

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.4631 & 4632/Del/2017  
Assessment Years : 2012-13 & 2013-14

Moradabad Development Authority, Vs. ACIT (Exemption),  
Kanth Road, Near Vivekanand Lucknow.  
Hospital,  
Moradabad (UP).

PAN: AAJFM7731M

(Appellants)

(Respondents)

Assessee By : Shri Piyush Kaushik, Advocate  
Department By : Ms Alka Gautam, Sr. DR

Date of Hearing : 03.01.2018  
Date of Pronouncement : 04.01.2018

ORDER

PER R.S. SYAL, VP:

These two appeals filed by the assessee relate to the assessment years 2012-13 & 2013-14. Since common issue is raised in both the

appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Briefly stated, the facts of the case are that the assessee, an Authority formed under the Rules and Regulations of the UP Urban Planning and Development Act, 1973, was granted registration u/s 12AA of the Income-tax Act, 1961 (hereinafter also called 'the Act'). Return of income for the assessment year 2012-13 was filed declaring Nil income, after claiming exemption u/s 11 of the Act. The Assessing Officer, during the course of assessment proceedings, observed that the objects of the assessee were not charitable in nature and, hence, exemption u/s 11 was not available. On being called upon to explain as to why the exemption be not denied as the assessee was engaged in the real estate business and the provisions of the first proviso to section 2(15) were applicable, the assessee submitted that its activities were of charitable nature and the first proviso to section 2(15) was not applicable. In support of this contention, the assessee relied on various judicial pronouncements including certain judgments of the Hon'ble jurisdictional High Court, as is evident from para 6.1 of the assessment order. The Assessing Officer took note of an

order passed by the Amritsar Bench of the Tribunal in the case of Jammu Development Authority in which, the order u/s 12AA(3) of the CIT cancelling registration to the Jammu Development Authority, was approved and such order was upheld by the Hon'ble Jammu & Kashmir High Court. The Assessing Officer further observed that SLP against the said judgment came to be dismissed by the Hon'ble Supreme Court. In view of the fact that there were two sets of decisions – one in which the issue was decided in favour of the assessee and the other, being, the dismissal of the SLP- direction u/s 144A of the Act was sought from the Additional Commissioner of Income-tax on the eligibility of exemption u/s 11 of the Act. Considering such direction, the Assessing Officer held that the proviso to section 2(15) was applicable in respect of the development authorities and, hence, exemption u/s 11 was not available. The ld. CIT(A) upheld the assessment order denying the exemption u/s 11 by principally relying on the dismissal of SLP by the Hon'ble Supreme Court against the judgment of the Hon'ble J&K High Court in which the cancellation of registration u/s 12AA(3) was approved. The ld. CIT(A) took note of the orders passed by the Tribunal in the assessee's own case

for the assessment years 2008-09 and 2009-10 setting aside the orders of the Assessing Officer and restoring the exemption u/s 11 of the Act. However, in his opinion, the dismissal of SLP against the judgment of the Hon'ble J&K High Court changed the entire conspectus of the case and he, *ex consequenti*, held that the earlier Tribunal orders in the assessee's own case could not be followed. The assessee is aggrieved against the denial of exemption u/s 11 of the Act.

3. We have heard both the sides and gone through the relevant material on record. It is seen, as is evident from para 4.1 of the impugned order itself, that the assessee was allowed exemption u/s 11 of the Act by the Tribunal for the assessment years 2008-09 and 2009-10. It is an admitted position that the regular assessment for the assessment years 2010-11 and 2011-12 was not taken up and the claim for exemption u/s 11 of the Act got automatically allowed. We have gone through the lead order passed by the Tribunal for the assessment year 2009-10, whose copy is available on page 75 of the paper book. In this order, the Tribunal considered the effect of proviso to section 2(15) and, thereafter, held that the activities of the assessee of construction and sale of plots were incidental to the main

object of town planning and, hence, exemption u/s 11 was to be granted. The said order of the Tribunal was challenged by the Department before the Hon'ble Allahabad High Court. Vide its judgment dated 03.05.2017, a copy of which is available on page 80 of the paper book, the Hon'ble Allahabad High Court dismissed the Revenue's appeal by following another judgment of the co-ordinate Bench in *CIT vs. Yamuna Expressway Industrial Development Authority & Ors.*, in which similar questions were answered against the Revenue. A copy of the judgment of the Hon'ble jurisdictional High Court in the case of *CIT vs. Yamuna Expressway Industrial Development Authority & Ors.*, is available on page 93 of the paper book. The Hon'ble High Court in its judgment has considered all the relevant aspects of the issue threadbare and, thereafter, decided similar issue against the Revenue.

4. It is, ergo, palpable that the assessee has been allowed exemption u/s 11 of the Act consistently in the past, either by the AO himself or by virtue of the orders of the Tribunal as affirmed by the Hon'ble High Court. This settled position ought not to have been ordinarily disturbed. The authorities below have chosen to deviate from the earlier consistent

view by harping on the dismissal of SLP against the judgment of the Hon'ble J&K High Court in Jammu Development Authority. There are two reasons for not accepting the Departmental stand. Firstly, the issue before the Hon'ble Jammu and Kashmir High Court was cancellation of registration by the CIT u/s 12AA(3) of the Act and not the denial of exemption, as is prevailing in the extant case. Admittedly, the assessee's registration has not been canceled by the Commissioner. Further, it is a settled legal position that a summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution. A mere dismissal of SLP without giving any reasons, cannot be equated with exposition of law by the Hon'ble Supreme Court so as to indicate the imprimatur on the reasoning and/or the *ratio decidendi* of the High Court in the judgment. In such circumstances, there is no merger of the judgment of the Hon'ble High Court. The Hon'ble Apex Court in *Hemalatha Gargya vs. CIT (2003) 259 ITR 1 (SC)*, has held that dismissal of SLP in limine: "could not operate as a confirmation of the reasoning in the decision sought to be appealed against.....". Similar view has been taken by the Hon'ble Summit court

in *Kunhayammed & Ors vs. State of Kerala and Anr (2000) 245 ITR 360 (SC)*, in which their Lordships have held that an order refusing special leave to appeal does not stand substituted in place of order under challenge. In the hue of the above discussion, it is amply vivid that the mere dismissal of SLP by the Hon'ble Supreme Court against the judgment of the Hon J&K High Court in the case of Jammu Development Authority cannot be construed as having the effect of elocution of law by the Hon'ble Supreme Court on the subject against the assessee. In other words, the view point of the Department that the mandate of the Hon'ble jurisdictional High Court on the issue has ceased its binding force and hence preference should be given to the judgment of the Hon'ble J&K High Court as SLP against the same has been dismissed, cannot be countenanced. We, therefore, hold that the decision taken by the Hon'ble jurisdictional High Court in several cases including that of the assessee itself holds the field and, accordingly, the benefit of exemption u/s 11 of the Act cannot be denied. The impugned order on the issue is overturned and it is directed to grant exemption u/s 11 of the Act.

5. Both the sides are *consensus ad idem* that the facts and circumstances of the appeal for the assessment year 2013-14 are *mutatis mutandis* similar to those of the preceding year. Following the view taken hereinabove, we vacate the impugned order on the issue and direct the granting of exemption u/s 11 of the Act.

6. In the result, both the appeals are allowed.

The order pronounced in the open court on 04.01.2018.

Sd/-

[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 04<sup>th</sup> January, 2018.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.