

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.1174 & 913/PUN./2023 [E-APPEALS]
Assessment Years 2016-2017 & 2017-2018

Ishwar Education and Charitable Trust, Sant Sai High School, Adinath Nagar, Bhosari- 411 026 Maharashtra. PAN AAATI1010Q	vs.	The Income Tax Officer, (Exemption), Ward-2, Income Tax Office, PMT Bldg., Swargate, Pune - 411 042. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	CA Ashok Kothary
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	05.06.2024
Date of Pronouncement :	31.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's twin appeals, for assessment years 2016-2017 & 2017-2018, arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1056461938(1) and 1053912819(1), dated 23.09.2023 and 23.06.2023, in proceedings u/s.154 and 143(1) of the Income Tax Act, 1961 (in short "the Act"); respectively.

Heard both the parties at length. Case files perused.

2. The assessee pleads the following substantive grounds in its "lead" appeal ITA.No.1174/PUN./2023 for the former assessment year 2016-2017 as under :

"On the facts and in the circumstances of the case the learned Assessing Officer and the Commissioner of Income Tax erred in :

1. *Not rectifying the order U/s 154 and not allowing the claim of exemption U/s 11 of the Income Tax Act, 1961. It is prayed that the Assessing Officer be directed to rectify the order by allowing the exemption U/s 154.*

2. *Not considering the correct date of filing of the return of income and based on such incorrect date not entertaining the claim of exemption of income U/s 11. This being factually incorrect and not in accordance with the law it is prayed that the correct date for the filing of the return of income be considered and the exemption of income as claimed be granted.*

3. *In holding that the date of filing of return of income being earlier than the date of application for registration U/s 12A of the Income Tax Act, 1961 the AO was right is not allowing benefit of CBDT's circular No.01/2015 dt. 21/01/2015. This being factually incorrect, it is prayed that the correct date of filing of the return of income be*

considered and the income be exempt in accordance with the said CBDT's circular.

The appellant named above craves leave to add. to alter, to modify or to amend the grounds of appeal if and when required.”

3. The assessee's latter appeal ITA.No.913/PUN./2023 for assessment year 2017-2018 also raises very nature of it's grievance(s) as under :

“On the facts and under circumstances of the case the learned Assessing Office and the Commissioner of Income Tax (Appeal) erred in :

1. Making adjustment U/s.143(1) by disallowing exemption of income claimed U/s.11 and 12 of the Income Tax Act, 1961 on the ground that the Trust was granted registration U/s.12AA with effect from A.Y. 2018-19. The said adjustment being beyond the scope of Sec.143(1) it is prayed that the assessment / intimation be set aside, and the exemption claimed be granted.

2. Not considering the benefit of Sec.11 and 12 available to the assessee for the period prior to the year of registration when the assessment proceedings are pending, and all the required details are on record. It is

prayed that the assessment be set aside, and the Assessing Officer be directed to grant the exemption as claimed by the assessee.

3. In stating that the assessee has not clarified the aspect of pending assessment when in fact they are and were available on the record. It is prayed that the exemption as claimed by the assessee be allowed.

4. Invoking the provisions of Sec.143(1) without regard to the matters specified in the said section for the purpose of adjustments which can be carried out. The assessment being bad on the facts and in the laws. It is prayed that the assessment be set aside, and the exemption claimed be granted.

The assessee craves leave to add, to amend, to alter, or to modify the grounds of appeal if and when required.”

4. We next note the learned CIT(A)-NFAC's impugned lower appellate discussion in the “lead” assessment year 2016-2017 reads as under :

“6. I have gone through the rectification order and the submissions made by the appellant.

6.1 Ground no.1 is relating to refusal of relief given to the Trust in which the benefit of registration granted is available to the appellant trust even in earlier assessment

year. The appellant is referring to circular no.1 of 2015 dated 21.01.2015. The contention of the appellant in raising this ground is that the order u/s.12AA of the act in its case has been issued on 23.02.2018 which is applicable for FY 2017-18 (AY 2018-19) and onwards and by virtue of circular 1 of 2015, the benefit of relief u/s.11 should be available to the appellant even for the impugned AY i.e. AY 2016-17 . On the other hand, the contention of the AO is that the registration to the appellant trust was granted w.e.f AY 2018-19 and hence, the appellant is not eligible for claiming the exemption u/s.11 of the Act in the impugned AY.

6.2. I have gone through relevant provision and the contents of circular 1 of 2015. For the sake of clarity, the contents of the circular are reproduced below :-

"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 proceedings 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.”

From the above, it is quite clear that benefit of sec.11 and 12 of the Act would be available to the appellant trust in respect of income derived from property held under trust in any assessment proceedings for an earlier assessment year which is pending before the AO as on the date of such registration. The appellant had applied for registration in form 10A on 02.08.2017 and return in the impugned AY was filed on 17.10.2016, which is much earlier than the date of application for registration. Further, the appellant had not specified as to whether the benefit it wants to claim u/s.11 of the Act is relating to the income derived from property held under trust.

6.3. *In view of the above, I am of the opinion that denial of exemption u/s.11 of the Act in the rectification order by the AO dated 12.08.2021 is justified and hence upheld. The appellant has referred to the decision of Hon'ble Bombay High court in the case of CIT vs. Sakal relief fund (appeal no. 63 of 2015 dated 03.04.2017) in which the question of law before the Hon'ble High court was relating to firing of form no.10 in terms of rule 17 of*

the I.T. rules and not rerating registration u/s.12AA of the Act. Hence, the ratio of the said decision is not applicable to the facts of the appellant's case. Ground no.1 is dismissed.”

5. Learned CIT(A)-NFAC has adjudicated the very nature of reasoning in the latter assessment year 2017-2018 as well reading as under :

“3.2. I have gone through the order u/s 154 passed by the AO and the submission of the appellant. It is a fact which is not denied by the appellant that the appellant was registered u/s 12AA w.e.f. 2.08.2017 i.e. from A.Y. 2018-19. Hence, for the impugned A.Y., the appellant Trust was not registered u/s 12AA. As regards application o the provisions of Circular No.01/2015 dated 21.01.2015, it is pertaining to income from property and the assessment should have been pending as on the date of registration. These aspects have not been clarified y the appellant to claim the benefit of the said circular.

3.3. Hence, the accumulation of income as claimed by the appellant u/s 11(2) of the Act cannot be allowed to the appellant. Accordingly, the addition made by the AO of Rs.18,68,418/- stands upheld. Grounds No.1 & 2 are dismissed.”

6. We have given our thoughtful consideration to the vehement rival stands and see no merit in the Revenue's arguments supporting the impugned sec.11 exemption disallowance(s) in principle. There is hardly any dispute between the parties that the learned CIT(A)-(Exemption)'s impugned order dated 23.02.2018 has granted sec.12AA registration to the assessee. There is further no issue that the assessments for both these assessment years were indeed pending on the day of the foregoing registration relief once the learned lower appellate authority has not granted it the benefit of (3) proviso of sec.12A. Faced with this situation, we quote CBDT's landmark circular no.1/2015 dated 21.01.2015 that such a benefit has to be mandatorily granted on all such assessments which are pending before Assessing Officer [para 8.3].

7. Mr. Murkunde vehemently argued that the pre-condition of applying the foregoing statutory proviso as well as the CBDT's benevolent circular is that the assessee's objects and activities remains the same in both registration as well as the exemption(s) herein. We leave it open for the learned Assessing Officer to carry-out his necessary factual verification in very terms. These assessee's twin appeals are set aside to the learned Assessing Officer for his afresh, appropriate adjudication/factual verification to be finalised in the consequential proceedings as per law. Ordered accordingly.

8. These assessee's twin appeals ITA.Nos.1174 & 913/PUN./2023 are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 31st July,
2024

Sd/-
[RAMA KANTA PANDA]
VICE PRESIDENT

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 31st July, 2024

VBP/- / GCVSR

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

Sr. Private Secretary, ITAT, Pune Benches,
Pune.

S.No.	Details	Date	
1	Draft dictated on	28.06.2024	Sr.PS
2	Draft placed before author		Sr.PS
3	Draft proposed & placed before the Second Member		J.M.
4	Draft discussed/approved by Second Member		A.M.
5	Approved Draft comes to the Sr. PS/PS		Sr.PS
6	Kept for pronouncement on		Sr.PS
7	Date of uploading of Order		Sr.PS
8	File sent to Bench Clerk		Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		