

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH, AGRA**

BEFORE: SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 46/Agr/2024
Assessment Year: 2010-11**

Pehal, Near Irrigation Colony,
Bada Malehra, Distt. Chhatarpur-
471311, Madhya Pradesh.

PAN: AABTP6194M
(Appellant)

v. Income-tax Officer,
(Exemption), Gwalior.

(Respondent)

Assessee by : Sh. Sanjay Parekh, CA
Revenue by : Sh. Shailendra Srivastava, Sr. DR

Date of hearing : 11.12.2024
Date of Pronouncement : 09.01.2025

ORDER

This appeal in ITA No.46/Agr/2024 for the assessment year 2010-11 has arisen from the appellate order dated 27.12.2023 (Din & Order No. ITBA/APL/S/250/2023-24/1059118768(1)), passed by learned ADDL/JCIT (A)-10, Mumbai, which, in turn, has arisen from the assessment order dated 27.03.2015 passed by Assessing Officer u/s. 144 r.w.s. 147 of the Income-tax Act, 1961.

2. Grounds of appeal raised by the assessee in the memo of this appeal filed with the Tribunal read as under :

“1. That, on facts and circumstances of the case and in law and in any view of the matter, the Ld. Additional/Joint Commissioner of Income Tax Appeal-10 Mumbai National Faceless Appeal Centre has erred in passing the order u/s.250 of the Income Tax Act, 1961 on 27.12.2023 upholding the appellant's claim of exemption of Rs.583244/-u/s.11 is not allowable for want of prosecution, even on merits of facts as available on record, stating that neither any response on the prescribed date nor any submission was made. Whereas the adjournment application was uploaded in the portal on 11.12.2023 thereafter issued the notice dated 20.12.2023 fixed next date 26.12.2023 is not seen by the appellant in the portal being not use-to to see the portal online frequently and dismissed the appeal by passing order on 27.12.2023.

2. That, on facts and circumstances of the case and in law and in any view of the matter, the Ld. Additional/Joint Commissioner of Income Tax Appeal-10 Mumbai National Faceless Appeal Centre has erred in dismissing the appeal upholding the addition of Rs.583244/- stating that appellant is not entitled to claim exemption from payment of tax u/s.11(1)(a) and 12 of the Act, without considering Finance (No.2) bill 2014, proposes to insert three new provisions in sub section (2) of section 12A, which provide relief to such trust institution and remove hardship in genuine case duly reflected in the 'statement of facts' in which exemption is available for prior years where assessment proceedings pending before the Assessing Officer.

3. That, on facts and circumstances of the case and in law and in any view of the matter, the Ld. Additional/Joint Commissioner of Income Tax Appeal-10 Mumbai National Faceless Appeal Centre has erred in dismissing the appeal upholding the addition of Rs.583244/- stating that appellant got registration u/s.12AA from A.Y. 2011-12 hence asstt. order u/s.144/147 was passed rightly on 27.03.2015 by disallowing exemption u/s.11 of the Act and therefore, grounds Nos. 1,2,3,4,5,6,7 taken by the appellant are summarily dismissed. That appellant's first appeal's all the seven grounds are still taken as grounds of appeal here in this appeal before the Hon'ble Bench may kindly be heard during the course of hearing of appeal.

4. That, on facts and circumstances of the case and in law and in any view of the matter, the Ld. Authorities below have erred in invoking and upholding the applicability of provisions of section 11, 12 by ignoring part of section 12A(2) of the Act, in respect of disallowing exemption u/s. 11 of Rs.583240/-.

5. That, the appellant craves leave to add, amend, withdraw any ground (s) of appeal before and/or at the time of hearing.”

3. Brief facts of the case are that the assessee filed return of income for the impugned assessment year on 12.10.2010, declaring Nil income. Assessment was framed by the Assessing Officer u/s. 143(3) vide assessment order dated 18.04.2012, wherein the returned income was accepted by the Assessing Officer. The case of the assessee was later reopened by Revenue u/s. 147 of the Act, and notice dated 28.02.2013 was issued by the Assessing Officer u/s. 148 of the Act. The reasons recorded by Revenue for reopening of the assessment were as under :

"The assessee filed return of income of Rs. Nil for assessment year 2010-11 on 12/10/2010 which was assessed at Rs. Nil u/s 143(3) on 18/04/2012. In the case of the assessee, verification of the record RAP has raised objection vide para no. ITRAP-IV/IT/11 Dated 24/10/2013 which is received in this office on same date.

In this case, the assessee trust claimed exemption of Rs. 5,83,244/-(as per audited P&L a/c) u/s. 11 and 12 and was allowed by the assessing officer. Though in return of income, the trust showed total income of Rs. 13,03,369 (as per Sl. No. 23 of Part-B computation of total income) and claimed exemption this entire amount. During the course of audit revealed that the trust applied for registration under section 12AA of IT Act. 1961 through its president vide application dated 11/06/2011 the got registration u/s 12AA(i)(b)(i) of the IT Act, 1961 on 14/09/2011 by the Commissioner of Income Tax, Gwalior with effect from 01/04/2011 (from Assessment Year 2011-12). In the judicial of UP Forest Corporation verses CIT 165 Taxmen 533(SC) 2007, it was held by the Apex Court that registration under section 12 is a condition precedent for availing benefit under section 11 and 12. So, in this case the assessee trust got registration u/s 12 from A.Y. 2011- 12 but the Assessing Officer allowed the exemption to this trust for A.Y. 2010-11 itself which is erroneous as per above mentioned order.

Thus, this mistake resulted underassessment of income of Rs. 583,244 and short levy of tax comes to Rs. 225,280/- (including interest u/s 234B @ 25%) Hence, considering the above, I have reasons to believe that there is an escapement of income during the A.Y. 2010-11 and the case is reopened u/s 147 of the IT Act 1961 and notice u/s 148 is to be issued.”

4. During the course of assessment proceedings, the Assessing Officer issued statutory notices u/s. 142(1) as well as show cause notice u/s. 144 of the Act, show causing to the assessee that why deduction u/s. 11 may not be denied to the assessee as registration u/s. 12AA was granted vide order dated 14.09.2011 w.e.f. 01.04.2011, i.e., for the assessment year 2012-13, but the assessee has claimed exemption u/s. 11 for the impugned assessment year 2011-12 to the tune of Rs.5,83,244/-, which is to be disallowed. Assessee did not comply with the notice(s), which led to denial of deduction u/s. 11 of the Act by the Assessing Officer to the tune of Rs.5,83,244/- claimed by the assessee vide re-assessment order dated 27.03.2015 framed by the Assessing Officer u/s. 144/147 of the 1961 Act.

5. Assessee filed first appeal with Id. CIT(Appeals) and there was no compliance on behalf of the assessee before the Id. CIT(Appeals) despite several notices issued by the Ld. CIT(Appeals), which led to dismissal of appeal *ex parte* by Id. CIT(Appeals) for non-prosecution. Ld. CIT(Appeals) also upheld the order of the Assessing Officer on the

ground that he has rightly denied exemption u/s. 11 of the Act, as the assessee was not holding registration u/s. 12AA for the assessment year 2010-11 and the same was granted w.e.f. assessment year 2012-13. Thus, both the authorities below have denied deduction u/s. 11 of the Act to the assessee *ex parte*.

6. Now, the assessee has filed second appeal with the Tribunal and at the outset, Id. Counsel for the assessee submitted that the assessee's case is covered by first proviso to sub-section (2) of section 12A of the Act, which reads as under :

“Provided that where registration has been granted to the trust or institution under section 12AA, then, 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 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.”

6.2. Learned counsel for the assessee submitted that keeping in view the provisions of first proviso to sub-section (2) of section 12A, registration to the assessee was granted u/s. 12AA of the Act by Id. Commissioner of Income-tax, Gwalior vide order dated 14.09.2011, which was valid from 01.04.2011. It is submitted that the original assessment for the impugned assessment year was pending before the

Assessing Officer u/s. 143(3) of the Act, wherein the notice was issued on 23.09.2011 to the assessee by the Assessing Officer u/s. 143(2) of the Act. It was submitted that the case of the assessee was selected for scrutiny assessment under CBDT guidelines para 3(h) dated 02.09.2011. The registration u/s. 12A was granted by the Commissioner of Income Tax vide order dated 14.09.2011 and it is prayed that the first proviso to sub-section (2) to section 12A is applicable, as the assessee is eligible for deduction u/s. 11 of the Act. It was submitted that specific ground No. 5 was raised before the Id. CIT(Appeals), which reads as under :

“5. That Ld. A.O. has flayed and ignored the amended provisions of section 12A(2) inserted by the Finance (No.2) bill 2014 and without considered this provision, without mentioning this provision framed the assessment order in haste hence, warranted to allow the exemption under section 11 of the I.T.Act, 1961.”

It was submitted that the Id. CIT(Appeals) has not adjudicated the said issue. He relied upon the decision of ITAT Kolkata in case of Sree Sree Ramkrishna Samity vs. DCIT (ITA No. 1680/Kol/2012 & Others). Ld. Counsel also relied upon the decision reported in (2017) 88 taxmann.com 113 and other decisions submitted in paper book at pages 74 - 101.

6.3. Learned Sr. DR, on the other hand, submitted that the CIT(Appeals)'s order was passed *ex parte* as the assessee did not comply with any of the notice(s) issued by Id. CIT(Appeals). He relied upon the order of Id. CIT(Appeals).

6.4. Ld. Counsel in rejoinder stated that the assessee submitted statement of facts, however, no written submissions were submitted before the CIT(Appeals). It was submitted that the adjournment application was filed before the CIT(Appeals), but the same were rejected and the matter was decided *ex parte*.

7. I have considered rival contentions and perused the material on record. I have observed that the case of the assessee was reopened by the Revenue by invoking provisions of section 147 of the Act on the ground that registration u/s. 12AA was granted effective from 01.04.2011, i.e., assessment year 2012-13, but the assessee has claimed exemption u/s. 11 of the Act for the impugned assessment year, i.e., 2010-11. There was no compliance by the assessee during the assessment proceedings as well as in the first appellate proceedings. Both the order were passed *ex parte* in the absence of compliance by the assessee. The assessee has now filed paper book with the Tribunal

containing 101 pages and it is argued by the Id. Counsel that first proviso to sub-section (2) of section 12A is applicable since the assessment for the impugned assessment year was pending on the date of grant of registration u/s. 12AA of the Act vide order dated 14.09.2011 by the learned Commissioner of Income-tax. However, I have observed that the assessee has not taken this plea before the Assessing Officer, while before Id. CIT(Appeals) the assessee has taken this ground vide ground No. 5, but the assessee did not comply with any of the notices issued by Id. CIT(Appeals) and the matter was decided *ex parte* by Id. CIT(Appeals). The Id. CIT(Appeals) has not adjudicated the ground of appeal. The said proviso was inserted by Finance Act, 2014 w.e.f.01.01.2014. There are two conditions attached to first proviso to sub-section (2) of section 12A. Firstly, the assessment should be pending for any assessment year preceding the assessment year as on the date of such registration and secondly, the objects and activities of such trust or institution remain the same for such assessment year. On the cumulative satisfaction of both the conditions, assessee will be eligible to claim deduction u/s. 11 and 12 of the Act for any assessment year preceding the aforesaid assessment year, for which assessment is pending before the Assessing Officer as on the date of such registration.

This requires investigation of facts and further I observe that the order passed by Id. CIT(Appeals) is cryptic and non-speaking and the appeal of the assessee was dismissed on the ground of non-prosecution and also that the order of the Assessing Officer was upheld to be rightly passed denying the exemption. However, the Ld. CIT(Appeals) has not adjudicated the ground No. 5 raised regarding the application of amended provisions of section 12A(2) inserted by Finance Act, 2014. The Id. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as Id CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The appellate order passed by Id. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning

of Id. CIT(A) in deciding the issues. If the Id. CIT(A) simply dismisses the appeal merely because the assessee did not comply with the notices issued by Id. CIT(A) in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld, and that the assessee has not submitted details/documents is not sufficient. The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO., which even includes power of enhancement. It is equally true that the assessee also did not complied with the notices issued by Id. CIT(A) and did not file the requisite details/documents to support his contentions. The assessee also did not comply with the notices issued by the Assessing Officer during reassessment proceedings. Thus, the assessee is equally responsible for its woes. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) is set aside and the matter can go back to the file of Id.

CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. I clarify that I have not commented on the merits of the issues in the appeal. I order accordingly.

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

Order pronounced in open court on 09.01.2025.

Sd/-

**(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 09/01/2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT Agra