

आयकर अपीलीय अधिकरण, मुंबई “ई” खंडपीठ
Income-tax Appellate Tribunal -“E”Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member

आयकर अपील सं./I.T.A./1111/Mum/2016,निर्धारण वर्ष /Assessment Year: 2011-12

आयकर अपील सं./I.T.A./1112/Mum/2016,निर्धारण वर्ष /Assessment Year: 2012-13

Seven Eleven Education Society Seven Eleven Mansion Deepak Hospital Lane, Mira Road (East). Thane PAN:AAHTS 2904 A	Vs.	The ACIT, Circle-2 Thane.
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Revenue by: Shri V. Justin -DR
Assessee by: Shri Sanjay Parikh

सुनवाई की तारीख / Date of Hearing: 12.03.2018

घोषणा की तारीख / Date of Pronouncement: 02.05.2018

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार- PER RAJENDRA, AM-

Challenging the orders,dated 23/11/2015,of the CIT (A)-1,Thane,the assessee has filed appeals for the above-mentioned two AY.s.Assessee-trust is running a school in the name of Seven Eleven Square Academy and is registered as a Public charitable trust.

ITA/1111/Mum/2016-AY. 2011-12.

2.First ground of appeal is about denying exemption claimed by the assessee under section 11 of the Act.During the assessment proceedings, the AO called for various details. He found that the trust was not registered under section 12 AA of the Act. He held that claim made by the assessee for exemption under section 11 of the Act could not be allowed.Therefore the surplus of Rs.1.73 crores claimed to be exempt income was disallowed and added back to its income for the year under consideration.

3.During the course of assessment, the assessee submitted a revised computation of income wherein surplus income was reduced from Rs.1.73 crores to Rs. 1.58 crores.It submitted that by mistake capital expenditure for fixed assets,amounting to Rs.45.61 lakhs was taken as application of money, that in the original return the depreciation claim of Rs. 30.53 lakhs was taken

instead of capital expenditure actually incurred. The AO held that the revised computation of income could not be accepted, that the assessee had not filed audited report along with balance sheet, income/expenditure account with the return before the due date of filing, that the audit report was submitted only during the course of assessment proceedings.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) and filed detailed submissions along with the case laws. After considering the available material, the FAA held that the assessee had been an application, dated 18/06/2009, before the CIT-I, Thane, that it had requested for grant registration under section 12AA(2) of the Act, that it had also filed reminders in that regard. The FAA called for the file from the office of the CIT-I, Thane and found that the claim made by the assessee about filing the application in the month of June, 2009 was factually correct and that assessee had filed reminders in the months of January 2013 and January 2014, that the application filed by the assessee for registration was not disposed off by the CIT-I, Thane either by rejecting or by granting registration. Referring to the judgment of the Hon'ble allowable High Court delivered in the case of Muzaffarnagar Development Authority (275 CTR 233), he held that the assessee could not be said to have been granted him registration because the application filed by it for registration was not disposed off by the CIT, that the assessee trust did not have the requisite registration under section 12 A (1) (a) of the Act. Upholding the order of the AO he held that AO was fully justified in disallowing the exemption to the assessee u/s. 11 of the Act.

5. During the course of hearing before us, the Authorised Representative (AR) stated that the assessee should not be penalised for not passing the order by the CIT, that it had filed the application within time, that the CIT was supposed to pass order within a period of six months, that in case of the failure by the CIT the assessee was entitled to deemed registration. He relied upon the cases of Society for the Promotion of Education Adventure Sport and Conservation of Environment (372 ITR 222) of Hon'ble Allahabad High Court and the judgment of Hon'ble Apex Court in the case of Society For The Promotion Of Education (382 ITR 6). The Departmental Representative (DR) supported the order of the FAA.

6. We have heard the rival submissions. We find that the AO had denied the benefit of the provisions of section 11 of the Act to the assessee as the CIT had not granted registration to the

trust,that FAA had also held that without registration the assessee was not entitled to claim exemption.that the FAA also observed that the assessee was not at fault,if the CIT had not issued the ceritifcate.Thus,the whole controversy has arisen because the CIT neither rejected the application nor did he grant registration.It is also a fact that the assessee had filed reminders with the office of the CIT,Thane to issue the registration certificate.In our opinon,an assessee cannot and should not be penalised for inaction of an officer representing the Sovereign.The Act provides that if the CIT does not reject the application or does not grant registration,it would be deemed that the assessee was entitled to registration.In the case of Society for the Promotion of Education Adventure Sport and Conservation of Environment (supra),the Hon'ble Allahabad High Court found that the CIT had not disposed off the application made for registration within a period of six months.Deciding the writ petition filed by the assessee,the Hon'ble Court held as under:

"4. Section 12AA(2) reads as follows :

"12AA.(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of sub-section (1) of section 12A."

5. Admittedly, no decision was taken on the petitioner's application within the time of six months fixed by the aforesaid provision and in fact, even after a lapse of almost five years, no decision had been taken as per the counter-affidavit. And for want of a decision by the Commissioner, the Assessing Officer has continued to make block assessment of the petitioner u/s. 158BD, raising huge tax demands in excess of rupees two croress.

6. What has to be examined in this writ petition is the consequence of such a long delay on the part of Income-tax authorities in not deciding the petitioner's application dated February 24, 2003. Admittedly, after the statutory limitation the Commissioner would become functus officio and he cannot thereafter pass any order either allowing or rejecting the registration. It is obvious that the application cannot be allowed to be treated as perpetually undecided. Therefore, the key question arises whether upon lapse of the six-month period without any decision, the application for registration should be treated as rejected or it should be treated as allowed.

7. The petitioner contends, relying upon a decision of the Income-tax Appellate Tribunal, Bangalore Bench, in the case of Karnataka Golf Association v. DIT (Exemption) [2004] 91 ITD 1 (Bangalore) ; [2005] 272 ITR (AT) 123 (Bangalore), that the registration should be deemed to have been granted after the expiry of the period prescribed u/s. 12AA(2), if no decision had been taken on the application for registration u/s. 12A/12AA. Reliance has also been placed by the petitioner in the cases of Jan Daood and Co. v. ITO [1978] 113 ITR 772 (All) and CIT v. Rohit Organics (P.) Ltd. [2006] 281 ITR 194 (All), both of which lay down that when an application for extension of time is moved and is not decided, it will be deemed to have been allowed. In continuation of the above, reliance has been placed upon the decision of the Allahabad High Court in the case of K. N. Agrawal v. CIT [1991] 189 ITR 769 (All), which lays down that discipline of quasi-judicial functioning demands that the decision of the Tribunal or the High Court must be followed by all

Departmental authorities because not following the same could lead to a chaotic situation. Similar view has been expressed by the Bombay High Court in the case of Bank of Baroda v. H. C. Srivastava [2002] 256 ITR 385 (Bom).

8. *It is not in dispute that the Commissioner is required to give opportunity to the applicant before refusing registration and that reasons have to be given by the Commissioner in his order (see CBDT Circular No 762, dated February 18, 1998 (see [1998] 230 ITR (St.) 12). Based on that hypothesis, it has been argued that absence of any such order of the Commissioner should be taken to mean that he has not found any reason for refusing registration, notice of which could have been given to the assessee by way of opportunity of hearing. For showing the legislative intent, reliance has also been placed by the petitioner on the fact that against an order of the Commissioner granting registration the Income-tax Department has not been given any right of appeal. It has been argued that laches and lapse on the part of the Department cannot be to its own advantage by treating the application for registration as rejected.*

9. *On the other hand, the standing counsel for the Income-tax Department relies upon a decision of the Supreme Court in the case of Chet Ram Vashist v. Municipal Corporation of Delhi, AIR 1981 SC 653. In the said decision, the Supreme Court was examining the effect of the failure on the part of the Delhi Municipal Corporation to decide an application u/s. 313(3) of the Delhi Municipal Corporation Act, 1957, for sanction to a lay-out plan within the period specified in that sub-section. The Supreme Court held in that decision that non-consideration would not amount to deemed sanction. Apart from the fact that the said Supreme Court decision was dealing with a different statute but one of the important aspects pointed out by the Supreme Court for taking that view is the purpose of the provision requiring sanction to lay-out plans. There was an element of public interest involved, namely, to prevent un-planned and haphazard development or construction to the detriment of the public. Besides sanction or deemed sanction to a lay-out plan would entail constructions being carried out, thereby creating an irreversible situation.*

10. *In the present case, we find that there is no such public element or public interest. Taking the view that non-consideration of the registration application within the time fixed by section 12AA(2) would result in deemed registration, may at the worst cause loss of some revenue or Income-tax payable by that individual assessee. This would be similar to a situation where the assessing authority fails to make the assessment or reassessment within the limitation prescribed for the same. That also leads occasionally to loss of revenue from that individual assessee.*

11. *On the other hand, taking the contrary view and holding that not taking a decision within the time fixed by section 12AA(2) is of no consequence would leave the assessee totally at the mercy of the Income-tax authorities, inasmuch as the assessee has not been provided any remedy under the Act against non-decision.*

12. *Besides, the above view does not create any irreversible situation, because u/s. 12AA(3), the registration can always be cancelled by the Commissioner, if he is satisfied that the objects of such trust or institution are not genuine or the activities are not being carried out in accordance with the objects of the trust or institution. The only drawback is that such cancellation would operate only prospectively. Therefore, if a view is taken that non-consideration of the registration application within the time fixed by section 12AA(2) would amount to deemed grant of registration, the only adverse consequence likely to flow from such a view in respect of any case of that assessee arising in future would at best be some loss of revenue from that individual assessee from the date of expiry of the limitation u/s. 12AA(3) till the date of cancellation of that registration, if such cancellation is called for.*

13. Moreover, the view we are inclined to take as above furthers the object and purpose of the aforesaid statutory provision. In our view for the interpretation of a statute "purposive construction" of the enactment which gives effect to the legislative purpose/intendment, if necessary must be followed and applied. The doctrine of purposive interpretation is well accepted and has been applied in India by the apex court following the English law on the subject. Explaining as to what "purposive construction" is, Lord Smith in *R. (Haw) v. Secretary of State for the Home Department* [2006] 3 All ER 428 at page 438, in paragraph 42, observed "A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this code called a purposive-and-literal construction), or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the code called a purposive-and-strained construction)."

14. Again, in paragraph 44 quoting the passage from Bennion, it said :

"... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it (*Kammins Ballroom Co. Ltd. v. Zenith Investments (Torquay) Ltd.* [1971] AC 850) provides an instance of this ; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy ; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved ; and, thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed."

15. The aforesaid principle has been followed and applied by the apex court in India in *K. L. Gupte v. Municipal Corporation of Greater Bombay*, AIR 1968 SC 303 ; *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* [1987] 61 Comp Cas 663 (SC) ; [1987] 1 SCC 424 ; *Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer* [1990] 3 SCC 682 ; *Balram Kumawat v. Union of India* [2003] 7 SCC 628 ; *Maruti Udyog Ltd. v. Ram Lal* [2005] 2 SCC 638 ; *Pratap Singh v. State of Jharkhand* [2005] 3 SCC 551 ; *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.* [2007] 6 SCC 528.

16. Recently, in *New India Assurance Co. Ltd. v. Nusli Neville Wadia* JT 2008 (1) SC 31, in paragraph 51 of the judgment, the apex court referred to Aharon Barak, *Purposive Interpretation in Law* (2007) at page 87) and quoted the following passage :

"Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity : First, the interpreter should assume that the Legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner ; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

17. *The apex court also referred to and followed its earlier decisions in Bharat Petroleum Corporation Ltd. v. Maddula Ratnawalli JT 2007 (6) SC 564 and Oriental Insurance Co. Ltd. v. Brij Mohan JT 2007 (7) SC 472, for taking recourse to the doctrine of "purposive interpretation".*

18. *The apex court has also applied the doctrine of purposive interpretation in fiscal statutes that would be evident from its decision in CIT v. Anjum M. H. Ghaswala [2001] 252 ITR 1 (SC) ; JT 2001 (9) SC 61.*

19. *Considering the pros and cons of the two views, we are of the opinion that by far the better interpretation would be to hold that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be a deemed grant of registration. We do not find any good reason to make the assessee suffer merely because the Income-tax Department is not able to keep its officers under check and control, so as to take timely decisions in such simple matters such as consideration of applications for registration even within the large six-month period provided by section 12AA(2) of the Act.(emphasis by us).*

20. *We, accordingly, direct the respondents, subject to any order which may be passed u/s. 12AA(3), to treat the petitioner society as an institution duly approved and registered u/s. 12AA and to recompute its income by applying the provision of section 11 of the Act. Accordingly, a formal certificate of approval will be issued forthwith to the petitioner by respondent No. 2.*

21. *The writ petition is allowed to the above extent."*

Confirming the above judgment of the Hon'ble Allahabad High Court, the Hon'ble Supreme Court has held as under:

*"The Department appealed from the decision of the High Court to the effect that once an application u/s. 12AA of the Income-tax Act, 1961 is made and it is not responded to within six months, it would be taken that the assessee was registered under the provision, expressing an apprehension that since the date of application was February 24, 2003, at the worst, it would operate only after six months from the date of the application :
..... that there was no basis for such an apprehension since that was the only logical sense in which the judgment could be understood. The registration of the application u/s. 12AA of the Act in the case of the assessee shall take effect from August 24, 2003."*

Considering the above, we hold that the assessee cannot be penalised for the delay in disposing of the application filed by the assessee for registration, that the AO and the FAA were not justified in holding that in absence of the registration certificate the assessee could not claim the exemption u/s. 11 of the Act. The assessee was to be treated to be deemed to be registered trust from the sixth month of the lodging the registration application with the CIT-1 Thane. We are of the opinion that the judgment of Society for the Promotion of Education Adventure Sport and Conservation of Environment (supra) of the Allahabad High Court has to be given preference over the judgment of Muzaffarnagar Development Authority (supra), relied upon by the FAA, as

the first judgment has been approved but the Hon'ble Supreme Court. First ground of appeal is decided in favour of the assessee.

7. Second ground of appeal is about not considering the capital expenditure for acquisition of fixed assets as application of income, amounting to Rs.45.61 lakhs.

In the appellate proceedings, the FAA held that the assessee was entitled to claim the capital expenditure for acquisition of fixed assets as application of income, that the issue was academic as the assessee was denied exemption of section 11 of the Act.

8. During the course of hearing before us, the AR stated that the assessee was entitled to claim the sum of Rs.45.61 lakhs towards the capital expenditure for acquisition of fixed assets. The DR left the issue to the discretion of the Bench.

9. As we have held that the assessee was entitled to registration from the sixth month of making the application, so, in our opinion there was no justification in denying it the claim made about acquisition of fixed assets. Second ground is decided in favour of the assessee.

ITA/11121/Mum/2016-AY.2012-13:

10. Solitary ground of appeal for the year under appeal is about denial of exemption u/s.11 of the Act for want of registration certificate to be issued by the CIT-1, Thane. Following our order for the earlier year, we decide the issue in favour of the assessee.

As a result, appeals filed by the assessee for both the AY.s stand allowed.
फलतः निर्धारिती द्वारा दोनों नि.व.के लिए दाखिल की गई अपीलें मंजूर की जाती है.

Order pronounced in the open court on 2nd May, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 2 मई, 2018 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 02.05.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

Sd

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

2. Respondent /प्रत्यर्थी

- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
5.DR “A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**