

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT  
JAIPUR**

(1) D.B. Income Tax Appeal No. 32 / 2008

Commissioner Of Income Tax

----Appellant

Versus

Sahitya Sadawart Samiti Jaipur

----Respondent

Connected With

(2) D.B. Income Tax Appeal No. 29 / 2008

----Appellant

Versus

Sahitya Sadwart Samiti

----Respondent

(3) D.B. Income Tax Appeal No. 563 / 2009

C I T

----Appellant

Versus

Sahitya Sadawart Samitti

----Respondent

(4) D.B. Income Tax Appeal No. 406 / 2011

C I T

----Appellant

Versus

Sahitya Sadawart Samitti

----Respondent

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For Appellant(s) : Mr. R.B. Mathur with Mr. K.D. Mathur

For Respondent(s) : Mr. Mahendra Gargeiya with Ms. Manisha  
Surana

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**HON'BLE MR. JUSTICE K.S. JHAVERI**

**HON'BLE MR. JUSTICE INDERJEET SINGH**

**JUDGMENT**

**19/05/2017**

1. Since identical question of law and facts are involved in these appeals hence they are decided by this common judgment.

2. By way of these appeals, the appellant has assailed the judgment and order of the Tribunal whereby Tribunal has allowed the appeal preferred by the assessee.

3. This court while admitting the appeals framed following substantial questions of law:-

**(i) Appeal No.32/2008**

"1. Whether in the facts and circumstances of the case, the ITAT has not acted illegally and perversely in making observations with regard to grant of exemption u/s 10(23C) (vi) when the ITAT has no jurisdiction to decide any application/appeal arising out of order passed either granting or rejecting exemption u/s 10(23C) (vi) of the Act by the Competent Authority.

2. Whether, without prejudice to the facts that the ITAT did not have jurisdiction to examine the merits of the case, whether it was justified in quashing the findings given by the AO holding that the same are perverse, contrary to facts and against the law, completely ignoring the specific findings that conditions set out in the provisos to Section 10(23C) have not been fulfilled.

**(ii) Appeal No.29/2008**

"1. Whether in the facts and circumstances of the case, the ITAT has not acted illegally and perversely in directing the CIT to allow application of respondent u/s 12A(a) of the Act for registration for the purpose of the exemption u/s 11 & 12 of the ACT for the claimed assessment year?"



(iii) **Appeal No.563/2009**

"(i) Whether in the facts and circumstances of the case, the ITAT was justified in holding that the respondent assessee is entitled for exemption u/s 11 & 12 of the Act?

(ii) Whether in the facts and circumstances of the case, the ITAT was justified in law in making observations with regard to grant of exemption u/s 10(23C) (vi) when the ITAT has no jurisdiction to decide any application/appeal arising out of order passed either granting or rejecting exemption u/s 10(23C)(vi) of the Act by the Competent Authority?"



(IV) **Appeal No.406/2011**

"1. Whether in the facts and circumstances of the case, the ITAT was justified in holding that society is entitled for exemption u/s 11 & 12 of the Act.

2. Whether in the facts and circumstances of the case, the ITAT has not acted illegally and perversely in making observations with regard to grant of exemption u/s 10(23C)(vi) when the ITAT has no jurisdiction to decide any application/appeal arising out of order passed either granting or rejecting exemption u/s 10(23C) (vi) of the Act by the Competent Authority."

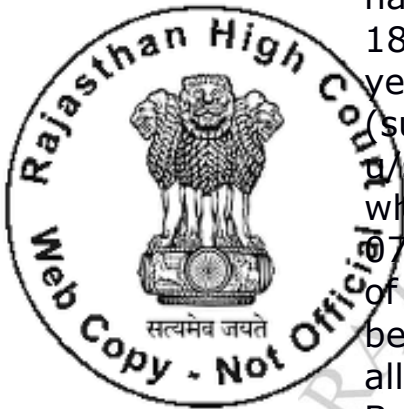
For convenience of the Court appeal No.29/2008 is taken first

4. In this appeal, counsel for the appellant has contended that registration was made on 30.5.2002 and rejected on 18.11.2005.

5. Mr. R.B. Mathur counsel for the appellant contended that tribunal has committed serious error while observing in para no.2.12 reads as under:-

"2.12 After having gone through the impugned order, we find that the Ld. CIT has denied the above plea of the assessee on the basis that the application dated 30.5.2012 was an invalid application and not meeting with mandatory requirement of S.12A(a), hence the limitation of S12AA (2) is not applicable in respect of such invalid application. We do not agree with such

findings of the Ld.CIT on the issue because in all the circumstances either due to defect in the application or on merits of it the Ld. CIT under sub clause (2) of S.12AA is supposed to grant or refuse registration before 6 months from the end of months in which application was received and in the present case since the application was filed on 30.5.2012 the Ld. Cit should have disposed off the application on or before 30.11.2012. The Ld. CIT has however disposed the application on 18.11.2015 i.e. with the delay of around three years. In the case Sambandh Organization V/s CIT (supra) relied upon by the Ld. A.R. the application v/s 12A for registration was filed on 2.8.2002 which was rejected by the Ld. Commissioner on 07.11.2003. It was held that in view of provisions of S.12AA it could be said that impugned order had been passed beyond statutory period deemed to be allowed. Similar view has been expressed by Delhi Bench of the Tribunal in the case of Sardarilal Obroi Memorial Charitable Trust v/s ITO (supra) referred by the Ld. A.R."



6. Mr. Mahendra Gargiyea counsel for the respondent has relied upon the decision of Supreme Court in Commissioner of Income Tax and ors. vs. Society for the Promotion of Education (2016) 382 ITR 6 (SC) wherein speaking for the bench Supreme Court has observed as under:-

"The short issue is with regard to the deemed registration of an application Under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

The learned Additional Solicitor General appearing for the Appellants, has raised an apprehension that in the case of the Respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.

We see no basis for such an apprehension since that is the only logical sense in which the



judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application Under Section [12AA](#) of the Income Tax Act in the case of the Respondent shall take effect from 24.08.2003. Subject to the above clarification and leaving all other questions of law open, the appeal is disposed of with no order as to costs."



The view taken by the tribunal is very clear that the registration will take effect from the date of application. In our considered opinion, in view of the observation made by the Tribunal, the registration will be granted from 30.5.2002. The issue is answered in favour of the assessee.

The appeal stands dismissed.

#### **Appeal No.32/2008**

In view of the decision in tax appeal no.29/2008 the registration will be given accordingly. In that view of the matter, the exemption which is granted u/s 10 (23C) will be considered on the basis of 12A registration. The issues are accordingly answered.

The appeal stands dismissed.

#### **Appeal 406/2011**

11. Similarly in view of the decision of appeal no. 29/2009, the issue is answered in favour of the assessee and against the department.

The appeal stands dismissed.

#### **Appeal 563/2009**

11. In view of the decision of appeal no.32/2008, the issue is answered in favour of the assessee and against the department.

12. Counsel for the assessee has also placed on record the notification dt. 13.4.2009 in respect of assessee passed by Chief Commissioner of Income Tax, Jaipur which because of this decision taken will not be disturbed.

All the appeals are dismissed as indicated above.

A copy of this judgment be placed in each file.



(INDERJEET SINGH),J.

Brijesh 13-16.

(K.S. JHAVERI),J.



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