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PREM PRAKASH MANDAL SEWA TRUST vs. INCOME TAX OFFICER (EXEMPTION)

IN THE ITAT RAIPUR

PRADIP KUMAR KEDIA, AM & PAWAN SINGH, JM.

ITA Nos. 262 & 263/RPR/2016

Aug 12, 2021

(2021) 62 CCH 0426 RaipurTrib

Legislation Referred to

Section 254(1), 142(1), 143(2)

Case pertains to

Asst. Year 2008-09 & 2011-12

Decision in favour of:

Assessee

Charitable trusts—Benefit of section 11 while registration granted during appellate proceeding — Assessee is a trust, engaged in social and religious activities — Assessee filed its return of income declaring NIL income — Return was processed under section 143 — Assessment was reopened under section 147 — AO in absence of registration under section 12A treated receipt of building fund as income of assessee — On appeal before CIT(A), action of AO was upheld — Held, Assessee initially applied for registration under s.12A on 31.03.2004 — Outcome of application of assessee was never communicated to assessee — Assessee applied for fresh registration under s.12AA — During pendency of appeal, assessee was granted registration, therefore assessee's case is covered under "deemed registration — First proviso to section 12A(2) was brought in statute only as a retrospective effect, with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by said trust — Benefit of retrospective application alone could be intention of legislature and this point is further strengthened by Explanatory Notes to Finance (No.2) Act, 2014 issued by Central Board of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015 — Apparently statute provides that registration once granted in

subsequent year, benefit of same has to be applied in earlier assessment years for which assessment proceedings are pending before A.O., unless registration granted earlier is cancelled or refused for specific reasons — Statute also goes on to provide that no action under section 147 could be taken by AO merely for non- registration of trust for earlier years — It is admitted position under law that appeal is continuation of original proceedings — Even otherwise CIT(A) has co-terminus power with that of assessing officer — In view of above and going by principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before appellate authority should be deemed to be 'assessment proceedings pending before assessing officer' within meaning of that term as envisaged under proviso — It follows there-from that assessee who obtained registration under section 12AA during pendency of appeal was entitled for exemption claimed under section 11 — CIT(A) was also not justified in taking a similar stand that of AO, without taking cognizance and intention of amendment to section 12A — If no judicious or a liberal view is not taken either by assessing authority or appellate authority as in case under consideration, very purpose for which such an amendment to section 12A would be defeated — Amendment to Section 12A w.e.f. 01.10.2014 is retrospective — Considering facts that assessee was granted registration under s.12AA w.e.f. 01.04.2015, vide order dated 09.05.2016, when appeal of assessee was pending before CIT(A) — Therefore Assessing Officer is directed to grant benefit of Section 11 & 12 for AY 2008-09 — Assessee's appeal allowed.

Held

Assessee initially applied for registration under s.12A on 31.03.2004. The outcome of application of assessee was never communicated to the assessee. Assessee filed a reminder letter before CIT (Exemption). Even then no outcome of assessee's application under s.12A was communicated. The assessee applied for fresh registration under s.12AA. During the pendency of appeal, the assessee was granted registration, therefore the assessee's case is covered under "deemed registration".

(para 5)

First proviso to section 12A(2) 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. The benefit of retrospective application alone could be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No.2) Act, 2014 issued by the Central Board of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015. Apparently the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the A.O., unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to provide that no action under section 147 could be taken by the AO merely for non-registration of trust for earlier years.

(para 9)

It is admitted position under the law that the appeal is continuation of original proceedings. Even otherwise the Id CIT(A) has co-terminus power with that of the assessing officer. 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 who obtained registration under section 12AA during the pendency of appeal was entitled for exemption claimed under section 11 of the Act.

(para 10)

CIT(A) was also not justified in taking a similar stand that of the AO, without taking cognizance and intention of the amendment to section 12A. If no judicious or a liberal view is not taken either by the assessing authority or the appellate authority as in the case under consideration, the very purpose for which such an amendment to section 12A would be defeated.

(para 11)

Similar view was taken by Coordinate bench in Badhte Kadam Vs DCIT (2020) 203 TTJ (Raipur) 597 where it was held that amendment to Section 12A w.e.f. 01.10.2014 is retrospective. Considering the facts that assessee was granted registration under s.12AA w.e.f. 01.04.2015, vide order dated 09.05.2016, when the appeal of assessee was pending before learned CIT(A). Therefore we direct the Assessing Officer to grant the benefit of Section 11 & 12 for AY 2008-09. Assessee's appeal allowed.

(para 12)

Conclusion

Assessee who obtained registration under section 12AA during the pendency of appeal was entitled for exemption claimed under section 11.

In favour of

Assessee

Cases Referred to

SNDP Yogam vs. ADIT 186 TTJ 227 (Cochin)

Badhte Kadam 203 TTJ 597 (Raipur Tribunal)

Sree Sree Ramkrishna Samity vs D CIT [2016] 156 ITD 646

Counsel appeared:

Sunil Agrawal, CA for the Assessee.: G.N. Singh, DR for the Department

PAWAN SINGH, JM.

Order Under Section 254(1) of Income -tax Act

1. These two appeals by the assessee are directed against the common order of Learned Commissioner of Income Tax (Appeals)-I, hereinafter called as "ld.CIT(A)" Raipur, dated 27.05.2016 for the A.Ys. 2008-09 & 2011-12. In both the appeals, the assessee has raised certain common grounds of appeal, fact in both the years are almost similar except variation of figure of corpus donation, therefore with the consent of parties, both the appeals were clubbed, heard and are decided by common order. For appreciation of facts, the appeal for A.Y. 2008-09 was treated as lead case. The assessee raised the following grounds of appeal:-

"1. The ld.AO erred in not granting exemption u/s 11 of I.T. Act 1961 and determining total income at Rs. 2,90,700/- and levying tax there upon as AOP.

2. The Hon'ble CIT(A) erred in holding that assessee is not eligible for benefit of income being exempted u/s 11 of I.T. Act 1961.

3. The ld.AO ought to have accepted income returned at Rs. NIL and held income exempt u/s 11 of I.T. Act 1961.

4. The learned authorities ought to have held that applicant is holding registration u/s 12A in terms of application submitted for registration on 31/03/2004 and accordingly eligible for income exemption u/s 11 of I.T. Act 1961

5. The Hon'ble CIT(A) erred in not considering the judgment of Hon'ble Apex Court discussed at para 2.2 of appellate order.

6. The ld.AO & CIT(A) erred in holding that corpus donation of Rs. 3,21,351/- is liable to be assessed as income at the hands of assessee.

7. the assessee denies liabilities to be assessed to interest

The appellant reserves the right to add, alter, amend, omit or withdraw all or any of the grounds of appeal in the interest of justice.

2. Further, vide application dated 24/04/2019 the assessee has raised the following additional grounds of appeal:-

"1. That the ld. CIT(A) has erred in confirming the action of the ld AO, of initiating reassessment proceedings u/s 147, merely on the sole ground that the assessee-Trust has not been registered u/s 12A for the relevant A.Y. 11-12, while, 'deemed registration' was effectively applicable from the date 30/09/04 which is much prior to the date of issuing notice u/s 148(2) on 18/06/13, hence, the reassessment proceedings is to be treated as null & void & is liable to be quashed.

2. That the ld. CIT(A) has erred in confirming the denial of exemption u/s 11 by concluding that 'proviso' inserted in sec. 12A(2) through amendment by the Finance (No.2) Act, 2014 is not applicable as the proceedings are not pending before the AO, while, registration was granted on 09/05/16 and on such date, proceedings were pending before the AO' and has retrospective effect as held in SNDP Yogam (2016) (Coch-Trib), hence, reassessment made u/s 147 is null & void and is liable to be quashed. 3. That the ld. CIT(A) has erred in confirming the action of the AO in denial of exemption claimed u/s 11 without bringing any finding that the objects/activities

of the assessee trust for the A.Y. 11-12 has been changed as compared to the objects/ activities for the subsequent AYs, in which the Id AO has allowed the exemption u/s 11, as held in Surat City Gymkhana (2008) (SC), Sree Sree Ramkrishna Samity (2015) (Kol-Trib.).

3. Brief facts of the case are that the assessee is a trust, engaged in social and religious activities. The assessee filed its return of income for the A.Y. 2008-09 on 07/01/2009 declaring NIL income. The return was processed under section 1431 on 21/08/2009. Subsequently, the assessment was reopened under section 147. Notice under section 148 was issued on 11/07/2013. In response to notice issued under section 148, the assessee filed its reply dated 06/08/2013 and stated that return filed original on 07/01/2009 may be treated as return in response to notice under section 148. The AO after serving statutory notices under section 143(2) & 142(1) proceeded for reassessment. The AO during the re-assessment noted that assessee-trust is registered with Registrar Sub- Divisional, Bhatpara (CG) vide registration No. 2/001, dated 09/10/2001, however, the assessee has no registration under section 12A. The main source of income of assessee is donation and membership in Mandir. During the relevant financial year the assessee has received donation for corpus and building fund of Rs. 6,31,444/-. The AO in absence of registration under section 12A treated the receipt of building fund of Rs. 321,351/- as income of the assessee.

4. On appeal before CIT(A), the action of the AO was upheld. During the pendency of appeal before Id CIT(A), the assessee applied for registration under section 12AA and the assessee was granted registration vide order dated 09.05.2016 with effect from 01.04.2015. Before, Id CIT(A) the assessee pleaded that the assessee as per the Proviso to section 12AA(2), when the application of the trust is pending registration, the registration will apply to the pending assessment. The plea of the assessee was not accepted by the Id CIT(A) by taking view that before granting the registration under section 12AA, the assessment for AY 2008-09 was completed on 31.03.2015 and for AY 2011-12 assessment completed on 27.03.2015. Further aggrieved the assessee has filed present appeal before Tribunal.

5. We have heard the submission of learned AR for the assessee and the learned CIT-DR for the Revenue. The learned AR for the assessee submits that the assessee is a charitable trust. The assessee is registered with Sub-Registrar, Bhatapara, Chhattisgarh. The assessee initially applied for registration under s.12A on 31.03.2004. The outcome of application of assessee was never communicated to the assessee. The assessee filed a reminder letter before CIT (Exemption), Bhopal on 02.07.2014. Even then no outcome of assessee's application under s.12A was communicated. The assessee applied for fresh registration under s.12AA vide application dated 27.11.2015 under prescribed format and furnished all relevant information. The assessee was granted registration under s.12AA on 09.05.2015 w.e.f. 01.04.2015. During the pendency of appeal, the assessee was granted registration, therefore the assessee's case is covered under "deemed registration" as per the decision of Hon'ble Supreme Court in case of Promotion of Education Adventure Sport & Conservation of Environment dated 16.02.2016. The learned AR for the assessee further submitted the assessee is granted registration during the pendency before CIT(A), therefore the assessee is entitled for the benefit of first Proviso to Section 12A(2). To support his submission the learned AR for the assessee relied on the decision of SNDP Yogam vs. ADIT 186 TTJ 227 (Cochin) & Badhte Kadam 203 TTJ 597 (Raipur Tribunal).

6. On the other hand, the learned DR for the Revenue by referring the provision of Section 12A(2) and its first proviso submits that when assessment was completed the assessee was not having registration under section 12AA. The subsequent registration under s.12AA will not helpful to the assessee. The learned DR for the Revenue prayed for the dismissal of the appeals of the assessee.

7. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. In our view the short question for our consideration is whether the Id. CIT (A) is justified in confirming the AO action, for both the assessment years under consideration, in assessing the corpus of building donation as incomes of the assessee. For appreciation of facts the same is reproduced below:

"[(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.]"

8. Further it would be relevant to reproduce the explanatory note to the provisions of the Finance (No.,2) Act 2014 as given in CBDT No.1/15 dated 21.1.2015

"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."

9. The first proviso to section 12A(2) 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. The benefit of retrospective application alone could be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No.2) Act, 2014 issued by the Central Board of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015. Apparently the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the Id. A.O., unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to provide that no action under section 147 could be taken by the AO merely for non- registration of trust for earlier years.

10. Now advertng to the facts of the present cases. The Id AR for the assessee vehemently submitted that the assessee is entitled first Proviso to section 12A(2) of the Act. It is admitted position under the law that the appeal is continuation of original proceedings. Even otherwise the Id CIT(A) has co-terminus power with that of the assessing officer. In view of the above and going by the principle of purposive interpretation of statues, 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 who obtained registration under section 12AA of the Act during the pendency of appeal was entitled for exemption claimed under section 11of the Act.

11. Thus taking the above facts and circumstances of the issue, we are of the view that the Id CIT(A)

was also not justified in taking a similar stand that of the AO, without taking cognizance and intention of the amendment to section 12A of the Act. If no judicious or a liberal view is not taken either by the assessing authority or the appellate authority as in the case under consideration, the very purpose for which such an amendment to section 12A would be defeated.

12. We find that similar view was taken by Coordinate bench in *Badhte Kadam Vs DCIT (2020) 203 TTJ (Raipur) 597* and Kolkata Bench of Tribunal in case of *Sree Sree Ramkrishna Samity vs D CIT [2016] 156 ITD 646/[2015] 64 taxmann.com 330* 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 (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."

13. In view of the aforesaid factual and legal discussion and considering the facts that assessee was granted registration under s.12AA w.e.f. 01.04.2015, vide order dated 09.05.2016, when the appeal of assessee was pending before learned CIT(A). Therefore we direct the Assessing Officer to grant the benefit of Section 11 & 12 for AY 2008-09.

14. In the result, appeal of the assessee is allowed.

ITA No.263/RPR/2016 For AY 2011-12

15. As recorded above, the assessee has raised similar contention and grounds of appeal as raised in the appeal for A.Y. 2008-09, wherein we allowed the appeal of assessee, therefore this appeal is also allowed with similar observation. In the result, appeals filed by the assessee are allowed.

16. In the result, both the appeals of the assessee are allowed.

Order pronounced on 12-08-2021 by placing result on notice board.
