



% 16.09.2009

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Present: Ms. Prem L. Bansal with Ms. Anshul Sharma for the appellant.
Mr. Kaanan Kapur for the respondent.

+ ITA No. 35/2007

The respondent/assessee is a Club which had moved application for registration under Section 12A of the Income Tax Act, 1961 with the Director of Income Tax (Exemptions), the appellant herein, on 31.3.1999. Since the application was made on 31.3.1999, the appellant granted registration only with effect from 1.4.1998 and did not accede to the request of the respondent for granting the registration with effect from 1.4.1989, as sought by the respondent. The respondent, in these circumstances, filed appeal against the order of the appellant. Initially, the matter was remanded back by the Tribunal directing the appellant to pass speaking order giving cogent reasons for denying registration from back date. The appellant passed speaking order denying the registration once again with effect from 1.4.1989.

The respondent, in these circumstances, approached the Tribunal yet again, and successfully, inasmuch as the Tribunal, vide its impugned order dated 28.4.2006, has concluded that there was sufficient cause because of which the respondent had not approached the appellant



earlier. In this behalf, it is mentioned by the Tribunal that the respondent assessee was exempted under Section 10(23) of the Act and, therefore, the respondent was under the *bona fide* belief that in view of the said exemption granted to the respondent, it was not necessary to move application under Section 12A of the Act as well, and because of this *bona fide* belief, he was prevented from making the application earlier, by sufficient cause. Relevant observations of the Tribunal in this behalf are as under :-

"7. The meaning of the expression "before the expiry of the period" in the proviso above has been considered by the Hon'ble High Court of Madhya Pradesh in the case of Society of Divine Providence (supra). It is explained that the said expression requires an appellant to show sufficiency of reasons which prevented him from making the application within the period as required and not the reasons for the period beyond the period so prescribed. In other words, it requires the Commissioner to be satisfied as to whether or not there were sufficient reasons which prevented the applicant from making the application within the prescribed period alone and that the reasons for the period beyond the date prescribed and upto the date of actual application are required to be examined. Now, considered in this light, we go back to the facts of the instant case and examine as to what was the period within which the assessee was required to have furnished his application seeking registration u/s 12A of the act and what were the reasons, if any, which prevented it from furnishing such application. The assessee company was incorporated in the year in 1950. Section 12A providing for registration of Trusts was introduced on the statute w.e.f. 1.4.1973 by the Finance Act, 1972. The Section, as it stood originally, provided that the Trust or institution shall make an application seeking registration before the first day of July 1973 or before the expiry of the period of one year from the date of creation of the Trust or establishment of the institution, whichever was



later. Ostensibly, the provisions for registration w applicable in cases where the applicant chose to avail of the exemptions provided u/s 11 and 12 of the Act. In this light, the assessee having been created in the year 1950 was required to seek registration by furnishing an application before the first day of July 1973. The reasons which have been explained by the assessee for its belated application for registration have been noted by us in the earlier background. The assessee applied for registration on 31.3.99 seeking registration w.e.f. 1.4.89. The reasons were that its entire income was exempted in terms of Section 10(23) and that such exemption was based on the notification by the CBDT in this regard. There is no dispute that upto the date of the period prescribed for seeking registration, the assessee was enjoying exemption from taxation u/s. 10(23) of the Act. Under such circumstances, there was no occasion for the assessee to have claimed any exemption u/s 11 and 12 of the Act. The aforesaid facts are not in dispute as borne out from the record. We are also satisfied that the reasons are bona fide and consequently they constitute sufficiency, which prevented the assessee from making the application before the expiry of the period as laid down in the statute. Under such circumstances, we are of the view that the Commissioner should have exercised his discretion and allowed registration to the assessee, as provided in law. On this, we find that the assessee sought registration not from the date of its establishment but w.e.f. 1.4.89 although in our view, the reason prevailing with the assessee in not filing application before 1.7.1973 was sufficient and it was entitled for registration from the earlier date. Having noted so, as the assessee itself has sought registration w.e.f 1.4.89, we, therefore modify the order of the DIT(E) to the extent that registration u/s 12A be understood to have accorded to the assessee w.e.f 1.4.89 as prayed for by the assessee."

Thus, after analyzing the matter in its entirety, the Tribunal has exercised its discretion, having regard to the peculiar facts of this case, on the relevant consideration condoning the delay. In these circumstances, we




are of the opinion that the said order does not call for any interference.

no question of law arises.

This appeal is dismissed.

However, we make it clear that as the effect of granting registration from back date would be that the assessee is entitled to exemption from payment of tax with effect from 1.4.1989, and that order is confirmed at this stage, it would not preclude the Revenue, if it so requires, to go into the accounts of those ^{years} ~~orders~~ to satisfy that the assessee fulfils the requirement of benefit of Section 11 of the Act.


A.K. SIKRI, J.


VALMIKI J. MEHTA, J.

September 16, 2009
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