

| आयकरअपीलीयअधिकरणन्यायपीठ,मुंबई|
IN THE INCOME TAX APPELLATE TRIBUNAL
“(SMC)” BENCH, MUMBAI
BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON’BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON’BLE JUDICIAL MEMBER

I.T.A. No.1141/Mum/2024
(Assessment Year: 2016-17)

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| DaivadnyaSamjonnati Parishad Mahajanwadi Mandal, 311, MEHTA BHAVAN CHSL, RAJ RAM MOHAN ROY MARG, GIRGAON., Mumbai, Maharashtra, 400004 [PAN: AAATD6140L] | Vs | Income Tax Officer, 1(2), Mumbai |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
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| Assessee by : | Shri V. G. Ginde a/w Shri Kumar Kale |
| Revenue by : | Shri R. R. Makwana, Sr. DR |

सुनवाई की तारीख/Date of Hearing : 05.09.2024
घोषणा की तारीख /Date of Pronouncement:09.09.2024

आदेश/ORDER

PERNARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order dated 17.01.2024 of Id. NFAC, Delhi pertaining to Assessment Year 2016-17.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in confirming the denial of exemption u/s 11 of the Act.

3. Briefly stated the facts of the case are that the assessee trust is registered with the Director of Income Tax (Exemption), Mumbai u/s 12A of the Act. The assessee is also registered with Charity Commissioner, Mumbai. The assessee filed its return of income on 09.10.2016 declaring total income of Rs. 3,60,320/-. The return was

selected for scrutiny assessment though CASS and accordingly statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the AO noticed that the objects of the trust remain unchanged. Further, the AO observed that the assessee trust is also carrying out non-charitable activities as it is having health resort/ rest house in Lonavala which provided rooms on rent, canteen services and other facilities to members and the receipts are business income of the assessee trust. Considering the facts assumed by him the AO came to the conclusion that the entire amount of Rs. 32,17,508/- is the receipt from non-members and drawing support from the provisions of Section 2(15) of the Act treated the receipts as business income and denied the claim of exemption u/s 11 of the Act. The assessee carried the matter before the Id. CIT(A) but without any success. Before us the counsel for the assessee rightly stated that for similar reasons the exemption was denied in AY 2012-13 and the matter travelled up to the Tribunal and the coordinate bench has decided the issue in favour of the assessee and against the revenue. The Id. DR fairly stated that there are no new facts brought on record.

5. We have carefully considered the orders of the authorities below. We find force in the contention of the counsel as the AO himself has mentioned that there is no change of facts from earlier years and the objects of the trust remain unchanged. Therefore, we deem it pertinent to refer to the decision of the coordinate bench in

ITA No. 2631/Mum/2019 for AY 2012-13. The relevant finding reads as under:-

“9. Considered the rival submissions and material placed on record. We observe from the record that assessee was granted registration u/s 12A on 25/04/1975 and in the year 1986 assessee made certain modifications and amended the objects of the trust. The same were approved by the Commissioner of Charities which were placed on record. During assessment proceedings, assessing officer observed that assessee has amended the object clause without intimating the CIT (Exemption). According to the assessing officer, it violates the registration granted u/s 12A of the Act and by relying on the decision of the Hon'ble Allahabad High Court in the case of Allahabad Agricultural Institute vs UOI 291 ITR 116, 119 (All). According to the assessing officer, assessee has violated the terms of approval granted u/s 12A, therefore, exemption u/s 11 of the Act cannot be allowed to the assessee. We observe from the records submitted before us, in fact, it was also submitted before Ld.CIT(A) that CIT (Exemption) has initiated the proceedings for withdrawal of the registration u/s 12A on 10/03/2016 and subsequently on 19/12/2016, the proceedings were dropped. We also observe from record that no doubt assessment order was passed on 28/03/2015 and it is a fact on record that the withdrawal proceedings were initiated by CIT (Exemption) on the basis of information from the assessing officer; however, he has dropped the same subsequently. We observe from the record that this information was brought to the notice of the Ld.CIT(A) and Ld.CIT(A) conveniently omitted to take notice of the same and proceeded to toe the line of assessing officer. In our considered view, the assessing officer has no authority or right to treat the registration granted by the higher authority, i.e. CIT (Exemption) as not valid. We observe from the record that he has rightly brought to the notice of the CIT (Exemption) and it is a fact on record that CIT (Exemption) considered the same facts on record at the time of granting original registration u/s 12A and subsequent withdrawal of the proceedings shows that he is convinced with the submissions of the assessee and the objects were within the charitable activities. Therefore, learned CIT(A) should have taken note

of this development and should have cancelled the assessment made by the assessing officer.

10. Further we observe that assessing officer in his order has observed that this trust was formed for benefit of a particular community and thus attracted section 13(1)(d) of the Act. We observe from the record that the main object for which the trust was registered was for the benefit of the members of the Daivadnya community. The purpose and objects of the trust was never changed or modified. The amended object clause also for the benefit of members of the Daivadnya community. When the CIT (Exemption) approved the objects of the trust for registration us 12A on 25/04/1975 that means, he has satisfied himself that it is not a particular group, rather, it is for the whole members of the Daivadnya community. Even after amendment to the object clause, there is absolutely no change. Accordingly, learned CIT(Exemption) has taken a decision to drop the proceedings initiated for cancellation of the registration granted u/s 12A. Therefore, in our considered view, the assessment order passed is void and accordingly, it is set aside. Accordingly, ground 1 raised by the assessee is allowed and we direct the assessing officer to consider the exemption as per section 11 of the Act."

6. Respectfully following the decision of the coordinate bench, we direct the AO to allow the exemption u/s 11 of the Act.

7. Appeal of the assessee is accordingly allowed.

Order pronounced in the Court on 9th September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated: 09/09/2024

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*AK. NEDT, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्ड फाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai