

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

ITA No.140/Lkw/2016
Assessment Year:2011-12

M/s Artificial Limbs Manufacturing Corporation of India (ALIMCO) G. R. Road, Naramau, Kanpur. PAN:AABCA 8899 F	Vs.	A.C.I.T.-6, Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri P. K. Kapoor, C. A.
Respondent by	Shri J. S. Minhas, CIT, D.R.
Date of hearing	28/02/2018
Date of pronouncement	07/03/2018

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of CIT(A), Kanpur dated 08/12/2015 relating to assessment year 2011-12. The appeal was earlier disposed off by the Hon'ble Tribunal vide order dated 27/06/2016. However, the said order was recalled for rehearing of the case vide Tribunal order dated 07/06/2017.

2. At the outset, Learned A. R. submitted that the assessee is a section 25 company and is fully owned Government of India company and its entire capital is held by the President of India through Ministry of Social Justice & Empowerment. It was submitted that the assessee had applied for

registration u/s 12AA of the Act which was denied. However, the Tribunal, vide order dated 15/09/2008, directed the CIT (Exemptions) to allow registration u/s 12A with effect from 30/11/1972. It was stated that in view of the order of the Tribunal directing the CIT (Exemptions) to grant registration, the CIT (Exemptions) had granted registration u/s 12A vide certificate of registration dated 05/12/2008 and therefore, the assessee had filed return declaring nil income after claiming exemption u/s 11 of the Act. Learned A. R. submitted that against the granting of registration u/s 12AA by the Tribunal, the Revenue had preferred appeal before Hon'ble Allahabad High Court which has dismissed the appeal of the Revenue vide order dated 06/11/2017 and in this respect our attention was invited to page No. 16 of the paper book where copy of said order was placed.

2.1 It was submitted that despite availability of registration u/s 12AA, the Assessing Officer made disallowances and did not allow the benefit of exemption available u/s 11 of the Act. It was submitted that the Assessing Officer held that assessee was engaged in manufacturing, purchase and sale of goods and therefore, in view of insertion of proviso to section 2(15) with effect from 01/04/2009, the assessee was not carrying out charitable activities. In view of these facts and circumstances, it was submitted that since the assessee was enjoying registration u/s 12AA of the Act, the denial of exemption u/s 11 by the authorities below was not justified.

3. Learned D. R., on the other hand, heavily placed his reliance on the orders of the authorities below.

4. We have heard the rival parties and have gone through the material placed on record. We find that it is an undisputed fact that the assessee was granted registration vide certificate dated 05/12/2008. The said

registration was granted in view of the directions by the Tribunal order dated 15/09/2008. The said order of registration was challenged before Hon'ble Allahabad High Court which vide order dated 06/11/2017 had dismissed the appeal of the Revenue. The Assessing Officer has denied the exemption u/s 11 of the Act by holding that the registration u/s 12AA was granted to the assessee on the directions issued by the Tribunal and for which the Revenue had filed appeal before Hon'ble High Court. The Assessing Officer therefore, did not consider the registration u/s 12AA and assessed the assessee as a company. The relevant findings of the Assessing Officer are reproduced below:

"Therefore, keeping in view of facts as discussed above, the status of the assessee is taken as Company and total income is computed in accordance with normal provisions of the I.T. Act, 1961 applicable in the cases of Domestic Companies. Further Ld. the Commissioner of Income tax-II, Kanpur vide his order dated 08.12.2008 granted certificate u/s. 12AA of the Act in accordance with the directions issued by Hon'ble ITAT granted registration to the Institution w.e.f. 30.11.1972, subject to provisions contained u/s 12AA (3) of the Income Tax Act, 1961. The issue of grant of registration u/s. 12AA is sub-judice before Hon'ble Allahabad High Court, therefore the status of the assessee as discussed in above paras is taken as 'Company'.

4.1 The learned CIT(A) also upheld the order of the Assessing Officer. The relevant findings of learned CIT(A) are reproduced below:

"A perusal of the order of the Hon'ble ITAT vide order in ITA NO.514/LKW/2014 for A.Y. 2010-11, directed the AO to consider the provisions of sub section (8) of section 13 while deciding the issue of computing income in terms of section 11 to 13 of the Act. Section 13(8) says that exemption u/s. 11 & 12 will not be granted to the persons if the provisions of 1st proviso to clause 15 to section 2 become applicable in the case of such persons in any previous year. These observations made by

Hon'ble ITAT reflects that this was the aspect which needed AO's attention for the subsequent years. It was properly looked into and the decision was taken. Applicability of section 2(15) in the assessee's case has not been decided by any higher judicial authority in previous years and keeping in view of the above mentioned discussion, I uphold the order of the AO in this regard and confirmed the applicability of section 2(15) of the I.T. Act and hold that the object activity of the appellant are not in the nature of relief to poor or medical relief and hence the provisions of section 2(15) is clearly applicable on the appellant's case."

4.2 From the above findings of the authorities below, it is seen that they have held that since the assessee was engaged in the business of manufacturing, buying and selling of artificial limbs and accessories therefore, they were hit by the proviso to section 2(15) of the Act which was inserted with effect from 01/04/2009. The Assessing Officer also denied the exemption in view of the fact that Revenue had challenged the order of Hon'ble Tribunal by which it had directed learned CIT(A) to grant exemption. However, the Revenue was not able to demonstrate that the registration granted to the assessee u/s 12AA of the Act has been withdrawn. Therefore, unless the said registration is withdrawn, the assessee will be eligible for exemption u/s 11 of the Act unless it is hit by the provisions contained in section 13 of the Act. We further find that ground No. 1 to 3 taken by the assessee relate to the grievance of the assessee of not being heard by learned CIT(A). The assessee has stated that the directions given by learned CIT(A) dated 27/10/2015 during the course of appellate proceedings were complied on 17/11/2015 which were not considered by the CIT(A). The assessee has further taken as a ground of appeal that the assessee had submitted on due date i.e. 17/11/2015 comprehensive written submissions in the form of compilation running from 1 to 142 pages which had not been considered. Therefore, in view of the

entire facts and circumstances, we deem it appropriate to remit this issue back to the office of learned CIT(A) who should decide the issue afresh keeping in view the registration available to the assessee u/s 12AA of the Act and further he should decide the issue of exemption u/s 11 after considering the submissions made by the assessee in its written submissions. Needless to say that the assessee will be provided sufficient opportunity of being heard.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open court on 07/03/2018)

Sd/.
(PARTHA SARATHI CHAUDHURY)
Judicial Member

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:07/03/2018
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow