

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1398 & 2219/Chny/2024
निर्धारणवर्ष/Assessment Years: 2015-16 & 2016-17

Child Jesus Matric Higher – Secondary School, 11, Unnamalaikadai, Tamilnadu-629 179.	v.	The ITO, Exemptions Ward, Tirunelveli.
[PAN: AACAC 0152 G]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.R. Harshvardan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.P. Krishna Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	11.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	14.11.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 13.03.2024 for the Assessment Year (hereinafter in short "AY") 2015-16 and order dated 11.07.2024 for AY 2016-17.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the order of the AO denying exemption u/s.11 of the



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Income Tax Act, 1961 (hereinafter in short 'the Act') on the ground that the registration granted subsequently by the Ld.CIT(A) was not operative to the years under consideration. Since both the parties agreed that the facts and the law involved in both the appeals are identical, appeal for AY 2015-16 is taken as the lead case and the result of which will be applicable *mutatis mutandis* with that of AY 2016-17.

3. The brief facts for AY 2015-16 are that the assessee society is running an Educational Institution in the name and style of Child Jesus Matric Higher Secondary School, which filed its return of income (RoI) for AY 2015-16 on 21.09.2016 admitting total income of Rs.NIL after claiming benefit of exemption u/s.11 of the Act. The AO observed during the course of assessment proceedings that the registration u/s.12AA of the Act was granted by the Ld.CIT(A) to the assessee on 19.01.2017 w.e.f. 30.05.2016 (AY 2017-18) and not in the AY 2015-16. The assessee contended before the AO that as per sec.12A(2) of the Act, it is entitled to the exemption for the year under consideration also. But such a contention didn't find favour with the AO who held that for availing benefit u/s.11 of the Act, the assessment proceedings must be pending when the registration is granted. According to the AO, since notice u/s.143(2) for the relevant year was issued only on 17.07.2017 [i.e. after grant of registration], no such exemption could be allowed, since it failed to satisfy the conditions laid down u/s.11 of the Act and therefore, it was found to



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be not eligible for exemption u/s.11 & 12 of the Act and AO was pleased to compute the income of the assessee treating it as a AOP and determined the total income at Rs.54,79,662/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO.

5. Aggrieved, the assessee society is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. There is no dispute with regard to the fact that the assessee filed its RoI for AY 2015-16 on 21.09.2016 declaring 'NIL' income after claiming the benefit of exemption u/s.11 of the Act. The registration was granted by the Ld.CIT(A) u/s.12AA of the Act on 19.01.2017 w.e.f. 30.05.2016 (AY 2017-18) and the assessee during the course of assessment proceedings brought to the notice of the AO that the Ld.CIT(A) has granted registration u/s.12AA of the Act and hence, by virtue of sub-section (2) of section 12A of the Act, it is entitled for exemption for the relevant year under consideration. But the AO as well as the Ld.CIT(A) didn't agree with such a plea by contenting that for availing benefit u/s.11 of the Act, the assessment proceedings must be pending when the registration is granted. Therefore, we have to examine the validity of such an action of the AO denying the benefit under sub-section (2) of Section 12A of the Act, which grants benefit of exemption



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to the years prior to the grant of registration on satisfaction of certain conditions stipulated therein. Second proviso to section 12A(2) provides 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.*" A bare reading of the second proviso says that where subsequent registration has been granted u/s 12AA, then the benefit of such registration will also be conferred to earlier years for which assessment proceedings are pending before the AO as on the date of such registration. The crucial words used in the second proviso are the pendency of assessment proceedings when the registration is granted. To put it simply, if the assessment proceedings are pending before the AO when the registration is granted by CIT(E), the registration so granted shall apply to the pending assessments before the AO; and the AO has to proceed as if assessee has been granted registration for the pending assessment proceedings and grant exemption u/s.11 in respect of such assessment years. Thus, we are of the view that the AO as well as the Ld.CIT(A) erred in denying the benefit of exemption in the present case



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on wrong interpretation of second proviso to section 12A(2) of the Act. We therefore hold that the assessee was eligible for exemption u/s.11 of the Act for AY 2015-16.

7. Coming to Assessment Year 2016-17, we note that the assessee had filed its RoI on 21.09.2016. The registration was granted by the Ld.CIT(A) u/s.12AA of the Act on 19.01.2017. Since the assessment proceedings for the year under consideration commenced with the filing of return on 21.09.2016, the same was pending on the date of grant of registration by the Ld.CIT(E) on 19.01.2017. We therefore hold that the assessee was eligible for exemption u/s.11 of the Act. In the light of the above discussion, following the order passed for AY 2015-16, we set aside the impugned orders and restore the matter back to the file of the AO for examining the claim of exemption u/s.11 of the Act on merits for both AY 2015-16 & AY 2016-17. Needless to say that assessee should be given reasonable opportunity of hearing.

8. In the result, appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on the 14th day of November, 2024, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,
दिनांक/Dated: 14th November, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF