

।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.772/PUN/2024
निर्धारण वर्ष / Assessment Year : 2016-17

Indian Medical Association, PCB Branch, Niramaya Hospital, Behind Post Office, Chinchwad Station, Pune – 411019. PAN: AABTI0892B	V s	The ADDL-JCIT(A)-I, Visakhapatnam, e-order.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Rajesh Gawali – Addl.CIT(DR)
Date of hearing	20/06/2024
Date of pronouncement	26/06/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Id.ADDL/JCIT(A)-1, Visakhapatnam under section 250 of the Act dated 31.01.2024 for the A.Y.2016-17 emanating from the order u/sec.143(1) of the Act dated 02.01.2018. The assessee has raised the following grounds of appeal:

- 1. Exemption U/s 11: The learned A.O has erred in confirming the total income of the assessee at Rs.33,84,440/- as against returned income of Rs 31,040/-*

Exemption U/s 11 : The learned A.O has erred in denying exemption claimed U/s 11 of Rs 33,53,400 even though the assessee is registered U/s 12A on 18/10/2016 in A.Y.2017-18 (F.Y.2016-17).

Exemption U/s 11: The learned A.O. has erred in not considering the amendment made in Finance Bill 2014 effective from 1st October 2014 which states exemption u/s section 11 and 12 can be given with retrospective effect.

Exemption U/s 11: The learned A.O has erred in not considering various legal pronouncements allowing effect to the registration u/s 12A provided the activities and objects of the trust remains substantially the same.

Exemption U/s 11: The learned A.O. has erred in not considering the CBDT Instruction No. 16/2015 dated 16-1-2015 allowing six months only while passing order under section 12AA.

The Learned AO has erred in not allowing genuine expense of the Trust and has considered the gross receipts as taxable income instead of considering the net income of the Trust.

Exemption U/s 11: Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

2. None appeared for assessee. No adjournment letter was filed.

It is observed that notice for hearing was issued on 06.06.2024 and was duly served at the email address ravi.rajapurkar@gmail.com, mentioned in Form No.36 filed by assessee.

Submission of ld.DR :

3. The ld.DR for the Revenue relied on the order u/sec.143(1) and order u/sec.250 of the Act.

Findings & Analysis :

4. We have heard ld.DR and perused the records. In this case, assessee filed Return of Income for A.Y.2016-17 in ITR-7 claiming deductions u/s 11 of the Act. An order u/sec.143(1) of the Act was passed on 02.01.2018 rejecting assessee's claim for deductions u/sec.11 of the Act. Aggrieved by the order u/sec.143(1), assessee filed appeal before the ld.CIT(A).

5. The Additional/JCIT(Appeal) passed an order u/sec.250 of the Income Tax Act for A.Y.2016-17 dismissing the appeal of the assessee, only on one ground that the Registration granted u/sec.12A is prospective and hence not applicable for Assessment Year 2016-17. Accordingly, Additional/JCIT(Appeal) upheld the order u/sec.143(1) of the Act. Aggrieved by the order, assessee filed appeal before this Tribunal.

6. The assessee i.e.Indian Medical Association is a Registered Trust. The Deputy Charity Commissioner, Pune issued registration

certificate to the assessee on 26.08.2014. The Trust was formed by Trust Deed dated 12.10.2013. As per the Trust Deed, some of the objects are as under :

- *Improvement of Public Health and Medical Education in India.*
- *Upholding the dignity of Medical Profession.*
- *Holding periodical meetings, conference of medical professionals.*
- *Encourage Research in medical and allied sciences. Provide Scholarships, Prizes for the same.*
- *Organize Medical Camps for providing medical reliefs.*

7. The assessee filed Return of Income for Assessment Year 2016-17 in ITR-7 and claimed benefit u/sec.11 of the Act. The assessee had applied for registration u/sec.12AA of the Act on 15.07.2016. The assessee received registration u/s.12AA of the Act vide order dated 20th October, 2016.

7.1 As per section 12A(2) of the Act, if any assessment proceeding is pending during the pendency of registration u/sec.12AA of the Act, then the registration granted shall be applicable to the pending assessment proceedings. The relevant section 12A(2) is reproduced here as under :

Quote "*12A..... **Conditions for applicability of section 11 and 12.**
(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of section 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:*

¹³[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.J.” Unquote.

7.2 The Central Board of Direct Taxes(CBDT) vide Circular No.1/2015 explained the section 12A(2) of the Act, the relevant part of the circular is reproduced here as under :

“8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfil other substantive conditions. However, the power of condonation of delay in seeking registration was not available.

8.3 In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Income-tax Act has been amended to provide that in a case where a trust or institution has been granted registration under section 12AA of the Income-tax Act, the benefit of sections 11 and 12 of the said Act shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.”

7.3 Thus, the proviso to section 12A(2) was introduced to remove hardship caused to the genuine trust. In this case, assessee is a Charitable Trust. It has not been alleged by Revenue that assessee's activities/objects are not charitable in nature, rather it is an admitted fact that assessee's objects and activities are charitable in nature. The Id.CIT(E) after examining the objects and activities of the Trust, granted registration u/sec.12AA of the Act to the assessee trust. The impugned order u/sec.143(1) was issued on 02.01.2018 and registration u/s.12AA of the Act was granted 20.10.2016, means at the time of issue of order u/s.143(1), assessee was already having registration u/s.12AA of the Act. We have already mentioned that proviso to section 12A(2) was introduced to remove hardship to the genuine trust. Therefore, as per proviso to section 12A(2) of the Act, assessee was eligible for deduction u/sec.11 of the Act for A.Y.2016-17. In this context, we find support from the decision of the Hon'ble Rajasthan High Court in the case of CIT(Exemptions) Vs. Shree Shyam Mandir Committee [2018] 400 ITR 466 (Raj).

8. Similarly, the Hon'ble Kolkatta ITAT in the case of Sree Sree Ramkrishna Samity Vs. DCIT 44 ITR(T) 678 vide order dated 09/10/2015 has held as under :

Quote, “6.4 Admittedly, the reassessment proceedings were pending before the Learned AO for the Asst Years 2003- 04 to 2008-09 as on the date of granting registration u/s 12AA of the Act on 29.10.2010 with effect from 1.4.2010 as reassessment proceedings got commenced pursuant to issuance of notice u/s 148 on 30.3.2010 as stated supra. Admittedly, the objects and activities of the trust had remained the same in preceding assessment years also i.e Asst Years 2003-04 to 2008-09. Though this first proviso to section 12A(2) talks about pendency of assessment proceedings, it is relevant to get into the definition of the term 'assessment' in section 2(8) of the Act, wherein it is defined as "assessment includes reassessment". Hence even reassessment proceedings that were pending would also come under the ambit of the first proviso to section 12A(2) of the Act. 6.5 The second proviso to section 12A(2) also provides that no action u/s 147 of the Act shall be taken merely for non-registration of trust or institution. Reading this proviso with the first proviso to section 12A(2) and applying the Rule of Harmonious Construction, it could safely be concluded that the legislature in its wisdom had only brought this proviso to prevent genuine hardship that could be caused on the assessee due to nonregistration u/s 12AA of the Act and accordingly in our opinion, the provisos to section 12A(2) of the Act is to be construed as retrospective in operation. 6.6 The third proviso to section 12A(2) of the Act also provides that the first and second proviso shall not be applicable if the trust or institution had been refused registration earlier or the registration granted earlier is cancelled by the Commissioner u/s 12AA of the Act. This also goes to prove that the first and second proviso shall be made applicable for the trusts for earlier assessment years also who had not applied for registration u/s 12AA of the Act at all. 6.7 We hold that the registration of trust under section 12A of the Act once done is a fait accompli and the AO cannot thereafter make further probe into the

objects of the trust. Reliance in this regard is placed on the decision of the Hon'ble Apex Court rendered in the case of Asstt. CIT v. Surat City Gymkhana [2008] 300 ITR 214/170 Taxman 612. Drawing analogy from this judgement, the logical inference could be that as long as the objects were charitable in nature in the earlier years and in the year in which registration u/s 12AA was granted, the existence of trust for charitable purposes in the earlier years cannot be doubted with. Even otherwise, no adverse findings were given by the revenue with regard to the existence of the assessee society for charitable purposes in the assessment years under appeal.....

.....

6.13 We hold that since the only reason for denial of exemption u/s 11 was absence of registration u/s 12AA (which was granted to assessee society on 29.10.2010 with effect from 1.4.2010) for the relevant assessment years and on no other ground, the benefit of change in law as above by Finance Act 2014 should be available and for all the years, the benefit of exemption should be available on the date of registration as all the assessments were pending as shown above. I ”
Unquote.

8.1 Similarly ITAT Pune in the case of Sansthan Shree Eknath Maharaj Vishwastha Mandal Vs. ITO(Exemption) 195 ITD 46 (Pune - Trib.) has held as under :

Quote, “4. I have heard both the sides in Virtual Court and gone through the relevant material on record. There is no dispute on the fact that the assessee filed its return of income on 17-1-2017 for the year under consideration. The approval was granted by the Id. CIT(E) u/s 12AA on 16-5-2017. At this stage, it is relevant to take note of the mandate of sub-section (2) of section 12A granting benefit of exemption to the years prior to the grant of registration, which provides through the second proviso that : 'where registration has been granted to the trust or institution under section 12AA or section

12AB, 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.' A bare perusal of the proviso amply transpires that where the subsequent registration has been granted u/s 12AA, then the benefit of such registration will also be conferred to earlier years for which assessment proceedings are pending before the AO as on the date of such registration. The crucial words used in the second proviso are the pendency of assessment proceedings. To put it simply, if the assessment proceedings are pending before the AO when the registration is granted by CIT(E), the registration so granted will also have effect and the AO will be obliged to grant exemption u/s 11 in respect of such assessment year. The authorities below have taken note of the mandate of the second proviso but interpreted the term 'assessment proceedings' as commencing with the issuance of notice u/s 143(2) of the Act. That is the *raison d'être* for denying the benefit of exemption in the extant case on the premise that notice u/s 143(2) was issued on 20-9-2017 and by that time the registration had already been granted by the ld. CIT(E) on 16-5-2017. In my opinion, the connotation of commencement, continuation and termination of 'assessment proceedings' is fairly settled by authoritative pronouncement from the highest Court of the land in *Auto & Metal Engineers v. Union of India [1998] 97 Taxman 363/229 ITR 399 (SC)* in which it has been held by the Hon'ble Summit Court that the process of assessment commences with the filing of return or by issuance by the AO of notice to file a return and it culminates with the issuance of notice of demand u/s 156 of the Act. It is thus, manifest that the assessment proceedings commence with the filing of return and not when notice is issued for the first time u/s 143(2). Issuance of such a notice and passing of assessment order are parts of entire assessment proceedings which commences with the filing of return.

5. Adverting to the facts of extant case, I find that the assessee filed its return for the year under consideration on 17-1-2017. The approval was granted by the ld. CIT(E) u/s 12AA on 16-5-2017. It is, ergo, glaringly patent that the assessment proceedings for the year under consideration, which commenced with the filing of return on 17-1-2017, were pending on the date of grant of registration by the ld. CIT(E) on 16-5-2017. I, therefore, hold, in principle, that the assessee is eligible for exemption u/s 11 of the Act. ” Unquote.

9. No contrary decision of the Hon'ble Jurisdictional High Court has been brought to our notice. Therefore, respectfully following the Hon'ble Rajasthan High Court and the Hon'ble ITAT (supra) it is held that assessee is eligible for deduction u/sec.11 of the Act for A.Y.2016-17 as assessee had received registration u/sec.12AA of the Act before the order u/sec.143(1) for A.Y.2016-17 was passed by Income Tax Central Processing Centre, Bangalore. Accordingly, grounds of appeal number 1 to 4 raised by the assessee are allowed.

Ground Number 5:

10. Ground Number 5 is regarding 12AA proceedings which is not related to the present appeal and it is not arising from the impugned Order u/s 250 of the Act. Hence, Ground Number 5 is dismissed.

Ground Number 6:

11. Since we have allowed the assessee benefit of exemption u/s 11 of the Act the ground number 6 becomes academic in nature. However, in principle, we agree with the assessee that without prejudice to earlier grounds, only the profit can be taxed and not the entire receipt if benefit of section 11 is to be denied. Therefore, the CPC has erred in taxing entire receipt of the assessee u/s 143(1) of the Act. However, this is merely academic discussion, as we have held that assessee is eligible for deduction u/sec.11 of the Act.

Ground No.7 :

12. Ground number 7 is general in nature. No additional ground was raised or no ground was altered. Hence, ground number 7 is dismissed.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 26th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th June, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.