

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA No. 205/Coch/2024
(Assessment Year: 2007-08)

Sree Anjaneya Medical Trust 17/501X-1, kanchas Building Opp. Indoor Stadium Rajaji Road, New Bus Stand Kozhikode 673004 [PAN: AAHTS3844B]	vs.	ACIT, Circle - 2 Aayakar Bhavan Mananachira Kozhikode 673001
(Appellant)		(Respondent)

Appellant by:	Shri Surendranath Rao, CA
Respondent by:	Smt. Girly Albert, Sr. D.R.

Date of Hearing:	01.10.2024
Date of Pronouncement:	03.10.2024

ORDER

Per Bench

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 29.01.2024 for Assessment Year (AY) 2007-08.

2. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of exemption claimed by the assessee under section 11 of the Act.

3. The facts in brief are that the assessee in the present case is a charitable trust, running medical college. The assessee in the year under consideration shown receipt of Rs. 50 Lakh toward corpus fund received from trustee which was claimed as exempted under section 11 of the Act.

4. However, the AO in the proceeding under section 147 of the Act found that the registration of assessee under section 12AA of the Act was not available for the year under consideration. Accordingly, the AO held that in the absence of registration under section 12AA of the Act, the exemption available under section 11 of the Act cannot be extended to the assessee. Hence, the AO disallowed the exemption claimed by the assessee and made an addition of Rs. 50 Lakh to the total income of the assessee.

5. On appeal by the assessee, the learned CIT(A) also confirmed the addition made by the AO.

6. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

7. The learned AR before us submitted that the corpus fund cannot be treated as income of the assessee as the assessment for the year in dispute was pending at the time of registration under section 12 A of the Act. It was also submitted by the learned AR that the revenue in the subsequent assessment year 2008-09 has not taken the amount of corpus fund as income of the assessee.

8. On the other hand, the learned Sr. DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee does not have registration under the provisions of section 12AA of the Act for the year under section. However, by virtue of the proviso to subsection 2 of section 12A of the Act, the benefit of section 11 can be extended to the assessee for the assessment year prior to the A.Y. in which registration granted under

section 12AA provided that the assessment for such prior year/ years is remained pending.

10. Coming to fact of the case on hand, we from the orders of the authorities below and materials available on record, note that the assessee has made an application for registration under section 12AA of the Act dated 12-12-2008 which was granted in the year 2008 w.e.f. A.Y. 2009-10 as per the direction of Hon'ble Kerala High Court dated 29-03-2016. Though, the assessment order was passed by the AO as on 28-02-2013 which is prior to the date of order of the Hon'ble Kerala High Court based on which registration given, but what we find is that the proceedings before the learned CIT(A) was still pending. It is the settled position of law that the proceedings before the learned CIT(A) is extension of the assessment proceeding. Thus, the assessment as on the date on which registration granted under section 12AA of the Act was pending. Thus, in our considered view, the assessee was eligible for benefit under section 11 of the Act unless revenue could have found that the activity of the assessee for the year under consideration was not as per the object. We further note that this Tribunal in the case of SNDP Yogam vs. ADIT (Exemption) reported in 68 taxmann.com 152 in identical facts and circumstances decided the issue in favor of the assessee by observing as under:

“7. We have carefully considered the rival submissions, perused the relevant materials on record and the case law on which the learned AR had placed strong reliance. The primary issue for our consideration is whether the CIT (A) is justified in confirming the AO's action, for all the assessment years under consideration, in assessing the entire incomes of the assessee from all the institutions at the maximum marginal rate. In this context, it is appropriate to refer the amendment to section 12A(2) of the Act and its proviso. For ready reference the same is reproduced below:

(Section 12A(2) & its proviso)

"[(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:]

[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.]"

7.1 Further it would be relevant to reproduce the explanatory note to the provisions of the Finance (No.,2) Act 2014 as given in CBDT No.1/15 dated 21.1.2015

"Para 8.2

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

The first proviso to section 12A(2) was brought in the statute only as a retrospective effect, with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by the said trust. The benefit of retrospective application alone could be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No.2) Act, 2014 issued by the Central Board of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015. Apparently the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the ld. A.O., unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to provide that no action u/s147 could be taken by the AO merely for non- registration of trust for earlier years.

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 Act 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 two 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 there-from 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.

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.

7.4 Taking into account the above facts and circumstances of the issue, we are of the view that the AO was not justified in taking a stand that registration u/s 12A was not applicable to the assessee for the AYs under dispute and the condonation petition for delay in filing the application for registration u/s 12A [for the AYs under dispute] has not yet been decided by the CBDT and, therefore, the total incomes of the assessee were to be assessed as per commercial principles. The CIT (A) was also not justified in taking a similar stand that of the AO, without taking cognizance and intention of the amendment to s. 12A of the Act. If no judicious or a liberal view is not taken either by the assessing authority or the appellate authority as in the case under consideration, the very purpose for which such an amendment to s. 12A of the

Act enacted, in our view, would be defeated. We are also supported by the order of Kolkata Bench of ITAT in case of Sree Sree Ramkrishna Samity v. Dy. CIT [2016] 156 ITD 646/[2015] 64 taxmann.com 330 where it was held that amendment to Section 12A w.e.f. 01.10.2014 is retrospective. The relevant finding of the Hon'ble Kolkata Bench in case of Sree Sree Ramkrishna Samity (supra) read as follows:

"6.10. We hold that it is an established position in law that a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole and accordingly the said insertion of first proviso to section 12A(2) of the Act with effect from 1.10.2014 should be read as retrospective in operation with effect from the date when the condition of eligibility for exemption under section 11 & 12 as mentioned in section 12A provided for registration u/s.12AA as a pre-condition for applicability of section 12A."

Further, the Kolkata Tribunal observed as under:

"6.11. We also hold that though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. It is only elementary that a statutory provision is to be interpreted ut res magis valeat quam pereat, i.e to make it workable rather than redundant. Applying this legal maxim, it would be just and fair to hold that the amendment in section 12A is brought in the statute to confer benefit of exemption u/s 11 of the Act on the genuine trusts which had not changed its objectives and had carried on the same charitable objects in the past as well as in the current year based on which the registration u/s.12AA is granted by the DIT (Exemptions)."

7.5 In light of the aforesaid reasoning and order of the Tribunal in case of Sree Sree Ramkrishna Samity (supra), we direct the Director of Income-tax (Exemption) to grant registration to the assessee trust for all the assessment years under dispute, subject to the following conditions, namely:

"(i)	The registration U/S.12AA (1)(b)(i) of the Income Tax Act, 1961 does not automatically exempt the income of the Trust/Institution. The question of taxability of the income of the Trust/Institution shall be examined and decided upon by the Assessing Officer at the time of assessment based on the conduct of the activities, compliance with various statutory and other requirements, etc., as referred to in Sections 2(15), 11, 12 & 13 of the Income Tax Act, 1961, without prejudice to the fact of granting merely in principle registration by DIT(E).
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(ii)	<i>With effect from the Assessment Year 2009-10, the advancement of any object of general public utility other than relief of the poor, education and medical relief as defined in section 2(15) of the Income Tax Act shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.</i>
(iii)	<i>Amendments to the Deed/Memorandum, Rules and Regulations, if any, of the Trust/Institution shall be made only with the prior approval of the Commissioner of Income Tax(Exemptions) or any other prescribed authority under the Income Tax Act,1961.</i>
(iv)	<i>The registration may be withdrawn on violation of any of the stipulations laid down in the Income Tax Act, 1961,</i>
(v)	<i>The SOCIETY/TRUST shall regularly file its Income Tax Return."</i>

8. In the result, the appeals filed by the assessee are allowed."

11. In view of the above and considering the facts in totality, we hereby set aside the finding of the learned CIT(A) and direct the AO to allow the benefit of exemption under section 11 of the Act. Hence, the ground of appeal of the assessee is hereby allowed.

12. In the result, the appeal of the assessee is hereby allowed.

Order pronounced on 03rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

Cochin, Dated: 03rd October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin