आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI PRADIP KUMAR KEDIA, AM

ITA No.1880/PN/2014
Assessment Year : 2008-09

Krishna Yajurvedi Taittiriya
Apasatamb Bramhan Sabha,
1009, Shukrawar Peth,
Swargate Chowk, Near Nataraj Hotel,
Pune – 411 002.
PAN : AAATK7090A …. Appellant

Vs.

The Income Tax Officer,
Ward 11(3), Pune. …. Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishor Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Biju

सुनवाई की तारीख / **Date of Hearing : 02.02.2016**		घोषणा की तारीख / **Date of Pronouncement: 10.03.2016**

आदेश / ORDER

PER PRADIP KUMAR KEDIA, AM :

The present appeal preferred by the assessee is against the order of CIT(A)-I, Pune dated 28.03.2014 relating to assessment year 2008-09 passed under section 143(3) of the Income-tax Act, 1961 (in short "the Act").

2. In this appeal, the assessee has raised the following Grounds of Appeal :-

> *"1. The learned CIT(A)-I, Pune erred in law and on facts in not appreciating that the appellant trust is deemed to have been registered U/s.12A, since no order of refusing registration was passed within six months of application vide Form 10A dated 17/04/2006. Order U/s.143(3) is passed by the A.O. on 12/11/2010.*
>
> *2. The learned CIT(A)-I, Pune erred in law and on facts in confirming the decision of the A.O. in applying the provision of the Sec.13(1)(b) of the Income Tax Act, 1961, ignoring the facts that the trust was created before the commencement of Income Tax Act, 1961, i.e. date of creation of Trust is 22/05/1946.*

3. The learned CIT(A)-I, Pune erred in law and on facts in holding that appellant has not demonstrated need to be produce additional evidence and thus held that Rule 46A stands violated.

4. The learned CIT(A)-I, Pune erred in law and facts and circumstances of the case, in taxing the Income, ignoring the notice U/s.11(2) of the Income Tax Act, 1961 dated 12/11/2008 and application dated 12/11/2008 for condonation of delay made to CIT and the same was pending.

5. The appellant craves leave to add/modify/delete all/any of the above Grounds of Appeal."

3. The brief facts concerning the issues involved are that it the case of the assessee that the assessee is a Charitable Trust which came into effect on 20.05.1946. The constitution of the Trust was amended on 28.07.1974 and it is registered under Bombay Public Trust Act, 1950 vide Reg. No.F-5 on 17.01.2004.

3.1 The Assessee has narrated the key objects in the statement of facts filed before the CIT(A) extracted as under:

The main object of the Trust is to develop and improve unity and love in the community of Brahman and to help each other for improving the relation among themselves, to help poor and needy students of the Brahman community and to do all such work as social, religious educational and financial except political for welfare of the Brahman community. To start the student hostel in the building owned by the Sanstha. To organize the conferences and get together of the persons of the Brahman Community. To arrange the lectures, kirtans and pravchans. As far as possible the work suggested by the person from Brahman shall be done on priority basis. To help the needy person from Brahman community.

3.2 Return of income for assessment year 2008-09 declaring total income at Rs.Nil was furnished on 12.11.2008. During the relevant assessment under scrutiny, the Trust derived income from interest on fixed deposits and savings account to the tune of Rs.3,05,851/-. The assessee also earned some nominal interest income on income-tax refund. After incurring small expenses of Rs.8,507/-, the Trust earned a surplus of Rs.2,98,994/-. The assessee claimed exemption on the aforesaid surplus in terms of provisions of section 11 and 12 of the Act.

3.3 As 85% of the surplus income was not spent on the objects of the Trust, the Assessee filed a notice under section 11(2) in Form No.10 *albeit* belatedly with the CIT concerned on 12.11.2008 along with application for condonation of delay.

3.4 The Assessing Officer denied the applicability of section 11 and 12 of the Act to the assessee on the ground that income/surplus of the Trust has not been applied to the extent of 85% towards the object of the Trust. Secondly, the objects of the Trust did not enure for the benefit of the public and the Trust has been created for the benefit of particular religious community or caste. The Assessing Officer also found fault with the assessee in not following the procedure prescribed under section 11(2) of the Act whereby the assessee is required to make an application before the Assessing Officer and the Commissioner of Income Tax in terms of Rule 17 of the Income Tax Rules, 1962 in the event of non-utilization of the income towards charitable purposes to the extent of 85% but is accumulated or set a part. It was observed by the Assessing officer that the Trust has given belated notice by 42 days in Form No.10 dated 11.11.2008 under section 11(2) of the Act i.e. after the expiry of the due date under section 139(1) of the Act and therefore not non-entitled for exemption under S. 11 / S. 12 of the Act as claimed.

4. Aggrieved, the Assessee preferred appeal before CIT(A). As regards registration under S. 12A, the Assessee submitted that the trust has applied for registration under section 12A of the Act on 17.04.2006 to the CIT, Pune. The said application is still pending. It was contended that the CIT, Pune has to mandatorily pass an order within six months from the end of the month in which the application for registration is filed. It is thus clear that the order has to be passed within the time limit prescribed and if not, the application should be deemed to have been granted. In the absence of any order from CIT, Pune, the Trust is deemed to be registered under section 12A of the Act. The next contention of the Assessee was that Section 13 deals with situations where the income of a Trust shall not be eligible for exemption under section 11 and 12. If a Charitable Trust is created or established for the benefit of any particular religious community or caste, the income of such trust shall not be exempt. However, this will not apply to a Charitable Trust created or established before the commencement of the Act. It is the case of the Assessee that the Trust is created on 20.05.1946 i.e. before the commencement of Act and hence the

income of the Assessee is not disqualified from getting the exemption under section 11 and 12 of the Act.

5. The CIT(A) however, did not accede to the contentions put-forth by the Assessee and confirmed the action of denial of exemption under section 11/12 of the Act claimed by the assessee.

5.1 The CIT(A) negated the arguments of the assessee that since the application for registration of the Trust was made before the Commissioner of Income Tax on 17.04.2006 and the same is pending for decision of the CIT concerned as on the date of the assessment order, the registration is deemed to have been granted in favour of the Trust under section 12AA(2) of the Act since the period of six months specified therein has lapsed. The CIT(A) also held that since the CIT has not condoned the delay in compliance with procedure for under utilization of surplus in accordance with Rule 17 of the I.T. Rules, the Assessee is not entitled to exemption under S. 11 / S. 12 of the Act. As regards exclusion of assessee trust from applicability of S. 13(1)(b), the CIT held that the Assessee failed to establish with cogent evidences that the Assessee trust in the present form was created prior to the commencement of the I. T. Act, 1961.

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

7. The Ld. Authorized Representative for the assessee fairly stated at the bar in the earlier hearing dated 02.02.2016 that the Ground No.1 raised by the assessee is decided against the assessee by Full Bench of the Hon'ble Allahabad High Court in the case of CIT vs. Muzafar Nagar Development Authority in Income Tax Appeal No.348 of 2008, order dated 05.02.2015 and therefore the same is not pressed. However, subsequent to the closure of the hearing, a latest decision of the Hon'ble Supreme Court rendered in the case of CIT vs. Society for the Promotion of Education, Allahabad in Civil Appeal No.1478 of 2016, order dated 16th February, 2016 came to our knowledge

which appeared to us to be squarely applicable to Ground No.1 of the assessee's case. Accordingly, the matter was re-fixed for hearing for necessary clarification and opportunity to the other side. The Hon'ble Apex Court in the case of Society for the Promotion of Education (supra) rejected the Revenue appeal against the judgement of the Allahabad High Court reported in 216 CTR 167 (All.) wherein it was held that non-disposal of an application for registration before the expiry of six months as provided under section 12AA(2) of the Act would result in deemed grant of registration. In the wake of the decision of Apex Court on the issue, Ground No.1 is remitted back to the file of the Assessing Officer to re-determine the issue in accordance with law and in the light binding judicial precedent. Ground No.1 is thus disposed of in terms of above.

8. Ground No.2 of the assessee's appeal pertains to challenging the applicability of provisions of section 13(1)(b) of the Act on the ground that the Trust was created before the commencement of the Income-tax Act whereas Ground No.3 relates to admission of the additional evidence under Rule 46A of the Income Tax Rules before the CIT(A) concerning the eligibility of the assessee for exemption under section 10 and section 11 of the Act. We find that on both these issues, the Tribunal has already taken a view in assessee's own case in ITA No.1680/PN/2013; order dated 13.11.2015. The Co-ordinate Bench of the Tribunal in the case of the assessee has set-aside the issue to the file of the Commissioner of Income Tax for *de novo* consideration. The relevant extract of the order of the Tribunal is reproduced hereunder :-

> *"6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. We have also considered the decisions on which the ld. AR has placed reliance. The assessee has filed an application for producing additional evidence. The assessee has placed on record a photo copy of duplicate certificate issued by the Charity Commissioner at page 66 of the Paper Book. The duplicate certificate has been issued on 10.10.2013. A perusal of the said document shows that the original document was issued on 10.04.1952. The case of the assessee is that it is in-existence since 1946, therefore, the provisions of section 13(1)(b) of the Income-tax Act, 1961 will not be applicable. One of the grounds for rejecting the application of the assessee u/s. 12A of the Act by the Commissioner of Income-tax is that the assessee has not been able to place on record any document to show that it had come into existence in the year 1946 and thus, the provisions of section 13(1)(b) of the Act are not applicable. We are of the view that the additional evidence placed on record by the assessee is a vital document, which shows that the assessee was in-existence prior to enactment of*

> *Income-tax Act, 1961. The provisions of section 13(1)(b) of the Act are not applicable for the trusts or institutions created or established prior to the enactment of Income-tax Act, 1961. Thus, the consideration of said document is crucial for adjudicating the eligibility of assessee for grant of registration u/s. 12A of the Act.*
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> *7. Since the certificate which has now been placed on record by the assessee was not available with the Commissioner of Income-tax, we deem it appropriate to remit the file back to Commissioner of Income-tax to consider the same and decide the application of the assessee afresh, in accordance with law."*

9. In line with the order of the co-ordinate bench of Tribunal in the case of the assessee itself, Ground No.2 and 3 of the assessee's present appeal are also set-aside to the file of the Assessing Officer. The Assessing Officer shall re-determine the issue in the light of the order of the Commissioner of Income Tax in this regard as directed in earlier order of the Tribunal dated 13.11.2015 (supra). Needless to say, the Assessee shall be granted proper opportunity by the AO while determining the issues. Accordingly, Ground No.2 and 3 are allowed for statistical purposes.

10. As per Ground No.4, the assessee has raised grievance for non-disposal of the belated notice in Form 10 read with Rule 17 of the Income Tax Rules 1962, and consequent denial of exemption claimed. The Ld. Authorized Representative for the assessee submitted that delay in filing impugned notice ought to be condoned in view of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Mumbai Metropolitan Regional Iron And Steel Market Committee, (2015) 378 ITR 103 (Bom.). We take notice of the assertions made that the impugned belated application in prescribed form is continuing to remain pending before the Commissioner of Income Tax seeking appropriate relief for not applying 85% of the surplus of the year for charitable purposes in terms of section 11(2) of the Act. Since the application together with petition for condonation of delay in filing the application is stated to be pending disposal before the Commissioner of Income Tax, we consider it expedient to set-aside the issue and remit it back to the file of the Assessing Officer. The Assessing Officer shall decide the issue in accordance with law having regard to the decision taken by the Commissioner of Income Tax in respect of impugned application pending before it and after giving proper

opportunity to the Assessee in this regard. Accordingly, Ground No.4 is allowed for statistical purposes.

11. In the result, the appeal of the assessee is disposed off in terms of above.

Order pronounced on this 10th day of March, 2016.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**PRADIP KUMAR KEDIA**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 10th March, 2016.

सुजीत

आदेश की प्रतिलिपि अग्रेषित/Copy of the order is forwarded to :

1) The Assessee;
2) The Department;
3) The CIT(A)-I, Pune;
4) The CIT-I, Pune;
5) The DR "A" Bench, I.T.A.T., Pune;
6) Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune