

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

BEFORE S/SHRI SANJAY ARORA, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.563/Mum/2012

(निर्धारण वर्ष / Assessment Year: 2003-04)

Padmashri Annasaheb Jadhav Bhartiya Samaj Unnati Mandal C/o. H.N.Motiwalla & Co. 508, Sharda Chambers, 33 , New Marine Lines, Mumbai - 400020	बनाम/ Vs.	Commissioner of Income Tax II, Thane
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATP2888F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri H. N. Motiwalla
Department by:	Dr. Rajeev Harit (CIT-DR)

सुनवाई की तारीख / Date of Hearing: 17.03.2016

घोषणा की तारीख /Date of Pronouncement: 10.06.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

This is an appeal against the order dated 08.12.2011 passed by the Commissioner of Income Tax (Appeals)-II, Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2003-04 wherein the application moved by the assessee u/s.12AA of the Income Tax Act, 1961(in short “the Act”) has been ordered to be dismissed.

2. The facts of the case are that the assessee trust has applied for the registration u/s.12AA of the Act by filing the application on 18.04.2011. The trust was created on 08.06.1948 and was registered under Bombay Public Trust Act, 1950. The notice dated 12.01.2009 was issued to the above trust, where a serious allegation of financial misappropriation by the trustees was referred to along with extract of Special Auditor's books conducted by Hon'ble Charity Commissioner, Mumbai, where the auditors quantified misappropriation and siphoning of the funds by the erstwhile trustees to the tune of Rs.43.21 crores. Therefore, the registration was withdrawn vide order dated 21.01.2009. The trustees have not filed the appeal against the said order. Thereafter the trustees had filed an another application for registration u/s.12AA of the Act without giving the earlier reference, therefore, the show cause notice was issued to the assessee and after the receipt of the notice, the assessee's representative appeared and filed the letter dated 14.11.2011 referring the certain facts of the trust. Thereafter, CIT(A) considered the matter on the point of that whether the registration granted u/s.12AA of the Act w.e.f. 01.04.1998 should be continued on account of misappropriation of the fund of Rs.43.21 crores or not. Thereafter, the registration was withdrawn by the virtue of order dated 21.01.2009. The appellant did not file the appeal. Thereafter, the present application for registration u/s.12AA of the Act was filed. The main contention of the assessee is that the tainted trustees have been removed and new trustees have been appointed headed by Shri Vijay P. Jadhav, son of Late Shri Annasaheb Jadhav, founder of the trust therefore, the trust is required to be registered u/s.12AA of the Act. But the CIT(A) dismissed the

application on the ground of that the new trustees were appointed prior to the date on which the order of withdrawing the registration was passed i.e. prior to 21.01.2009 and granting of the registration u/s.12AA of the Act is tantamount to over-ride of the order of cancellation passed by the CIT(A). Once the trust has been found misappropriating of funds by the trustees then the trust becomes ineligible for grant of registration u/s.12AA of the Act in subsequent years as well. It has also been held that the appellant should file an appeal against order dated 21.09.2009, therefore the present application was dismissed. Feeling aggrieved the assessee has filed the present appeal before us.

2. The appellant has raised the following grounds:-

- “1. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax, II, Thane erred in not granting the registration under section 12A(1)(aa) of the Act vide its order dated December 08, 2011, particularly when, the appellant trust had filed its application for registration on April 18, 2011, and the said order ought to have been passed on or before October 31, 2011. Therefore, the said order is bad-in-law, illegal and ab-initio-void.*
2. *On the facts and in the circumstances of the case, the said learned Commissioner of Income Tax has also erred in refusing the registration only on the ground that the registration was withdrawn vide his order dated September 21, 2009 without appreciating the fact that the registration was wrongly withdrawn under section 12AA(3), particularly when it was granted under section 12A of the Act on March 21, 2000.”*

ISSUE NO.1:-

3. The learned representative of the assessee has argued that the assessee moved an application on 18.04.2011, therefore, the authority was under obligation to pass the order on or before 31.10.2011 but the authority passed the order on 08.12.2011 after the expiry of six months therefore the application is liable to be mandatorily allowable in view of the law settled in Civil Appeal No.1478 of 2016 decided on 16.02.2016 in case of Commissioner of Income Tax, Kanpur & Ors. Vs. Society for the Promn. Of Edn. Allahabad (Supreme Court) and in view of the law settled in Society for the Promotion of Education, Adventure Sport & Conservation of Environment Vs. Commissioner of Income Tax, Central, Kanpur [2008] 171 taxman 113 (Allahabad High Court) and in view of the Instruction No.16/2015 [F.NO.197/38/2015-ITA.1] dated 06.11.2015. On the other hand learned departmental representative has refuted the said contentions and argued that if no decision was taken by the authority on the application u/s. section 12AA(2) of the Act within the period of six months then in this eventuality the order cannot be treated as passed in view of the law settled in T.C.(A) No. 1183 of 2010, Commissioner of Income Tax Vs. Karimangalam Onriya Pengal Semipu Amaipu Ltd. and Civil Appeal No. 8003 of 2002 Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & Ors and 206 II OLR 75 Orissa High Court in case Srikhetra, A.C.Bhakti-Vedanta Vs. The Assistant Commissioner of Income Tax.

3.1 Keeping in view of the arguments advanced by the parties and perusing the record carefully, it is not in dispute that the appellant filed

an application on 18.04.2011 which has been decided on 08.12.2011 after the expiry of six months. On appraisal of the judgement passed by the Hon'ble Supreme Court in case of Commissioner of Income Tax, Kanpur & Ors. Vs. Society for the Promn. Of Edn., Allahabad, we find that clarification is there but the question of law has been left open by the Hon'ble Supreme Court. The question arise in this case is that the appellant moved an application before the authority on 18.04.2011 could be deem to be sanction / allowed after the expiry of six months or not. The Orissa High Court has held in case Srikhetra, A.C.Bhakti-Vedanta (Supra) that the period of six months has provided in sub section 2 to section 12AA of the Act is not mandatory. It was also observed that when the public duty is performed by the public authority, the time limit which is granted by the Statue is normally not mandatory but is directory in the absence of any clear statutory intent to the contrary. The Madras High Court also held in case of Commissioner of Income Tax Vs. Karimangalam Onriya Pengal Semipu Amaipu Ltd.(Supra) that there is no academic or deemed registration if application filed u/s.12AA was not disposed off within the stipulated period of six months. The Hon'ble Supreme Court in case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. (Supra) has observed that the provision of statute relate to the performance of a public duty should directory. In view of the above said facts and circumstances, we are of the view that the filing an application u/s.12AA of the Act on 18.04.2011 cannot be deemed to be registered of trust on expiry of time limit of the period of six months u/s.12AA of the

Act. Therefore, in view of the said circumstances we inclined to hold to decide the issue in favour of the revenue against the assessee.

ISSUE NO.2:-

4. According to issue no.2 the contention of the assessee is that the registering authority has declined the application of the appellant on the ground that the earlier registration was withdrawn vide his order dated 21.09.2009 and the same was not got renewed. The factual situation is not in dispute that the appellant trust was created on 08.06.1948 and was registered under Bombay Public Trust Act, 1950. The registration of the trust was cancelled on account of serious allegation of financial misappropriation by the trustees. The allegation against the trustees are in connection with the misusing of trust funds to the tune of Rs.43.21 crores. Therefore, the registration granted was withdrawn by virtue of order dated 21.09.2009. The present application has been linked by the authority with the earlier registration of the trust of the assessee and on account of admitted fact of misappropriation of funds by the trustee, the present application has been dismissed. It was also said that the appellant can move an application for the restoration of earlier registration. The application was not treated by the authority on merits. If the view that the Revenue is endorsed then no doubt the applicant has no option to move an application for the registration of the trust. So far as restoration of earlier registration is concerned the same is seems to be delayed being time barred as the registration was withdrawn on 21.01.2009 and now the year 2016 is running. So far as the misappropriation of the fund of Rs.43.21 crores is concerned, the same

has no connection with the present application, more so where the Trust claims to have severed all relations with, as well as initiated criminal proceedings against, the defaulter trustees, since removed. No doubt accordingly the legal remedy can also been taken by the appellant as well as the revenue but the right of the appellant is not liable to be curtailed on account of restoration of earlier registration. Consideration of application u/s.12AA of the Act and to go through the object of the trust and other verification required under law has not been done by the authority. In brief the application moved by the appellant u/s.12AA of the Act has not been examined and discuss on merit. Therefore, we are of the view that the order passed by the authority dated 08.12.2011 in question is wrong and against law and facts and not liable to be sustained in the eyes of law. We, therefore, set aside the order in question and direct the authority concerned to decide the matter afresh in accordance with law, issuing definite findings of fact after allowing the appellant an opportunity to present its case before him .

5. In the result, the appeal of the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 10th June, 2016

Sd/-

Sd/-

(SANJAY ARORA)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 10th June, 2016

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai