

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

Before

Shri Sanjay Garg, Judicial Member

&

Dr. Manish Borad, Accountant Member

I.T.A. No.240/KOL/2023

Assessment Years: 2018-19

Lions Club of Burdwan **Appellant**
(PAN: AAAJL1232F)

Vs.

Asstt. Director of Income-tax, **Respondent**
CPC/ ITO, Ward-2(1), Burdwan

Appearances by:

Shri R. K. Kankaria, FCA appeared for Appellant.

Shri P. P. Barman, Addl. CIT, Sr. DR appeared for Respondent.

Date of concluding the hearing : 09.05.2023

Date of pronouncing the order : 06.06.2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by ld. Commissioner of Income-tax (Appeals), NFAC, Delhi [in short ld. “CIT(A)”] dated 27.02.2023 arising out of the Intimation order framed u/s 143(1) of the Act by Ld. ADIT, CPC, Bangalore dated 22.06.2020.

2. On perusal o the ground, we notice that the sole issue for our adjudication is whether Ld. CIT(A) erred in confirming the action of the AO denying the exemption u/s. 11 of the Act at Rs.1,97,89,652/- for the sole reason that since the registration u/s. 12AA of the Act was granted from AY 2020-21 the assessee is not eligible for the said exemption for impugned year i.e. AY 2018-19.

3. At the outset, Ld. Counsel for the assessee submitted that the case of the assessee is squarely covered by the decision of Coordinate Bench Ahmedabad in the case of *Shri Bhanushali Mitra Mandal Trust Vs. ITO (ITA No. 2515/Ahd/2015) dated 22.02.2016* and the decision of this Tribunal in the case of *Sree Sree Ramkrishna Samity Vs. DCIT (ITA No. 1680/Kol/2012 dated 09.10.2015*

4. On the other hand, the Ld. DR vehemently argued supporting the order of the Ld. CIT(A).

5. We have heard rival submissions and have gone through the record placed before us. We note that the assessee namely Lions Club of Burdwan is a society incorporated on 16.02.1971, and it is engaged in carrying out charitable activities mainly medical relief and advancement of other object and general public utility in accordance with section 2(15) of the Act. The books of account are duly audited and for AY 2018-19 deductions u/s. 11 of the Act was claimed at Rs.1,97,89,652/- on account of the amount of Rs.1,56,60,913/- applied on revenue account, Rs.28,59,084/- applied on capital account and Rs.12,69,645/- accumulated to be applied for charitable activities in future. In the original return, the assessee wrongly claimed the exemption u/s. 10(23C) of the Act and not u/s. 11. Return processed u/s. 143(1)(a) of the Act dated 28.02.2019 proposing adjustment for the amount of exemption claimed treating return defective u/s. 139(9) of the Act. Since the wrong claim was made and the return of income was treated as defective u/s. 139(9) of the Act and the assessee was asked to furnish a fresh return of income to which necessary compliance was made and a fresh return was filed on 17.12.2019. Subsequent to the filing of the original return on 12.10.2018 and before filing the return in response to notice u/s.

139(9) of the Act on 17.12.2019 assessee filed an application for registration u/s. 12AA of the Act on 12.06.2019 and vide order dated 30.08.2019 assessee was granted registration u/s. 12AA of the Act. It remains an undisputed fact that at the time when registration was granted u/. 12AA of the Act, the proceedings with the Centralised Processing Centre were pending. Under this given set of facts, we need to refer to the proviso to section 12A(2) of the Act which reads as follows:

"Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year."

6. Further, we note that this Tribunal in the case of Sree Sree Ramkrishna Samity (supra) and Sri Bhanushali Mitra Mandal Trust (supra) has examined the similar issue, referred to the provisions of section 12A(2) of the Act, observed as follows:

"Sree Sree Ramkrishna Samity

6.10. We hold that it is an established position in law that a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole and accordingly the said insertion of first proviso to section 12A(2) of the Act with effect from 1.10.2014 should be read as retrospective in operation with effect from the date when the condition of eligibility for exemption under section 11 & 12 as mentioned in section 12A provided for registration u/s.12AA as a pre-condition for applicability of section 12A.

6.11. We also hold that though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. It is only elementary that a statutory provision is to be interpreted ut res magis valeat quam pereat, i.e to make it workable rather than redundant. Applying this legal maxim, it would be just and fair to hold that the amendment in section 12A is brought in the

statute to confer benefit of exemption u/s 11 of the Act on the genuine trusts which had not changed its objectives and had carried on the same charitable objects in the past as well as in the current year based on which the registration u/s 12AA is granted by the DIT (Exemptions)."

Copy of the above judgment has been enclosed herewith vide Page No 70-83."

Shree Bhanushali Mitra Mandal Trust :

"7.2 It clearly goes to prove that the first proviso to section 12A(2) was brought in the statute only as a retrospective effect with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by the said trust. The benefit of retrospective application alone could be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No.2) Act, 2014 issued by the Central Board of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015. Apparently the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the ld. A.O., unless the registration granted earlier cancelled or refused for specific reasons. The statute also goes on to provide that no action u/s. 147 could be taken by the AD merely for non-registration of trust for earlier years."

7.4. The explanatory Memorandum to Finance (No.2) Bill, 2014, which sought to amend section 12A explains the objects and reasons for making such amendments. The explanation makes it clear that it was in order to provide relief to such trusts in respect of which, due to absence of registration u/s. 12AA tax liability got attached though otherwise they were eligible for exemption by fulfilling other substantive conditions that the amendment was brought in."

Copy of the above judgment has been enclosed herewith vide Page No 84-92."

7. From perusal of the above finding of this Tribunal and also considering the provisions of section 12(2)(a) of the Act and also the explanatory note issued by CBDT Circular No. 1/15 dated 21.01.2015, we are inclined to hold that for the year under appeal i.e. AY 2018-19 since the proceedings were pending with CPC and in the meantime registration u/s. 12AA of the Act was granted the benefit of deduction u/s. 11 of the Act is available to the assessee. Further, there is no other finding of the lower authorities against the assessee for being involved in any other activities other than charitable activities for which registration u/s. 12AA of the Act has been granted, we direct

the Ld. AO to allow the exemption/deduction u/s. 11 of the Act at Rs.1,97,89,652/- i.e. as per the claim made in the return of income.

4. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 06.06.2023.

Sd/- [Sanjay Garg]
Judicial Member

Sd/-[Manish Borad]
Accountant Member

Dated: 06.06.2023
J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Lion club of Burdwan, Goodshed Road, Tinkonia, Burdwan, West Bengal- 713101.**
- 2. ADIT, CPC/ITO, Ward-2(1), Burdwan**
3. CIT(A), NFAC, Delhi.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata