

आयकर अपीलीय अधिकरण, ' सी ' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, CHENNAI**

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

**आयकर अपील सं./ I.T.A.Nos.2616, 2617, 2618, 2619 & 2620/Mds/2016**

**निर्धारण वर्ष/Assessment Year : 2005-06, 2006-07, 2007-08,  
2008-09 & 2009-10**

Tamil Nadu Advocate Welfare  
Fund,  
Bar Council Buildings,  
High Court Campus,  
Chennai - 600 104.

Deputy Director of Income Tax,  
Vs. OSD (Exemptions) - II,  
121, Mahtma Gandhi Road,  
Chennai - 34.

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/Appellant by : Shri R. Venkatesh, CA

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 01.12.2016

घोषणा की तारीख/Date of Pronouncement : 29.12.2016

**आदेश /ORDER**

**PER BENCH:**

The assessee has filed the appeals against the common order of Commissioner of Income Tax (Appeals) - 17, Chennai in ITA No. 80,81,393 & 394/10-11 and 622,648 & 649/11-12&95/13-14, dated 30.03.2016 for the assessment years 2005-06, 2006-07, 2007-08, 2008-09 & 2009-10. Since, the issue

is these appeals are common in nature, the appeals are clubbed and heard together and disposed off by the common order. For the sake of convenience, we first take up the assessee appeal ITA No. 2616/Mds/2016 for the assessment year 2005-06 and take up the facts narrated by the appeal.

2. The assessee has raised the following grounds:
  - 2.1 The Ld. CIT(A) failed to appreciate that all the affairs of the Appellant Institution is governed by the state statute Tamil Nadu Advocates Welfare Fund Act, 1987 (Act No. 49 of 1987) and the income and utilization for meeting the objects of the fund are also governed and mandated as per the said statute and that they being exempt u/s. 11 having been registered u/s. 12AA w.e.f. 25.02.2011.
  - 2.2 While appreciating the effect of the inserted provisions of section 12A by the finance Act 2014 in respect of assessment year 2010-11 the Ld. CIT(A) erred in not following the exemption u/s. 11 to appellant in respect of Assessment years preceding assessment year 2010-11.
  - 2.3 The assessment was confirmed by the Ld. CIT(A) as he rejected the grounds due to non availability registration u/s. 12AA of the IT Act for the Impugned year.
  - 2.4 The Ld. CIT(A) failed to appreciate that appellant had earlier made a petition u/s. 119(2)(b) before CBDT for allowing the application for the benefit of registration u/s. 12AA from the date of the inception as the designated authority had and could grant the Registration u/s. 12AA only from 25.02.2011, the date of filing of the application for registration.

- 2.5 The Ld. CIT(A) failed to appreciate that appellant had earlier made a petition u/s. 119(2)(b) before CBDT for allowing the application for the benefit of registration u/s. 12AA from the date of its inception as the designated authority had and could grant the Registration u/s. 12AA only from 25.02.2011, the date of filing of the application for registration.
- 2.6 In view of the order dated 19.07.2016 of the CBDT condoning the delay in filing the application for registration u/s. 12AA for the assessment years 2005-06 onwards till 24.02.2011 the appellant get the opportunity to establish the claim for exemption u/s. 11 and this aspect has a substantive bearing on the taxability of the income for the impugned year.
- 2.7 The Ld. CIT(A) erred in concluding that there is no nexus between the revenue generated and the expenditure in pursuing the objects of the appellant mandated by law and further erred in bringing the said income being the Gross receipts less marginal expenses to tax at maximum marginal rate failing to note that the expenditure towards object are integral to the manner of generating the receipts
- 2.8 The Ld. CIT(A) erred in not allowing for impugned year while accepting the fact that the onetime life subscription is capital in nature and an earmarked receipt while wrongly concluding that "Section 11 has become inoperative" and the capital receipts get included as Income of the trust as per sec 13(8).

3. The Brief facts of the case that the assessee is a Welfare Fund formed under Tamil Nadu Advocate Welfare Fund u/s. 6(2) of the Advocates Act 1961 and constituted by the State Legislature u/s. 4 of the Tamil Nadu Advocates Welfare Fund Trustee Committee and Administered by the Bar Council. The Assessing Officer in the assessment proceedings found that the assessee's fund has claimed income as exempt and has not filed Return of income and issued notice u/s. 148 of the Act. In compliance to the notice, the letter was filed by the assessee explaining that the funds were part of the Bar Council, Tamilnadu were exempted u/s. 11 and 10(23A) of the Act. Further, questionnaire was issued along with notice 142(1) of the Act. The assessee filed the Return of income with Nil income. The Ld AR of the assessee appeared from time to time and the case was discussed. The contention of the assessee that this welfare fund is part of Bar Council of Tamilnadu administered by State Legislative in accordance with provisions of Advocate Act, 1961 and claiming exemption of income of the fund on interest on Fixed Deposit, life time subscriptions and corpus fund. The Ld. AO elaborately discussed on the provisions of section 10(23A) of the Act on claim of exemption of income and finally concluded that the assessee has not complied the conditions required for claim of exemption and was not Registered u/s. 12AA of the Act for the said assessment year and assessed the assessee's Welfare Fund as Association of persons and passed orders u/s. 143 r.w.s. 147 of the Act dated 26.12.2011 with assessed income of Rs. 1,88,01,470/- and raised the demand.

4. Aggrieved by the order, the assessee filed an appeal with the CIT(A). The Ld. AR argued the grounds and reiterated the submissions of assessment

proceedings and emphasized that the assessee fund is part and parcel of Bar Council of Tamilnadu. The Ld. CIT(A) found that the assessee has made an application for Registration u/s. 12AA of the Act and was granted on 25.02.2011 for the assessment year 2011-12 onwards and also Application was filed with the CBDT under the provisions of section 119(2)(b) for granting Registration u/s. 12AA from the date of inception of the Welfare Fund. Further, the Ld. CIT(A) considered the findings of the Assessing Officer on the applicability of provisions and submissions on law and facts and dismissed the appeal. Aggrieved by the order, the assessee has filed an appeal with the Tribunal.

5. Before us, the Ld. AR of the assessee argued the grounds and submitted that the income of the Welfare Funds was subjected to tax and confirmed by the CIT(A) as Registration u/s. 12AA of the Act not available to assessee for the said assessment year. Whereas, the assessee was registered u/s. 12AA of the Act on 25.12.2011 vide letter dated 29.08.2011 but for the assessment years 2005-06 to 2009-10. The Ld. CIT(A) confirmed the taxability of income based on newly inserted provisions of sections 12A(2) of the Act by Financial Act, 2014. The Ld. AR substantiated that the assessee has made an petition u/s. 119(2)(b) of the Act for condonation of delay for assessment year 2005-06 to 2010-11 in filing application of Registration u/s. 12AA of the Act and demonstrated the order u/s. 119(2)(b) of Income Tax Act issued by CBDT on 19.07.2016. The CBDT examined the matter and condoned the delay in filing the Application for registration u/s. 12AA of the Act for the assessment year 2005-06 to 2010-11 and subject to authority granting

Registration u/s. 12AA of the Act and to satisfy the fulfilment of conditions prescribed under the act which are necessary for granting of registration.

6. Further, The Ld. AR submitted that the order u/s. 119(2)(b) of the Act has bearing on the assessment of the assessee in deciding the taxability of the income and shall be the basis revolves on granting of registration u/s. 12AA of the Act and prayed for setting aside assessment to the AO and to comply the conditions of Registration as per CBDT order dated 19.07.2016. Contra, the Ld. DR accepted the CBDT order u/s. 119(2b) of the Act filed by the assessee and has no serious objections.

7. We have considered the facts, material on record and the order u/s. 119(2b). We are of the opinion, that there is strength in the arguments of the assessee and in the interest of justice, we set aside the order of the CIT(A) and remit the disputed issue to the file of the Assessing Officer for granting registration u/s. 12AA as per the order u/s. 119(2)(b) of the Act on fulfilment of the conditions necessary for the grant of registration. The Ld. AO shall provide adequate opportunity of being heard to the assessee before passing the order and accordingly, the grounds of the assessee are allowed for statistical purpose.

8. Likewise, i.e., as for assessment year 2005-06, ITA No. 2617/Mds/2016 for the assessment year 2006-07, ITA No. 2618/Mds/2016 for the assessment year 2007-08, ITA No. 2619/Mds/2016 for the assessment year 2008-09 and ITA No.

2620/Mds/2016 for the assessment year 2010-11 are also similarly set aside to the file of the Assessing Officer and assessee appeals are allowed for statistical purpose.

9. In the result, the appeals of the assessee are allowed for statistical purpose.

Order pronounced on Thursday, the 29th day of December, 2016 at Chennai.

**Sd/-**

(संजय अरोड़ा)

**(SANJAY ARORA)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

**Sd/-**

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य /JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29th December, 2016

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF