

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

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| ITA No.1749/Hyd/2019 | | |
| (Assessment Year: NA) | | |
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| Kakatiya University, Warangal, Vidyaranyapuri, Hanamkonda, Warangal – 506009. PAN : AAAGK0334C | Vs. | The Commissioner of Income Tax (Exemptions), Hyderabad. |
| (Appellant) | | (Respondent) |
| | | |
| Assessee by: | Sri E. Phalguna Kumar, AR | |
| Revenue by: | Sri Y.V.S.T. Sai, DR | |
| | | |
| Date of hearing: | 18/08/2021 | |
| Date of pronouncement: | 07/10/2021 | |

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal against the order of the CIT (Exemption), Hyderabad, denying the registration to the assessee u/s 12A of the Act vide order u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 dated 27.09.2019.

2. Brief facts of the case are that the assessee is a university imparting education within its territorial jurisdiction and it is totally funded by the Government. It filed its application in form 10A on 31.03.2019 seeking registration u/s 12A of the Act. The CIT(E) called for various details observing that the assessee has not filed the return of income for the relevant year

and has also got its accounts for the F.Y. 2016-17 and 2015-16 audited only on 16.09.2019, i.e. beyond the statutory time limit. He observed that assessee has deliberately not filed its return of income and thus violated the provisions of the Act. He observed that as per the amended Act, w.e.f. 01.04.2019, the compliance of law by a trust is mandatory. Therefore he observed the assessee has violated the law and therefore was not eligible for registration u/s 12A of the Act. He accordingly denied the registration u/s 12A of the Act against which assessee is in appeal before the Tribunal by raising the following grounds of appeal :

"1. The Order of the Ld. Commissioner of Income Tax, Exemptions, Hyderabad, is erroneous and is not based on facts and circumstances of the case.

2. The Ld. CIT (Exemptions), Hyderabad , erred in not restricting his scope of enquiry to the objects of the University and the genuineness of the activities or the University.

3. The Ld. CIT (Exemptions), Hyderabad erred in rejecting the application of the University for recognition under Sec 12AA on the premise that the Returns of Income are not filed by the University.

4. The Ld. CIT (Exemptions) erred in assuming that the filing of Returns of Income is sine qua non for granting of recognition under Section.12AA.

5. The Ld. CIT (Exemptions) erred in ignoring the various judicial precedents which have stated that the filing of Return of Income is not essential for grant of recognition under Section 12AA.

6. The Learned. CIT(Exemptions) erred in rejecting the application of the University on the ground that the audit was completed beyond the statutory time limit. Further the Ld. CIT(Exemptions) also rejected the application under Sec 12AA on the ground that audit report was not furnished for FY 17- 18 and FY 18-19, which is not just in law.

7 The Ld. CIT (Exemptions) erred factually in stating that the appellant has not produced books of accounts. The Ld. CIT (Exemptions) also erred in stating that the objects are not genuine, especially when the appellant is an University established under the Statute and audit of its accounts are carried every year by State LF auditors. The Learned. CIT (Exemptions) has not verified the books of accounts produced before him and has returned the same to the appellant.

8. *The Ld. CIT(Exemptions), Hyderabad, erred in not understanding the purpose and rationale with which the three provisos to subsection 2 of Section 12A have been introduced.*

9. *The Ld. CIT(Exemptions), Hyderabad erred in understanding the fact that the hon'ble legislature intended to pass the benefit of Sec 12AA registration retrospectively subject to the compliance of conditions mentioned in three provisos to Section 12A(2).*

10. *The Ld. CIT(Exemptions), Hyderabad erred in applying the law as enumerated in the three provisos to subsection 2 of Sec 12A to the facts of the present case arid has erred in rejecting registration under Sec 12AA on the premise that the returns of Income arc not filed by the University.”*

3. The learned counsel for the assessee, Sri E. Phalguna Kumar, submitted that the assessee, being a university, was constituted under the state Statute i.e., the Kakatiya University Act 1976, formed to serve the educational needs of areas comprising of Warangal, Adilabad, Karimnagar and Khammam with headquarters at Warangal. He submitted that the assessee is existing wholly for educational purposes and was exempt from tax all along. However, there has been an amendment to the Finance Act requiring the assessee to file its return of income along with its audit reports. He submitted that since the assessee has been wholly and substantially funded by the Government, it was not assessable to tax prior to the amendment and therefore it was under the impression that it is not required to file return of income and also not to seek registration u/s 12AA of the Act. As soon as the assessee became aware of the requirements of law, the assessee has complied with the same. He submitted that since the assessee has fulfilled basic conditions for grant of registration u/s 12AA of the Act, the CIT(E) has erred in denying the registration to the assessee and has caused gross injustice to the assessee. He submitted that similar issue had come up before the Tribunal in the case of Jawaharlal Nehru Technological University, Hyderabad Vs. CIT(E), Hyderabad and vide orders dt.27.04.2021 in

ITA No.1769/Hyd/2019, the Tribunal has directed the CIT(E) to grant registration u/s 12A if the objects and activities of the assessee are charitable in nature. He sought similar directions in the case of assessee as well.

4. The learned DR, on the other hand, supported the order of the CIT(E).

5. Having regard to the rival contentions and the material on record, we find that the assessee is also state funded university as in the case of Jawaharlal Nehru Technological University (JNTU) (supra) and in the case of JNTU, the registration was denied to the assessee therein on similar points and after considering the issue in detail and also the fact that the JNTU was granted registration from the next year i.e., 2020-21, the issue was set aside to the file of CIT(E) for re-consideration. For the purpose of ready reference and clarity, the relevant paragraphs of the decision of ITAT in the case of JNTU (supra) are reproduced hereunder :

2. Brief facts of the case are that the assessee University filed application in Form 10A on 30.03.2019 seeking registration u/s 12A of the I.T. Act. The CIT (E) issued a notice on 14.8.2019 directing the assessee to appear and produce its original Memorandum of Association (MoA/Trust Deed) and also to furnish detailed reply on specific points on or before 6.9.2019. The assessee appeared through its representative and furnished the required details. It was explained that the assessee has not filed the returns of income for the A.Ys 2014-15 & 2016-17 u/s 139(1) of the Act and that now the system does not allow the assessee to file belated returns. The assessee also explained that the return of income for the A.Y 2018-19 has not yet been filed and they want to file the returns of income for the A.Ys 2015-16, 2016-17 as well. The assessee explained that the audited reports for A.Ys 2015-16 and 2016-17 have been submitted before the Assessing Officer belatedly in the year 2019 and that the grant received from the government is only for salary and that the grant is less than 50% of its total receipts.

3. The CIT (E), on perusal of the acknowledgement of the return of income for the A.Y 2017-18 dated 23.9.2019, observed that the assessee has shown self-assessment tax payment of Rs.50,00,000/- but has shown total income at Rs. 'Nil'. He also observed from the computation of income filed for the A.Ys 2016-17 to 2018-19, that the assessee has claimed benefit of section 11, even though it has not obtained the registration u/s 12A of the Act. When asked to explain, the learned AR of

the assessee explained before the CIT (E) that since they have already made an application for registration, they have claimed exemption u/s 11 of the Act. When the assessee was enquired as to whether they have already submitted Form 10 before the Assessing Officer for accumulation of its income, the assessee submitted that they have not filed any Form.

4. *Taking the above facts into consideration, CIT (E) observed that:*

(i) *the assessee has failed to file its audited accounts and failed to file the return of income for the earlier A.Ys and thus, the assessee has violated the provisions of the I.T. Act and therefore, it is not eligible for registration u/s 12A of the Act.*

(ii) *The assessee has to apply its income only in India, but has failed this condition as it has spent Rs.6,48,39,585/- outside India; and*

(iii) *the assessee in its return of income has made a false claim of benefit u/s 11, even though it had not obtained the registration u/s 12A of the Act.*

5. *For all these reasons, the CIT (E) denied registration u/s 12A of the Act against which the assessee is in appeal before us by raising the following grounds of appeal:*

“1. The order of the Id CIT(Exemption) is contrary to the law and the facts.

2. The Appellant is a Charitable Institution Constituted by Enactment of the Government of Andhra Pradesh on 18/08/2008 for imparting Higher Education, Research, Scientific and Technical Education.

3. In accordance with the directions of University and Central Government, the Institution is imparting Advance Technology Learning along with other subjects.

4. The Appellant had filed application in Form 10A for Registration U/s. 12AA of the IT Act on 30.03.2019 and filed its Return of Income of its FY 2018-19 on 31.10.2019 within the extended time U/s. 139(1) of the Act.

5. The Id CIT erred in holding in the absence of filing of Return of Income with the Application, the Institution is not eligible for Registration U/s. 12AA of the Act.

6. The Id CIT failed to note that the Application for Registration since was made on 30/03/2019, the Return could not be filed earlier and the same was filed within the extended time and eligible for registration.

7. The Id CIT is not correct in law refusing Registration U/s. 12AA of the Act summarily without considering the Charitable objects of the Institution and on other extraneous grounds that there is a violation of Sec 11 of the Act.

8. *The Id CIT ought to have also noted that Registration U/s. 12A of the Act under law is required to be granted based upon Charitable Objects contained in the Indenture.*

9. *For these and other grounds that may be urged, Registration U/s. 12AA of the Act be granted to the Assessee Institution and mitigate the hardship”.*

6. *The learned Counsel for the assessee submitted that this University has been carved out in 2008 out of the earlier JNTU which was found in 1972 and is funded by the Govt. He submitted that the assessee was earlier exempt from tax as the assessee is engaged only in imparting education which is a charitable activity and was also exempt from filing returns of income. It is submitted that it is headed by the Governor of the State as Chancellor and Vice-Chancellor and all other Officers engaged in the services are IAS Officers appointed by the State Govt and the Institution is controlled and run under the directions of the State Govt. sponsoring number of colleges and imparting education to several lakhs of engineering students. It was submitted that the assessee has made the application for registration u/s 12A of the Act pursuant to notice from the IT Department in the financial year ending 31.3.2019. It is submitted that along with Form 10A, the assessee has filed all the relevant documents and the CIT (E) ought to have considered as to whether the objects of the assessee were charitable activity or not for grant of registration u/s 12A of the Act. He submitted that the assessee is carrying on its activities strictly in accordance with the objectives. As regards the observation of the CIT (E) that the assessee has violated the provisions of section 11, he submitted that there is no violation, because the payment made by the assessee to the foreign university is not out of its own funds but was the fee collected by it from the students for their study outside India i.e. Blekinge Institute of Technology at Karlskrona, Sweden in terms of the Memorandum of Cooperation dated 16.10.2010 entered into by India with Sweden and was reimbursed to the said University. He further submitted that the non-filing of returns of income for the earlier years cannot be considered as a ground for denial of registration u/s 12A of the Act. He submitted that subsequently, the assessee had filed another form 10A on 25.11.2019 seeking registration u/s 12A of the Act and the CIT (E) has granted registration vide orders dated 24.6.2020 and made it applicable from the A.Y 2020-21 onwards. Therefore, the assessee sought a direction to the CIT (E) to grant registration also for the A.Y 2019-20. In support of his contentions that it is only the objectives of the Trust which are to be considered while granting registration u/s 12A of the Act, he placed reliance upon the following decisions.*

i) *Hardayal Charitable and Educational Trust Vs. CIT reported in (2013) 355 ITR 534 (All.)*

ii) *Ananda Social and Educational Trust vs. CIT and another in 426 ITR 340 (SC)*

iii) *Vanita Vishram Trust v. CIT reported in 327 ITR 121 (Bom).*

7. *In support of his contentions that even if there is a profit element in the activities carried on by the assessee, such a violation may not be a*

ground for refusal for grant of registration u/s 12A of the Act, he placed reliance upon the decision of the larger Bench of the Supreme Court in the case of *T.M.A. Pai Foundation vs State Of Karnataka* on 5 April, 1994 AIR 2372, 1994 SCC (2) 734. He therefore, prayed for a direction to the CIT (E) to grant exemption w.e.f. A.Y 2019-20 onwards.

8. The learned DR, on the other hand, supported the orders of the CIT (E) and submitted that the assessee has not complied with the provisions of the Act and has violated the provisions of the I. T. Act by not filing the returns of income inspite of the requirement and therefore, the assessee has rightly been denied registration u/s 12A of the Act.

9. Having regard to the rival contentions and the material on record, we find that the assessee is an institution which is carrying on educational activities and therefore, the activity is undisputedly a charitable act. The assessee was earlier known as Jawaharlal Nehru Technological University which has subsequently been divided into four Universities and the assessee is one of them which was formed in 2008. Section 10(23C) (iiiab) provided that the income of any University or other Educational Institution existing solely for educational purposes and not for purposes of profit, and which is wholly and substantially funded by the Govt., its income is not to be included in the total income. However, sub-section (4C) and sub-clause (e) thereof to section 139 of the Act have been inserted by the Finance Act of 2002, to make the income of such university or other educational institution referred to in sub clause (iiiab) of section 10(23) as assessable to tax only if the total income in respect of such institution, without giving the effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income tax Sub-section (4E) to section 139 was inserted by the Finance Act of 2014 requiring every business trust, which is not required to furnish its return of income or loss under any other provisions of this section, to furnish return of such income of the previous year in the prescribed form and verified in the prescribed manner or as may be prescribed and all the provisions of this Act shall so far as may be, apply as if it were a return to be furnished under sub section-1 of section 139 of the Act. We find that this amendment was w.e.f. 1.4.2015.

10. We also find that Rule 2BBB has also been introduced w.e.f. 12.12.2014 prescribing the percentage of govt. grant for considering a university, hospital, etc., as substantially funded by the govt. for the purposes of clause (23C) of section 10 and it provides that where the govt. grants to such university or hospital exceeds 50% of the total receipts including any voluntary contributions of such university or other educational institution/hospital or other institution during the relevant previous year, it shall be considered as substantially funded by the govt. for such previous year. Thus, it can be seen that though the assessee university was formed in 2008, till the A.Y 2014, it was not required to file any return of income and therefore, the assessee's contention that it was not aware of the requirement of filing returns of income appears to be bonafide. Further, the assessee has made an application for registration only w.e.f. A.Y 2019-20 onwards. In such circumstances, the requirement of law is that the CIT (E) has to consider whether the objectives of the assessee were charitable in nature and if the activities have already begun, then whether the assessee is carrying on its activities in

accordance with such objectives. Therefore, we agree with the learned Counsel for the assessee that the CIT (E) has not looked into the objectives of this University while considering its application for registration u/s 12A of the Act. Further, from the very next A.Y i.e. 2020-21 onwards, the assessee has been granted registration u/s 12A of the Act. Thus, it is evident that the CIT (E) while granting the registration, was satisfied about the charitable nature of assessee's activities. In view of the same, we deem it fit and proper to remand the issue to the file of the CIT (E) with a direction to grant registration u/s 12A if the objectives and activities of the assessee are the same as were considered by the CIT (E) while granting registration u/s 12A of the Act for the A.Y 2020-21 onwards.

11. In the result, assessee's appeal is treated as allowed for statistical purposes.

Since the facts and circumstances in the case before us are also similar, we deem it fit and proper to remand the issue to the file of the CIT(E) for reconsideration of the issue and in accordance with the directions of the Tribunal in the case of JNTU (supra).

6. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 07th October, 2021.

Sd/-

Sd/-

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| (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER | (P. MADHAVI DEVI) JUDICIAL MEMBER |
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Hyderabad, dated 07th October, 2021.

TYNM

Copy to:

| S.No | Addresses |
|------|---|
| 1 | Kakatiya University, Vidyaranyapuri, Hanamkonda, Warangal – 506009. |
| 2 | The CIT(E), Hyderabad. |
| 3 | Addl.CIT(Exemptions) - Hyderabad |
| 4 | Pr. CIT – Hyderabad |
| 5 | DR, ITAT Hyderabad Benches |
| 6 | Guard File |

By Order

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|-----|--|------------|--|
| 1. | Draft dictated on | 23.09.2021 | |
| 2. | Draft placed before author | 24.09.2021 | |
| 3 | Draft proposed & placed before the second Member | | |
| 4 | Draft discussed/approved by second Member | | |
| 5 | Approved Draft comes to the Sr.P.S./PS | | |
| 6. | Kept for pronouncement on | | |
| 7. | File received by Sr.PS / PS | | |
| 8. | File sent to the Bench Clerk | | |
| 9. | Date on which file goes to the Head Clerk | | |
| 10. | Date of Dispatch of order | | |