

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1236/Del/2024
(Assessment Year: 2021-22)**

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| Shambhu Dayal Modern School, Gohana Road, Haryana (Appellant) PAN:AABTS9199M | Vs. ITO (Exemption), Rohtak (Respondent) |
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| Assessee by : | Ms. Rano Jain, Adv Ms. Mansi Jain, Adv |
| Revenue by: | Shri N. K. Bansal, Sr. DR |
| Date of Hearing | 23/07/2024 |
| Date of pronouncement | 02/08/2024 |

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1236/Del/2024 for AY 2021-22, arises out of the order of the Commissioner of Income Tax (Appeals)/ Addl/ JCITA)-11, Mumbai [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2023-24/1060517179(1) dated 05.02.2024 against the order of assessment passed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.09.2022 by CPC, Bengaluru (hereinafter referred to as 'ld. AO').
2. The only effective issue to be decided in this appeal is as to whether the ld CIT(A) was justified in confirming the denial of exemption u/s 11 of the Act by the CPC u/s 143(1) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. The assessee is a society registered u/s 12AA of the Act vide registration dated 08.01.2001. The return for AY 2021-22 was filed by the assessee on 31.03.2022 u/s 139(4) of the Act declaring Nil income claiming exemption 11 of the Act. Infact the last date for filing return of income for AY 2021-22 u/s 139(4) of the Act was 31.03.2022 as per CBDT Circular No. 17/2021 dated 09.09.2021. Pursuant to the amendments brought in statute, all charitable trusts were supposed to apply for fresh registration u/s 12AB of the Act despite the fact that they were already holding registration u/s 12AA of the Act. Due date for preferring the application for seeking fresh registration u/s 12AB of the Act was extended by CBDT from time to time giving leeway to the assessee that the assessee trusts should not be put to any undue hardship. In the instant case, provisional registration u/s 12AB of the Act was indeed granted to the assessee by the Id Pr. CIT vide order in Form 10AC dated 05.04.2022 for AYs 2022-23 to 2026-27. The return of income was processed by the CPC, Bengaluru u/s 143(1) of the Act stating that the details of fresh registration u/s 12AB of the Act obtained by the assessee were not filled by the assessee in the relevant column of the ITR and consequentially exemption u/s 11 of the Act was to be denied. It is pertinent to note that return of income was filed belatedly on 31.03.2022. The registration u/s 12AB of the Act was obtained by the assessee only on 05.04.2022. Hence, it would be impossible for the assessee to mention the details of registration obtained u/s 12AB of the Act in the relevant column of the ITR filed on 31.03.2022. However, the assessee had furnished the entire details of registration obtained u/s 12AB of the Act on 05.04.2022 before the Id CIT(A). The Id CIT(A) even record this fact in his order as part of the reproduction of written submission of the assessee vide page 5 in para 2.1. Despite the same, the Id CIT(A) ignores the fact of assessee

having obtained the provisional registration u/s 12AB of the Act and proceeds to uphold the denial of exemption u/s 11 of the Act on the ground that the assessee had not furnished the details of fresh registration obtained. This action of the Id CIT(A) is highly condemnable as it is directly contrary to the facts on record. It is a fact that assessee had furnished the audit report in form No. 10B along with return of income on 31.03.2022. It is fact that this filing of audit report in form 10B of the Act was filed beyond the prescribed due date i.e. 15.03.2022. In this regard, it is pertinent to note that AY 2021-22 being the first year of requirement of law to file the audit report in Form 10B 1 month prior to the due date of filing the return of income. Hence, apparently the assessee had not complied with this amended requirement of law, being the first year of such requirement. Now the moot question that arises for our consideration is as to whether non uploading of Form 10B within the date prescribed under the Act would become fatal to the claim of exemption u/s 11 of the Act ? This aspect has been duly considered by the coordinate bench decision of Ahmedabad Tribunal in the case of ITO Vs. Takshshila Foundation (NGO) in ITA NO. 118/Ahd/2024 and CO No. 08/Ahd/2024 dated 02.07.2024 wherein, it was held that the requirement of filing of audit report in Form 10B was only procedural requirement of law and as long as the same was made available to the Id AO before the completion of assessment either u/s 143(1)/ 143(3)/ 144/ 147 of the Act, the substantive claim of exemption u/s 11 of the Act cannot be denied to the assessee. Similar was the view taken by the coordinate bench of Dehradun Tribunal in the case of Saraswati Shishshu Mandir Vs. ADIT, CPC in ITA No. 01/DDN/2023 dated 29.02.2024.

4. We find that the only reason for denial of claim of exemption u/s 11 of the Act to the assessee in the instant case is for non furnishing of fresh

registration u/s 12AB of the Act. We find that the assessee was already enjoying the registration u/s 12AA of the Act vide order dated 08.01.2001, though in the instant case the assessee had indeed applied for fresh registration u/s 12AB of the Act in the prescribed form within the time allowed by the statute. That is why the said application has been duly considered by the Id Pr. CIT by granting provisional registration in Form 10AC dated 05.04.2022 valid for 5 assessment years commencing from AY 2022-23 to 2026-27. As per the law, fresh registration could be granted only from the year in which application was preferred by the assessee. At the cost of repetition, the said application made by the assessee for seeking fresh registration u/s 12AB of the Act is well within time allowed by CBDT. Hence the original registration obtained u/s 12AA of the Act dated 08.01.2001 would protect the assessee up to AY 2021-22 for claim of exemption u/s 11 of the Act as long as other conditions prescribed in section 11 to 13 of the Act have been fulfilled by the assessee. From AYs 2022-23 to 2026-27, the assessee would be eligible for exemption u/s 11 of the Act given the fresh registration obtained u/s 12AB of the Act. Hence, for AY 2021-22 the assessee would be duly entitled for claim of exemption u/s 11 of the Act. In view of the aforesaid observations and respectfully following the judicial precedents herein above, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 02/08/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:02/08/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi