

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1853/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Rotary Club of Poona Downtown
Charitable Trust.
Khandelwal Jain & Associates,
Alankar Cinema Building,
1st Floor, Above United Bank,
Pune-411 001
PAN : AAAJR0413L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (Exemption),
Ward-2, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Nahar

Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 09.04.2019

घोषणा की तारीख / Date of Pronouncement : 16.04.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals), Pune-10 dated 08.10.2018 for the assessment year 2013-14
as per following grounds of appeal on record:

"1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the addition of Rs.9,40,110/- made by the AO refusing to grant the exemption u/s.11 of

the Act in pursuance of the fact that registration u/s.12A could not be produced, is contrary to the facts and the provisions of law prevailing in the case of the appellant. The addition made by the AO be deleted. The appellant be granted just and proper relief in this respect.

2. The appellant prays to be allowed, to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.”

2. The only grievance of the assessee is refusal of granting exemption u/s.11 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Revenue Authorities and consequent addition of Rs.9,40,110/- in the hands of the assessee.

3. The brief facts in this case are that the assessee was registered under the Bombay Public Trust Act, 1950 vide registration No. E-1077(Pune) dated 27.10.1986. The Assessing Officer during assessment proceedings asked the assessee to furnish evidence/ proof of registration u/s.12A of the Act which the assessee failed to furnish. Therefore, the Assessing Officer asked the assessee vide letter dated 17.03.2016 to explain why exemption u/s.11 should not be denied for being not registered u/s.12A of the Of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee vide letter dated 11.03.2016 contended that the trust was earlier granted the registration u/s.12A of the Act but the certificate was not traceable. The assessee however, had submitted a copy of exemption u/s.80G of the Act issued by the Department on 07.11.2015. It was requested before the Assessing Officer to grant exemption u/s.11 of the Act. The Assessing Officer in absence of non production of registration certificate u/s.12A of the Act had denied the benefit of exemption u/s.11 of the Act on the excess of income over expenditure and added Rs.9,40,110/- in the hands of the assessee.

4. During the First Appellate proceedings, the Ld. CIT(Appeals) upheld the order of the Assessing Officer only on the ground that the copy of registration certificate u/s.12A of the Act was not furnished by the assessee before him.

5. At the time of hearing the Ld. AR of the assessee vehemently argued that the Trust had applied for granting registration u/s.12A of the Act on 12.08.1986 before the Commissioner of Income Tax. Registration certificate u/s.12A as well as exemption u/s.80G of the Act was granted to the assessee Trust. The exemption u/s.80G was renewed from time to time till 2007. Even the exemption u/s.80G for granting 100% deduction during Gujarat earthquake was also granted which was renewed twice. The copy of original application for registration and exemption u/s.80G of the Act has been placed on record. Similarly certificate u/s.80G of the Act has also been renewed from time to time which is also evident from record. There is no dispute from Revenue side with regard to the fact that the exemption u/s.80G of the Act has constantly been renewed for the assessee Trust.

5.1 The Ld. AR of the assessee further submitted that time and again they had requested the Revenue Authority to furnish the copy of registration certificate u/s.12A to the assessee since that was not in their possession. However, till date the Revenue Authorities have not conceded to the request of the assessee. Thereafter, the assessee has filed an application through RTI to ascertain whether the Department has the copy of registration certificate u/s.12A of the Act. Thereafter, order issued u/s.7(1) of the RTI Act, 2005, was received by the assessee trust intimating that such information is not available with the department. The charge i.e. RTI Officer of the Department was created on 15.11.2014 whereas the information which the assessee trust wants pertains to 12.08.1986 i.e. period much before the creation of the charge. Therefore, the assessee trust was unable to procure any information

from the RTI charge of the Department. The Ld. AR of the assessee also invited our attention to the submissions made before the Ld. CIT(Appeals) wherein functions of the assessee trust has been submitted before the Revenue Authorities. In that written submission, it is stated that lots of programmes of charitable nature are conducted by this assessee trust. The assessee trust does not have its own office and there is no permanent place as well as a permanent Governing body.

