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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-02-2026

CORAM

THE HON'BLE MR JUSTICE C. SARAVANAN

WP No. 20300 of 2024

AND

WMP NO. 22231 OF 2024

Suga Jeeva Oozhiyangal
Represented by its Trustee,
Mr.Selvaraj Bharath Raj,
No.52, V.G.P.Road, Saidapet,
Chennai - 600015

..Petitioner(s)

Vs

1. The Commissioner Of Income Tax (exemption)
   Aayakar Bhawan-annexe Building, No. 121,
   Mahatma Gandhi Road, Nungambakkam,
   Chennai -600 034.

2. The Central Processing Circle,
   1st Floor, Prestige Alpha No 48/1 48/2,
   Beratenaagrahara Begur, Hosur Rd, Uttarahalli
   Hobli, Bengaluru - 560100

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3. The Income Tax Officer Exemptions
Ward - 3, 3rd Floor, Annexe Building, 121,
Mahatma Gandhi Road, Nungambakkam,
Chennai 600034

..Respondent(s)

PRAYER

Writ Petition filed under Art.226 of Constitution of India seeking for issuance of Writ of Certiorari, calling for the records DIN and ORDER No.ITBA/COM/F/17/2024-25/1064480107(1) dated 30.04.2024 on the file of the 1st Respondent relating to Assessment Year 2016-17 and quash the same.

For Petitioner(s): Mr. I.Dinesh

For Respondent(s): Mr.V.J.Arulraj,
Senior Standing Counsel

ORDER

Mr.V.J.Arulraj, learned Senior Standing Counsel takes notice for the Respondents.

2. This Writ Petition is being disposed of at the stage of admission itself with the consent of the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents.

3. The Petitioner is before this Court against the impugned Order dated 30.04.2024 passed by the 1st Respondent under Section 119(2)(b) of the Income Tax Act, 1961 for the Assessment Year 2016-2017. By the impugned order, the

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application dated 08.03.2023 filed for condoning the delay of 534 days in filing Form No.10B by the petitioner for the Assessment Year 2016-2017 has been rejected.

4. Operative portion of the impugned order of rejecting the request of the petitioner is reproduced below :-

"*5. Decision :-*

5.1.It is pertinent to note that only Trust or institution registered under Section 12A are required to furnish the said Form No.10B within the due date. In the assessee's case, for the AY 2016-17, the assessee is not a registered Trust as the assessee got approval only from AY 2017-18 i.e. with effect from 01.04.2016 onwards. The assessee is not entitled to claim exemption for the Asst. Year 2016-17.

5.2.It is relevant at this juncture to get into the amendment brought in Section 12A by Finance Act 2014 with effect from 01.10.2014 by way of insertion of first proviso to Sec.12A(2) of the Act, which is reproduced below for the sake of convenience :

"...(2) Where an application has been made on or after the 1st day of June 2007, the provisions of Sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:

"Provided that where registration has been granted to the trust or institution under Section 12AA, then the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year.

Provided further that no action under Section 147 shall be taken by the Assessing Officer in case of such trust or institution

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for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA…"

In the nutshell, Section 12A of the Act makes it mandatory for charitable trusts to get themselves registered for claiming exemptions under Section 11. The exemptions shall apply in relation to the income of a trust or institution from the assessment year (AY) immediately following the financial year in which the application is made by the trust or to any AY for which the proceedings are pending before the Assessing Officer (AO) as on the date of such registration. It is clear from the above proviso that this does not apply in the instance case because as per the ITBA portal no assessment proceedings were pending as on the date of grant of approval u/s. 12A i.e. 02.01.2017.

6. From the above, it can be inferred that the assessee is not eligible to avail the benefit of provision related to exemption as the applicant failed to fulfil mandatory conditions of being a registered u/s12A/12AA/12AB to claim exemption. Hence, as the conditions prescribed in the proviso inserted w.e.f. 01.10.2014 TO Section 12(A)(2) of the Income Tax Act, 1961 are not satisifed, the application filed seeking condonation of delay in filing Form No.No.10B is treated as infructuous.

7. The issue in question has been recently considered and decided in favour of revenue by various courts in some cases including the decision of Hon'ble Supreme Court and Hon'ble High Court of Madras. Hence, reliance is placed on the following recent case laws :-

a. ***Shiv Kumar Sumitra Devi Samarak Shikshan Sansthan – 138 Taxmann.com197(2022):-***

In this case, the Hon'ble Supreme Court dismissed the SLP filed by the assessee against the decision of Allahabad High Court according to which the benefit under Section 11 and 12 would be available to assessee from assessment year following financial year in which application for registration under Section 12A was given and not from any previous year.

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b. U.P.Forest Corporation v. Dy. CIT (2007) 165 Taxman.533:-

The Hon'ble Supreme Court observed that a conjoint reading of sections 11, 12 and 12A makes it clear that registration under Section 12A is a condition precedent for availing of benefit under Sections 11 and 12. Unless and until an institution is registered under Section 12A, it cannot claim the benefit of section 11(1)(a). Keeping in view the fact that the assessee had not been granted registration under section 12A, it was not entitled to claim exemption from payment of tax under sections 11(1)(a) and 12.

c. Soundaram Chokkanathan Education & Charitable Trust (2021) 125 Taxman.com 340-AY 2011-12 (Madras High Court):-

In this case, the assessee trust was granted registration under section 12A by order dated 02.03.2016 with effect from 01.04.2015. Hon'ble Madras High Court held that first proviso under section 12A could not be made applicable to assessee so as to grant it benefit of exemption under section 11 for assessment year 2013-14.

d. Bhagawan Sree Mahayogi Lakshmamma Educational Society, Adoni 134 taxmann.com 310(2022):-

In this case The ITAT, Hyderabad Tribunal held that appeal pending before the CIT (Appeals) could not be termed as an assessment pending before Assessing Officer even if CIT (Appeals) had coterminous powers with that of Assessing Officer, Assessing Officer was justified in rejecting exemption under section 11. Since assessee society was not registered under section 12A/12AA, Assessing Officer was justified in rejecting exemption under section 11 and making addition treating corpus fund receipts/donations as income of assessee.

8. Accordingly, as the conditions prescribed in the proviso inserted w.e.f.01.10.2014 to section 12(A)(2) of the Income Tax Act, 1961 are not satisfied, the application filed seeking condonation of delay in filing Form No.10B for the Assessment Year 2016-17 is rejected."

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5. It is noticed that the Return of Income was filed on 08.06.2017 for the Assessment Year 2016-2017, while Form No.10B was filed belatedly on 04.04.2018 in the Income Tax portal by the petitioner. The petitioner is required to file Form No.10B along with Return of Income for the Assessment Year 2016-2017 (Financial Year relating 2015-2016).

6. The undisputed fact in this case is that the petitioner is a Trust, which was constituted on 10.09.2003 and later, the objects of the Petitioner Trust were amended on 15.12.2016. The application for registration under Section 12-AA of the Income Tax Act, 1961 was made by the petitioner on 26.08.2016 i.e. after the end of financial year 2015-2016 (Assessment Year 2016-2017).

7. The application was processed and the registration certificate was issued to the petitioner under Section 12AA of the Income Tax Act, 1961 on 02.01.2017 with retrospective effect from 01.04.2016 i.e., from the Financial Year 2016-2017.

8. As per Sec. 12A(2) of the Income Tax Act, 1961, the provisions of Sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made. However, as per the Proviso to Sec.12(A)(2) of the Income Tax Act, 1961, where registration has been granted to the trust or

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institution under Section 12AA, then the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year. Thus, the benefit of Sec.11 and Sec.12 of the Income Tax Act, 1961 is to be given to the petitioner.

9. The due date for filing the Return of Income after due extension as per Central Board of Direct Taxes Circular for the Assessment Year 2016-2017 was on 17.10.2016. As per Section 44-AB of the Income Tax Act, 1961, the petitioner was also required to file an Audit Report in Form No.10B along with Return of Income under Section 139(1) of the Act on 17.10.2016.

10. However, the petitioner belatedly filed the Return of Income only on 08.06.2017 under Section 139(4) of the Act. However, before the Assessment Year could be completed, the petitioner filed Form No.10B on 04.04.2018 with the delay of 534 days viz., between 17.10.2016 and 04.04.2018.

11. Thereafter, the petitioner's Return of Income filed on 08.06.2017 under Section 139(4) of the Act was selected for assessment and an intimation was issued to the petitioner under Section 143(1) of the Act on 25.02.2019,

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which was rectified by an order dated 23.11.2019 pursuant to an application filed under Section 154 of the Income Tax Act, 1961 on 14.10.2019.

12. In the said rectification order, the petitioner was denied the benefit under Section 11 of the Income Tax Act, 1961, on account of the fact that the petitioner had belatedly filed the Return of Income on the aforesaid date viz., on 08.06.2017 under Section 139(4) of the Income Tax Act, 1961 and Form No.10B on 04.04.2018.

13. In the light of the above development, the petitioner filed an application for condonation of delay of 534 days in filing Form No.10B, which has now culminated in the impugned order on 08.03.2023.

14. Meanwhile, the petitioner was given a fresh Provisional Registration on 31.05.2021 in the light of amendment to Section 12AB of the Income Tax Act, 1961 for the period of three years.

15. The point for consideration is whether the petitioner can be denied of the benefit of Section 12AA registration for the financial year 2015-2016 (Assessment year 2016-2017). As per Section 12A(2) of the Act, where an application has been made on or before 1st June 2007, the provisions of Section 11 and 12 will apply in relation of such trust or institution from the assessment

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year immediately following the financial year, in which such an application is made.

16. In other words, as per Section 12A(2) of the Income Tax Act, 1961, the registration will apply prospectively from the Assessment Year immediately following the financial year in which such application was made. However, as per first proviso to Section 12(A)(2) of the Income Tax Act, 1961, where registration has been granted to a trust or institution under Section 12-AA of the Income Tax Act, 1961, then the provisions of Sections 11 and 12 shall apply in respect of any income derived from the property held under trust for any Assessment Year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration.

17. As per second proviso to Section 12A(2), no action under Section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any Assessment Year preceding the aforesaid year except for non-registration of such trust or institution for the said Assessment Year.

18. This has been clarified vide **Circular No.1/2015** dated **21.01.2015** bearing Reference F.No.142/13/2014-TPL, which contains Explanatory Notes to the provisions of the Finance (No.2) Act, 2014.

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19. As far as applicability of registration granted to a trust or institution to earlier years are concerned, in Paragraph Nos. 8.2 and 8.3 of **Circular No.01/2015** dated **21.01.2015**, it has been clarified as under :-

> *"8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfill other substantive conditions. However, the power of condonation of delay in seeking registration was not available.*
>
> *8.3. In order to provide relief to such trusts and to remove hardship in genuine cases, Section 12A of the Income Tax Act has been amended to provide that in a case where a trust or institution has been granted registration under Section 12AA of the Income Tax Act, the benefit of Sections 11 and 12 of the said Act shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted."*

20. The Return of Income was filed by the petitioner belatedly for the Assessment Year 2016-2017. An intimation was issued on 25.02.2019 under Section 143(1) of the Income Tax Act, 1961. Thereafter, the said intimation was rectified on 23.11.2019 pursuant to an application dated 14.10.2019 filed under Section 154 of the Income Tax Act, 1961. It indicates that the only income of the petitioner was from voluntary contribution for a sum of Rs.8,60,000/- and a marginal income of Rs.4,182/- from other sources. Therefore, the gross total income of the petitioner was confined to Rs.8,64,182/-.

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21. Denial of the benefit of Section 11 of the Income Tax Act, 1961 to the petitioner on account of delay has resulted in tax liability. There is no doubt that the above income is to be treated as income from the property in terms of Section 11(1)(d) of the Income Tax Act, 1961. Such income is to be exempted in terms of Section 12 of the Income Tax Act, 1961 as it relates to income of trust for contribution. To deny the benefit of Section 11 and 12 to the petitioner trust, particularly, in the light of amendment brought to the Income Tax Act, 1961 vide Finance (No.2) Act, 2014 would be unfair and therefore, cannot be countenanced.

22. Further, the gross total income of the petitioner for the Assessment Year 2016-2017 as mentioned is confined to Rs.8,64,182/-. While the order of 2nd respondent is strictly in accordance with the guidelines issued by the Court, it has resulted in denial of benefit under Section 11 and 12 of the Income Tax Act. Therefore, it is liable to be set aside. Accordingly, the impugned order dated 30.04.2024 passed by the 1st respondent is set aside.

23. The decisions cited in the impugned order cannot be applied to the facts of the present case as they have no universal application. That apart, the substantial benefit under Section 11 and 12 of the Act cannot be denied, if an assessee is otherwise entitled to such other relief sought for. To penalise the

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Assessee like the petitioner is to penalise a trust for technical and procedural breach committed by the petitioner. Therefore, the reasoning cannot be countenanced/upheld.

24. The 2nd respondent is therefore directed to pass a fresh order by revising the intimation dated 25.02.2019 as modified by order dated 23.11.2019.

25. This Writ Petition stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

03-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
RPP
To

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   Aayakar Bhawan-annexe Building, No. 121,
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   Chennai -600 034.

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   1st Floor, Prestige Alpha No 48/1 48/2,
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