)/10(23C)(v)/10(23C)(vi)/10(23C)(via) to be eligible for exemption. Since in your case, new registration/approval details are not available, exemption claimed in Sl. No. 4 i to 4 viii in Schedule Part B – This is not allowable."

5. The Id. Counsel for the assessee has submitted as under:
- (i) The first proviso to section 12A(2) of the Act provides that the provisions of sections 11 and 12 of the Act shall apply to existing registered charitable trust or institution from the year from which the trust was earlier granted registration.
 - (ii) It may be noted that section 12A(1)(ac) was inserted with effect from 01.04.2021 and any application under the said provision can be made by any assessee for the first time only on or after 01.04.2021 and not before. It is not the case of the assessee that it has made the application belatedly.
 - (iii) The assessee had made the application well within the extended due date and has complied with the statutory provisions without any default. While section 12A(1)(ac) and section 12AB of the Income Tax Act, 1961 have been inserted with effect from 01.04.2021 and

section 12A(2) of the Act provides for application of sections 11 and 12 right from the year in which the trust was earlier granted registration, the Commissioner has granted registration in Form 10AC only from assessment year (“AY”) 2022-23 instead of AY 2021-22.

- (iv) Further it is submitted that as per provisions of section 12AB(1)(a), once the CIT receives an application under section 12A(1)(ac)(i), he is required to pass an order granting registration for five years. The said section does not specifically state the AY from which the registration is to be granted, in contrast to the 12AB(1)(c). This clearly means that when application is made under section 12A(1)(ac)(i), the CIT(E) is to grant registration in continuation to the earlier registration and thus in the present case ought to have granted from AY 2021-22.

6. On the other hand, the Id. DR relied on the order passed by the Id. PCIT/CIT.

7. We have heard both the sides, perused the materials available on record and gone through the order passed by the Id. CIT(E) as well as intimation order under section 143(1) of the Act by the CPC.

8. It is a fact that the assessee trust was already registered under section 12AA of the Act vide order dated 31.03.2018. The assessee has to file an application in Form 10A for fresh registration due to amendment to Clause (ac) to section 12A(1) of the Act was inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ("TOLA") with effect from 01.04.2021. The assessee has also filed as per amended laws in Form 10A within the due date as permitted by CBDT. We find that there is no justification for the Id. PCIT/CIT in not granting registration from the assessment year 2021-22. The Id. PCIT/CIT has only granted registration from assessment year 2022-23 to assessment year 2026-27 by his order dated 06.04.2022. In our opinion, the Id. PCIT/CIT ought to have been granted registration from the assessment year 2021-22 onwards. The assessee was not able to file details of registration along with return of income filed by the assessee for the reason that no fresh registration was available with the assessee as per amended law. Thus, the CPC was not correct in denying benefit under section 11 of the Act to the assessee. The Id. PCIT/CIT, by following the observations of the CPC, denying the registration to the assessee from the assessment year 2021-22 was also not correct. We find that the assessee is entitled for grant of registration from the assessment year 2021-22. In view of the above, we set aside the order of

the Id. PCIT/CIT dated 06.04.2022 in granting registration from 2022-23 to 2026-27 and remit the matter back to the file of the Id. PCIT/CIT with a direction to grant registration from the assessment year 2021-22 onwards and pass order accordingly.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 24th January, 2024 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 24.01.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.