।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1012/PUN/2023
निर्धारण वर्ष / Assessment Year : 2018-19

Pune Mathadihamal and Other Manual Workers Board, Shramashakti Bhavan, Coomercial Plot No.1, Market Yard, Pune – 411037. PAN: AAALP0097L	V s	The Income Tax Officer, Ward-5(1), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Vipul Joshi – AR
Revenue by	Shri Ajay Kumar Keshari & Shri Rajesh Gawali– DR's
Date of hearing	17/04/2024
Date of pronouncement	27/06/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is against the orders of ld.Commissionerof Income Tax(Appeals)[NFAC], under section 250 of the Act dated 14.07.2023 :

Submission of Authorised Representative (ld.AR) for Assessee:

2. The ld.AR submitted written submissions, relevant part of the same is reproduced here as under :

The board is a welfare authority constituted by Govt, of Maharashtra. The board is constituted by Govt, of Maharashtra in terms of separate statute of State Legislative Assembly called "Maharashtra Mathadi and other Manual Workers Regulation of Employment and Welfare Act, 1969". The Govt of Maharashtra has notified by way of notification no UWA- 1473GL/180589/Lab.lV Dated 23.07.1973 by way of scheme called "THE POONA GROCERY MARKETS OR SHOPS AND MARKETS AND SUBSIDIARY MARKETS UNPROTECTED WORKERS REGULATION OF EMPLOYMENT AND WELFARE SCHEME 1974.

The board is a tripartite body constituted by Govt, of Maharashtra consisting of representatives from workers, traders or employers and Govt. During the year tripartite board was not in existence but only one-man board was in existence. The board is headed by chairman who is of the rank of Dy. Commissioner of labour while secretary is the Govt, labour officer who are appointed by Govt, of Maharashtra.

1. The Board filed its return of income of A.Y. 2018-19 declaring income of Rs.0.00 on 28- 03-2019 by claiming exemption under section 11 of I.T. Act, 1961.

5. The assessment had been framed under section 143(3) of I.T. Act, 1961 read with sections 143(3A) & 143(3B) of I.T. Act, 1961 for the A.Y. 2018-19 by addingRs.3,55,23,487/- to the retuned income of nil instead of Rs.Rs.1,50,35,886 which was the excess of income over expenditure.

5. ***That the orders passed are bad in law as the appellant has been granted registration under section 12AB of I.T. Act, 1961 w.e.f. A.Y. 2022-23 by way of order dated 12.10.2021 under sub section (i) of clause (ac) of sub section (1) of section 12A and the proviso to section 12A which holds that*** *"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***" has been ignored.**

THE OBJECTS OF THE BOARD ARE :

1) protect the casual, unorganized Mathadi Workers, coolies from the exploitation by ensuring full and proper payment of wages due to them and provide security of work,

2) ensure that the workers are employed properly,

3) ensure benefits to the workers in the form of Provident fund, gratuity, bonus, compensation for injury, medical benefits etc.

4) ensure welfare and safety measures such as housing for the workers, providing scholarships to the wards of the workers, providing full fledge Hospitalisation facility and free medical treatment to the workers etc.

The mathadi boards do not carry on any activity for profit. The primary object is to protect the poor manual workers from exploitation by ensuring full wages, labour law benefits, ensuring full utilization of work forces, ensuring full employment and welfare. At no stage any profit element is involved. No business is carried on. No commercial activity for profit is undertaken. There is no distribution of surplus by way of dividend to any board members.

1. The main sources of receipts in the hands of the board are: 1. wages 2. levy 3. Interest on Investments, which is generated as under :

a. Regulation of the employment by utilising in optimum level the full work force available by ensuring registration of the worker with the board as well as registration of the traders and manufactures with the board. The registered workers are then grouped together called as " Toli". A particular toli is then allocated to the registered employer or group of them as per work available.

b. The registered trader as well as toli head (Mukadam) keep the record of the work done in a month and at the end of the month the trader deposits with the board the consolidated cheque of the entire work done by the entire "Toli".

c. The board then disburses back to the individual workers in a toli the entire wages receivedwithout keeping any margin or profit. The statutory deductions such as Income Tax Professional tax are made before disbursement of wages.

d. In addition to the wages of a month, the trader also deposits with the " Board" - on behalf of each worker working with him - an additional amount called " Levy " to provide for

labour laws benefits such as Provident Fund, Gratuity, Bonus, H.R.A., L.T.A., Medical care etc. A small portion of levy is meant to defray the administrative expenses of the board.

e. Out of the levy received, the board invests on behalf of workers in Fixed deposits with the nationalised banks to built the funds for Provident fund and Gratuity fund. The levy received on account of other labour law benefits such as bonus, H.R.A., L.T.A., Medical care etc. is disbursed back to the individual worker within one year.

f. Thus the receipts in the hands of the board in the form of wages and levy are for and on behalf of workers as welfare agency and as a trustee, to be disbursed back to the workers either as wages or in the form of retirement dues or as benefits under labour laws.

g. The board maintains on behalf of the workers various funds such as Provident Fund, Gratuity Fund, workmen compensation fund (can be termed as workers' long term funds) as well as worker's short term funds such as Bonus fund, H.R.A. Fund, L.T.A. fund etc. These long term funds are earmarked and invested in fixed deposits with Nationalised banks while short term funds are invested in recurring deposits with nationalised banks. These funds are liabilities for the board as the funds represent either long term dues to be paid to the workers or short term dues to be paid to the workers, i.e. current liabilities.

h. The interest earned on these investments is credited to the respective funds. In respect of short term funds, major part of interest is paid back to workers and taxed in their hands as "Salary" and part of the interest is used to defray the administrative expenses of the board as small portion of levy is not sufficient to meet the administrative expenses of the board in the form of salary of clerks, rent, telephone, electricity etc.

5. The annual report submitted by it to the Govt. Of Maharshtra every year is sufficient proof that the activities are genuine and are in fact carried out. The copy of one annual report is enclosed herewith.

2.1 The ld.Authorised Representative for the assessee in the written submission had submitted following propositions :

"I. Proposition 1 :

No denial of sec. 11 relief to a trust if it had obtained registration during the pendencyof appeal before CIT(A).

(i) SNDP Yogam v. ADIT (Exemption) - [(2016) 68 taxmann.com 152 (Cochin - Trib.)]- Para 7.2 / 7.3

(ii) Prem Prakash Mandal Sewa Trust v. ITO (Exemptions) - [(2021) 132 taxmann.com 269 (Raipur - Trib.)]

(iii) Dera Baba Bhai Gurdas Ji Udasin Trust (Regd) (Mansa) v. ITO [(2022) 145 taxmann.com 278 (Amritsar - Trib.)]

(iv) Alpha Educational Trust v. DCIT (E) [(2023) 150 taxmann.com 20 (Chennai - Trib.)]

II. Proposition 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, thereby covering the entire financial year, beginning from the lstday of the financial year in which application for registration is made.

(i) Prem Prakash Mandal Sewa Trust v. ITO (Exemptions) - [(2021) 132 taxmann.com 269 (Raipur - Trib.)

(ii) Dera Baba Bhai Gurdas Ji Udasin Trust (Regd) (Mansa) v. ITO [(2022) 145 taxmann.com 278 (Amritsar - Trib.)]

(iii) Alpha Educational Trust v. DCIT (Exemption) - [2023] 150 taxmann.com 20 (Chennai - Trib.)

III. Proposition 3:
If an Application for Registration is not disposed off within 6 months, then same isdeemed to be accepted/approved, in terms of section 12AA(2).

Sardari Lai Oberoi memorial Charitable Trust v. ITO [2005] 3 SOT 229 (Delhi)]

SambandhOrganisation v. CIT [(2006) 156 Taxman 183 (Delhi)]

CIT v. Society for Promn. Of Edn. Allahabad [(2016)382 ITR 6 (SC)]

CIT v. Sahitya sadawart Samiti Jaipur [(2017) 396 ITR 46 (Rajasthan)]

CIT v. TBI Education Trust [(2018) 96 Taxmann.com 356 (Kerala)]

DIT (Exemption) v. St. Ann's Education Society [(2020) 425 ITR 642 (Karnataka)]

CIT (Exemptions) v. Gettwell Health and Education Samiti [(2021) 133 Taxmann.com 114 (SC)]

Bhagwad Swarup Shri ShriDevraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT [(2008) 111 ITD 175 (Delhi)]

Sai Shyam Educational Society v. ITO I.T.ANo. 567/(Asr)/2014

IV. Proposition 4 :
The Board is "State" within the meaning of Article 289 of the Constitution of India and, therefore, the income of the Board is exempt from Union taxation.

1. Smt. Ujam Bai v. State of Uttar Pradesh [(1962) AIR 1621, 1963 SCR (1) 778]

2. K.S.Ramamurthi Reddiar v. The CCIT [(1963) AIR 1464, 1964 SCR (1) 656]

3. Rajasthan State Electricity v. Mohan Lal [(1967) AIR 1857, 1967 SCR (3) 377]

4. Ajay Hasia Etc v. Khalid Mujib Sehravardi&Ors. Etc [(1981) AIR 487, 1987 SCR (2) 79]"

Submission of ld.DR :

3. The ld.Departmental Representative(ld.DR) for the Revenue relied on the orders of Assessing Officer and ld.CIT(A).

Findings & Analysis :

4. In this case it is a fact that the Assessee is formed by an Act of Government of Maharashtra called Pune Mathadi and Hamal and Other Manual Worker Board Act 1969. The Assessee was incorporated on 13/06/1969.

4.1 The Assessee had applied for registration u/s 12A of the Act on 09.03.1992, then again, the assessee applied for registration u/sec.12A of the Act on 29/05/2006, 09/05/2007, 27/03/2018 and 07/09/2021. Assessee had filed copies of these applications in the paper book. We verified from the Income tax department and department could not file any submission about the status of these applications filed by the Assessee. It is not the case of the Income Tax Department that the Income Tax department had rejected variousapplications, as department had not filed any copy of such rejection orders. Therefore, it can be presumed that the Income Tax Department had not rejected any of the earlier applications filed by the assessee. However, subsequently in response to assessee's application dated 07.09.2021, assessee received registration u/s.12AA of the Act vide order dated 02.10.2021.

4.2 This fact is proved from the fact that the Income Tax Department had allowed the Assessee benefit of section 11 in earlier assessment orders. We have perused the Order u/s 143(1) of the Act for AY 2010-11 dated 28/10/2011 duly signed by Dy.Commissioner of Income Tax ,Circle 4, Pune, vide which Assessee's Returned income of "NIL". Has been accepted and refund of Rs.43,270/- given to the assessee. The assessee had claimed exemption u/s 11 of the Act for AY 2010-11. Similarly for A.Y.2014-15 assessment order was passed u/s 143(3), for A.Y.2015-16 assessment order passed u/s.143(3), for A.Y.2016-17 assessment order passed u/s 143(3) of the Act allowing the assessee exemption u/s 11 of the Act and assessing the Income of the Assessee at "NIL". Copies of all these assessment order filed by the Assessee in the paper book along with copies of the return of income. On perusal of the return of Incomes for A.Y.2014-15, 2015-16 and 2016-17, it is observed that the assessee had claimed exemption u/s 11 of the Act and all these Returns were filed in ITR-7. ITR-7 is for the entities claiming benefit u/s 11 of the Act. For Assessment Year 2013-14 also assessee had filed Return of

Income in ITR-7 and claimed benefit u/s 11 of the Act. The chart showing details of Assessments is as under :

Assessment Year	Section	Form of Return	Returned Income	Deduction u/s 11	Assessed Income	Amount accumulated u/s.11(1)
2010-11	143(1)		NIL	Allowed	NIL	
2013-14		ITR 7	NIL	Allowed		
2014-15	143(3)	ITR 7	NIL	Allowed	NIL	2,09,75,949/-
2015-16	143(3)	ITR 7	NIL	Allowed	NIL	2,65,39,406/-
2016-17	143(3)	ITR 7	NIL	Allowed	NIL	18,66,80,903/-

4.3 Thus, as can be seen from the chart, for all the earlier years the Income Tax Department had accepted the Return of Income and allowed the assessee's claim of deduction u/s 11 of the Act and also allowed the assessee benefit of accumulation u/sec.11(1) of the Act.

