

Court No. - 3**Case :- INCOME TAX APPEAL No. - 11 of 2014****Appellant :- The Commissioner Of Income Tax, Ayakar Bhawan Faizabad****Respondent :- Shri Awadh Bihari Shri Ram Lok Vikas Sansthan Mehdawal****Counsel for Appellant :- Sidharth Dhaon, Alok Mathur, Manish Mishra****Hon'ble Sudhir Agarwal,J.****Hon'ble Ravindra Nath Mishra-II,J.**

1. Heard Sri Alok Mathur and Sri Manish Mishra for appellant. None has appeared on behalf of respondent, though notice was already issued by Registered post A.D. and we have perused office report dated 25.4.2017. Service upon respondent is deemed sufficient, therefore, we proceed to hear and decide this appeal after hearing learned counsel for the appellant.

2. This appeal under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as "Act, 1961) has arisen from judgment and order dated 12.11.2013 passed by Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as "Tribunal") in Income Tax Appeal No. 628/LKW/2011 relating to Assessment Year (herein after referred to as "A.Y.") 2008-09.

3. This appeal was admitted on the following substantial questions of law:

“(1) Whether on the facts and circumstances of the case Income Tax Appellate Tribunal was justified in applying the time limit of 6 months provided in section 12AA(2) in a case where the order u/s 12AA is to be passed in second round in pursuance to ITAT's directions.

(2) Whether non disposal of application for registration by granting or refusing registration before the expiry of six months as provided u/s 12AA

(2) of the Income Tax Act, 1961 would result in deemed grant of registration.

(3) Whether in the facts and circumstances of the case and Hon'ble Income Tax Appellate Tribunal was correct in granting deemed registration u/s 12AA without appreciating the facts that power to grant or refuse registration is statutory power of Commissioner u/s 12AA.

(4) Whether in the facts and circumstances of the case Income Tax Appellate Tribunal has erred in substituting its own satisfaction in place of the satisfaction of commissioner of income tax as provided u/s 12AA of Income Tax Act, 1961, thereby exceeding its jurisdiction."

4. We find that the aforesaid questions are squarely covered by a Full Bench judgment of this Court in the case of **CIT vs. Muzafar Nagar Development Authority MANU/UP/0207/2015**, wherein following questions were referred for consideration by Full Bench:

"(i) Whether the non-disposal of an application for registration, by granting or refusing registration, before the expiry of six months as provided under s. 12AA (2) of the IT Act, 1961 would result in deemed grant of registration;and

(ii) Whether the Division Bench Judgment of this Court in the case of Society for the Promotion of Education Adventure Sport & Conservation of Environment v. CIT MANU/UP/0144/2008: (2008) 216 CTR (All) 167: (2008) 5 DTR (All) 329 holding that the effect of non-consideration of the application for registration within the time fixed by s. 12AA (2) would be deemed grant to registration, is legally correct."

5. Court has answered the aforesaid questions as under:

"(i) non-disposal of an application for registration, by granting or refusing registration, before the expiry of six months as provided under s. 12AA (2) of the IT Act, 1961 would not result in deemed grant of registration;and

(ii) the judgment of the Division Bench of this Court in Society for the

Promotion of Education Adventure Sport & Conservation of Environment (supra) does not lay down the correct position of law.”

6. In view of aforesaid judgment rendered by Full Bench, the view taken by Tribunal otherwise cannot be sustained. The aforesaid questions are answered in favour of appellant and against Assessee. Appeal is accordingly allowed. The judgment of Tribunal dated 12.11.2013 is hereby set aside. We direct Commissioner of Income Tax to pass appropriate order on the application for registration filed under Section 12AA of Act, 1961, if not already passed, within one month and if it has already been passed, communicate to Assessee and Revenue.

Order Date :- 13.7.2017
Arvind