

Pendency of appeal against application seeking sec. 11 relief won't vitiate reassessment notice of earlier years

Summary – The High Court of Karnataka in a recent case of Urban Development Authority., (the Assessee) held that where application was filed to get section 11 exemption from next year would have no bearing on income of earlier years and reassessment notice in respect of income of such earlier years would not be vitiated by pending appeal against cancellation of impugned application under section 13

Facts

- The assessee-State Urban Development authority filed an application under section 12AA on 14-12-2016 seeking exemption under section 11 to section 13. The said application was rejected on the ground that the assessee had failed to furnish the information which was called for by the Commissioner (Exemption).
- The aforesaid order was subject matter of appeal filed by assessee and same was pending before appellate Tribunal. However, subsequent to filing of appeal, notice under section 147 was issued by the Income-tax Officer. In the said notice total income was sought to be assessed for the period from 2010-11 to 2014-15.
- On writ petition to the High Court, the above notice issued under section 147 had been challenged by the assessee alleging that the Income tax Officer had committed an error in issuing said notice during pendency of appeal filed by the assessee by which the assessee was pursuing their right to seek exemption from payment of tax and that, the Income tax Officer had no right to demand tax by reopening assessment under section 147.

Held

- Even assuming that the petitioner is entitled to exemption under sections 11 to 13, it can only be for the period subsequent to the date of the application, if the same is allowed. In the instant case, the application is filed on 14-12-2016, therefore, the petitioner would be entitled to seek exemption for the assessment year which is 2017-18 onwards. Therefore, pending consideration of the appeal, any proposal order is passed under section 147 or final order for the said assessment year, the same would be subject to its pending before the appellate tribunal. However, in the instant case, proposal notice under section 147 is issued for assessment year from 2010-11 to 2014-15. Even assuming that the appeal of the petitioner is allowed by the Income Tax Appellate Tribunal, the same would enure to the benefit of the petitioner for the financial years, earlier to 2016-17 during which period petitioner filed application seeking exemption under section 12AA. The same would not benefit the petitioner for previous assessment years. Therefore, question of interfering with the said notices on the premise that the petitioner has challenged the order of rejection of its application filed under section 12AA and the same is pending consideration before the Income Tax Appellate Tribunal

cannot be a basis to quash the said notices. Accordingly, these writ petitions are dismissed reserving liberty to the petitioner to pursue the appeal for subsequent assessment years to assessment year 2016-17. So far as notices which are issued for the years prior to assessment year 2016-17, the petitioner does not have any right to challenge the same in this proceeding. In view of writ petitions being dismissed, other application, pending for consideration does not survive.