4.4 However, for the impugned assessment year i.e.2018-19, the Assessing Officer(AO) denied the assessee benefit of exemption u/sec.11 of the Act only on one ground that assessee had not filed copy of registration u/s.12A of the Act. Therefore, AO assessed the income of assessee at Rs.3,55,23,487/-. However, for A.Y.2018-19 also, assessee had shown Rs.44,95,81,482/- as accumulation u/s.11(1) of the Act. The AO has not discussed anything about assessee's claim of accumulation u/s.11(1) of Rs.44,95,81,482/- in the assessment order. It indirectly means,

Assessing Officer had accepted assessee's claim of accumulation u/sec.11(1) of the Act and benefit of section 11(1) is only possible, if assessee is duly registered u/sec.12A of the Act.

4.5 It is also observed that Department has issued registration u/s.12AA of the Act on 02.10.2021. It is a fact that objects and activities of the assessee are same since its incorporation.

4.6 The Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT 193 ITR 321(SC) observed as under :

> Quote, *"13. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*
>
> *14. On these reasonings in the absence of any material change justifying the revenue to take a different view of the matter—and if there was no change it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the Commissioner in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12."* Unquote.

4.7 The above decision of the Hon'ble Supreme Court was followed by the Hon'ble Bombay High Court, Hon'ble Punjab & Haryana High Court and Hon'ble Karnataka High Court.

4.8 The Hon'ble Bombay High Court in the case of PCIT Vs. Quest Investment Advisors Pvt Ltd., 409 ITR 545 (Bombay)[28-06-2018] has held as under :

> Quote, *"**5.** Thus, the respondent carried the issue in further appeal to the Tribunal. The impugned order of the Tribunal without going to the merits of the action of the Assessing Officer in allocating the expenses between the professional income and capital gains, proceeded to allow the appeal on the basis of principle of consistency. It observed that for the assessment years relating to Assessment Years 1995-96 to 2012-13, no such allocation of expenses between professional income and the earning on account of capital gain was made. All expenses were allowed to be set off against the professional income. It is only for two assessment years namely Assessment Years 2008-09 and 2007-08 that the Assessing Officer had done this exercise of allocating the expenditure under the heads of business income and capital gain. The Revenue before the Tribunal as recorded in the impugned order, was not able to point out any distinguishing facts in the subject assessment year, which would warrant a different view from that taken in the earlier and subsequent assessment where no allocation of expenditure was done between various heads of income. Therefore, on application of the principles of consistency following the decision of the Apex Court in Radhasoami Satsang v. CIT [1992] 193 ITR 321/60 Taxman 248 the respondent's appeal was allowed.*
>
> ***6.** Mr. Mohanty, learned Counsel appearing for the Revenue urges that the decision of the Apex Court in Radhasoami Satsang (supra) would have no application to the facts of the present case for two reasons viz. (a) that the decision itself states that it is restricted to the facts of the case before it and would not have general application; and (b) Besides, it is submitted that the issue of expenses to be allowed and / or income to be assessed would be a subject matter of separate consideration for each year that is unlike an issue deciding a status of a person and / or a property which would in the absence of any change in law and / or facts would permeate through various*

years. Thus, the impugned order of the Tribunal is not sustainable and the appeal requires admission.

***7.** We note that the impugned order of the Tribunal records the fact that the Revenue Authorities have consistently over the years i.e. for the 10 years years prior to Assessment Years 2007-08 and 2008-09 and for 4 subsequent years, accepted the principle that all expenses which has been incurred are attributable entirely to earning professional income. Therefore, the Revenue allowed the expenses to determine professional income without any amount being allocated to earn capital gain. In the subject assessment year, the Assessing Officer has deviated from these principles without setting out any reasons to deviate from an accepted principle. Moreover, the impugned order of the Tribunal also records that the Revenue was not able to point out any distinguishing features in the present facts, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. So far as the decision of Radhasoami Satsang (supra) is concerned, it is true that there are observations therein that restrict its applicability only to that decision and the Court has made it clear that the decision should not be taken as an authority for general applicability.*

***8.** However, subsequently the Apex Court in Bharat Sanchar Nigam Ltd. v. Union of India [2006] 282 ITR 273 has after referring to the decision of Radhasoami Satsang (supra) has observed as under :—*

> *"20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision of where the earlier decision is per incuriam. However, these are fetters only on a co-ordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view*

expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction."
(emphasis supplied)

9. *The principle accepted by the Revenue for 10 earlier years and 4 subsequent years to the Assessment Years 2007-08 and 2008-09 was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains. Once this principle was accepted and consistently applied and followed, the Revenue was bound by it. Unless of course it wanted to change the practice without any change in law or change in facts therein, the basis for the change in practice should have been mentioned either in the assessment order or atleast pointed out to the Tribunal when it passed the impugned order. None of this has happened. In fact, all have proceeded on the basis that there is no change in the principle which has been consistently applied for the earlier assessment years and also for the subsequent assessment years. Therefore, the view of the Tribunal in allowing the respondent's appeal on the principle of consistency cannot in the present facts be faulted with, as it is in accord with the Apex Court decision in Bharat Sanchar Nigam Ltd.'s case (supra).*

10. *Accordingly, the question as proposed do not gives rise to any substantial question of law. Thus, not entertained. "* Unquote.

4.9 The Hon'ble Punjab and Haryana High Court in the case of Pr.CIT Vs. Nippon Leakless Talbros (P.) Ltd 455 ITR 355 held as under :

Quote, *"**10.** A bare perusal of orders (Annexure R-1 to R-5) shows that the appeal of the assessee was accepted by the Tribunal by setting aside the order of Assessing Officer passed under section 143 (3) read with section 144 C of the Income-tax Act by holding that the Transfer Pricing Officer for the Assessment year 2008-2009, 2009-2010 & 2011-2012 has accepted the transcation of payment of management fees paid to NLC by NLT and therefore the same having been made entirely for business consideration incurred wholly and exclusively for the purposes of business. Hence no addition was held to be sustainable for the assessment year 2010-2011. Similarly in respect of disallowance made under section 40A (2) (b) on account of payment of administrative charges paid to TACL, the Tribunal recorded that the Assessing Officer had failed to discharge the onus as per the*

mandate of the provisions of section 40A (2) of the Act. The assessee i.e NLT had received services from TACL in respect of which payment had been made as per documentary evidence on record and thus, there was no warrant for disallowance paid to TACL by the assessee when the payment was adjudged on the principle of commercial expediency when viewed from the point of view of a prudent businessman.

11. *The present appeal filed by the department/revenue thus deserves to be dismissed in view of principle of consistency and rule of finality, in view of judgments i.e CIT v. Dalmia Dadri Cement Ltd. [1970] 77 ITR 410, 420 (Punj & Har.), Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321, 329 (SC), CIT v. Girish Mohan Ganeriwala [2004] 135 Taxman 233/[2003] 260 ITR 417, 418 (Punj & Har.) "* Unquote.

4.10 The Hon'ble Karnataka High Court in the case of Coffeeday Global Ltd Vs. Addl CIT 433 ITR 321 has held as under :

Quote, *"**9.** It is well settled legal proposition that where interest free funds are available to the assessee and were sufficient to meet its investment, the presumption is that the investments were made from interest free funds available with the assessee. See: Reliance Industries Ltd., (supra). The assessee had made investment by way of share application money in one of its foreign subsidiaries i.e., A.N. Coffeeday. The investment which was made as on 31-3-2009 and 31-3-2010 was for an amount of Rs. 14,32,75,766/- and Rs. 17,47,54,752/- respectively. The assessee held its own funds to the extent of Rs. 17,47,54,752/- which were far in excess of the investment made in A.N. Coffeeday. Therefore, the presumption in law arises that the investments were made out of non interest bearing funds and burden was on revenue to show that investments were made out of borrowed funds. The revenue has not discharged the aforesaid burden. Therefore, it has to be presumed that the investments were made from interest free funds which were available with the assessee. It is also noteworthy that for Assessment Year 2008-09, the Commissioner of Income-tax (Appeals) had recorded a finding that investments made during the aforesaid Assessment Year including investments in A.N. Coffeeday as on 31-3-2009 were made out of the funds of the assessee, with reference to claim of disallowance under section 14A read with rule 8D(ii) of the Rules and therefore, the same conclusion ought to have been applied to section 36(1)(iii) as well. Therefore, in the fact situation of the case, the remand by the tribunal to the Assessing Officer to examine whether the investments were*

made out of the funds of the assessee or from borrowed funds, is not warranted as the Assessing Officer for the Assessment Year 2009-10, the Assessing Officer on examination of the details furnished by the assessee had accepted the contention that investment was made by the assessee out of the funds owned by it.

10. *The Supreme Court in Radhasoami Satsang v. CIT [1992] 60 Taxman 248/193 ITR 321 has held that even though principles of res judicata do not apply to income tax proceedings, but where a fundamental aspect permeating through the different Assessment Years has been found as the fact one way or the other and the parties have allowed the position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in subsequent year. For the aforementioned reasons, the substantial question of law No. 1 is answered in the negative and in favour of the assessee."* Unquote.

4.11 Thus, the proposition of law laid down by the Hon'ble Supreme Court and the Hon'ble High Courts is that res judicata does not apply to Income Tax Proceedings, however, when a certain claim of the assessee has been accepted by the Department in earlier assessment years, it cannot be disturbed in subsequent assessment years when facts are same.

5. In the case of the assessee, we have already narrated all specific details. It is a fact that Income Tax Department had allowed assessee's claim of Exemption u/s.11 of the Act for various earlier assessment years as mentioned by us in the Chart above. It is also a fact that objects and activities of assessee remain same. It is also a fact that assessee had applied for

registration u/s.12A of the Act as early as 1992. Assessee had filed copy of the Registration u/s.12A of the Act dated 02.10.2021.

5.1 Therefore, in these facts and circumstances of the case, respectfully following the proposition of the law laid down by the Hon'ble Supreme Court and the Hon'ble High Courts, we hold that the Assessing Officer has erred in rejecting the Assessee's claim of exemption u/s.11 of the Act for A.Y.2018-19, which was allowed for the Assessee in earlier Assessment Orders, in the absence of any new facts, hence, assessee is eligible for exemption u/s.11 of the Act for A.Y.2018-19. Accordingly, the AO is directed to allow the exemption u/s.11 of the Act to the assessee for AY 2018-19.

Without prejudice :

6. In this case, assessee had filed Return of Income for A.Y.2018-19 claiming benefit of exemption u/s.11 of the Act. The AO rejected assessee's claim of exemption u/s.11 of the Act and assessed the income at Rs.3,55,23,487/- u/s.143(3) of the Act vide order dated 23.03.2021. The Assessee filed application for rectification of assessment order repeating the assessee's plea to allow exemption u/s.11 of the Act. The Assessing Officer passed

rectification order u/s.154 r.w.s 143(3) for A.Y.2018-19 on 18.10.2021 assessing the income at Rs.1,50,35,887/-. Thus, when the order u/s.154 was passed by the Assessing Officer, assessee had already received registration u/s.12A of the Act on 02.10.2021.

6.1 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.]." Unquote.

6.2 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."

6.3 Thus, the proviso to section 12A(2) was introduced to remove hardship caused to the genuine trust. In this case, assessee is a Board formed by an Act of Government of Maharashtra. 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 ld.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.154 r.w.s 143(3) was passed on 18.10.2021. The Registration u/s.12AA was granted on 02.10.2021, means at the time of issue of order u/s.154 r.w.s 143(3), 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 exemption u/sec.11 of the Act for A.Y.2018-19. 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).

7. 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.

7.1 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 ld. 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`etre 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.**

8. 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.2018-19 as assessee had received registration u/sec.12AA of the Act before the order u/sec.154 r.w.s 143(3) for A.Y.2018-19 was passed by Assessing Officer.

8.1 Since we have decided the impugned issue of allowability of exemption u/s.11 of the Act in favour of the assessee, other grounds of appeal raised by the assessee becomes academic in

nature and does not need any adjudication. Accordingly, appeal of the assessee is partly allowed.

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

Order pronounced in the open Court on 27th June, 2024.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 27th June, 2024/ *SGR**

<u>आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :</u>

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

आदेशानुसार / BY ORDER,

// TRUE COPY //

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