

IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH, KOLKATA
[Before Shri A. T. Varkey, JM]**I.T.A. No. 450/Kol/2021**
Assessment Year: 2016-17

Rotary Presidency Foundation (PAN: AACTR7008R)	Vs.	Income-tax Officer, Wd-1(1), Exemption, Kolkata.
Appellant		Respondent

Date of Hearing (virtual)	09.02.2022
Date of Pronouncement	18.02.2022
For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Smt. Archana Gupta, Sr. DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC) dated 27.08.2021 for AY 2016-17.

2. The grounds of appeal raised by the assessee are as under:

“1. For that the Ld. CIT(A) erred in dismissing the appeal when the petition u/s. 154 was filed within the time allowed under the law.

2. For that the Ld. CIT(A) erred in holding the view that the mistake was not apparent from the records only by considering the information contained in the return when the claim of the assessee that the trust was approved u/ s 14A was correct, verifiable from the records itself at the time when processing u/ s 143(1) was completed and as such the mistake was apparent from records.

3. That the Ld CIT(A) was otherwise also not correct in holding the view that the mistake requested to be rectified was not apparent from the records.

4. For that the ld CIT(A) should have directed to allow the sum of Rs. 5,06,446/- while computing the taxable income.

5. For that the Ld CIT(A) erred in not allowing the claim of the corpus donations of Rs. 193000/- claimed as such in the return.”

3. Brief facts of the case are that the assessee Trust had filed its return of income for the assessment year 2016-17 on 19.04.2016 showing total income of Rs.6,790/-. According to assessee, during the year the total voluntary contribution received by the assessee Trust was to the tune of Rs.7,06,030/- out of which according to it the corpus


donation received was to the tune of Rs.1,93,000/-. According to the assessee trust it had applied Rs.5,06,246/- towards charitable activities during the year. As per the order u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act), the assessee's return was processed by the CPC and by order dated 23.01.2018 the assessee's total income was assessed at Rs.7,06,033/- and net tax liability thus created was to the tune of Rs.2,74,220/-. According to the Ld. AR Shri S. M. Surana, there was mistake apparent on the face of the record because even though the assessee came into existence on 15.11.2015 and on the same day it had applied to the department/CIT(E) for registration u/s. 12A of the Act, but the same was granted by the Ld. CIT(E) only vide order dated 05.05.2016 (placed at page 25 of Paper Book) wherein our attention was drawn to the 1st para wherein the Ld. CIT(E) while granting the 12A registration has given registration u/s 12A of the Act **w.e.f. 16.11.2015**. For easy reference a scanned copy of the same is reproduced below:

OFFICE OF THE COMMISSIONER OF INCOME TAX (EXEMPTIONS) 10B, Middleton Row, 5th floor, Kolkata - 700 071.	
NAME & ADDRESS	ROTARY PRESIDENCY FOUNDATION Room No.215, 'Krishna' 224, A.J.C. Bose Road, Kolkata-700 017, West Bengal.
PAN	AACTR7006R
DATE OF APPLICATION	15.12.2015
DATE OF ORDER	05.05.2016

ORDER U/S 12AA(1)(b)(i) OF THE INCOME TAX ACT, 1961

The aforesaid Trust established under the Trust Deed dated 15.11.2015 has filed an application for registration u/s.12A(a) of Income Tax Act, 1961 in Form No.10A on 15.12.2015. After considering the material placed on record, I the undersigned, hereby register the Trust with effect from 15.11.2015.

- The name of the Trust has been entered at Unique Registration Number (URN)-AACTR7006R/10/15-16/T-0036 as established for charitable purposes for advancement of objects of general public utility in the Register of Trusts maintained in this office.
- No change in the Trust Deed shall be effected without the prior approval of the Commissioner of Income Tax (Exemptions), Kolkata.
- This certificate testifies to the fact of registration u/s 12AA of the Income Tax Act, 1961 only. It does not confer any right or entitlement regarding operation of Section 11, 12 & 13 or any other Provisions of the Income Tax Act, 1961 which is to be decided by the Assessing Officer on merit.
- This Trust is henceforth assessable by the Income Tax Officer (Exemptions) - Ward-1(1), Kolkata.
- In terms of Section 12AA(3), if the activities of the Trust are found to be not genuine or not being carried out in accordance with the objects of the Trust, the registration granted vide this order shall be liable for cancellation.


 (Ld. (A) AGRAWAL)
 Commissioner of Income Tax (Exemptions), Kolkata.

Form No. CIT(E)10E/530/15-16/T-0036/16-17/ 537-39 Date:- 05-05-2016.

4. According to the Ld. AR, since the assessee had applied for registration u/s. 12A of the Act and this year (AY 2016-17) was the first year of its formation and having duly applied for the registration u/s. 12A of the Act and it was granted by the Ld. CIT(E) though on 05.05.2016, the registration u/s 12A of the Act was granted to the Trust w.e.f. 16.11.2015 u/s. 12A of the Act. According to the Ld. AR even though this was the factual position, however, since the return of income was filed when the assessee was not in receipt of this order dated 05.05.2016 (albeit w.e.f. 16.11.2015,12A registration) obviously the assessee did not reflect about it in the return of income [registration u/s 12A of the Act]. In the aforesaid circumstances, the CPC when it was processing the return of income filed by the assessee on 19.04.2016 did not give any tax relief u/s. 11 of the Act. Aggrieved by the aforesaid action of the CPC, the assessee filed a rectification application u/s. 154 of the Act before the AO which was dismissed vide order dated 11.12.2019. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who did not give any credence to the factual aspects as stated (supra). And dismissed the appeal on technical reason that there is no error apparent on the face of the record. Aggrieved by the impugned action of Ld. CIT(A) the assessee is before this Tribunal.

5. Having heard rival submissions and after having carefully gone through the facts and circumstances of the case, it is noted that the assessee Trust was established vide Trust Deed dated 16.11.2015 and had filed an application for registration u/s. 12A of the Act on 16.11.2015. The Ld. CIT(E) after considering the material placed before him and after hearing the assessee was pleased to register the assessee trust w.e.f. 16.11.2015 vide order dated 05.05.2016 (refer scanned copy placed at page 25 of paper book). In the interregnum, the assessee had to file the return of income wherein since it had not received the registration granted by the Ld. CIT(E), the assessee filed the return of income on 19.04.2016 obviously without stating about the 12A registration granted to it *albeit* later on 05.05.2016 as discussed w.e.f. 16.11.2015. Therefore, when the CPC processed the return of income it was not given any exemption/relief u/s. 11 of the Act and computed the total taxable income at Rs.7,06,033/- in place of the assessee's returned income of Rs.6,790/-. According to assessee since it was having registration u/s. 12A of the Act from 16.11.2015, so according to it, it should get the benefit of section 11 of the Act. According to the assessee, it has received total voluntary contribution to the tune of Rs.

9,22,670/- out of which corpus donation was to the tune of Rs.1,93,000/- and that the assessee trust had applied Rs.5,06,246/- towards charitable activities during the year under consideration and only because the assessee could not bring to the notice of the CPC in its return of income the fact of it having registration u/s 12A of the Act, the CPC while processing the assessee's ROI, enhanced its income from the returned income of Rs.6,790/- to Rs.7.06,033/- just because the assessee did not mention about having registration u/s. 12A of the Act, which action cannot be countenanced. It is undisputed that due to late receipt of the order from Ld. CIT(E) granting Section 12A registration the assessee could not mention the same in its return of Income. Therefore that omission of fact cannot be the reason for not giving the benefit u/s. 11/12/13 of the Act. Since the assessee has been granted registration u/s. 12A of the Act with effect from 16.11.2015 i.e. much before the return of income was in fact filed, according to me the assessee is entitled to the benefit u/s. 11/12/13 of the Act unless the AO during scrutiny is able to find out that there is misrepresentation in respect of its claim of voluntary donation/application of its income etc. It has to be borne in mind that once section 12A registration has been granted to an assessee, then income has to be computed under Chapter III of the Act. With this caveat/observation, I find that there was a mistake apparent on the face of the record and, therefore, I allow the appeal of the assessee and direct the AO to grant benefits u/s. 11/12/13 of the Act as per the observation given supra and in accordance to law.

6. In the result, the appeal of the assessee is allowed as indicated above.

Order is pronounced in the open court on 18th February, 2022

Sd/-
(A. T. Varkey)
Judicial Member

Date: 18th February, 2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Rotary presidency Foundation, 215, Krishna, 224, AJC Bose Road, Kolkata-700 017.
2. Respondent – ITO, Ward-1(1), Exempt, Kolkata..
3. CIT(A) (NFAC)
4. CIT Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar