

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM**  
**(HYBRID HEARING)**

**श्रीललित कुमार, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**  
**BEFORE SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER**

**&**

**SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./I.T.A.No.358/VIZ/2024  
(निर्धारण वर्ष/ Assessment Year: 2015-16)

Sri Kanaka Mahalakshmi Ammavari Temple D.No. 22-71-26/B, SKML Temple Kotha Road, Burujupeta Visakhapatnam – 530001, Andhra Pradesh  [PAN: AAAJS1861M] (अपीलार्थी/ Appellant)	v.	Centralized Processing Center Bangalore.  (प्रत्यर्थी/ Respondent)
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करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri KSS Sarma, AR
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr Satyasai Rath, CIT(DR)
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	27.02.2025
घोषणाकीतारीख/Date of Pronouncement	:	29.04.2025

**आदेश /ORDER**

**PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:**

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-1, Gurugram [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No.ITBA/APL/S/250/2024-25/1066099951(1) dated 26.06.2024 for the A.Y. 2015-16 arising out of the intimation passed

under section 143(1) of Income Tax Act, 1961 (in short 'Act') processed by the CPC, Bangalore dated 29.03.2017.

2. Brief facts of the case are that, assessee is a Temple constituted under the AP charitable and Hindu Religious Institutions and Endowments Act 30 of 1987. Assessee filed its return of income and claimed exemption under section 11 of the Act. However, CPC while processing the return under section 143(1) of the Act denied the exemption claimed by the assessee and computed the tax payable of Rs. 6,24,41,680/-. Aggrieved by the intimation passed by the CPC, Bangalore, assessee filed an appeal before the Ld. CIT(A). Ld. CIT(A) after considering the submissions made by the assessee relying on various judicial pronouncements partly allowed the appeal of the assessee by directing the Ld. Assessing Officer [hereinafter in short "Ld. AO"] to allow the revenue expenditure while computing the tax liability of the assessee. Ld. AO passed the consequential order dated 16.07.2024 by granting the relief as per the order of the Ld. CIT(A) dated 26.06.2024 and also reduced the capital receipts of Rs.7,09,44,112/- in the assessed income and computed the net taxable liability of Rs.44,49,683/-. Subsequently, Ld. AO revised the consequential order thereby passing another order under section 154 of the Act dated 15.10.2024 by disallowing the capital receipts amounting to Rs.7,09,44,112/- stating that there is a mistake apparent from the record while passing the giving effect order to the Ld. CIT(A) dated 26.06.2024.

3. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising various grounds. The grounds raised by the assessee are mostly argumentative in nature. The assessee has reproduced the assessment orders of subsequent years in the grounds of appeal. The issue emanating from the grounds raised by the assessee is with respect to the Ld. CIT(A) not granting relief for the capital receipts amounting to Rs.7,09,44,112/- and also considering Hundi collections as revenue income of the assessee. We now proceed to adjudicate the above two issues.

4. At the outset, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has received the following amounts which are capital in nature: -

a.	FDR Maturity	Rs.6,53,63,782/-
b.	Recovery of advances and deposit	Rs.11,54,861/-
c.	Specific Donations	Rs.5,27,416/-
d.	Other donations	Rs.38,98,053/-

5. Ld.AR prayed that the above receipts cannot be considered as income of the assessee as they are being in the nature of capital receipt. Further, Ld.AR also submitted that as per Explanation 1(g) to section 65 of AP / TS Charitable Hindu Religious Endowments Act 1987, which stipulates that “donation in cash or kind by the donors as contributors to capital”. Ld.AR also argued that Hundi Collections be considered as capital and hence not taxable. He also placed reliance in the case of Sri BoyakondaGangamma Devasthanam in ITA No. 1983/HYD/2018 wherein the Co-ordinate Bench of the Tribunal has confirmed

that the Hundi collections as capital receipts as per Section 65 Explanation 1(g) of AP / TS Charitable Hindu Religious Endowments Act 1987. He therefore pleaded that relief for the capital receipts and Hundi collections may be granted to the assessee.

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] fully relied on the orders of the Revenue Authorities.

7. We have heard the rival submissions and carefully perused the material available on record. The principal contention advanced by the Ld. Authorized Representative (Ld. AR) is that the assessee was granted registration under section 12A of the Income Tax Act, 1961 on 06.08.2018, and that the assessment proceedings were pending before the Ld. Assessing Officer (Ld. AO) at the relevant time.

8. Upon examination, we find that the intimation under section 143(1) of the Act was issued on 29.03.2017, and the assessee filed the appeal before the First Appellate Authority on 06.03.2023. It is noted that the assessee sought condonation of delay when filing the appeal before the Ld. CIT(A), and the Ld. CIT(A), while passing the impugned order, has condoned the delay. Therefore, for all practical purposes, the appeal filed on 06.03.2023 would be deemed to have been filed within the statutory period. Consequently, it will be presumed that the appellate proceedings were pending when the registration under section

12A was granted. Therefore, the assessee is entitled to all benefits of the registration for the Assessment Year under consideration.

9. Even otherwise, it is pertinent to observe that the registration under section 12A was granted on 06.08.2018, much prior to the passing of the impugned order by the Ld. CIT(A). Hence, all consequential benefits flowing from the retrospective grant of registration are required to be extended to the assessee. This principle is in consonance with the law laid down by the Hon'ble Rajasthan High Court in the case of Shyam Mandir Committee which we will be referring to in the subsequent paragraphs. However, we find that the Ld. CIT(A) erred in not granting such consequential benefits to the assessee.

10. Further, we observe that the Ld. CIT(A) directed the Ld. AO to treat the assessee as an Association of Persons (AOP) after allowing the deduction of revenue expenditure. However, the Ld. CIT(A) has further erred in not directing the Ld. AO to exclude the following capital receipts, which are not liable to tax in the hands of the assessee: Further, Ld. CIT(A) has directed the Ld. AO to treat the assessee as AOP after allowing the revenue expenditure. However, we find that the Ld.CIT(A) has erred in not directing the Ld. AO to reduce the capital receipts as detailed below: -

a.	FDR Maturity	Rs.6,53,63,782/-
b.	Recovery of advances and deposit	Rs.11,54,861/-
c.	Specific Donations	Rs.5,27,416/-
d.	Other donations	Rs.38,98,053/-

11. It was demonstrated by the Ld.AR that the above receipts are out of maturity of the Fixed Deposits, Recovery of advances and specific donations. We are therefore directing the Ld. AO to deduct the capital receipts except “Other Donations” from the total receipts of the assessee and compute the tax liability accordingly.

12. We observe that ITAT Jaipur Bench in the case of Shyam Mandir Committee, Khatushyamjiv. ACIT in ITA. No. 651/JP/2013 vide decision dated 02.06.2016 has held as under:

*“5. Now, we will deal with the additional ground hereinabove before we deal with the other grounds.*

*5.1. For the purpose of adjudicating the additional ground, it is necessary to reproduce section 12A of the Income-tax Act, which provides as under :*

*“12A. Conditions for applicability of sections 11 and 12.-(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely :-*

*(a) The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under section 12AA :*

*Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,-*

*(i) from the date of the creation of the trust or the establishment of the institution if the Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons ;*

(ii) from the 1st day of the financial year in which the application is made, if the Commissioner is not so satisfied :

*Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007.*

(aa) the person in receipt of the income has made an application for registration of the trust or institution on or after the 1st day of June, 2007, in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA.

(b) Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to Income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(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."

The Finance (No. 2) Act of 2014 has inserted the proviso to sub-section (2) of section 12A with effect from October 1, 2014. We are reproducing hereinbelow sub-section (2) of section 12A first proviso, second proviso and third proviso for the sake of clarity.

"Provided that where registration has been granted to the trust or institution under section 12AA, 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 :

*Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year :*

*Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA."*

*A bare reading of the proviso clearly provides that if at the time of grant of registration under section 12A the assessment proceedings are pending before the Assessing Officer and the object and activities of the trust remain the same for such preceding assessment years, then the benefit of registration for sections 11 and 12 are required to be given to the trust on the income derived from the property held under the trust. In the present case as mentioned hereinabove, the appellant has filed the application for grant of registration on March 16, 2009, and the registration was directed to be granted by the order of the Tribunal with effect from April 1, 2008. The return of income was processed under section 143(1) on March 13, 2010. The assessment order was passed on December 26, 2011, under section 143(3) read with section 147 of the Income-tax Act and, thus when the order was passed by the Tribunal on January 28, 2010, the assessment proceedings were pending before the Assessing Officer. Therefore, the benefit of registration is required to be given for the preceding assessment years, i.e., 2007-08. The learned counsel for the assessee relied upon the judgment of the Income-tax Appellate Tribunal in I. T. A. Nos. 503 to 506 and 569/Coch/2014, dated May 13, 2015 in the matter of SNDP Yogam v. ADIT (Exemption) wherein in paragraphs 7, 7.1 and 7.2 it has been held as under :*

*"7. We have carefully considered the rival submissions, perused the relevant materials on record and the caselaw on which the learned authorised representative had placed strong reliance. The primary issue for our consideration is whether the Commissioner of Income- tax (Appeals) is justified in confirming the Assessing Officer's action, for all the assessment years under consideration, in assessing the entire incomes of the assessee from all the institutions at the maximum marginal rate. In this context, it is appropriate to refer the amendment to section 12A(2) of the Act and its proviso. For ready reference the same is reproduced below :*

*(Section 12A(2) and its proviso)*

*'(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 where registration has been granted to the trust or institution under section 12AA, 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 :*

*Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non- registration of such trust or institution for the said assessment year :*

*Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.' "*

*We have gone through the provisions of the Act and have also gone through the record. In our view, the proviso to sub-section (2) of section 12A has retrospective application and has been inserted in the Act to remove the hardship of the charitable trusts/institutions. Admittedly, in the present case when the registration was granted on March 5, 2010, with effect from April 1, 2008, the assessment proceedings for 2007-08 were pending before the Assessing Officer. Therefore, the assessee cannot be treated as an association of persons and is required to be treated as registered trust under section 12A of the Income-tax Act. We find no reason to disagree with the judgment passed by the co-ordinate Bench (supra) where the co-ordinate Bench has given the benefit of registration of the trust for the assessment year 2006-07 though the application for registration was granted on July 29, 2013. Respectfully following the judgment of the co-ordinate Bench, we are of the view that the assessee before us is also required to be treated as registered trust for the assessment year 2007-08 de hors the direction issued by the Tribunal to grant the registration with effect from April 1, 2008, in the light of new amendment referred to hereinabove and also in view of the judgment of the co-ordinate Bench. We may like to add that though the Tribunal, vide order dated January 28, 2010, has directed to grant the registration from April 1, 2008, in our view when there is a conflict between the order passed by the Tribunal and the subsequent Legislature which is beneficial in nature, the subsequent Legislature and the benefit flowing from the subsequent Legislature should be given to the assessee. It is none of the party's case that the assessment proceedings have reached to the finality and, therefore, in view of the change in law, the beneficial legislation should be applied to the benefit of the assessee. Even otherwise, in the matter of Howrah Municipal Corporation v. Ganges Rope Co. Ltd. [2004] 1 SCC 663 it has been held by the honourable Supreme Court that if there is a change in law during the pendency of the appeal, the change in law should be made applicable and should be applied to the pending appeals. In the present case the appeal is pending before the Tribunal for the year 2007-08 and there is a change in law with effect from October 1, 2014. Therefore, the benefit which are available to the assessee on account of insertion are required to be extended or passed on to the*

assessee. We, therefore, hold that the assessee is entitled to benefit under sections 11 and 12 for the assessment year 2007-08 on account of the fact that the assessment proceedings are pending. In view thereof, now we will deal with the reopening under section 147/ 148 of the Income-tax Act.

5.2. It is the contention of the learned authorised representative that the sole basis of reopening under section 147 was the levy was not rejected and, therefore, the amount of Rs. 2.08 crores is required to be treated as the income instead of being the capital receipt. The learned counsel relied upon various judgments as under :

1. CIT v. Bijli Cotton Mills (P.) Ltd. [1979] 116 ITR 60 (SC) ;
2. CIT v. Madurai Mills Co. Ltd. [1973] 89 ITR 45 (SC) ;
3. Mahila Sidh Nirman Yojna v. IAC [1994] 50 TTJ (Delhi) 494;
4. ITO (Exemptions) v. Smt. Basanti Devi and Shri Chakhan Lal Garg Education Trust (I. T. A. No. 5082/Del/2010, dated January 19, 2011)
5. ITO v. Gaudiya Granth Anuvad Trust [2013] 28 ITR (Trib) 161 (Agra) ; and
6. Shankar Bhagwan Estate v. ITO [1997] 61 ITD 196 (Cal.).

5.3. The learned Departmental representative for the Revenue has submitted that the provisions of section 147/148 are attracted as the original return of income was only processed and there was no application of mind in scrutiny assessment. It was submitted by the learned Departmental representative that the assessee has filed the return of income as an association of persons and not as registered trust. Therefore, the amount of Rs. 2.08 crores though has mentioned in the return of income but there was no application of mind and, therefore, has submitted that the income of the assessee has escaped assessment. Therefore, the authorities below were right in reopening the case of the assessee.

5.4. We have heard the rival parties and perused the material available on record. In our view, it is admitted that the assessee was incorporated in the year 1986 and thereafter has been continued to discharge its function as registered trust and was looking after the affairs of Khatu Shyamji. By virtue of order of the Tribunal dated January 28, 2010, the registration was granted with effect from April 1, 2008, however have held that the assessee, though was not registered and the application was not processed but the benefit of being the registered trust were required to be extended to the assessee under sections 11 and 12 of the Income-tax Act.

*In view thereof, the assessee is required to be treated as registered trust with effect from April 1, 2007. Since we have already held that the assessee is required to be treated as registered trust with effect from April 1, 2007, therefore, in our view, if we read the second proviso to sub-section (2) of section 12A, then it is clear that the reopening under section 147/148 is not permitted. For ready reference, we are reproducing hereinbelow the second proviso to sub-section (2) of section 12A :*

*"Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year ."*

*A bare reading of the abovesaid provision though inserted with effect from October 1, 2014, in our view, clearly mandates that no reopening can be made on account of non-registration of the trust. In view thereof, we hold that the reopening made by the Assessing Officer under section 147/148 of the Act was ill founded and was not in accordance with law. In view thereof this ground is decided in favour of the assessee and against the Revenue.*

*5.5. Since we have held that the reopening under section 147/148 was bad in law, therefore, we do not find it appropriate to examine the other grounds mentioned by the assessee as the other grounds originates from reopening of the assessment proceedings. Since we have held that the reopening was bad in law, therefore, all the other grounds are also decided in favour of the assessee and against the Revenue."*

**13.** The Hon'ble Rajasthan High Court, in the case of CIT (Exemptions) v. Shree Shyam Mandir Committee (2018) 400 ITR 466 (Raj.), addressed the applicability of the proviso to Section 12A(2) of the Income-tax Act, 1961. The Hon'ble High Court had held the Retrospective Application of Proviso to Section 12A(2): The Court held that the proviso to Section 12A(2), introduced by the Finance Act, 2014, is declaratory and has retrospective effect. This means that if a trust or institution obtains registration under Section 12AA during the pendency of assessment proceedings, it is entitled to claim exemption under Sections 11 and 12 for earlier assessment years for which proceedings are

pending. It was held that Assessment Proceedings Include Appeals: The Court clarified that the term "assessment proceedings" encompasses not only proceedings before the Assessing Officer but also includes appeals pending before the Commissioner of Income-tax (Appeals). Therefore, if a trust secures registration while its appeal is pending, it can claim exemption for the relevant assessment year. An SLP (Special Leave Petition) was filed against this judgment (SLP(C) No. 11498/2018). However, on 22<sup>nd</sup> November 2019, the Supreme Court dismissed the SLP as withdrawn, thereby upholding the Rajasthan High Court's decision.

**14.** In the present case, the assessee was granted registration under section 12A of the Act on 06.08.2018. As already held hereinabove, the assessment proceedings for the assessment year 2015-16 were pending before the authorities at the time of the grant of registration. It is not the case of the Revenue that there was any change in the nature of activities carried out by the assessee or that the activities carried by the assessee were contrary to the aims and objects for which registration under section 12A was granted on 06.08.2018. In view of the above factual position, and in light of the finding that the proceedings were pending when the registration was granted, we do not find any impediment in granting the relief to the assessee. Respectfully following the decision of the Hon'ble High Court, we are of the considered view that the

assessee is entitled to the benefit claimed. Accordingly, the grounds raised by the assessee are allowed. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 29 April, 2025.

<b>Sd/-</b> <b>(ललितकुमार)</b> <b>(LALIET KUMAR)</b> <b>न्यायिकसदस्य/JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(एसबालाकृष्णन)</b> <b>(S. BALAKRISHNAN)</b> <b>लेखासदस्य/ACCOUNTANT MEMBER</b>
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Dated : 29.04.2025  
Giridhar, Sr.PS

**आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :-**

1. निर्धारिती/ The Assessee : Sri Kanaka Mahalakshmi Ammavari Temple  
D.NO. 22-71-26/B, SKML Temple  
Kotha Road, Burujupeta  
Visakhapatnam – 530001  
Andhra Pradesh
2. राजस्व/ The Revenue : Centralized Processing Center  
Bangalore
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल/ Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam