

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SHRI GAGAN GOYAL, AM**

ITA Nos.1474 to 1479/Mum/2024
(Assessment Years: 2012-13 to 2017-18)

Maharashtra Nursing Council 5 th Floor, Bombay Mutual Annex Building, Gunbow Street, Opp. Residency Hotel, Off D N Road, Fort, Mumbai-400 001	V s.	Dy. CIT(Exemption)-2(1) MTNL Building, Peddar Road, Mumbai-400 026
PAN/GIR No. AAFAM 5890 G		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Nitesh Joshi
Respondent by	:	Shri Ankush Kapoor
Date of Hearing	:	08.08.2024
Date of Pronouncement	:	25.10.2024

ORDER

Per Bench :

The captioned appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short)2012-13 to 2017-18.

2. As the facts are identical, we hereby pass a consolidated order by taking ITA No.1474/Mum/2024 as a lead case.

ITA No. 1474/Mum/2024

3. The assessee has challenged these additions on the following grounds of appeal:

1. *The CIT(A) ought to have provided a final opportunity to be heard and to provide submissions to the Appellant before passing the appellate order.*
2. *The CIT(A) erred in passing the appellate order in brief without passing a speaking order on each separate ground raised by the Appellant.*

3. *The CIT(A) ought to have held that the AO erred in law and facts of the case by passing the assessment order without jurisdiction and, is hence, illegal and bad in law. That the AO erred in assuming jurisdiction under section 147 of the Act without fulfilling the jurisdictional pre-conditions in sections 147 to 151.*

4. *The CIT(A) ought to have held that the AO erred in law and facts of the case by assessing the Appellant for the year under consideration to total income of Rs.4,62,47,290/- overlooking that its income was not chargeable to tax under the Act.*

5. *The CIT(A) ought to have held that the AO erred in law and facts of the case by failing to appreciate that as per section 12A(2) read with the provisos thereto he ought to have granted the Appellants claim for exemption of its income under section 11 of the Act, as, on the date of grant of registration under section 12A i.e., on 29.09.2018, the present assessment proceeding which was initiated on 28.09.2018 was pending.*

6. *The CIT(A) ought to have held that the AO erred in law and facts of the case by erring in denying the Appellants claim for grant of exemption in respect of amounts accumulated for future application under section 11(2) of the Act.*

7. *The CIT(A) ought to have held that the AO erred in law and facts of the case by failing to appreciate that interest earned on deposits placed out of specific funds like gratuity, pension, provident fund etc. ought to be treated as diverted by overriding title and hence, such interest could not be brought to tax in the Appellants hands.*

8. *The CIT(A) ought to have held that the AO erred in law and facts of the case and he ought to have held that the Appellant is a mutual organization and hence, any income received by it from the nurses and training institutes (who were the contributors as well as participators in the fund) cannot be brought to tax under the Act.*

4. Brief facts of the case are that the assessee Trust was established by Maharashtra Nurses Act, 1966 for accomplishing the purpose of providing registration and maintaining the register of Nurses in Maharashtra, prescribe the code of ethics, to hold examinations, to grant certificates, diplomas, prepare textbooks, course materials, etc. The assessee trust is governed by Maharashtra Nursing Council Rules, 1971, Maharashtra Nursing By-Laws, 1973 and regulates the Laws governing election, conduct of business of council, regulations and syllabus for examinations. The Maharashtra Government passed a notification dated 08.04.2011 for dissolving the assessee Trust and to appoint an Administrator in its place. Subsequently, the members of the assessee Trust filed a writ challenging the said notification before the Hon'ble High Court and vide order dated 24.04.2011, the Notification was nullified and the assessee Trust was restored with a

condition that no financial obligation nor any policy decision will be undertaken by the assessee Trust and only day to day administrative work will be carried out. The Maharashtra Government had further filed an application before the Hon'ble High Court for vacating the interim stay order granted to the assessee Trust and vide order dated 12.12.2018 vacated the original stay order dated 08.04.2011. The assessee Trust had applied for a new PAN in 2017 and was granted a new PAN as Association of Person (AOP), as against its original status as a local body, thereby surrendering the old PAN to the jurisdictional Id. A.O. in May, 2017. The assessee filed its return of income under new PAN with the status as AOP for A.Ys. 2016-17 and 2017-18 dated 31.03.2018 and had applied for section 12A registration in Form No.10A in March, 2018. The Id.CIT(E) issued order u/s. 12AA(1)(b)(i) granting 12A registration from A.Y. 2018-19 onwards vide order dated 29.09.2018.

5. The Id. learned Assessing Officer ('Id. A.O.' for short) reopened the assessee's case vide notice u/s. 148 of the Act dated 28.09.2018 for A.Ys. 2012-13 to 2017-18 and in response to the same, the assessee filed its return of income for the impugned assessment years. The assessee contended that as 12A registration was granted to the assessee, reopening of the earlier years was objected by the assessee. The Id. A.O. rejected the assessee's contention that notices were issued on 28.09.2018, whereas the Registration u/s. 12A of the Act was granted on 29.09.2018. The assessee's contention that the assessee Trust was unable to spend the money accumulated for purchase of its own premises due to the restraint order passed by the Hon'ble High Court and that if the Id. A.O. fails to grant benefit of section 11 of the Act, then the alternate plea was to treat the assessee as a mutual organization and income received from the Nurses and Nurses

Institution ought to be covered under the concept of mutuality which is not liable to be taxed, except the interest earned from the banks. The Id. A.O. then passed the assessment order u/s. 143(3) r.w.s. 147 of the Act dated 26.12.2019 denying the benefit of section 11(1)(a) of the Act and section 11(2) of the Act on 15% accumulation and taxed the entire surplus held by the assessee as income chargeable to tax. The Id. A.O. rejected the concept of mutuality on the ground that the assessee was not eligible for the same.

6. Aggrieved the assessee was in appeal before the first appellate authority who vide order dated 01.02.2024, upheld the order of the Id. A.O. for the reason that the assessee had failed to file the audit report in Form No. 10B and that no accumulation has been made u/s. 11(2) of the Act by filing Form 10 and also held that the assessee did not have a valid registration u/s. 10(23C)(iv) of the Act. The Id. CIT(A) upheld the addition made by the Id. A.O. that the assessee has failed to utilize the fund for objective of the assessee trust.

7. Aggrieved the assessee is in appeal before us, challenging the impugned order.

8. We have heard the rival submissions and perused the materials available on record. The learned Authorised Representative ('Id. AR' for short) for the assessee made a submission on ground no. 3 raised by the assessee, challenging the jurisdiction of the Id. A.O. in reopening the assessment u/s. 147 of the Act on the ground that as the assessee was not registered u/s. 12A/12AA of the Act, the assessee was not entitled to exemption u/s. 11 of the Act and due to large surplus, the assessee has not applied the same u/s. 11(2) of the Act which was an allowable accumulation. The Id. AR contended that the Id. A.O. has assumed jurisdiction to reopen the assessee's case merely for the reason that the

assessee Trust was not registered u/s. 12A/12AA of the Act and, hence, its income would not be exempted u/s. 11 & 12 of the Act. Further, the Id. AR brought to our attention that notice u/s. 148 of the Act was issued on 28.09.2018 which was one day prior to the grant of registration which was on 29.09.2018 and notice was also issued by the same authority which had granted registration. The Id. AR iterated that the reason for reopening was contrary to the second proviso to section 12A(2) of the Act. The Id. AR relied on the decision of the Hon'ble High Court of Karnataka in the case of *CIT(E) vs. Karnataka State Welfare Fund* [2022] 141 taxmann.com 419 (Kar) and Circular No. 1 of 2015 which supported the contention of the Id. AR. The Id. AR also relied on the decision of the Hon'ble Rajasthan High Court in the case of *CIT(E) vs. Shri Shyam Mandir Committee* [2018] 400 ITR 466 (Raj.) which held that the *proviso* to section 12A(2) of the Act inserted w.e.f 01.10.2014 was held to be applicable retrospectively and that no action u/s. 147 of the Act shall be taken merely for non registration of the Trust. The Id. AR also contended that the only reason why the surplus was not applied as per section 11(2) of the Act, was due to the restriction placed by the Hon'ble Jurisdictional High Court, which was later on relaxed by the subsequent order.

9. The learned Departmental Representative ('Id. DR' for short), on the other hand, controverted the said fact and contended that the assessee Trust was registered u/s. 12A/12AA of the Act only on 29.09.2018 and notice for reassessment was issued prior to the registration and the Id. DR further stated that the assessee has not satisfied the condition for grant of exemptions u/s.11/10(23C)(iv) of the Act. The Id. DR relied on the order of the lower authorities which implies that the reopening was valid and with due application of mind.

10. On the above factual matrix, we find merit in the submission of the Id. AR in contending that the Id. A.O. has erred in reopening the assessment for the reason that the assessee was not registered u/s. 12A/12AA of the Act, thereby denying the exemption u/s. 11 of the Act on the surplus accumulated by the assessee, which is contrary to the 2nd proviso to section 12A of the Act and the said provision is cited herein under for ease of reference:

Section 12A(2) in The Income Tax Act, 1961

*(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:[***] [First proviso Omtt. by the Act. No. 38 of 2020, w.r.e.f. 1-6-2020.]*

[Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

(a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;

(b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment year for which it was provisionally registered:

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:

[Provided also] 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.

11. The above provision clearly mandates that there can be no reassessment merely for the reason of non registration of a Trust or Institution. In the present case in hand, there is no iota of doubt that the reassessment was initiated for non registration and the other reasons specified are consequential to such non registration or rather to say for non

fulfillment of the conditions due to the non registration. The Id. AR has extensively placed reliance on the decision of Hon'ble High Court of Karnataka in the case of *CIT(E) vs. Karnataka State Welfare Fund* (supra), which has upheld the order of the Tribunal, quashing the reassessment order for the reason that it is violative of the second and third proviso to section 12A(2) of the Act. The Id. AR has also placed reliance on Circular No.1/2015, which has reiterated that no reassessment can be initiated merely for the reason of non registration. The above mentioned decision has also relied on the said Circular and upheld this issue in favour of the assessee. The relevant extract of the said decision is cited herein under for ready reference:

7. *It is not in dispute that the registration under section 12A of the Act was granted to the assessee on 23-9-2014. In terms of the first proviso, where the registration has been granted to the Trust 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. The objects and activities of such Trust remain the same for such preceding assessment year. As per the second proviso, it is clear that no action under section 147 shall be initiated by the Assessing Officer in case of such Trust for any assessment year preceding such assessment year, only for non-registration of such Trust for the said assessment year. However, these two provisos would not be applicable where Trust was refused registration or the registration granted to it was cancelled at any time under section 12AA of the Act.*

8. *Circular No. 1/2015 reads as under:-*

"8.1 The provisions of section 12A of the Income-tax Act, before amendment by the Act, provided that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA of the said Act has been granted. In case of trusts or institutions which apply for registration after June 1, 2007, the registration shall be effective only prospectively.

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 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 trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

8.4 Further, it has been provided that no action for reopening of an assessment under section 147 of the Income-tax Act shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not been obtained the registration under section 12AA for the said assessment year.

8.5 However, the above benefits would not be available in case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA of the Income-tax Act or a registration once granted was cancelled.”

9. On combined reading of the aforesaid provisions with the Circular vis-d-vis the material facts of the case, it cannot be gainsaid that the case on hand would not fall under any of the exceptions carved out in the provisos as contemplated under section 12A(2) of the Act. Moreover, the interpretation given by the authorities to the Circular issued by the CBDT not being justifiable, the Tribunal has rightly held that the provisos to section 12A(2) of the Act are applicable to the case on hand.

10. As could be seen from the material on record, the reasons assigned by the Assessing Officer for reopening the assessment is as under:

REASONS FOR ISSUE OF NOTICE U/S. 148

"The Fund was established by virtue of a proceedings of the Government of Karnataka (the then Mysore Govt.). The said fund, was granted registration u/s 12A w.e.f. financial year 2013-14.

Information was gathered revealed that the said fund is having taxable surplus/income since quite a number of years. It is also verified from the AST that the said fund had not filed return of income except for the financial years 2008-09 to 2013-14.

As the registration was granted only from the assessment year 2014-15 i.e., for the financial year 2013-14, the surplus of earlier years are to be taxed as AOP without extending the benefits of secs. 11 and 12.

The present jurisdiction over the case vests within the Charge of CIT(E), Bengaluru since fund has been granted section 12A registration.

As the fund do not have registration u/s 12A, the taxable surplus for the financial years 2008-09 to 2013-14 the taxable surplus needs to be assessed to tax."

11. The aforesaid reasons would indicate that the only reason for reopening of assessment is the absence of registration under section 12A of the Act. Further, the assessee has not filed return of income for the assessment year in question. A finding has been recorded on the facts of the case by the Tribunal on this aspect and the Act is held to be against the facts available on record. Having regard to these factual aspects and the provisos to section 12A(2) of the Act, we are of the considered view that the findings claiming deductions under recorded by the Tribunal under sections 11 and 12 of the find no substantial questions for our consideration.

For the reasons aforesaid, the appeal stands dismissed.

12. From the above finding, it is evident that the assessee's case would not fall under the 3rd proviso to section 12A of the Act where it is not the case of the Revenue that the

registration of the assessee Trust was refused or granted and cancelled at any point in time, the assessee ought to get the benefit of the 2nd proviso to section 12A of the Act where reopening merely for non registration is not warranted as per the Act. The ld. AR has also relied on the first proviso to section 12A of the Act where the registration has been granted u/s.12AA of the Act then the provision of section 11 and 12 of the Act shall apply to the assessment year preceding the assessment year for which the assessment proceedings are pending before the ld. A.O. as on the date of registration along with the cumulative condition that the objects and activities of the Trust remains the same for such preceding assessment year. Here in this case, the assessment proceeding commenced on issuance of the notice u/s. 148 of the Act dated 28.09.2018 and the date of registration was the next day, i.e., 29.09.2018, which implies that the assessment proceeding for earlier years were pending before the ld. A.O. as on the date of such registration, thereby concluding that the provisions of section 11 and 12 of the Act shall apply to income held by the assessee Trust of any assessment year, preceding the assessment year in which the registration was granted. The ld. AR has also placed reliance on the decision of the Hon'ble Rajasthan High Court, Jaipur Bench in the case of *CIT vs. Shree Shyam Mandir Committee* [2018] 400 ITR 466 (Raj) which held that the proviso to section 12A(2) of the Act inserted from 01.10.2014 has retrospective effect.

13. On a conjoint reading of the provisions, the CBDT Circular No.1/2015 and the decisions relied upon the assessee, we deem it fit to hold that the reassessment proceeding is bad in law as it is contrary to the proviso to section 12A(2) of the Act and, therefore, liable to be quashed. Ground no. 3 raised by the assessee is hereby allowed.

14. As we have quashed the reassessment order, the other grounds of appeal raised by the assessee becomes academic in nature for which no adjudication is required.

ITA No. 1475 to 1479/Mum/2024

15. The findings applied in ITA No. 1474/Mum/2024 will apply *mutatis mutandis* to these appeals also.

16. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 25.10.2024

Sd/-
(Gagan Goyal)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 25.10.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai