

Registration deemed to be granted if CIT failed to dispose off Sec. 12AA application within 6 months: ITAT

Summary – The Bangalore ITAT in a recent case of Visvesvaraya Technological University., (the Assessee) held that where Commissioner failed to dispose of assessee's application for registration under section 12AA within prescribed period of six months without any justifiable reason, registration would be deemed to have been granted from date of inception of assessee-University

Facts

- The assessee was a university established by the Government of Karnataka and Act of State Legislature, *i.e.*, VTU Act, 1994, for the purpose of ensuring proper and systematic instructions, teaching, training and research & development of engineering technology and allied sciences in the State of Karnataka and matters connected therewith.
- It moved an application for registration under section 12A on 25-5-1999, but said application was not disposed of by the Commissioner and it was kept pending and assessee was persuaded by the revenue to file another application for registration. *Vide* letter dated 21-1-2002, the assessee requested the Commissioner to grant registration under section 12A on the basis of its application filed on 25-5-1999 with effect from 1-4-1998 and delay in filing of application for registration of less than 2 months should be condoned.
- The said application of the assessee was also not adjudicated upon by the Commissioner. Other applications for registration under section 12A filed on different dates were rejected by the Commissioner on technical grounds despite the fact that at the relevant point of time, assessee was enjoying the recognition under section 80G. subsequently, the registration under section 12A was granted to the assessee with effect from 1-4-2016 after making a detailed verification of the records and enquiry.
- The assessee filed instant appeal contending that when the Commissioner was satisfied with the statement of accounts and the activities conducted by the assessee, he should have granted registration from retrospective date *i.e.*, from 1-4-1998 and not from prospective date *i.e.*, from 1-4-2016.

Held

- The contention of the assessee that as of now 203 engineering colleges located throughout the state of Karnataka are affiliated to the assessee university and more than 4 lakh students are studying in various under graduate and post graduate course are not disputed by the revenue. The registration was finally granted to the assessee under section 12A with effect from 1-4-2016 without recording the reasons for not acceding to the University's request for grant of registration with retrospective effect from 1-4-1998 though assessee has specifically requested for registration in its application.
- Till date, the Commissioner has not adjudicated the application for registration under section 12A filed on 25-5-1999. They have chosen to remain silent on its application. During the course of

hearing, the revenue could not answer the query as to why said application was not disposed off. The revenue cannot take the benefit of its own wrong. As per the provisions of section 12AA, which was brought on statute by the Finance Act, 1996 with effect from 1-4-1997, all applications filed before 1st day of June 1998 shall stand transferred on that day to the Principal Commissioner/Commissioner and the Principal Commissioner/Commissioner may proceed to such application under that sub section from the stage at which they were on that day and as per provisions of sub-section (2) of section 12AA, every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of 6 months from the end of the month in which the application was received under section 12A.

- As per provisions of section 12A(1)(a), application for registration of trust or institution in the prescribed form should be filed within a period of one year from the date of creation of the trust or the establishment or the institution. Undisputedly, the trust was created on 01-04-1998 and application was moved on 25-5-1999. There was delay of 1 month 25 days for which assessee has moved an application requesting therein that the delay may be condoned and registration may be granted from the date of its inception. Though the revenue was required to dispose of the application for registration under section 12A within a period of 6 months but it was not done.
- In the light of these facts and the judgments of the Apex Court in the case of *CIT v. Society for promotion of Education* [\[2016\] 67 taxmann.com 264/238 Taxman 330/382 ITR 6](#) the registration is deemed to have been granted from the date of inception of the University as the delay in filing of the application was only 1 month and 25 days for which request for condonation of delay was moved. Therefore, the order of Commissioner is set aside and he is directed to grant registration with effect from 1-4-1998. Accordingly, the appeal of the assessee stands allowed.