

FACELESS ASSESSMENT OR ALSO MINDLESS ASSESSMENT

A review of some of the assessment orders passed by NFAC show that it is not only faceless but also passed without application of mind to the submissions. It is evident from the decisions of the Bombay High Court and Madras High Court. Another examples of not following CBDT's instructions and judicial pronouncements and giving its own interpretation to the applicability of the provisions of Sec.12A for the pending assessments once registration is granted for the subsequent assessment year is discussed here under. The assessee a body constituted by the Legislature of a State had obtained Registration u/s.12A on 16-9-2019. During the course of assessment proceedings by the NFAC, it brought to the notice of the NFAC, in reply to a query as to why its claim u/s.10(23A) cannot be denied as form 10B is not filed within time, stating that having received registration u/s.12A, has not pursued filing application for recognition u/s.10(23A) and sought deduction u/s.11, by stating as under:

"It is unfortunate that the Centre is ignoring the provisions of Law and is proposing once again to treat the income as assessable on the ground that the form 10B is filed belatedly on the ground that documentary evidence is not filed in support of submissions. In our earlier submissions it is brought to the notice of the centre that the Council is registered u/s.12A and a copy of the order is submitted and it is also brought to notice that as per the Explanation to Sec.12A, once registration is granted u/s.12A, it applies to all pending assessments. The Centre ought to have thought of this and accepted the form 10 that is filed with the earlier submissions instead of looking at the form 10B that was filed earlier by when registration u/s.12A was not there. The legislature in its wisdom has explained in the provisions of Sec.12A that once registration is granted it would have application to earlier years where assessments are pending. It automatically is to be understood that the department should allow filing of form 10 if the assessment is taken up for scrutiny. Contrary to the provisions of the Explanation to Sec.12A, the centre took a stand as under:

"As per section 2(15), the registration shall be available only from the previous year in which application for registration is made. Due to absence of registration, tax liability gets attached. The power of condonation of delay in seeking registration is not available under this section"

With due respects it is to submit that the provisions of Sec.2(15) is only a definition of Charitable activities and it does not specify from when

the registration shall be available. The assessee hope that the Centre has access to the provisions of the Act and could go through the Explanation to Sec.12A that was reproduced in the earlier submissions and state as to how it is not applicable to our case. To substantiate our stand that once registration u/s.12A is granted it has application to pending assessments we are reproducing the relevant portion from the CBDT **CIRCULAR NO. 01/2015 in F. No. 142/13/2014-TPL Government of India Ministry of Finance Department of Revenue (Central Board of Direct Taxes), Dated, the 21st January, 2015** which is binding on the assessment centre here under:

8.3 *In order to provide relief to such trusts and 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."*

The NFAC, after considering this reply passed assessment order denying deduction u/s.11 and levying tax making the assessee to file an appeal, observing as under:

"From the perusal of reply with regard to the claiming of deduction u/s.10(23A), it has been observed that the reply of the assessee has been considered but not acceptable with the following reasons,

(i). The provision of section 11 and 12 shall not apply in relation to the income of any trust or institution of the assessee for the AY.2018-19 as the registration u/s.12AA is applicable from the AY.2019-20 as per order of the CIT(Exemptions), Hyderabad in ITBA/EXM/S/12AA/2019-20/1018002202(1), DATED 16-9-2019."

It is clear that it avoided dealing with application of the provisions of Sec.12A for this assessment year by stating that the claim of deduction u/s.10(23A) cannot be considered, though it is mandatory for the Assessing Officer to consider the claim made under different section with orders of registration. Thus it leaves one to wonder whether the assessment centre is ignorant of the powers of the Assessing Officer or is passing assessment orders mindlessly.

K.VASANTKUMAR,
ADVOCATE. HIGH COURT (T.S.)

