

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1056, 1352 & 1353/Bang/2024
Assessment Years : 2016-17

Magadi Planning Authority, Bagegowda Layout, Tirumale Main Road, Magadi Ramnagar – 562 120. PAN – AAALM 1912 D	Vs.	The Income Tax Officer, Ward -3, Ramanagar. The Income Tax Officer Exemption, Ward -3, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Dinesh Kumar Joshi, CA
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	12.12.2024
Date of Pronouncement	:	22.01.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These are appeals filed by the assessee against the order passed by the NFAC, Delhi dated 20/05/2024, 04/07/2024 for the assessment year 2014-15, 2016-17, 2017-18 respectively.

2. First, we take up ITA No. 1352/Bang/2024, an appeal by the assessee for A.Y. 2014-15.

3. The issues raised by the assessee in Ground Nos. 1 and 11 are general in nature and do not require any separate adjudication; hence, both grounds are dismissed as infructuous.

4. The interconnected issues raised by the assessee through Ground Nos. 2 to 7 pertain to the learned CIT(A) allegedly erring in not allowing the benefit of Sections 11 and 12 of the Act.

5. The facts, in brief, are that the assessee is a town planning authority created under the Karnataka Town and Country Planning Act, 1961. The assessee claims to be a local authority responsible for the administration, development, and monitoring of affairs in rural Magadi town, located in the Ramanagar district of Karnataka.

6. The appellant-assessee derives income by collecting certain charges or fees, such as betterment fees, lake development fees, and other cesses for specific purposes. Additionally, the assessee earned interest income from deposits of such charges or fees collected. Against this income earned or accrued, the assessee claimed exemption under Section 10(20) of the Act. Consequently, in the original return filed for the year under consideration, the assessee declared its taxable income as NIL. Subsequently, the assessment was reopened under Section 147 of the Act through the issuance of a notice under Section 148 of the Act, dated 18-03-2019.

7. The AO, during the assessment proceedings, observed that the assessee had filed an application for registration under Section 12AA of the Act, which was granted vide order dated 28-05-2019, under the last

limb of charitable activity, namely, "Advancement of any other object of general public utility." Consequently, the issue of eligibility for deduction under Section 10(20) of the Act became redundant.

7.1 The AO noted that while the Assessee was involved in activities aimed at advancing general public utility, it also engaged in significant commercial activities, such as earning income from scrutiny, supervision, layout plan approvals, betterment charges, and lake conservation fees. These were deemed to fall under the ambit of trade, commerce, or business as defined under Section 2(13) of the Act. Consequently, the AO invoked section 13(8), which states that organizations engaging in trade or business lose the benefit of section 11 of the Act exemptions. Furthermore, the AO emphasized that the Assessee, as a distinct legal entity, could not claim exemption under Article 289(1) of the Constitution, which is limited to exemption of levy of tax on the income of the State.

7.2 In its defense, the Assessee argued that it was a statutory body established by the Government of Karnataka for the advancement of public welfare and infrastructure development, aligning with the definition of charitable purposes under Section 2(15) of the Act. The Assessee contended that its activities were non-profit-oriented and primarily served public utility objectives. It also cited a favorable ruling by the Bangalore ITAT in the case of the Bangalore Development Authority bearing ITA No. 1968 to 1971/Bang/2018, claiming that its case was similar and should be treated in the same manner.

7.3 The AO, however, rejected the Assessee's arguments, by concluding that the income-earning activities were inherently commercial in nature and fell within the scope of trade, commerce, or business. The AO held that the proviso to Section 2(15) applied in this case, as the activities involved rendering services for a fee. Moreover, the AO dismissed reliance on the ITAT ruling in favor of the Bangalore Development Authority, pointing out that an appeal under Section 260A was still pending before the Hon'ble High Court of Karnataka. As a result, the AO denied the Assessee's claim for exemption under Section 11 of the Act. Accordingly, the total taxable income of the Assessee was computed at ₹6,75,85,251/- by the AO.

8. The aggrieved assessee preferred an appeal before the National Faceless Appeal Centre- NFAC (hereafter the learned CIT-A).

9. The appellant before the learned CIT(A) contended that it is an instrumentality of the state, created to serve public interests, and does not engage in any activity with a profit motive. Its primary objective is to undertake developmental works, such as water conservation, rejuvenation of water bodies, improvement of lakes, and planning for the town and adjacent areas. These activities aim to meet the drinking water and agricultural needs of Magadi town and its surrounding 223 villages.

9.1 The appellant argues that all its financial transactions, including its receipts and expenditures, are regulated by the State Government. The funds are deposited into a designated account called the Magadi Planning Authority Fund, with the annual budget being reviewed and

approved by the Government. Furthermore, it is subject to annual audits conducted by Government agencies, and its operations are fully controlled by the Urban Development Ministry of Karnataka.

9.2 On dissolution, all its assets and liabilities vest with the Government, further reinforcing its status as a non-commercial, public body. The appellant highlights that the functions performed by it are statutory and public in nature, aimed at improving infrastructure and addressing the needs of the local population, and thus do not fall within the purview of "business activity." Therefore, the activities carried out by it (the assessee) are entirely charitable, lacking any trade or commerce aspects, as they are focused on fulfilling the basic needs of the community.

9.3 The appellant also challenges the interpretation of the AO, who deemed that some of its functions might qualify as business. The appellant argues that this interpretation is inconsistent with the nature of the activities, which are conducted strictly in adherence to the Government rules and regulations, and do not exhibit any features of commercial enterprise.

9.4 In conclusion, the appellant firmly asserts that its activities are for public welfare, making it a state instrumentality exempt from Income Tax under the Act. The taxation of its income would contradict its status as a public body created solely to serve the people of Magadi.

9.5 However, the learned CIT(A) rejected the assessee submission and concurred with finding of the AO and confirmed the addition made by him.

10. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

11. The learned AR for the assessee before us reiterated the contention made before the lower authorities. The learned AR argued that the learned CIT-A without considering the explanation furnished by the assessee proceeded to confirm the addition made by the AO which needs to be quashed/ deleted after granting the benefit of exemption under section 11 and 12 of the Act.

12. On the contrary, the learned DR vehemently supported the finding of the authorities below.

13. We have heard the rival contentions of both parties and perused the materials available on record. From the preceding discussion we note that the primary issue raised in this appeal pertains to the denial of exemptions under Sections 11 and 12 of the Act. The assessee, a statutory authority established under the Karnataka Town and Country Planning Act, 1961, undertakes public welfare and developmental activities such as town planning, water conservation, and lake rejuvenation for Magadi town and its adjacent areas. The functions of the assessee align with the definition of "charitable purposes" under Section 2(15) of the Act, as they are oriented towards the advancement of public utility without any profit motive.

13.1 We note that the AO acknowledged in the assessment order that the facts in the present case are identical to those involved in the case of the Bangalore Development Authority (BDA) (supra). The relevant finding of the AO is extracted as under:

"6.2 The facts of eh case are exactly similar to that of Bangalroe Development Authority, the principle of taxation in the case of Bangalore Development Authority squarely apply to the Assessee's case as well."

13.2 We find that in the case of BDA, the coordinate bench of ITAT had categorically held that activities undertaken by a statutory authority in fulfilment of its public duties, even when they involve in the collection of fees, do not fall within the scope of trade, commerce, or business as per the proviso to Section 2(15) of the Act. The finding of the Tribunal in the case of BDA (supra) are extracted as under:

9. At the time of hearing of the appeal, it was agreed by both the parties that identical issue had come up for consideration in assessee's own case for asst. year 2012-13 in ITA No.1104/Bang/2017 and this tribunal vide its order dated 22/3/2019 held that the assessee is entitled to the benefit of sec. 11 of the Act and that its activities cannot be said to fall within the ambit of proviso to sec. 2(15) of the Act. The conclusions of the Tribunal can be summed up as follows:-

1. In Paragraph 5.8.1, the Tribunal extracted the objects of the Assessee as per Section 14 of the BDA Act, 1976, which is as under:

"14. Objects of Authority:—The objects of the authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the authority shall have the power to acquire, hold, manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary of expedient for the purpose of such development and for purposes incidental thereto."

In Paragraph 5.8.2 the Tribunal came to the conclusion that there were five limbs to the definition of "Charitable Purpose" in Sec.2(15) of the Act, viz., (i) Relief of the poor, (ii) Education, (iii) Medical relief, (iv) Preservation of environment (including watersheds, forests and wildlife) and (v) Preservation of monuments or places or objects of artistic or historic interest). Though the five limbs are not specifically provided for in section 14 of the BDA Act, the

objects enunciated involved preservation of environment, preservation of water bodies, preservation of forest areas, etc., appears to have merit; for it is a fact that planned urban development cannot take place or be done without due consideration being given to the preservation of the environment, water bodies like lakes, streams, etc., and forest areas. In coming to the above conclusion, the Tribunal found that from the financial statements of the assessee it was evident that it has expended an amount of Rs.2095.24 lakhs on planting of one crore seedlings in the green belt area for improvement of the environment. The Assessee has expended a sum of Rs.2997.42 lakhs towards development of lakes. The Tribunal therefore held that the Assessee carried out the activity of preservation of environment and water bodies and that the conclusion of the revenue authorities that these activities were done only to enhance the commercial value of the layout developed is untenable.

2. The Tribunal held that allotment of sites and flats to the economically weaker sections of society constitutes relief for the poor and that relief to the poor does not necessarily mean giving something free of cost to the poor. It also includes providing them things at a concessional rate. The Tribunal also embarked upon an enquiry as to whether the word "poor" can mean only those who are below the official poverty line or does it include all those who are economically weaker, but not necessarily below the poverty line. The Tribunal concluded that it is not necessary that educational / medical assistance is to be given free only to those below the poverty line. It will suffice if education / medical assistance is provided at concessional rates. The Tribunal also held that the rules that govern the allotment of sites are so formed in order to facilitate the economically weaker sections of society to purchase these sites. In the case of construction of flats, it was clear from the very scheme and the name thereof, that these flats are meant only for the Economically Weaker Sections of society.

3. The Tribunal held that the complaint of the Revenue authorities that the assessee was not applying huge amount of profit generated from the activities towards any charitable activities such as relief of poor, education, medical relief and other objects of advancement of general public utility and such surplus is being invested in fixed deposits in order to earn interest income was also not correct in as much as the Assessee was constructing grade separators, PRR Bridges on Flyovers, carrying out renovation and remodeling works, Maintenance of BBMP facilities, Development of Lakes, etc. The Tribunal also held that object of the Assessee was planned urban development of Bangalore City and not with the purpose of profit making; i.e., the activity of formation of layouts and allotment of sites is only carried out with the primary and main object to ensure planned development of Bangalore City and not with the intention to make profits. In coming to the above conclusion, the Tribunal has referred to the decision of the Hon'ble Apex Court in the case of Barendra Ray and Others Vs. ITO (1981) 129 ITR 295 wherein it was held one has to see whether the predominant object of the activity is to make profit or whether the predominant object of the activity is to carry out charitable purposes and not profit making. The Tribunal also referred to the decision of the Hon'ble Apex Court in the case of Surat Art Silk Organisation Vs. CIT (121 ITR 1), wherein it was held that a charitable organization cannot be expected to balance its accounts in such a manner that the income for the year matches exactly with its expenditure. It is inevitable that in carrying on the activities, certain surplus

may ensue. The earning of such surplus, in itself, would not mean that the organization existed for profit. The Hon'ble Apex Court went on to observe that every Association requires funds for expanding the range of its activities (for example; an Educational Institution may require additional infrastructure under which more class rooms can be set up / created). If profits are generated to support and expand these activities, then it cannot, in the view of the Hon'ble Apex Court, be held that there is a profit motive involved to deny the exemption. From the above ratio of the decision of the Hon'ble Apex Court, it is clear that it is the basic motive behind the activity, which is important to be considered; whether it is one with profit motive or not. Merely because surplus is generated from a particular activity, it cannot be said that such activity is in the nature of trade, commerce or business. What needs to be seen is, what the intent and purpose of starting such activity is. The tribunal found that BDA's embarkation of the activity of setting up of residential layouts, including the activity of sale of sites and flats, is definitely not with a view to earn profit, but to ensure planned urban development and also to accomplish a social objective of providing an opportunity to economically weaker sections of society to be able to own a residence on their own. The tribunal also held that the process of auctioning of corner sites by the BDA was only to ensure that officials do not use their discretion to allot corner sites and was therefore an activity which will ensure no loss to the public exchequer.

4. The Tribunal took note of the fact that the concerned Income Tax authorities have recognized the assessee as a public charitable organization by grant of registration under section 12A of the Act since 26.03.2003 and that the assessee's objects clause, i.e., section 14 of the BDA Act has not undergone any change or modification since its enactment; which is what must have prompted the Income Tax Department to take the view that it was charitable in nature. The tribunal took note of the fact that after the introduction of the proviso to section 2(15) of the Act the Income Tax Department took a view that the activity of 'BDA' was in the nature of trade, commerce or business and cancelled the registration, granted under section 12A of the Act, vide order dated 08.11.2011. The assessee's registration under section 12A of the Act however stood restored by a decision of the Co-ordinate Bench of this Tribunal vide order in ITA No.12/Bang/2012 dated 10.04.2015. In this prevailing factual matrix, there is no change in the objects and the only issue which apparently prompts Revenue to take the view it has taken, i.e., that the activity of the assessee is hit by the proviso to section 2(15) of the Act; is the fact that the activity of the assessee has resulted in huge surplus or profits. In our view, the fact of surplus or shortfall is not to be reckoned as the test for applicability of the proviso to section 2(15) of the Act; but rather, whether the activity is embarked upon solely with the view to earn profit or not; which the AO and CIT(A) have not done.

5. The Tribunal took note of the fact that in the case of similar urban development authorities in India, such as the Assessee, the revenue took a similar stand that those urban development authorities cannot be regarded as existing for "Charitable Purpose" after introduction of the proviso to Sec.2(15) of the Act and such approach has been held to be incorrect by the various judicial forums in the following cases:

(i) Ahmedabad Urban Development Authority Vs. ACIT (Exemptions) (2017) 396 ITR 323 (Guj.);

(ii) Jaipur Development Authority Vs. CIT (2014) 52 taxmann.com 25 (Jaipur – Trib.)

(iii) Haridwar Development Authority Vs. CIT (2015) 57 taxmann.com 6 (Delhi – Trib.)

(iv) CIT Vs. Lucknow Development Authority (2013) 38 taxmann.com 246 (Allahabad)

(v) CIT Vs. Jodhpur Development Authority (2017) 79 Taxmann 361 (Raj.).

6. *The Tribunal also held that the AO's reliance on the following decisions in support of his conclusion that the Assessee does not exist for "Charitable Purpose" was not correct because the issue involved in those cases were with regard to cancellation of registration u/s.12A of the Act. The cases referred to by the AO in this regard were as follows:*

(i) Jammu Development Authority Vs. UOI in ITA No.164/2012, CMA/2/2012 (J & K High Court);

(ii) Punjab Urban Planning and Development Authority (103 TTJ 98) (ITAT – Chandigarh);

(iii) Indore Development Authority – ITA No.366/Ind/2008 (ITAT – Indore).

(iv) Improvement Trust Vs. CIT, Bhatirda (41 Taxmann.com 403) (ITAT – Amritsar).

10. *In view of the aforesaid decision of the Tribunal, we are of the view that the assessee's activities have to be regarded as charitable in nature. The facts and circumstances under which the Tribunal decided the aforesaid issue and the basis of the conclusions in AY 12-13 and the AY 13-14 & 14-15, which are the AYs in the present appeals, are identical. The conclusions of the Tribunal in AY 12-13 would therefore be equally applicable to AY 13-14 & 14-15 also. The assessee would be entitled to the benefits of sec. 11 of the Act for AY 13-14 & 14-15. We hold accordingly and allow ground No.5 in both the Assessment years. In view of the findings rendered as above, the other grounds/issues raised by the Assessee in these appeals and the grounds raised by the revenue in its appeal become academic in nature as these conclusions flow only on the basis that the Assessee does not exist for "Charitable Purpose", which conclusion has been held by us to be incorrect. The AO will therefore compute total income on the basis that the Assessee is entitled to the benefits of Sec.11 of the Act and if done so there would be no income which can be brought to tax.*

13.3 Despite admitting the factual similarity, the AO chose to dismiss the assessee's reliance on the ITAT's decision in the BDA case, citing the pendency of an appeal under Section 260A before the Hon'ble High Court of Karnataka. This Tribunal, however, emphasizes the principle of judicial discipline and consistency, which requires that identical cases be treated in a uniform manner. The AO's attempt to disregard the binding precedent set by the ITAT in the BDA case solely due to an unresolved

appeal is unwarranted and contrary to established legal norms. Until and unless the Hon'ble High Court reverses the ITAT's findings, the ruling remains binding in cases with identical facts.

13.4 We further observe that the assessee operates under stringent Government regulation. All its receipts and expenditures are deposited into the Magadi Planning Authority Fund, and the budget is subject to approval by the State Government. The assessee's accounts are audited annually by Government agencies, and any surplus or assets, upon dissolution, revert to the State Government. These factors unequivocally demonstrate the non-commercial character of the assessee's activities. We, accordingly, concur with the assessee's argument that the imposition of income tax on its operations would contradict statutory mandate and undermine its role as a state instrumentality serving public welfare.

13.5 The AO's invocation of Section 13(8) of the Act, citing that the assessee's fee-earning activities constitute trade or business, lacks sufficient merit. The activities cited by the AO—such as layout plan approvals, betterment fees, and lake conservation fees—are intrinsic to the assessee's statutory responsibilities and do not exhibit the characteristics of a profit-driven enterprise. These fees are charged to ensure accountability and fund public welfare initiatives, not to generate profit. As such, the AO's interpretation of the assessee's activities as trade or commerce is inconsistent with the intent and purpose of Sections 11 and 12 of the Act.

13.6 The learned CIT(A) further erred in concurring with the AO without adequately addressing the assessee's submissions, including its reliance on the BDA case. The appellate authority failed to provide a reasoned explanation for dismissing the precedent, despite the AO's admission of factual similarity.

13.7 Given the admitted identical nature of the facts and the binding judicial precedent set by the Bangalore ITAT in the BDA case, we hold that the denial of exemptions under Sections 11 and 12 of the Act is unjustified. The assessee's activities are undeniably charitable, and the provisions of the Act support its exemption claim. The addition made by the AO and upheld by the learned CIT(A) is, therefore, quashed.

13.8 It is equally important to note that the Hon'ble Supreme Court in the case of ACIT Vs. Ahmedabad Urban Development Authority reported in 143 taxmann.com 278 involving identical facts and circumstances, has decided the issue on hand favouring assessee by holding as under:

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

13.9 In conclusion, we allow the appeal of the assessee. The findings of the lower authorities are reversed, and the assessee is entitled to exemptions under Sections 11 and 12 of the Act, 1961. Hence the ground of appeal raised by the assessee is hereby allowed.

14. In the result, the appeal of the assessee is hereby partly allowed.

Coming to ITA No. 1056/Bang/2024 for A.Y. 2016-17.

15. The interconnected issue raised by the assessee through ground Nos. 2 to 7 is that the learned CIT(A), erred in not allowing the benefit of exemption under section 11 and 12 of the Act.

15.1 The facts, in brief, are that the appellant assessee, during the year under consideration, claimed an exemption under Section 10(20) of the Act against income earned or accrued by it. Consequently, the assessee declared taxable income as NIL in the return of income filed by it.

15.2 During the assessment proceedings, the AO found that the exemption under Section 10(20) of the Act is available only to local authorities such as Panchayats, Municipalities, Municipal Committees or Boards, and Cantonment Boards. The assessee did not fall under any of the categories of local authorities defined under the provisions of Section 10(20) of the Act. Accordingly, the AO disallowed the claim for exemption under Section 10(20) of the Act and determined the income from business operations and other sources at ₹ 4,30,08,736/- and ₹ 3,64,36,418/-, respectively. Thus, the AO assessed the total income of the assessee at ₹7,94,45,154/-, as opposed to the NIL income declared by the assessee.

16. The aggrieved assessee appealed before the learned CIT(A) and contended that its activities fall under the purview of a local authority,

thereby making it eligible for deduction/exemption under Section 10(20) of the Act. However, the learned CIT(A) rejected the assessee's arguments and upheld the findings of the AO.

17. Being aggrieved by the order of the learned CIT(A), the assessee has now filed an appeal before us.

17.1 The learned AR before us among other contention argued that the appellant trust was granted registration under Section 12AA of the "Act" on 28th May 2019. At the time of granting registration, the proceedings for the relevant assessment year (A.Y. 2016-17) were pending before the learned CIT(A), therefore in accordance with the proviso to subsection (2) of Section 12A of the Act, the appellant trust should be entitled to the benefit of exemption under Section 11 of the Act for the year under consideration. The Id. AR argued appellate proceeding is continuance of assessment proceeding which was pending on the date of registration. Since the registration was granted before the completion of the assessment proceedings, the appellant is entitled to the exemptions available to a registered charitable trust under Section 11 of the Act.

18. On the other hand, the learned DR vehemently supported the order of the authorities below.

19. We have heard the rival contentions of both the parties and perused the materials available on record. From the record, we note that the assessee, for the year under consideration, originally claimed exemption under Section 10(20) of the Act by treating itself as a local

authority. However, the exemption claimed under Section 10(20) of the Act was denied by the AO in the assessment order passed under Section 143(3) of the Act, dated October 30, 2018.

19.1 Subsequent to the assessment order, the assessee applied for registration as a charitable trust under Section 12AA of the Act, which was approved vide order dated May 28, 2019. At the time of approval of the registration under Section 12AA of the Act, the appeal against the assessment order was still pending before the learned CIT(A). The CIT(A) order was eventually passed on May 20, 2024.

19.2 Based on these facts, the learned AR for the assessee contended before us that since the registration was granted prior to the completion of the appellate proceedings, the assessee trust, in accordance with the proviso to subsection (2) of Section 12A of the Act, is entitled to the exemptions available to a registered charitable trust under Section 11 of the Act.

19.3 The proviso to subsection (2) of Section 12A of the Act provides that if a trust is granted registration under section 12AA of the Act, the benefits of sections 11 and 12 of the Act shall be extended to such a trust for any previous assessment year for which assessment proceedings were pending before the AO on the date of granting registration, provided the objects and activities of the trust remain unchanged during such previous years.

19.4 As far as the objects and activities of the appellant assessee are concerned, it is noted that, while adjudicating the assessee's appeal for

A.Y. 2014-15 bearing ITA No. 1352/Bang/2024, we have held in paragraph no. 13 – 13.9 of this order that the activities of the assessee are charitable in nature, and there has been no change in the objects and activities of the assessee for the year under consideration.

19.5 Moving forward, we note that in the case at hand, the registration under Section 12AA of the Act was granted while the appeal for the year under consideration was pending before the learned CIT(A). This raises the question of whether proceedings pending before the learned CIT(A) can be considered as assessment proceedings before the AO, thereby extending the benefit of sections 11 and 12 of the Act.

19.6 We find that this question has been addressed by the Hon'ble Rajasthan High Court in the case of *CIT (Exemption) vs. M/s Shree Shyam Mandir Committee* in Income Tax Appeal No. 234/2016. The Hon'ble Rajasthan High Court, in its order dated October 23, 2017, decided the issue in favor of the assessee, holding that an appeal is a continuation of assessment proceedings. Therefore, an appeal pending before the appellate authority should be deemed as assessment proceedings pending before the AO. The relevant observation is extracted below:

30. *This brings us to the next question, i.e., whether the assessment proceeding "pending before the Assessing Officer," as stated in the first proviso to Section 12A(2) can be taken as "pending in appeal," or, in other words, whether proceedings pending in appeal can be taken as assessment proceedings pending before the Assessing Officer. This issue also stands answered in favor of the assessee by Shree Bhanushali Mitra Mandal Trust (supra), wherein it was held that appeal is a continuation of the original proceedings and assessment proceedings pending before an appellate authority should be deemed to be "assessment proceedings pending before the Assessing Officer" within the meaning of Section 12A. SNDP Yogam (supra), is to the same effect. Again, no contrary decision has been brought to our notice. Accordingly, it is held that the appellate proceedings before the appellate*

authorities are deemed to be assessment proceedings pending before the Assessing Officer.

19.7 Before concluding, it is important to note that an identical issue was also considered by the Hon'ble Allahabad High Court in the case of *CIT (Exemption) vs. Shiv Kumar Sumitra Devi Smarak Shikshan Sansthan*, reported in 113 taxmann.com 334. In this case, the Hon'ble Allahabad High Court decided the issue against the assessee, holding that the assessment shall be considered as pending only before the Assessing Officer, not before the Tribunal. The relevant finding of the Hon'ble Allahabad High Court is extracted below:

17. *Section 12A extends benefit of exemption under Section 11 & 12 of the Act at the first instance to the cases referred under sub-section 1 of Section 12 A. Sub-section 2 of section 12 A extends benefit even when application for registration of Trust or Institution has been made on or after first day of June 2007. It would however be in relation to the income of the Trust or the Institution from the assessment year immediately following the financial year in which application for registration was made. If the simple meaning of the provision of section 12A(2) is to be given, it governs those cases where application was moved for registration after first day of June, 2007. The benefit of Section 11 and 12 would be extended from the assessment year immediately following the financial year in which the application was given. In the instant case the application for registration was given on 15.12.2014 i.e. in the financial year 2014-15. On registration of the Trust, benefit under Section 11 and 12 would be available to the assessee from the assessment year following the financial year in which application was given and not any previous year. The benefit of registration could not have been extended for the assessment year 2011-12, even if the matter was pending before the Tribunal when application for registration was submitted on 15.12.2014.*

18. *The proviso to sub-section 2 applies in a given circumstances, but cannot by making main provision of section 12 A as redundant. In the instant case, the application for registration was then submitted on 15.12.2014. The registration was given on 08.06.2015. Since registration has been given on 08.06.2015, the benefit of Section 11 & 12 would be available for the following financial year in which application was made if the assessment proceedings for the relevant assessment year was pending till the date of registration. It cannot be for the assessment year 2011-12 due to pendency of the appeal before the Tribunal. If the benefit of Section 11 and 12 is extended for the assessment year 2011-12, despite submission of the application for registration on 15.12.2014, it would be in contravention of sub-section 2 of Section 12. By virtue of the interpretation taken by the Tribunal the main provision has been made redundant on the facts of the case, though not*

permissible. The proviso has to be read along with main proviso and not in isolation and contradiction.

19. The Tribunal even ignored the fact that proviso not only require registration of the Trust or the Institution while the assessment proceedings are pending, but it refers to assessment proceedings before the assessing authority and not elsewhere.

In a common parlance, whenever matter is pending before the Tribunal in appeal, considered to be pendency of the assessment proceedings. The aforesaid principle would be applicable in the instant case is another question because proviso qualifies not only pendency of the assessment proceedings, but should before the Assessing Officer not else where, if in the proviso words "pendency of the assessment proceedings", would have been used then pendency of the appeal against the assessment could have been considered to be pendency of the assessment proceedings, but in the instant case the words used are "pendency of the assessment proceedings before the Assessing Officer".

The assessment proceedings of the year 2011-12 was not pending before the Assessing Officer, but before the Tribunal. The observation aforesaid is relevant on the facts of this case. This Court has otherwise given proper interpretation to the substantive provision as well as the proviso.

20. We have further gone through the instruction of the CBDT and find it to be contrary to the proviso to Section 12 A of the Act, 1961. The instruction of the CBDT cannot be forfeited, if it is against the statutory provisions. The provision is not to extend benefit in case assessment is pending but it should be before the Assessing Officer. In that case, pendency of the assessment can be treated to be pending before the Assessing Officer though pending before the Tribunal in Appeal. It cannot be in those cases where provision is very specific, because proviso not only refers to the pendency of the assessment when it is pending before the Assessing Officer. In few cases, the assessment proceedings is considered to be pending before the Tribunal due to pendency of the appeal but it is applicable in those cases where words used are pendency of the assessment proceedings and not with words "pending before the Assessing Officer". The interpretation therein is in reference to the words 'pendency of the assessment' and not in reference to the pendency of the assessment before the Assessment Officer. The instruction of CBDT can not be applied if seems counter the statue.

21. Accordingly the judgment of Gujarat High Court in Mayur Foundation (supra), would not apply. The view expressed therein cannot be applied to the facts of this case, otherwise an anomalous situation may emerge in a given case where for one or the other reason assessment proceedings before the Tribunal remain pending for years together or on a remand or for any other reason it comes before the Assessing Officer and such cases also subsequent application for registration and acceptance would result to extend benefit of Section 11 and 12 creating anomalous position if not meant for. This was not the object sought to be achieved by the legislature. If for one or the other reason, the proceedings in reference to the assessment years 1998-99

remains pending and the application for registration under Section 12AA of the Act, 1961 is filed in the year 2014-15 followed by registration, if the proviso is applied, then benefit of Section 11 and 12 of the Act, 1961 would be given to the Trust or the Institution even for the year 1998- 99, though the legislatures have not provided such arrangement or to extend the benefit in such cases. The provision is candid to govern only those cases where the application for registration is submitted followed by registration, to extend the benefit to the assessee from the following financial year of the date of application. Taking aforesaid into mind, we find reasons to allow the appeal preferred by the revenue and the substantial questions of law framed herein above are answered in favour of the Revenue and thereby we set-aside the order passed by the Tribunal.

19.8 Thus, there are contrary views taken by two different non-jurisdictional High Courts on the issue of whether assessment proceedings can be considered pending as on the date of approval of registration under Section 12AA of the Act, for the purpose of extending the benefit of exemption under Sections 11 or 12 of the Act.

19.9 It is a settled position of law that when there are conflicting views on the same issue by different non-jurisdictional High Courts, the view favoring the assessee shall prevail. Therefore, we are inclined to follow the view taken by the Hon'ble Rajasthan High Court in the case of *CIT (Exemption) vs. M/s Shree Shayam Mandir Committee* (supra).

19.10 In our considered opinion, the appellant assessee is entitled to the benefit of the provisions of section 11 of the Act for the year under consideration. Accordingly, the ground of appeal of the assessee is allowed.

20. In the result, the appeal of the assessee is hereby allowed.

Coming to ITA No. 1353/Bang/2024 for A.Y. 2017-18.

21. The interconnected issue raised by the assessee is that the learned CIT(A), erred in not allowing the benefit exemption provided under section 11 and 12 of the Act.

22. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2017-18 are identical to the issue raised by the assessee in ITA No. 1352/Bang/2024 for the assessment year 2014-15. Therefore, the findings given in ITA No. 1352/Bang/2024 shall also be applicable for the assessment years 2017-18. The appeal of the assessee for the A.Y. 2014-15 has been decided by us vide paragraph No. 13-13.9 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the assessment years 2017-18. Hence, the ground of appeal filed by the assessee is hereby allowed.

23. In the result appeal of the assessee is hereby allowed.

24. In the combined result, the appeal of the assessee for A.Y. 2014-15 is partly allowed whereas the appeals of the assessee for A.Y. 2016-17 & 2017-18 are hereby allowed.

Order pronounced in court on 22nd day of January, 2025

Sd/-

Sd/-

(KESHAV DUBEY)

(WASEEM AHMED)

Judicial Member

Accountant Member

Bangalore

Dated, 22nd January, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore