

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'C', MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER  
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No.1014/Mum/2024  
Assessment Year: 2016-17**

Poor Box Charity Fund Dr. R.N. Cooper Hospital Juhu		CIT(Appeals), Delhi
R.N. Cooper Hospital N S Road No. 1, Villeparle West, Mumbai-400056.	vs	
PAN: AACTP 2833 J		
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rajendra Kadrekar  
Revenue by : Shri H.M. Bhatt Sr. DR

Date of Hearing : 05.09.2024

Date of Pronouncement : 14.11.2024

**ORDER**

**PER AMARJIT SINGH, AM:**

This appeal of the assessee for the assessment year 2016-17 is directed against the order dated 21.12.2023 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*"1. That the ld. CIT(A) has erred in confirming the action of the ld AO, the appellant-Trust has not been registered u/s 12A for the relevant A.Y. 16-17, while, 'deemed registration' was effectively applicable from the date 1 April 2018 which is prior to the date of passing assessment order u/s 143(3) on 22<sup>nd</sup> Dec. 2018, hence, the confirmation of addition made by ld AO is to be set aside.*

*2. That the ld. CIT(A) has erred in confirming the denial of exemption u/s 11 by concluding that 'proviso' inserted in sec. 12A(2) through amendment by the Finance (No.2) Act, 2014 is not applicable as the proceedings are not pending before the AO, while, registration was granted on 28th June 2019 with effect*

*from 1 April 2018 and the assessment order u/s 143(3) was passed on 2<sup>nd</sup> Dec. 2018 and as such, the proceedings were pending before the AO' and has retrospective effect as held in the binding judicial decisions, hence, the confirmation of addition made by ld AO is to be set aside.*

*3. That the ld. CIT(A) has erred in confirming the action of the AO in denial of exemption claimed u/s 11 without bringing any finding that the objects/activities of the appellant trust for the A.Y. 11-12 has been changed as compared to the objects/ activities for the subsequent AYs, in which the ld AO has allowed the exemption u/s 11, as held in Surat City Gymkhana (2008) (SC), Sree Sree Ramkrishna Samity (2015) (Kol-Trib.).*

*4. That the ld. CIT(A) has erred in confirming the denial of exemption u/s 11 by concluding that 'proviso' inserted in sec. 12A(2) through amendment by the Finance (No.2) Act, 2014 is applicable as the proceedings were pending before the CIT A, as the registration was granted on 28th June 2019 with effect from 1 April 2018 and the appellate order u/s 250 was passed on 21 Dec. 2023 and such, the appellate proceedings before CIT A are extension of assessment proceedings and has retrospective effect as held in the binding judicial decisions, hence. the confirmation of addition by ld CIT A is to be set aside.*

*5. That the ld. CIT(A) has erred in confirming the action of the AO in denial of exemption claimed u/s 1i without bringing any finding that the objects/activities of the appellant trust for the A.Y. 11- 12 has been changed as compared to the objects/ activities for the subsequent AYs in which the ld AO has allowed the exemption u/s 11, as held in Surat City Gymkhana (2008) (SC), Sree Sree Ramkrishna Samity (2015) (Kol-Trib.).*

*6. Without prejudice to the aforesaid, the alternate ground taken by the appellant Trust for set-off of loss from one source against another source under the same head of Income from Other Sources u/s 70 of the Act has not been considered by the ld CIT (A).*

*The appellant reserves the right to add, alter, amend omit or withdraw all or any of the grounds of appeal in the interest of justice.”*

2. Fact in brief is that return of income declaring Nil income was filed on 31.03.2018. The case was subject to scrutiny assessment and assessment order u/s 143(3) of the Act was passed on 28.12.2018. During the course of assessment, the assessing officer noticed that assessee has received contribution and donation aggregating to Rs. 6,86,220/- and also received Rs. 25,52,672/- in the form of bank interest. Out of the receipt, the assessee claimed deduction of Rs. 33,00,588/- claiming as expenditure incurred for the object of the assessee trust. The assessing officer stated that as provided in section 12A of the Act any charitable trust which want to avail the benefit of section 11 must obtain a registration certificate u/s 12AA of the Act. Since the assessee has not obtained requisite certificate under section 12AA of the Act, therefore, the assessee was show caused as to why the entire income declared by it should not be assessed to tax in the status of AOP and deduction claimed should not be disallowed. The assessee explained that it is exempted from the provisions of Mumbai Public Trust vide Notification No. 14411/E on 16<sup>th</sup> October, 1957 with effect from 15.05.1957 as the said exemption is granted to all public trust administered by the Municipal Corporation of Greater Mumbai. It was also explained that an application was also made to the Income Tax Department for registration u/s 12AA of the Act. However, the assessing officer has not agreed with the submission of the assessee stating that since the certificate of granting registration u/s 12AA of the Act was not submitted therefore, the receipt of Rs. 6,86,200/- and the bank interest of Rs. 25,52,672/- claimed by the assessee as deduction was added to the total income of the assessee.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) vide order u/s 250 of the Act passed on 21.12.2023 dismissed the appeal

of the assessee holding that registration u/s 12A of the Act was granted on 28.06.2019 with effect from 01.04.2018 to the assessee therefore assessee is eligible for exemption u/s 12A only from A.Y. 2019-20 and not for A.Y. 2016-17.

4. Heard both the sides and perused the material on record. The assessee is a public charitable trust established on 15.06.1957 by the Municipal Corporation of Greater Mumbai and its primary objective is to provide medical relief including medicines, appliances and other assistance to the poor and needy patients of Dr. R.N. Cooper Hospital, Juhu, Mumbai. The trust has been exempted from the provisions of the Mumbai Public Trust Act, 1950 as per the Notification No. 14411/E dated 16.10.1957 and the assessee submitted that this exemption was granted to all public trusts administered by the Municipal Corporation of Greater Mumbai. The assessee applied for registration u/s 12AA of the Act on 05.12.2018. The Finance Act 2014 w.e.f. 01.10.2014 inserted proviso to section 12AA of the Act that the provisions of section 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 AO as on the date of such registration and the objects and activities of such trust or institution remain the same for such proceeding assessment year. Further, the CBDT Circular 01/2015 dated 21.01.2015 in order to mitigate the genuine hardship to charitable organizations, provides that the beneficial provisions of section 11 & 12 are applicable for a previous year if the registration process u/s 12AA is subsequently completed. The ld. Counsel has also placed reliance on various judicial pronouncements i.e. ITAT, Pune Bench in the case of Camel Havel vs

ITO in ITA No. 1822/PN/2014 relating to assessment year 2011-12, order dated 26.08.2016 and in the case of ITO vs M/s. Shri Vishwakalyan Jivraksha Pratishtan in ITA Nos. 987 to 989/PN/2016 along with CO No. 18/PN/2016 relating to assessment year 2011-12 order dated 22.07.2016 and also on various other decisions of different Benches of Tribunals viz. Prem Prakash Mandl Seva Trust Bharatpura (ITA No. 262 & 263/RPR/2016 for AY 2008-09 & 2011-12) Order dated 12<sup>th</sup> Aug, 2021, Alpha Educational Trust, Chennai vs DCIT (Exemptions) on 10<sup>th</sup> March 2023 (ITA No. 588/CHNY/2022), The South India Club vs ITO Ward Exemp, New Delhi dated 22<sup>nd</sup> May, 2024 (ITA No. 354/Del/2024).

5. On the proposition of amended sub-section (2) of section 12A of the Act were retrospective in nature, the ld. Counsel has also referred the decision of ITAT, Raipur in the case of Prem Prakash Mandal Seva vs ITO (Exemption). The relevant extract of the decision of Raipur Bench is as under:

*“12. We find that similar view was taken by Coordinate Bench in Bandhte Kadam vs DCIT (2020) 203 TTJ (Raipur) 597 and Kolkata Bench of Tribunal in the case of Sree Sree Ramkrishna Samity vs DCIT (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 01.10.2014 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'*

*13. In view of the aforesaid factual and legal discussion and considering the facts that assessee was granted registration under section 12AA w.e.f. 01.04.2015 vide order dated 09.05.2016 when the appeal of the assessee was pending before ld. CIT(A). Therefore, we direct the assessing officer to grant the benefit of section 11 & 12 for A.Y. 2008-09.*

*14. In the result, appeal of the assessee is allowed."*

6. We have also perused the explanatory notes of the provisions of the Finance (No.2) Act, 2014. The relevant part of the same is reproduced as under:

*"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 registration, if the objects and activities 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."*

7. Looking to the above facts and judicial findings as discussed supra in this order, we consider that action of the ld. CIT(A) in denying the exemption u/s 11 & 12 to the assessee trust due to its registration

u/s 12AA of the Act retrospectively is not justified as it is undisputed fact that in this case proceedings for the assessment year under consideration was pending before the date of registration as discussed, therefore, we direct the assessing officer to allow the claim of deduction u/s 11 & 12 of the Act. Accordingly, the ground of appeal of the assessee are allowed.

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

**Order pronounced in the open court on 14.11.2024**

**Sd/-**

**Sd/-**

**(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Mumbai: 14.11.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai