

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथ, लेखक सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.680/Chny/2024
निर्धारण वर्ष /Assessment Year: 2015-16

Kaumara Madalayam,
Chinnavedampatti Post,
Coimbatore – 641 049.
[PAN: AABTK 6034B].

Vs. The Dy. Commissioner of Income
Tax (Exemptions),
Coimbatore.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri N.V. Krishnan, Advocate
: Shri N. Sanjay Gandhi, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.06.2024

घोषणा की तारीख /Date of Pronouncement

: 30.08.2024

आदेश / **ORDER**

PER S.R. RAGHUNATHA, A.M :

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), [NFAC], Delhi [hereinafter CIT(A)] in DIN & Order No.ITBA/NFAC/S/250/2023-24/1059915043(1), dated 19.01.2024. The assessment was framed by the Dy. Commissioner of Income Tax (Exemptions), Coimbatore for the Assessment Year 2015-16 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 12.12.2017.

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2. The assessee has raised the following grounds of appeal:

1. *The order of the Hon'ble Commissioner of Income-tax (Appeals) is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.*

2. Re: Allowability of exemption u/s 10(23BBA):

a. *The Hon'ble CIT (Appeals) erred in confirming the order of the learned assessing officer denying the exemption claimed u/s.10(23BBA) of the Act.*

b. *The Hon'ble CIT(Appeals) ought to have appreciated that the Appellant is rightfully entitled to claim the exemption and ought to have granted sufficient opportunity to substantiate the same with necessary documentary evidences.*

c. *The Hon'ble CIT (Appeals) ought to have allowed one more opportunity to the appellant in the interest of justice, by appreciating the fact that the Appellant was prevented by sufficient cause from adducing documentary evidences in support of its case.*

d. *The Hon'ble CIT (Appeals) ought to have appreciated that the benefit of exemption u/s.10(23BBA) has been granted to the appellant in the subsequent assessment year (AY 2016-17) and consequently allowed the claim of the appellant when there was no change in law and facts, in both the years.*

3. Alternative grounds raised for the first time:

The Appellant got subsequently registered u/s.12AA, and hence would be eligible to claim exemption u/s 11;

a. *by virtue of first proviso to section 12A of the Act, and*

b. *the term "pending before the assessing officer" would include pendency before any appellate authority as held by the Hon'ble ITAT, Kochi in the case of SNDP Yogam [2016 (3) TMI 1110]*

In view of the above grounds and such other additional grounds as may be adduced at time of hearing, it is prayed before the Hon'ble Income Tax Appellate Tribunal;

i) *to grant the benefit of exemption claimed u/s 10(23BBA) of the Act, or*

ii) *alternatively, to grant the benefit of exemption u/s 11 of the Act, available by virtue of first proviso to section 12A of the Act, or*

iii) *alternatively, to direct the Hon'ble CIT (Appeals) to hear the case once again on merits, and*

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iv) to pass such other consequential orders as the Hon'ble Income tax Appellate Tribunal may deem fit and just."

3. The Assessee is a notified religious institution as enumerated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [HR & CE Act"] and assessed to tax in PAN-AABTK6034B. The Appellant is administered by Hindu Religious & Charitable Endowments Department, Government of Tamil Nadu (HR&CE"). The HR & CE vide order dated 05.03.2011, notified the Appellant Math as Religious Institution under HR&CE Act.

4. As per section 6(18) of HR&CE Act,

The religious Institution means a math, temple or specific endowments and includes:-

- i. a samadhi or brindhavan; or*
- ii. any other institution established or maintained for a religious purpose*

5. During the Assessment Year ("AY") 2015-16, the assessee filed return of income on 21.03.2017, admitting total income of Rs.Nil, after claiming exemption of Rs.33,43,050/- under section 10(23BBA) of the Income Tax Act, 1961 ("Act"). The case was selected for scrutiny and the assessing officer completed the assessment vide assessment order dated 12.12.2017 wherein he assessed total income at Rs.33,43,050/- by disallowing exemption claimed under section 10(23BBA) of the Act for the reason that the exemption under this section can be claimed only by any 'body or authority' established under a Central, State or Provincial Act.

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Since the assessee is a notified religious institution and is administered by the HR & CE, Department of Government of Tamilnadu, the exemption is not available under section 10(23BBA) of the Act.

6. Aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) (CIT(A)) on 18.01.2018. During the pendency of appeal before the CIT(A), the assessee filed an application under section 12A(1)(ac) of the Act and obtained registration under section 12AB of the Act vide order dated 21.03.2023 from AY 2022-23 to 2026-27. It is submitted that vide Finance Act, 2023, the 2nd proviso to section 12A(2) of the Act was prospectively removed from 01.04.2023.

7. The CIT(A), vide order dated 19.01.2024 dismissed the appeal filed by the assessee by holding that the assessee is not entitled to claim exemption under section 10(23BBA) of the Act. Aggrieved by the order of the CIT(A), the assessee filed an appeal before us.

8. In the appeal, the assessee has raised an alternative ground that the Appellant is eligible for exemption under section 11 and 12 of the Act by virtue of second proviso to section 12A(2). The aforementioned ground is legal ground, wherein the facts are on record facts do not require fresh investigation.

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9. The Ld.AR in support of the additional ground furnished the following submissions before us.

i. We submit that the assessing officer disallowed the exemption claimed under section 10(23BBA) of the Act and CIT(A) sustained the decision of the It is submitted that the CIT(A) failed consider the implication of the second proviso to section 12A(2) of the Act.

ii. It is submitted that the second proviso to section 12A(2) of the Act reads as follows:

“Provided further 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”

iii. The implication of the second proviso to section 12A(2) of the Act would apply to the assessee, if the following preconditions are fulfilled

a) assessment proceedings are pending before the Assessing Officer as on the date of such registration in respect of any assessment year preceding the assessment year for which the registration is granted

b) the objects and activities of such trust or institution remain the same for such preceding assessment year

iv. We submit that the Commissioner of Income Tax (Exemptions) **granted registration under section 12AB of the Act from AY 2022-23 to 2026-27 vide order dated 21.03.2023**. As on the date of such registration, the appeal was pending before the CIT(A) and accordingly, it is pending before the assessing officer also. Consequently the 2nd proviso to section 12A(2) of the Act applied to the appellant's case.

The appellant relies on the following decisions in support of the same.

a) Hon'ble Gujarat High Court in the case of CIT vs Mayur Foundation reported in 274 ITR 562 (Enclosed in Annexure 1) (Extracted portion is in Page No.5 of the Annexure-1):

In the case of Rambhai Jethabbai Patel vs. CIT [1977] 108 ITR 771, this court was called upon to decide the question as to till what point of time an

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assessment can be said to be pending. This court referred to various interpretations of the word "pending" at page 784 of the reported decision, and ultimately, relied upon the decision of the Apex court in the case of Asgarali Nazarali vs. State of Bombay, AIR 1957 SC 503, to hold that it can safely be said that a matter can be said to be pending in a court of justice when any proceedings can be taken in it and that is the test to be applied. In Stroud's Judicial Dictionary, Fourth Edition, Volume 4, at page 1975, it is stated:

"A legal proceeding is 'pending' as soon as commenced and until it is concluded, i.e., so long as the court having original cognisance of it can make an order on the matters in issue, or to be dealt with, therein."

Applying the aforesaid principle, can it be stated that when the matter is pending before the Tribunal by way of an appeal, the assessment proceeding is pending? The answer has to be in the affirmative. The assessing authority is empowered and is duty bound, to pass an order giving effect to the order of the Tribunal the assessment year which was under consideration before the Tribunal. In these it cannot be contended on behalf of the Revenue that the assessment proceedings come to an end when the assessment order is framed. The contention on behalf of the Revenue to equate the assessment order with assessment proceeding is based on a fallacious premise.

b) Hon'ble ITAT Cochin Bench in the case of SNDP Yogam vs ADIT reported in 68 taxmann.com 152 (Enclosed in Annexure-2)

7.2 When section 12A of the Act was amended by introducing new provisos to sub-section (2) of S.12A by Finance Act, 2014 with effect from 01.10.2014, the assessment orders passed by the assessing officer in respect of the present assessee were pending in appeal before the first appellate authority. During such pendency, the assessee was granted registration u/s 12AA of the Ad on 29.07.2013 w.e.f. the assessment year 2013-14. Those appeals were the continuation of the original proceedings and that the power of the Commissioner of Income-tax was co-terminus with that of the assessing officer [ADIT (Exemption) in the present case] were too well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the assessing officer' within the meaning of that term as envisaged under the proviso. It follows therefrom that the assessee which obtained registration u/s.12AA of the Act during the pendency of appeal was entitled for exemption claimed u/s.11 of the Act.

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7.3 The explanatory Memorandum to Finance (No.2) Bill, 2014 which sought to amend section 12A explains the objects and reasons for making such amendments. The explanation makes it clear that it was in order to provide relief to such trusts in respect of which, due to absence of registration u/s.12AA tax liability got attached though otherwise they were eligible for exemption by fulfilling other substantive conditions that the amendment was brought in. That being so, denying such benefit to a trust like the assessee who had obtained registration u/s.12AA during the pendency of the appeals filed against the orders of the assessing authority, by narrowly interpreting the term, 'pending before the assessing officer' so as to exclude its pendency before the appellate authority, will be doing violence to the provisions of the Statute and, as such, liable to be interfered with. Moreover, under the Scheme of the Act, sections 11 and 12 are substantive provisions which provide for exemptions to a religious or charitable trust. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemptions under sections 11 and 12 by the assessee and the grant or rejection of such application by the commissioner. Thus, in our view, sections 12A and 12AA are only procedural in nature. Hence, it is not the registration u/s.12AA by itself that offers immunity from taxation. A receipt whether it is revenue or capital in nature is to be decided at the assessment stage. Being procedural in nature, in our view, liberal interpretation will give effect to the intention of the amendment, thereby removing the hardship in genuine cases like the present assessee under consideration.

c) It is submitted that similar view was taken by the Hon'ble ITAT Ahmedabad Bench in the case of Shree Bhanushali Mitra Mandal Trust vs. ITO reported in 68 taxmann.com 250 (Enclosed in Annexure – 3)

v. Going by the rationale laid down by the Hon'ble Gujarat High Court in the case of CIT vs. Mayur Foundation (supra), Hon'ble ITAT Cochin Bench in the case of SNDP Yogam vs ADIT (supra) and Hon'ble ITAT Ahmedabad Bench in the case of Shree Bhanushali Mitra Mandal Trust vs. ITO (supra), it is submitted that the implication of the phrase "assessment proceedings are pending before the Assessing Officer" contemplated in the 2nd proviso to section 12A(2) of the Act would also cover pendency of the appeal before the CIT(A). Therefore it is submitted that in the present case the Appellant had fulfilled the pre-condition contemplated in the 2nd proviso to section 12A(2) of the Act.

vi. The appellant further submits that its objects and activities remain the same in the year of registration viz. AY 2022-23 and impugned assessment year viz.2015-16. In light of the same it is submitted that the Appellant is notified as religious institution vide order of the HR&CE dated 05.03.2011. The copy of the order dated 05.03.2011 can found as attachment to application under section 12A circulated on 13.06.2024. For the sake of convenience the application in Form 10AB (including attachments) dated

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26.09.2022 is re-enclosed alongwith this submission in Annexure-4. It is submitted that the at the time of filing application under section 12A(1)(ac) (11) of the Act, the Appellant enclosed the copy of order dated 05.03.2011 alongwith the application. As per section 12AB(1)(b) of the Act, the Commissioner is obligated to satisfy himself about the genuineness of activities of the trust or institution and fulfilment of compliance requirement for the purpose of achieving objects of the trust. It is submitted that the Commissioner would grant approval under section 12AB of the Act upon aforesaid satisfaction. In the present case the CIT(E) vide order under section 12AB of the Act dated 21.03.2023 registered the Appellant as Religious Trust (Refer clause 1 of the Annexure to Order dated 21.03.2023). For the sake of convenience the order under section 12AB of the Act dated 21.03.2023 is re-enclosed alongwith this submission in Annexure 5. The Appellant submits that there is no change in the object and activity during the impugned assessment year and the year on which the registration is granted under section 12AB of the Act. Therefore it is submitted that the second precondition contemplated in the 2nd proviso to section 12A(2) of the Act is also fulfilled.

vii. For the reasons stated above it is submitted that the Appellant is entitled for exemption under section 11 & 12 read with 2nd proviso to section 12A(2) of the Act.

In view of the above, the Appellant prays this Hon'ble Tribunal may be pleased to hold that the appellant is entitled for the deduction under section 11 even if the exemption claimed under section 10(23BBA) of the Act is not applicable and consequently allow the appeal and render justice.

10. Per contra, the Ld. DR relied on the orders of the Ld.CIT(A) and stated the decision of denial of exemption claimed by the assessee trust U/s.10(23BBA) of the Act, is in accordance of the provisions of the Act and hence prayed for dismissal of the appeal of the assessee.

11. We have heard the rival contentions and gone through the facts, materials available and orders of the various Hon'ble courts. It is admitted fact that the assessee is a notified religious institution as enumerated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

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[HR&CE Act"]. The AO and that of Id.CIT(A) has rightly decided that the assessee is not eligible for exemption U/s.10(23BBA) of the Act as this section provide exemption only to body or authority established under a Central, State or Provincial Act.

12. The assessee has raised ground alternatively that the assessee is eligible for exemption U/s.11 of the Act, since the registration U/s.12AA of the Act was granted by the CIT(E) vide its order No.AABTK6034B22CH01 dated 21/03/2023 w.e.f. assessment years 2022-23 to 2026-27 during the pendency of the appeal proceedings before the Ld.CIT(A) and it is evident that the order of the Ld.CIT(A) has been passed on 19/01/2024. According to Ld.AR the assessee is eligible to claim exemption U/s. 11 of the Act, as per second proviso to Section 12A(2) of the Act, which reads as follows :

"Provided further 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"

13. We note that the assessee has relied on the following decisions of the various courts, which are in favour of the assessee's claim of exemption u/s.11 in the present facts of the case.

- a) CIT vs. Mayur Foundation (supra),
- b) SNDP Yogam vs ADIT (supra)
- c) Shree Bhanushali Mitra Mandal Trust vs. ITO (supra),

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14. In the present facts and circumstances of the cases, we note that the assessee is a notified religious institution as enumerated under the Tamil Nadu HR&CE Act, 1959 and obtained the registration U/s.12AA of the Act was granted by the CIT(E) vide its order No.AABTK6034B22CH01 dated 21/03/2023 w.e.f. assessment years 2022-23 to 2026-27 during the pendency of the appeal proceedings. As per the second proviso to Section 12A(2) of the Act, the assessee obtained registration before the disposal of the appeal by the Ld.CIT(A), and respectfully following the decisions of the Hon'ble courts (supra) relied by the assessee in support of the claim exemption U/s.11, we are inclined to allow the appeal of the assessee and direct the AO to re-compute the total income of the assessee by allowing exemption U/s.11 of the Act.

15. In the result, the appeal of the assessee is allowed.

Order pronounced on 30th August, 2024.

Sd/-
(महवीर सिंह)
(Mahavir Singh)
उपध्यक्ष / Vice President

Sd/-
(एस. आर. रघुनाथ)
(S.R. Raghunatha)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 30th August, 2024.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF