

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4135/Mum/2024
(Assessment Year: 2020-21)**

Society for Mumbai Incubation Lab to Entrepreneurship Council, K/East Ward, 1 st Floor, BMC Office, Cabin A-1, Near ACME Plaza, M.V. Road, Maharashtra-400053. PAN : ABCCS8205M	Vs.	ITO(E) Ward-2(3), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri M. Subramanian, AR
Revenue / Respondent by : Dr. Kishor Dhule, CIT-DR
Date of Hearing : 09.12.2024
Date of Pronouncement : 16.12.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 20.06.2024 for the AY 2020-21. The assessee raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal and that too in violation of rules of natural justice.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal and that too without appreciating fully and properly the facts of the case.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal in limine by observing that this is not a fit case to condone the delay in filing of appeal.

5. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal even on merits and that too without even appreciating fully and properly the facts of the case as well as the relevant grounds raised in appeal.

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal even on merits and thereby further erred in retaining the assessed income at Rs. 12,02,97,079/- as against the nil income returned.”

2. The assessee is a company promoted by Brihan Mumbai Mahanagar Palika (BMC) as non-profit organization and was incorporated on 19.10.2019 under section 8 of the Companies Act, 2013. Due to onset of Covid Pandemic the assessee was directed by BMC in March 2020 to carry out Covid Relief activity on behalf of BMC. The assessee received CSR donations from Corporate, NGOs and citizens for carrying out Covid relief projects during the last two weeks of Financial Year (FY) 2019-20. The assessee made an application for registration under section 12AA of the Income Tax Act (the Act) on 15.07.2020. The assessee filed the return of income for AY 2020-21 on 12.02.2021 declaring Nil Income

claiming exemption under section 11 of the Act. The return was processed under section 143(1) of the Act and intimation dated 24.12.2021 was received by the assessee denying the benefit of exemption under section 11 of the Act. The assessee filed a rectification petition under section 154 of the Act against the order under section 143(1) of the Act. The Assessing Officer (AO) rejected the rectification petition filed by the assessee vide order dated 14.09.2022. Aggrieved, the assessee filed further appeal against the order rejecting the rectification petition under section 154 of the Act. There was a delay 497 days in filing the appeal before the CIT(A). The assessee in this regard submitted that efforts were being made to get registration under section 12AA retrospectively from CIT(E) and therefore, the delay. However, the CIT(A) did not condone the delay and dismissed the appeal in limine. On merits, the CIT(A) held that the claim of exemption under section 11 of the Act in assessee's case is not correct since the assessee is not registered under section 12AA of the Act for AY 2020-21

3. We heard the parties and perused the material on records. The assessee for AY 2020-21 has received voluntary contributions to the tune of Rs. 12,02,20,110/- and the same was claimed as exempt under section 11 of the Act while filing the return of income on 12.02.2021. The assessee has filed the application for registration under section 12AA on 15.07.2020 and is granted registration vide order dated 03.02.2021 from AY 2021-22 onwards. The return of the assessee for the year under consideration was processed under section 143(1) wherein the exemption under section 11 was denied for the reason that the assessee is not registered under section 12AA of the Act for AY 2020-21. The AO also rejected the petition filed under section 154 of the Act filed by the assessee in this regard. The CIT(A) dismissed the appeal in limine without condoning the delay in filing the appeal before the CIT(A). The argument of the ld. AR is that though the

assessee is not registered under section 12AA of the Act for the AY 2020-21, as per the 2nd proviso to section 12A of the Act as it existed till 01.04.2023, the registration granted vide order dated 03.02.2021 should be applicable for AY 2020-21 also since the proceedings under section 143(1) of the Act was pending. Our attention in this regard is drawn to the relevant proviso which reads as under:

12A - Conditions for applicability of sections 11 and 12.

(1) ****

(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 *****

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:

(emphasis supplied)

4. From the plain reading of the above section, it is clear that in cases where the assessment proceedings are pending before the AO as on the date of registration under section 12A of the Act and where the activities of the Trust or Institutions remain the same then the registration granted shall be applicable in respect of income earned during the preceding AY also. In assessee's case the return was filed on 12.02.2021 and the same was processed under section 143(1) on 24.12.2021. The registration under section 12AA is granted for AY 2021-22 vide order dated 03.02.2021 i.e. at the time of grant of registration the proceedings under section 143(1) was pending before the AO. Therefore it submitted by the Id AR that when the 2nd proviso of section 12A is applied to the above facts in

assessee's case, the registration granted vide order dated 03.02.2021 for AY 2021-22 is applicable for the donation received during the preceding AY i.e. AY 2020-21 also. From the perusal of the records, we notice that this particular contention has not raised before the lower authorities since the assessee did not have the proper opportunity raise the same. Therefore we are inclined to give one opportunity to the assessee to raise the issue of application of the 2nd proviso to section 12A of the Act in assessee's case. Further the said contention requires factual verification supported by the documentary evidences to decide the claim of the assessee. Accordingly, we deem it fit to remit the appeal back to the AO to examine assessee's case in the light of the applicability of 2nd proviso to section 12A of the Act and decide the issue of giving exemption under section 11 towards donations received for AY 2020-21 in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

5. In result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16-12-2024.

Sd/-

(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Sd/-

(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai