

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR
Judgment

D.B. Income Tax Appeal No.711/2008
Commissioner of Income Tax, Jaipur-II, Jaipur
Vs.
Garment Exporters Association of Rajasthan

Date of Judgment ::: 18.05.2016

HON'BLE MR. JUSTICE M.N. BHANDARI
HON'BLE MR. JUSTICE J.K. RANKA

Mr. Nikhil Simlote on behalf of
Mr. RB Mathur, for the appellant-revenue.
Mr. Sandeep Taneja, for the non-appellant.

By this appeal, a challenge is made to the order of Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (in short "the Tribunal") dated 29.02.2008.

Learned counsel for the appellant-revenue submits that as per Section 12AA(a)(ii) of the Income Tax Act, the registration of the Trust can be taken from the date of the application, if it is complete in all respect. If an application for registration of the Trust is submitted with defects and are cured later on, the registration would be treated on the date, the defect are removed. It cannot relate back to the date of submission of the defective application.

The Tribunal has allowed registration under

Section 12AA (a) (ii) from the date of submission of the application with condonation of delay. The audited accounts were not submitted along with application and the defect aforesaid was cured later on. Learned Tribunal thus committed grave illegality while ignoring mandate of Section 12AA (a)(ii) of the Act. In the light of the aforesaid, the order of the learned Tribunal may be set aside. A reference of the judgment of Gujrat High Court in the case of HeeraLal Bhagwati Vs. Commissioner of Income Tax, reported in 246 ITR 188 has been given.

Learned counsel appearing for the assessee-respondent has contested the case and submits that application for registration was submitted complete in all respect. The defect was yet pointed out showing absence of audited account which was not a condition precedent for submission of application for registration under Section 12AA of the Act.

Learned Tribunal found that the defect was unnecessarily pointed out as filing of the audited accounts along with the application was not mandatory in nature and in absence of mandate to submit audited account along with the application, the registration is to be taken from the date of application. The application

was wrongly considered to be defective. The order of the Tribunal is supported by the judgments of Madhya Pradesh High Court as well as of Punjab and Haryana High Court. A reference of the judgment of Allahabad High Court in the case of CIT Vs. Sri Baldeoji Maharaj Trust (1983) 142 ITR 584 has also been given. The similar issue was decided in favour of the assessee.

We have considered rival submissions of the parties and perused the record.

The facts available on record reveal that an application was submitted by the assessee for registration under section 12AA(a)(ii) of the Act. The issue for our consideration is as to what should be the effective date for acceptance of the application for registration.

According to learned counsel for the appellant-revenue, effective date of application for registration would be when the defects were cured. As against the aforesaid, assessee submitted that the application was submitted having no defect. The defect was unnecessarily pointed out by the revenue. The audited accounts were not required to be submitted along with

application. The requirement of audited accounts along with the application was not mandatory but directory in nature. The issue aforesaid has already been decided by Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. Devradhan Madhavlal Genda Trust 230 ITR 714 MP and also by Punjab and Haryana High Court in the case of CIT Vs. Shahzedanand Charity Trust 228 ITR 292 Punjab and Haryana. A further reference of the judgment of Calcutta High Court in the case of Commissioner of Income Tax Vs. Hardeodas Agarwalla Trust reported in (1992) 198 ITR 511 has been given. The view expressed by different High Courts is about the requirement to submit audited accounts along with the application. The requirement is held to be directory in nature and not mandatory. If filing of the the audited accounts is not mandatory, the application submitted by the non-appellant cannot be said to be defective. The registration should have been allowed from the date the application was submitted and not from the date when alleged defects in the application were cured. The Tribunal and the revenue have not pointed out any other defect in the application than for filing of the audited accounts. The issue raised herein is covered by the judgments supra.

In the light of the aforesaid, we do not find it to be a case of relating back of the date of registration from the date of its filing. The application was filed without any defect and the audited accounts were submitted later on because submission of audited accounts along with the application was not mandatory.

In the light of aforesaid discussion, we find no error in the order passed by the Tribunal. Accordingly, appeal is dismissed.

(J.K. RANKA), J

(M.N. BHANDARI), J

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All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed.

Sunita Kanwar
Jr.P.A.