5.2 The Ld. AR further submitted that parameters of the facts of the assessee trust should be considered, wherein no permanent office is there but at the same time it is also correct that the assessee trust has received registration u/s.12A and exemption u/s.80G of the Act starting from 12.08.1986 onwards. The basic evidence of this fact is that they have been able to renew exemption u/s.80G of the Act from time and again. It is the contention of the assessee that if the Department is not able to provide the copy of registration certificate that does not justify denial of exemption u/s.11 of the Act to a bona-fide assessee and in support of this contention; the Ld. AR placed reliance on the decision of the Pune Bench of the Tribunal in the case of Oswal Bandu Samaj Vs. CIT in ITA No.1561/PN/2012 and in ITA Nos.203 & 1840/PN/2014. In this case, facts are identical and similar to that of the assessee. Herein also repeatedly exemption u/s.80G of the Act was granted to the assessee. However, the Revenue Authorities denied exemption since registration u/s.12A certificate was not available with the assessee. In that decision the Tribunal had relied on the decision in the case of Sardar Bhavan Trust Vs. Income Tax Officer in ITA No.876 to 881/AHD/2010 for the assessment years 1999-2000 to 2004-05 decided on 10.05.2013. The Ld. AR of the assessee further submitted that the onus is on the Revenue to prove that the assessee trust was not registered u/s.12A of the Act. The assessee

cannot be panelized for the failure of the Department in maintaining necessary records with it. Following this decision, Pune Bench of the Tribunal observed that the assessee had furnished sufficient evidences in support of its claim that it has been earlier enjoying the benefit of exemption u/s. 80G of the Act in the past and categoric statement of the assessee that the original registration certificate issued u/s.12A has been misplaced, there was no occasion for the Commissioner of Income Tax to ask for any further documents in support of earlier registration granted u/s.12A of the Act. The Revenue has not been able to explain as to how the assessee was granted approval/extension u/s.80G on regular intervals in the absence of registration u/s.12A of the Act.

6. Per contra, the Ld. DR has relied on the orders of the Sub-ordinate Authorities.

7. We have perused the case records and heard the rival contentions. It is an undisputed fact that the assessee trust has been getting exemption u/s.80G of the Act on regular basis as per its application for renewal from 1986 till 2007. The Revenue Authorities have always renewed the exemption for the assessee's trust u/s.80G of the Act. It is also undisputed that the assessee trust has applied for registration u/s.12A and exemption u/s.80G of the Act on 12.08.1986 onwards. From that time onwards, there has been constant renewal of exemption u/s.80G of the Act. The Revenue Authorities have refused exemption u/s.11 of the Act to the assessee on the ground that they were not able to produce registration certificate u/s.12A of the Act. The assessee on its own has made constant efforts to obtain such copy of the registration certificate from the Department and have even applied through RTI application. However, the efforts of the assessee did not materialize. But it is clearly demonstrated that such efforts were made by the assessee. On the

contrary, the Revenue has not brought on record any evidence to show that the assessee trust was not registered u/s.12A of the Act. The action of the Revenue granting constant renewal u/s.80G of the Act from time and again itself shows that the Revenue never doubted the registration u/s.12A of the Act for the assessee trust since one of the essential criteria for granting renewal of exemption u/s. 80G of the Act is that the Trust or Society must be registered u/s.12A or 12AA of the Act. The very fact that time and gain, the exemption was granted to the assessee trust itself shows that Revenue has agreed to the fact that trust is registered u/s.12A of the Act. Just because documentary evidences were not furnished by the assessee cannot be the ground for denying exemption u/s.11 of the Act to the assessee.

8. Even Co-ordinate Bench of the Tribunal, Ahmedabad in the case of Sardar Bhavan Trust Vs. Income Tax Officer (supra.) has categorically observed and held that the onus is on the Revenue to prove that the trust was not registered u/s.12A of the Act and that the assessee cannot be penalized for failure on the part of the Department in maintaining necessary records with it. This observation was considered by the Co ordinate Bench of the Tribunal, Pune in the case of Oswal Bandhu Samaj Vs. CIT(supra.) wherein the Pune Bench of the Tribunal has observed that the assessee furnished sufficient evidence in support of its claim that it has been earlier enjoying the benefit u/s.80G and it had been getting renewal from time and again whereas the Revenue has not been able to explain as to how the assessee was granted approval/extension u/s.80G in absence of registration u/s.12A of the Act.

9. Reverting to the facts of the present case, the assessee trust has made ample efforts for procuring information from the Department regarding duplicate copy of registration certificate. The Department was not able to provide any copy of the registration certificate. This demonstrates that the

process of maintaining record in the Department is not proper and appropriate for which bona-fide assessee cannot be penalized. Furthermore, Revenue has accepted that the assessee trust is registered u/s.12A of the Act since all these years they have granted 80G renewal to the assessee trust and this fact is not disputed by the Department.

In view of the matter, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to grant benefit of exemption u/s.11 of the Act to the assessee trust.

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

Order pronounced on 16th day of April, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th April, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-10.
4. The CIT(Exemption), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	09.04.2019	Sr.PS/PS
2	Draft placed before author	09.04.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		