IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1885 OF 2019

ALONG WITH

WRIT PETITION NO.1887 OF 2019

ALONG WITH

WRIT PETITION NO.1888 OF 2019

ALONG WITH

WRIT PETITION NO.1889 OF 2019

ALONG WITH

WRIT PETITION NO.1890 OF 2019

ALONG WITH

WRIT PETITION NO.1891 OF 2019

Ashwini Sahakari Rugnalaya Ani]
Sanshodhan Kendra Niyamit.]
(Ashwini Sahakari Rugnalaya and]
Research Centre), Solapur.] … Appellant

Versus

Deputy Commissioner of Income Tax]
(Exemption) (HQ), Pune & Anr.] … Respondent

Mr. Rohan Deshpande a/w Ms. Alisha Pinto for Appellant.
Mr. Sham Walve for Respondent.

CORAM :- AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE :- 04 APRIL, 2019

<u>P. C.</u> :-

1. These Petitions arise in the common background. They have been heard together and would be finally disposed of by this common order. For convenience, we may record facts from Writ Petition No.1885 of 2019.

2. The Petitioner is a cooperative society and runs a hospital. The Petitioner had applied for registration under Section 12AA of the Income Tax Act, 1961 ('the Act', for short) in which the question of deemed registration on the ground that the application, after its filing, was not decided for a period of six months, arose. The Income Tax Appellate Tribunal ('ITAT', for short), by an order dated 15/03/2017, held that the Petitioner was entitled to a declaration of deemed registration. In that background, the question of the assessment of the Petitioner's return of income for the Assessment Year 2009-2010 came up for consideration. The Assessing Officer ignored such deemed registration of the Petitioner and rejected the request for exemption of its income. This issue reached the Tribunal. The Tribunal, by an order dated 30/11/2017, allowed the Appeal of the Assessee.

Relevant portion of the Tribunal's Judgment reads as under :

> *"11. .... in other words, the claim of the assessee of being registered under section 12AA of the Act has been accepted and adopted for giving relief to the assessee by way of exemption under section 11 and 12 of the Act. The second aspect which is related to a Trust is its entitlement to claim recognition under section 80G of the Act. The assessee had been granted the said recognition under section 80G of the Act by the Commissioner vide its order dated 30-03-2017, copy of which is placed on record. In view of these subsequent events, we hold that the assessee after receiving the deemed registration under section 12AA of the Act, is entitled to claim the exemption under section 11 and 12 of the Act. The same cannot be denied to the assessee on the aspect of the assessee having received deemed registration or the assessee not being registered under the Bombay Public Trust Act or any other issue in this regard. Accordingly, we direct the Assessing Officer to allow the exemption under section 11 and 12 of the Act to the assessee in the years under appeal.*
>
> *12. The Ld. Authorised Representative for the assessee time and again stressed that the income should be assessed at Nil in the hands of the assessee as it was entitled for the exemption under section 11 and 12 of the Act since complete details were filed before the Assessing Officer, which were verified by him. He also pointed out that the details have been looked into by the Assessing Officer at length and no discrepancy has been found in the said details.* ***However, in the interest of justice, we are of the view that the Assessing Officer has failed to consider the conditions of section 11 and 12 of the Act while denying the said exemption to the assessee in all the years. So for the limited purpose of verification, we restore this matter to the file of Assessing Officer who shall verify the expenditure***

> ***claimed by the assessee as to whether it falls within the scope of section 11 and 12 of the Act and recompute the balance income, if any, in the hands of the assessee, in the years under appeal. The Assessing Officer shall afford reasonable opportunity of hearing to the assessee. Before parting, we may also point out that the courts have held that the Audit Report for claiming exemption can be filed during the assessment proceedings also. Since the assessee has so filed the same, there is no merit in stand of Assessing Officer and the same is reversed. Accordingly, all the grounds raised by the assessee are thus allowed.***"

3. In terms of this Judgment of the Tribunal when the Assessing Officer took up the proceedings for passing consequential order, his inquiries ought to have been limited to the examination of Assessee's claim of exemption of its income under Sections 11 and 12 of the Act. The Assessing Officer, however, expanded the scope of the inquiry and once again went into the question of registration of the Petitioner under Section 12AA of the Act. He passed the impugned order dated 31/12/2018 in which he made the following observations:

> "*8. After having taken cognizance to the Hon'le Tribunal's decision, it is further stated that the issue of deemed registration has not reached its culmination since the Hon'ble Supreme Court while adjudicating the issue of deemed approval in the case of CIT Vs Society for the Promotion of Education, 382 ITR 6 (SC), relied upon by*

the Hon'ble ITAT in its impugned order, <u>has considered the decision of Division Bench of Allahabad High Court</u> in the case of Society for the Promotion of Education Adventure Sport and Conservation of Environment Vs CIT, 261 CTR (All) 167 <u>and not the decision of the Full Bench of the Allahabad High Court</u> in the case of of CIT Vs Muzafar Nagar Development Authority, 372 ITR (ALL)(FB) wherein the decision of the Division Bench of Allahabad was reverted and the Full Bench had held that "non disposal of an application for registration before the expiry of six months as provided u/s 12AA would not result in deemed grant of registration".

8.1 Further, the Hon'ble High Court of Allahabad, Lucknow Bench, vide its decision dated 31.07.2017 in the case of CIT Faizabad Vs Harshit Foundation Sehmalpur Jalalpur Janupur, ITAD No.24 2013, <u>has allowed Revenue's appeal</u> by stating and holding the following :

> *"10. .... However, we find that Supreme Court in the judgment dated 16.2.2016 has held that all other questions of law are left open, meaning thereby question of law raised in appeal by C.I.T. has not been decided, but left open, hence it cannot be said that judgement of this Court has merged with the judgement of Supreme Court on the above question of law, which was decided by this Court in* ***Society for the Promotion of Education, Allahabad (Supra)****.*
>
> *11. In view of full Court Judgment in* ***Commissioner of Income Tax vs. Muzafar Nagar Development Authority, Income Tax Appeal No.348 of 2008****, the question formulated above is answered against Assessee."*

8.2 It is further seen that the Hon'ble Tribunal in its said order dated 30.11.2017 has given the directions *for verification of expenditures claimed by the assessee and whether these claimed expenses fall within the ambit of Section 11 and 12 of the Act after granting the assessee deemed registration u/s 12AA of the Act to the assessee vide the said order. However, in this context it is seen that the Hon'ble Allahabad High Court in its decision in the case of CIT Meerut Vs A. R. Trust, Meerut, ITA No.112 of 2013 dated 04.09.2017, has held that, "the Tribunal has no jurisdiction in law to direct for registration of the Trust without there being satisfaction recorded by the Registering Authority as contemplated by Section 12AA of the Act" and has set aside the Tribunal's order and sent the matter to the Registering Authority i.e. CIT for recording its satisfaction and to pass appropriate order in accordance with law thereunder. The Hon'ble Court has relied upon the following decisions and held that aforesaid decision :*

a) The Hon'ble Karnataka High Court in the case of Sanjeevamma Hanumanthe Gowda Charitable Trust Vs DIT (Exemptions) (2006) 285 ITR 327 (Karnataka)

b) The Hon'ble Allahabad High Court's decision in the case of Fifth Generation Education Society Vs CIT (1990) ITR 634 (Alld)

c) The Hon'ble Kerala High Court's decision in the case of Sree Anjaneya Medical Trust Vs CIT (2016) 382 ITR 399 (Kerala)

d) The Hon'ble Division Bench Allahabad High Court's decision in the case of CIT (Exemption) Vs Yamuna Expressway Industrial Development Authority and others (2017) 395 ITR 18 (Alld)

e) The Hon'bl Division Bench Allahabad High Court's decision in the case of CIT-II Vs R. S. Bajaj Society (2014) 222 Taxmann.com 111 (Alld)

The CIT-IV, Pune in the assessee's case had rejected the assessee's application for registration u/s 12A of the Act *vide order dated 25.07.2006 after verification of its case. However, the Hon'ble Tribunal had allowed deemed registration u/s 12A only on the ground that the CIT failed to dispose the application u/s 12A within the time limit prescribed u/s 12AA(2). In view of the judicial precedents above, the stand of the Hon'ble Tribunal is not correct, since the Registering Authority i.e. the Ld. CIT-IV, Pune had recorded his satisfaction for rejecting the assessee's application for registration u/s 12A of the Act.*

8.3 Further, it is also seen that the Ld. CIT(E), Pune vide order No.PN/CIT(E)/12AA(3)/ASR/2017-18/6734 dated 28.03.2018 has withdrawn the registration granted u/s 12AA of the I.T. Act which was granted to the assessee by the Ld. CIT-IV, Pune vide the order No.PN/CITIV/12A/11/2007-08/2364 dated 14.12.2007 u/s 12AA(1)(b)(i) r.w.s. 254 of the I.T. Act, 1961 in consequence to the Tribunal's order dated 15.03.2007. The Ld. CIT(E), Pune has withdrawn the benefit of registration u/s 12AA in the assessee's case for the period subsequent to 23.05.2008 which implies that the assessee is not entitled to the benefit u/s 11 for the year under consideration.

9. In view of above discussed facts and circumstances, it is clear that assessee in spirit is not a charitable society and is working for the benefit of its members in clear violation of Section 13(1)(c) and not working for providing the medical relief to the needy patients at affordable costs. Assessee thus exists for the purpose of profit, as discussed in various para 7.3 above. In light of above discussion and in light of the fact that assessee did not possess registration u/s 12AA during A.Y. 2009-10, assessee society therefore cannot be considered as a charitable society and benefit of sec 11 & 12 cannot be allowed to the assessee and hence, assessee is hereby assessed as an AOP.

> *10. In view of the above facts and discussion, assessee being deemed to be registered u/s 12A has violated the provisions of Section 13(1)(c) r.w.s. Section 13(3) of the Act for the A.Y. under consideration and therefore, it is not eligible for grant of exemption u/s 11 and 12 of the Act for A.Y. 2009-10. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 are hereby initiated separately for furnishing inaccurate particulars of income.*"

4. In our opinion, the Assessing Officer has committed serious error. Firstly, the question of deemed registration of the Petitioner concluded in the earlier round of litigation. In the present case, the Assessing Officer was passing a fresh order on assessment as directed by the Tribunal. The Tribunal, in its order dated 30/11/2017, had made it clear that the Petitioner already enjoyed registration under Section 12AA of the Act. Only question was, on facts, the Petitioner's claim of exemption under Sections 11 and 12 of the Act was valid. Since the Assessing Officer had not applied his mind on this aspect of the matter, the Tribunal remanded proceedings before the Assessing Officer. The scope of the fresh order that the Assessing Officer would pass, pursuant to this order of the Tribunal, was, therefore, confined to the inquiry in relation to the Petitioner's claim of exemption under Section 11 and 12 of the Act. The issue of

the validity of the registration of the Petitioner under Section 12AA of the Act was not at large before him.

5. Perusal of the order of the Assessing Officer and in particular, the quoted portion thereof, would convince us that the Assessing Officer has travelled far beyond the scope of the inquiries before him and has breached all propriety of judicial discipline. The Assessing Officer has held that the Tribunal was not correct in granting deemed registration to the Petitioner. He has, in fact, criticized the Judgment of the Supreme Court on the ground that such Judgment notes a Division Bench Judgment of the High Court but not a larger Bench Judgment.

6. For his own sake, we hope the concerned Assessing Officer does not indulge into such bravado in future. Firstly, it was not within his scope to decide whether the decision of the Tribunal was correct or incorrect. Far more serious is his conduct of criticizing the Supreme Court Judgment. The entire hierarchy of judicial set up would be disturbed if a quasi-judicial authority or for that matter, any Court or subordinate Judicial Officer were allowed to disregard questioning the correctness of the decision of a higher authority, forum or Court.

7. In the result, the impugned orders are set aside. Since the Assessing Officer has not carried out the directions of the Tribunal to examine the Petitioner's claim of exemption under Sections 11 and 12 of the Act on merits, we place back the proceedings before him for passing a fresh order.

8. All the Petitions are disposed of accordingly.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**