

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Dr.Arjun Lal Saini, AM]

I.T.A Nos. 489-495/Kol/2016

Assessment Years : 2005-06 to 2011-12

Dreamland Education Society -vs.-
Hooghly
[PAN : AABTD 2274 N]
(Appellant)

A.C.I.T., Circle-2,
Hooghly

(Respondent)

For the Appellant : Shri S.K.Tulsiyan, Advocate
For the Respondent : Shri G.Mallikarjuna, CIT(DR)

Date of Hearing : 04.08.2016.

Date of Pronouncement : 10.08.2016.

ORDER

Per Bench

These are appeals by the assessee against the common order dated 30.09.2015 of CIT(A)-25, Kolkata relating to AY 2005-06 to 2011-12.

2. Grounds of appeal raised by the assessee are identical in all the appeal. For the sake of ready reference the grounds of appeal for A.Y.2005-06 are given below :-

“1) That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in treating the appeal of the assessee-trust registered under the WB Societies Registration Act, 1961 as non-maintainable being matter of registration u/s. 12A of the I.T. Act in spite of the fact that registration was already granted by the Ld. CIT-XX, Kolkata vide order u/s. 12AA(1) dated 18/7/2014.

2) That the Ld. C.I.T.(A) further erred in not having admitted the appeal on alleged technical perspective in spite of the fact a nil return u/s. 148 was filed on 23/2/2012 involving no tax payable and the condition precedent as per clause (a) of sec. 249(4) being fulfilled, the impugned denial of the admission of the appeal for disposal on merit was erroneous, uncalled for and bad in law.

3) That the Ld. CIT(A) further erred in having failed to appreciate that although no return u/s.139(1)/139(4A) was filed, but the return filed in response to notice u/s. 148(1) shall be

treated as if such return was a return required to be furnished under Sec 139, as prescribed in sec. 148 itself.

4) That on the facts and in the circumstances of the case, the Ld. CIT(A) acted arbitrarily in not admitting the appeal by distorting the facts on record that the assessee had petitioned to withdraw the appeal, in spite of the fact that he himself reported to the Ld. CIT-XX that the appeal was under process resulting in rejection of 264 petition and the assessee on such circumstances, in turn, prayed before the Ld. CIT(A) for restoration of the appeal.

5) That the Ld. A.O. erred in having passed order u/s.144/147/143(3) on 31/3/2013 assessing the total income at Rs. 50,65,805/- without allowing exemption u/s. lion the sole ground that registration u/s. 12AA was not granted whereas by virtue of proviso below sec. 12A(2), provisions of secs.11 & 12 shall apply in any assessment year preceding the assessment year for which the assessment proceedings are pending before the A.O. as on the date of such registration being granted on 18/07/2014.

6) That as on the date of granting registration by the Ld. CIT the appellate proceeding for the assessment year under appeal was pending before the Ld. CIT(A) which shall be interpreted as 'pending before assessing officer' in view of decision of Hon'ble IT AT, Kolkata in the case of Sree Sree Ramkrishna Samity vs. DCIT (ITA Nos.1680-85/K/12, AYs. 2003-04 to 2008-09, dated 9/10/2015), the impugned assessment order should be reckoned as null and void and the same should be passed treating the assessee as registered u/s. 12AA.

7) That the then Chartered Accountant Sri Subrata Kr. Sen, FCA purported to have filed application for registration u/s. 12A on 12.07.2007 which was found to be fake by the department and also returns in Form ITR-7 u/s.148 for A. Y s 2005-07 to 2011-12 without consulting/verifying the actual books of account/financial documents and thereby showing inflated income without considering many expenditure resulting in inflated assessments by the Ld. A.O. and in such circumstances the A.O. be directed to reframe the assessments on the basis of the actual financial statement and give effect to the benefit u/s. 11 of the Act.

8) That due to misconduct of the said Chartered Accountant, Sri Subrata Kr. Sen, FCA, complaints were lodged with the ICAI, New Delhi duly acknowledged on 30/10/2014 intimating their attention on the matter and O.C., Uttarpara P.S. on 20/05/2013 & 23/05/2013 for criminal breach of trust and in such circumstances the A.O. be directed to reframe the assessments on the basis of new set of audited accounts.

9) That, therefore, as the order of Ld. C.I.T.(A) is ab initio void and null in law, the same should be quashed and the A.O. be directed to reframe the assessment after giving effect to registration u/s 12AA of the Act.

10) That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. There is a delay of 103 days in filing these appeals by the assessee. The delay in filing the appeals of the assessee has been explained by the assessee on the ground that on receipt of the impugned order of CIT(A) dated 30.09.2015 which was received by the assessee on 10.10.2015, the assessee could not take any steps in view of the puja holidays and diwali holidays. Thereafter, there was an inspection by the ISCE Board authorities in December, 2015 for holding of forthcoming exams according to their norms. Then pre-board examinations were scheduled in January, 2016 which was followed by exams in February, 2016. Due to all these facts and circumstances the school authorities were not in a position to discuss the matter with the office bearers of the school till February, 2016. After meetings and deliberations, the assessee decided to consult a senior lawyer which they did in the first week of march, 2016. Thereafter the appeal was filed which resulted in the delay of 103 days . It has been mentioned in the application that the delay in filing the appeals is unintentional and due to bona fide reasons and the same should be condoned. It was submitted that if the delay in filing the appeal is not condoned, the assessee who is doing a charitable activity will be required to pay huge taxes which according to the Assessee is not in accordance with law. Reference was made to the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst.Katiji & Ors. [167 ITR 471 (SC) wherein it was held that Courts should adopt a pragmatic and liberal approach while considering the petition for condonation of delay. It was held that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice should be preferred. The facts with regard to the reasons for the delay in filing the appeal have been affirmed by the Secretary of the assessee in an affidavit filed before the Tribunal. The Id. DR submitted that there was no reasonable cause for the delay in filing the appeal.

4. After considering the rival submissions and after taking note of the affidavit of Mr.Indranil Chatterjee, Secretary of the assessee explaining the reasons for the delay in filing the appeal, we are satisfied that the delay in filing the appeal was due to a reasonable and sufficient cause. The delay in filing these appeals are accordingly condoned.

5. The assessee is running a school upto XII standard under ICSE Board. The assessee is a registered society having been registered under the West Bengal Societies Registration Act, 1961 bearing registration No.S/32405 of 1981-82. As already stated it is solely engaged in imparting education to pre-primary and primary section under the name 'Childrens'Corner and standard V to XII in the name of Dreamland School affiliated under ICSE Board in 1987.

6. The assessee had not filed return of income for any of the aforesaid assessments years 2005-06 to 2010-11 as required u/s.139 of the Income Tax Act, 1961 (Act). Notice u/s 148 of the Act was issued on 31.01.2012. As far as A.Y.2011-12 is concerned, notice u/s 142(1) of the Act dated 31.01.2012 and 13.10.2012 was issued to the Assessee calling upon the assessee to file return of income for that assessment year. The assessee filed return of income declaring total income at Nil for all the assessment years along with the audited accounts as per the following details :-

Details of Return filed (Copies enclosed) and Surplus as per Accounts

A. Y.	Date of filing of return	Returned Income	Tax Payable as per return	Surplus as per Audited Accounts as taken by A.O.
2005-06	23.02.2012	NIL	NIL	49,82,851
2006-07	23.02.2012	NIL	NIL	57,28,605
2007-08	23.02.2012	NIL	NIL	60,61,940
2008-09	23.03.2012	NIL	NIL	84,14,230
2009-10	14.01.2013	NIL	NIL	1,31,18,906

	2010-11	14.01.2013	NIL	NIL	1,41,03,178
	2011-12	18.03.2013	NIL	NIL	88,05,396

7. We will deal with the course of events while completing the Assessment for AY 2005-06. The same will be applicable to Assessments for AY 2006-07 to 2011-12 as well. In the course of assessment proceedings for A.Y.2005-06 notice u/s 142(1) of the Act was issued by the AO to the assessee on 13.12.2012 along with notice u/s131 requiring the assessee to make compliance on 17.12.2012. The school was affiliated under ICSE Board in the year 1987. The Secretary of the society upto 31.1.2012 was one Mr.B.N.Chatterjee. Mr.Indranil Chatterjee was the Secretary when the assessment proceedings were in progress. Mr. Indranil Chatterjee appeared on 27.12.2012 before the AO. The AO wanted clarification on the following points:

- (i) Actual status of the society.
- (ii) Computation of income and tax thereon in separate sheet.
- (iii) Produce all the requisite in response to notice u/s.142(1)

On 14.01.2013 Mr. Indranil Chatterjee, appeared and requested for time, to enable her to review the books of accounts and furnish details that were required by the AO to be filed. After reviewing the necessary documents, the Secretary informed the AO that the particulars like income tax returns, audit report and accounts prepared by Mr. S.K. Sen. FCA did not take into account huge expenditure under different heads that was drawn up by the society. Therefore, it was claimed that there was no excess of income. According to the AO, in support of such claim, no compliance could be made by the Assessee in terms of production of books of accounts and evidence in support of claims under the various heads of expenditure.

8. The AO on verification of accounts and other materials available on record noticed that the gross receipts of the Assessee were mostly from collection of fees from the students under different heads which sum was Rs. 1,40,26,548/- and expenses as per Income & Expenditure A/c was Rs. 90,43,697/- giving the excess of income over

expenditure to the tune of Rs. 49,82,851/-. The AO after taking into due consideration of the activities of the assessee society was satisfied that the incidental, administrative and school running expenditure were reasonable and inevitable. He was however of the view that expenses debited to Income & Expenditure A/c, such as, (a) Hospitality & Refreshment of Rs. 32,954/- (b) Donation of Rs. 50,000/- were not fully charitable in nature and not incidental to the activities of the Assessee society. Therefore, the claim for deduction of those sums were disallowed by the AO.

9. The AO adopted the status of the assessee as AOP in terms of the provision of section 2(31) r.w.s. 2(7) of the Act. The AO was given the following findings with regard to the activities of the society as the nature excess income over the expenditure.

“Observation

(a) Assessee is solely engaged in imparting education;

(b) There are real costs for the performance of activities which is met up from the collection made under the heads fees from students etc. After making necessary expenses from fund collected there may be excess of income over expenditure or vice versa.

(c) The excess of income over expenditure generated is intended for the application of the institutions which reveal that there is no profit making attitude.

(d) The Governing body members of the assessee society, specifically, worthy to be mentioned as the member of the assessee Society as an AOP are not allowed to enjoy the surplus of income over expenditure individually or collectively at all. The students and the institute itself become the beneficiaries in terms of getting education facilities, development of education by application of the fund. It is observed from the activities of the assessee society that ultimate fate of the excess of income over expenditure generated from the performance of the activities ensures the performer that is the assessee to consider the head of income as income from other source as there was no motive of earning profit for the interest of the assessee society or for the members individually or collectively which are the main guiding principles of heading of income and charging of tax thereon. Any person engaged in the activities of imparting and development of formal education which in all sense of the nature of public benefit basically may also be termed as business activity in all sense if the motive is only profit making and enjoyment of profit by the assessee individually or collectively by a group or person without indiscrimination of the status of the assessee viz. Trust, Society, Individual, Partnership firm or company. Here in the case of Dreamland Educational Society which derives excess of income over expenditure should reasonably be considered income under the head -' Income From Other Sources' under section 2(24)(iia) read with section 2(15) of the Income Tax Act.”

10. Thereafter the AO found that the assessee did not enjoy registration u/s 12A of the Act nor was there any notification allowing exemption u/s 10(23C) of the Act. The AO was therefore of the view that the assessee could not get the benefit of exemption from taxation of its income u/s 11 of the Act. The AO also observed that since the assessee did not file the return of income within the due date prescribed u/s 139(1) of the Act, the Assessee cannot claim the benefit of exemption u/s 11 or section 10(23C) of the. The AO therefore concluded that the excess of income over expenditure of the assessee was taxable. The AO completed the assessment ex parte u/s 144 of the Act on the basis of material available on record.

11. The total income was determined by the AO as follows :-

Total income as declared by the assessee (excess of income over expenditure)	Rs.49,82,851/-
Add : <u>Disallowance as discussed above</u>	
On account of Hospitality & Refreshment expenses	Rs.32,954/-
On account of donation made	<u>Rs.50,000/-</u>
Assessed Total Income	: <u>Rs.50,65,805/-</u>

12. Similarly for Assessment years 2006-07 to 2011-12, assessments were concluding determining the total income of the assessee as follows :-

A.Y.	Surplus as per Audited Accounts as taken by A.O.	.Addition made by A.O.	Total Income	Tax payable	Add Interest	: Demand raised
2005-06	49,82,851	82,954	50,65,805	16,71,716	29,49,910	46,21,626
2006-07	57,28,605	40,058	67,68,663	19,41,731	28,93,178	48,34,909
2007-08	60,61,940	38,707	61,00,647	20,53,477	25,66,849	46,20,326
2008-09	84,14,230	47,320	84,61,550	28,76,080	29,04,842	57,80,921
2009-10	1,31,18,906	14,156	1,31,33,062	44,63,928	39,28,258	83,92,186
2010-11	1,41,03,178	13,556	1,41,16,734	43,62,070	17,44,828	61,06,,898
2011-12	88,05,396	16,350	88,21,746	27,25,920	37,05,135	64,31,055

13. All the assessment orders were passed by the AO on 31.03.2013 for A.Y.2005-06 to 2011-12. Aggrieved by the orders of AO the assessee preferred appeals before

CIT(A). The Appeals before CIT(A) were presented by the assessee on 06.05.2013. On 18.09.2013 the assessee filed a letter in the office of CIT(A) in which the assessee submitted that it was advised to withdraw the appeals filed against the orders of assessment dated 31.3.2013 for all the aforesaid AYs, so as to enable the assessee to file an application for review of the said orders of assessment before Commissioner of Income Tax in exercise of his powers u/s 264 of the Act. This application of the assessee was not acted upon by the office of Commissioner of Income Tax (Appeals).

14. In the meantime, the application of the assessee u/s.264 of the Act, was considered by C.I.T., Kolkata-XX, Kolkata and by an order dated 06.12.2013 the CIT dismissed the revision of the application on the ground that u/s 264 (4) (c) of the Act if an order which is sought to be revised u/s 264 of the Act has been made the subject matter of an appeal before CIT(A), then the CIT does not have the power to revise the said order. The CIT found that the assessee's appeal for all the assessment years were pending before CIT(A). He therefore dismissed the revision petition u/s 264 of the Act.

15. Thereafter by an order dated 09.12.2013 the assessee wrote a letter to CIT(A) Kolkata that he is withdrawing his earlier request for withdrawal of the appeals vide its letter dated 18.09.2013. There was another letter dated 22.07.2014 made by the assessee to CIT(A) in which the assessee again prayed that the appeals may be treated as withdrawn and dismissed as the assessee again wants to pursue its remedies before CIT u/s 264 of the Act.

16. It is seen from the order of CIT that the last date of hearing before CIT was 15.09.2015. For this hearing, notice of hearing dated 03.08.2015 was sent to the assessee at the address mentioned in Form No.35. The CIT has observed in the impugned order that there was no response or attendance. The order is silent whether the notice was served or not. According to the Assessee no such notice was ever

received by it. The CIT thereafter proceeded to pass an ex parte order. It is pertinent to mention that the letter of the assessee seeking withdrawal of the appeals dated was 22.07.2014 whereas the date of hearing fixed by CIT(A) was 15.09.2015, viz., after a gap of 14 months. Without verifying as to whether the assessee still wants to act upon its letter dated 22.7.2014 seeking leave to withdraw the appeals, the CIT(A) proceeded to dismiss all the appeals for the following reasons :-

“Order:

Thus therefore:

A. The impugned assessments had been made raising the demands only for the reason that there was no approval of registration u/s 12A nor notification for allowing exemption u/s 10(23C).

For reasons discussed at Para 2.1, the grant of registration u/s 12A is the statutory domain of the Commissioner of Income Tax [CIT], and as regards exemption u/s 10(23C) it is the statutory domain of the Director General of Income Tax [Exemptions]. Thus, the appeal applications cannot be entertained by the CIT (Appeal). It may be that the appellant is aggrieved by the impugned assessment order(s) but, the cause is not in the domain of the CIT (Appeal) to adjudicate upon. Thus I am of the considered stand that the appeals cannot be entertained/are not maintainable. This order is u/s .251(1)C.

B. Statutorily too, as discussed in .Para 2.2, the appeal applications cannot be admitted as the statutory pre-requisite condition u/s 249(4) has not been complied with. Thus, this aspect of the order is made u/s 249(4).

C. And the appellant's own petition(s) seeking for Withdrawing the Appeals dated September 18th, 2013, and, yet again reiterated elaborately in its letter dated 22nd July, 2014 [mentioned at Para 2.4].

Thus I hereby dismiss all these 7 appeal applications as not admissible/not maintainable, and thereby which also will be on the same plane as petitioned by the applicant appellant to withdraw the appeals.”

17. We have heard the rival submissions. The Id. Counsel for the assessee brought to our notice that the CIT(A) without affording opportunity of being heard to the assessee has dismissed the appeals of the assessee on the strength of the letter dated 22.07.2014. It was submitted by him that the following events which occurred after 22.07.2014 would show that order of the CIT(A) dismissing the appeals of the assessee on the strength of the letter dated 22.07.2014 is unsustainable. The Id. Counsel brought to our

notice that the assessee had filed an application for grant of registration u/s 12AA of the Act as early as 22.08.2014 and the CIT-XX Kolkata passed an order u/s 12AA (1) of the Act granting registration to the assessee society by an order dated 18.07.2014. In the light of the aforesaid certificate of registration, the assessee was clearly entitled to claim the benefits of exemption u/s 11 of the Act. It was submitted by the Id. Counsel for the assessee that had the CIT(A) served the notice of hearing on 15.09.2015 before him, the assessee would have explained before CIT(A), the reason as to why this request for withdrawal the appeal as made in the letter dated 22.07.2014 should not be acted upon. It was submitted by him in the light of the grant of registration u/s 12AA(1) of the Act and in the light of the findings recorded by the AO in the assessment order that the Assessee is carrying on charitable activity of providing education, the assessee would clearly be entitled to the benefit of exempt u/s 11 of the Act. In this regard the Id. Counsel for the assessee drew our attention to the provision of the First proviso to section 12AA(2) of the Act which reads as follows :-

“(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](#).

18. Sec.12A(2) of the Act was introduced by the Finance Act, 2007 w.e.f. 1.6.2007. It can be from the above provisions that Section 12A(2) that the benefit of registration

where application for grant of registration is made after 1st day of June, 2007 is made, can extended only to AY immediately following the financial year in which such application is made. If Section 12A(2) is applied to the case of the Assessee, the benefit of registration can be extended only for Financial year 2015-16 which is the financial year immediately following the financial year in which application for grant of registration is made i.e., the application for grant of registration in this case was made only on 22.8.2014. The above provision of Sec.12A(2) was creating hardship to genuine charitable institutions which despite existing for charitable purpose could not get the benefit of exemption u/s.11 of the Act. With a view to remove this unintended hardship, by the Finance (No.2) Act, 2014 w.e.f.1-10-2014 introduced the 3 provisos to Sec.12AA(2). It is also relevant to reproduce the explanatory notes to the provisions of [Finance \(No.2\) Act, 2014](#) as given in CBDT Circular No.01/2015 dated 21.01.2015 in reference F. No.142/13/2014-TPL, which read as follows:

“Para 8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organizations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfill other substantive conditions. However, the power of condonation of delay in seeking registration was not available.”

The reasons for introduction of the first proviso clearly goes to show that it was brought in the statute only as a retrospective effect with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in [section 11 to 13](#) have been duly fulfilled by the said trust.

19. In the light of the above statutory provisions, it was submitted by the learned counsel for the Assessee that the present appeals filed by the assessee is nothing but a continuation of the assessment proceedings and therefore the assessee should be entitled to the benefits of the first proviso to section 12AA(2) of the Act referred to above and it has to be held that the Assessee enjoyed the benefit of registration for AY 2005-06 to

2011-12. In this regard our attention was drawn to the decision of the Hon'ble ITAT, Kolkata Bench in the case of Sree Sree Ramkrishna Samity vs DCIT vide ITA Nos. 1680-85/Kol/2012 dated 09.10.2015 and the decision of ITAT Ahmedabad Bench in the case of Bhanusali Mitra Mandal vs ITO for A.Y.2011-12 order dated 22.02.2016. In the order of the Hon'ble Ahmedabad Bench it was held that an appeal is a continuation of the assessment for the purpose of first proviso to section 12A(2) of the Act, the following are the relevant observations of the Tribunal:

*“7.3 In the instant case, it is not in dispute that registration was granted w.e.f. 17.12.2013 by the order of CIT(A) dated 08.05.2014. It is also not in dispute that objects and activities of the assessee trust are charitable in nature during the relevant financial year. When **Section 12A** of the Act was amended by introducing new provisos to sub-section (2) of **Section 12A** by **Finance Act, 2014** with effect from 01.10.2014, the assessment orders Asst. Year 2011-12 passed by the assessing officer in respect of the present assessee were pending in appeal before the first appellate authority. During such pendency, the assessee was granted registration u/s. 12AA of the Act on 17.12.2013 w.e.f. the assessment year 2013-14. The appeal is the continuation of the original proceedings and that the power of the Commissioner of Income-tax was co-terminus with that of the assessing officer were two well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the assessing officer' within the meaning of that term as envisaged under the proviso. It follows there-from that the assessee which obtained registration u/s 12AA of the Act during the pendency of appeal was entitled for exemption claimed u/s 11 of the Act.*

*7.4 The explanatory Memorandum to Finance (No.2) Bill, 2014, which sought to amend **section 12A** explains the objects and reasons for making such amendments. The explanation makes it clear that it was in order to provide relief to such trusts in respect of which, due to absence of registration u/s 12AA tax liability got attached though otherwise they were eligible for exemption by fulfilling other substantive conditions that the amendment was brought in. That being so, denying such benefit to a trust like the assessee who had obtained registration u/s 12AA during the pendency of the appeals filed against the orders of the assessing authority, by narrowly interpreting the term, 'pending before the assessing officer' so as to exclude its pendency before the appellate authority, will be doing violence to the provisions of the Statute and, as such, liable to be interfered with. Moreover, under the **Scheme of the Act, sections 11 and 12** are substantive provisions which provide for exemptions to a religious or charitable trust. **Sections 12A and 12AA detail the procedural requirements for making an application to claim exemptions under sections 11 and 12 by the assessee and the grant or rejection of such application by the commissioner. Thus, in my view, sections***

12A and 12AA are only procedural in nature. Hence, it is not the registration u/s 12AA by itself that offers immunity from taxation. A receipt whether it is revenue or capital in nature is to be decided at the assessment stage. Being procedural in nature, in my view, liberal interpretation will give effect to the intention of the amendment, thereby removing the hardship in genuine cases like the present assessee under consideration.

7.5 I am also supported by the order of Kolkata Bench of ITAT in case of Sree Sree Ramkrishna Samity vs. DCIT (ITA No. 1680/2012, order dated 09.10.2015) where it was held that amendment to [Section 12A](#) w.e.f. 01.10.2014 is retrospective. The relevant finding of the Hon'ble Kolkata Bench in case of Sree Sree Ramkrishna Samity vs. DCIT (*supra*) read as follows:

"6.10. We hold that it is an established position in law that a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole and accordingly the said insertion of first proviso to [section 12A\(2\)](#) of the Act with effect from 1.10.2014 should be read as retrospective in operation with effect from the date when the condition of eligibility for exemption under [section 11 & 12](#) as mentioned in [section 12A](#) provided for registration u/s.12AA as a pre-condition for applicability of [section 12A](#)."

7.6 Further, the Kolkata Tribunal observed as under:

"6.11. We also hold that though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. It is only elementary that a statutory provision is to be interpreted ut res magis valeat quam pereat, i.e to make it workable rather than redundant. Applying this legal maxim, it would be just and fair to hold that the amendment in [section 12A](#) is brought in the statute to confer benefit of exemption u/s 11 of the Act on the genuine trusts which had not changed its objectives and had carried on the same charitable objects in the past as well as in the current year based on which the registration u/s.12AA is granted by the DIT (Exemptions)."

(emphasis supplied)

20. It was therefore submitted by him that the impugned order of CIT(A) should be set aside and all the assessments for A.Y.2005-06 to 2011-12 should be directed to be done denovo by the AO after taking note of the grant of registration u/s 12AA(1) of the Act.

21. The next submission by the Id. Counsel for the assessee that the conclusions of CIT(A) with regard to the non fulfillment by the assessee of the conditions specified in section 249(4) of the Act are unsustainable. In this regard the Id. Counsel for the assessee has pointed out that the it is only when the tax due on returned income is not paid or when no return has been filed amount equal to the advance tax payable has not been paid by the assessee, that an appeal against the order of assessment cannot be entertained by CIT(A). He brought to our notice that in all the years the assessee filed return of income declaring nil income. In these circumstances there is no question of payment of advance tax or tax due on the income declared in the return of income filed by the assessee.

22. With regard to the CIT(A) relying on the assessee's request on the withdrawal of the appeals the Id. Counsel for the assessee reiterated his submissions that the said conclusions were drawn without affording opportunity of being heard to the assessee. It was submitted that the assessee never intended to withdraw the appeals filed before CIT(A) after the receipt of registration u/s 12AA(1) of the Act. It was submitted that had the CIT(A) afforded an opportunity to the assessee, this aspect would have been clarified to the CIT.

23. The Id. DR relied on the order of CIT(A). It was submitted by him that the first proviso to section 12A(2) of the Act will not be applicable in the present case because the date of registration u/s 12AA(1) of the Act was 18.07.2014 whereas the orders of assessment u/s 143(3) were passed by the AO on 31.03.2013. According to him u/s.12A(2) first proviso, to get the benefit of registration u/s 12AA(1) of the Act for A.Y.2005-06 to 2011-12, the assessment proceedings for those years, should have been pending before the AO as on the date of grant of registration us/ 12AA(1) of the Act. Since the assessment proceedings had already been concluded before the AO as on the date of grant of registration u/s.12AA(1) of the Act, the assessee cannot claim the benefit of registration u/s 12AA(1) of the Act for A.Y.2005-06 to 2011-12.

24. We have given a very careful consideration to the rival submissions. It is clear from the order of AO for all the assessment years that the AO does not dispute the fact that the assessee is solely engaged in imparting education. The order of AO goes to show that the assessee was carrying on charitable activity of imparting education. The fact remains however that to claim the benefit of section 11 of the Act registration u/s 12A(1) of the Act is necessary. Both AO and CIT(A) did not allow exemption u/s 11 of the Act because the assessee did not have the benefit of registration u/s 12AA(1) of the Act. As rightly pointed by the Id. Counsel for the assessee, in the proceedings before CIT(A), the Secretary of the assessee society had appeared on some occasions. Notice of hearing dated 03.08.2015 fixing the hearing of the appeal by CIT(A) on 15.09.2015 is claimed to be not served on the assessee. As we have already observed, the order of CIT(A) is silent on this aspect. The appeal was instituted in May, 2013 and ultimately concluded on 30.09.2015. Prior to the hearing on 15.09.2015 there was no hearing apparently at least from 22.07.2014 when the assessee filed letter requesting withdrawal of the appeals. As already observed it is after 14 months after filing of the letter dated 22.07.2014 that the said letter has been acted upon by the CIT(A) without notice to the assessee. In the light of the subsequent developments after the filing of the letter dated 22.7.2014 before the CIT(A), we are of the view that the plea of the assessee that it wanted to pursue the appeals before CIT(A), has to be accepted. We therefore hold that the CIT(A)'s action in dismissing the appeals on the strength of the letter dated 22.07.2014, cannot be sustained.

25. With regard to the conditions specified in Sec.24((4)(c) of the Act not having been fulfilled viz., "payment of tax on the returned income or payment of advance tax payable by the assessee", we find that this part of the conclusions of the CIT(A) are unsustainable. As rightly pointed out by the Id. Counsel for the assessee, the income declared in the returns of income by the assessee for all the assessment years is nil. Apart from the above, the Assessee in the course of assessment proceedings before the AO clearly submitted that the income and expenditure account and the basis on which

figures were given in the return of income were not correct. In such circumstances, we fail to see as to how any tax was payable on the income returned by the assessee or that the Advance tax payable by the Assessee was not paid. We therefore do not agree with the conclusions of the CIT(A) in the impugned order, on this issue. We hold that the appeal of the assessee could not have been dismissed for violation of section 249(4) of the Act.

26. The next aspect to be considered is as to whether the appeal in question could have been held by CIT(A) to be not maintainable for the reason that the CIT(A) is not an authority for grant of approval u/s 12A of the Act or for grant of notification for exemption u/s 10(23C) of the Act. In our view the appeal filed by the assessee is an appeal against the order of the assessment. It cannot be said that the assessee has filed the appeal before CIT(A) for grant of registration u/s 12A of the Act or for issue of notification u/s 10(23C) of the Act. The claim of the assessee before CIT(A) as per the ground of appeal before CIT(A) is that order of assessment is bad in law and the best judgment assessment is liable to be quashed. In such circumstances we do not agree with the conclusions of CIT(A) that the appeal is not maintainable in view of the provision of section 251(1)(c) of the Act. The assessee has now got its registration u/s 12AA(1) of the Act vide order dated 18.07.2014 passed u/s 12AA(1) of the Act. This order would have been brought to the notice of CIT(A), had CIT(A) afforded opportunity of being heard to the assessee. In the light of granting of registration u/s 12AA of the Act, we are of the view that the entire complexion of the assessment for A.Y.2005-06 to 2011-12 will change. We are of the view that the registration granted on 18.07.2014 will be valid and applicable for A.Y.2005-06 to 2011-12 also because the appellate proceedings against the order of assessment were pending as on 18.07.2014 when the order granting registration u/s 12A of the Act was passed by CIT. In coming to the aforesaid conclusion we are supported by the decision of the Hon'ble ITAT Ahmedabad Bench and the decision of ITAT Kolkata Bench referred to in the earlier part of this order.

27. In the light of the above conclusions, we are of the view that the orders of CIT(A) for A.Y.2005-06 to 2011-12 are liable to be set aside and the assessments for these years should be directed to be done de novo by the AO in the light of order dated 18.7.2014 granting registration u/s 12AA(1) of the Act. We hold and direct accordingly. The AO will afford opportunity of being heard to the assessee before concluding the assessment. The assessee is at liberty to file such evidences and documents in support of its claim for exemption u/s 11 of the Act. With these observations the appeals of the assessee are treated allowed for statistical purposes.

28. In the result the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 10.08.2016.

Sd/-
[Dr.Arjun Lal Saini]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 10.08.2016.
[RG PS]

Copy of the order forwarded to:

1. Dreamland Education Society, 98, T.N.Mukherjee Road, PO-Makhla, Hooghly-712 245.
2. A.C.I.T., Circle-2, Hooghly.
3. CIT(A)-25, Kolkata.
4. CIT-Exemption, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

ITA Nos.489-495/Kol/2016
Dreamland Education Society
A.Yrs.2005-06 to 2011-12