

आयकर अपीलीय अधिकरण, ए / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.1195, 1196, 1197 & 1198/Mds/2014

निर्धारण वर्ष / Assessment Years : 2005-2006 to 2008-09

M/s Advocates Welfare Fund of
the Bar Council of Tamil Nadu,
Bar Council Buildings,
High Court Campus,
Chennai - 600 104.

v. The Deputy Director of Income
Tax (Exemptions) – II,
Chennai - 600 034.

PAN : AAATA 8205 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1603 & 1604/Mds/2014

निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

The Deputy Director of Income
Tax (Exemptions) – II,
Chennai - 600 034.

M/s Advocates Welfare Fund of
the Bar Council of Tamil Nadu,
Bar Council Buildings,
High Court Campus,
Chennai - 600 104.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1199, 1200, 1201, 1202, 1203 & 1204/Mds/2014

निर्धारण वर्ष / Assessment Years : 2003-04, 2005-06 to 2009-10

M/s Bar Council of Tamil Nadu,
Bar Council Buildings,
High Court Campus,
Chennai - 600 104.

v. The Deputy Director of Income
Tax (Exemptions) – II,
Chennai - 600 034.

PAN : AAATB 5945 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1605 & 1606/Mds/2014**निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09**The Deputy Director of Income
Tax (Exemptions) – II,
Chennai - 600 034.

v.

M/s Bar Council of Tamil Nadu,
Bar Council Buildings,
High Court Campus,
Chennai - 600 104.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by

: Sh. R. Venkatesh, CA

राजस्व की ओर से /Revenue by

: Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing

: 16.06.2016

घोषणा की तारीख/Date of Pronouncement

: 15.07.2016

आदेश /O R D E R

All the appeals of two independent assesseees and cross appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) – VII, Chennai, dated 27.02.2014. Since common issue arises for consideration in all these appeals, I heard these appeals together and disposing of the same by this common order.

2. Shri R. Venkatesh, the Ld. representative for the assessee, submitted that the assessee-Bar Council of Tamil Nadu is a statutory regulatory body established under Advocates Act, 1961 to regulate the profession of legal practice in India. The assessee-Bar Council of Tamil Nadu has established a Welfare Fund for the

benefit of practicing Advocates. According to the Ld. representative, Advocates' Welfare Fund is not a legal entity. In fact, it is a fund established by Bar Council of Tamil Nadu for the welfare of legal practitioners. However, both the authorities below treated the Advocates' Welfare Fund as a separate legal entity and assessed the income. Referring to the order of the Director of Income Tax (Exemptions) dated 29.08.2011, a copy of the same is available on record, the Ld. representative submitted that on the basis of application filed on 25.02.2011, registration under Section 12AA of the Income-tax Act, 1961 (in short 'the Act') was granted with effect from 25.02.2011. The assessee filed an application before the CBDT under Section 119(2)(b) of the Act praying for condonation of delay for the assessment year 2003-04 onwards till 24.02.2011 in filing the application for registration under Section 12AA of the Act. The CBDT, in fact, condoned the delay in filing the application for the assessment years 2003-04 to 2010-11. However, the CBDT kept it open to grant registration under Section 12AA to the Director of Income Tax (Exemptions). Since the delay in filing the application for registration was condoned for assessment years 2003-04 to 2010-11, according to the Ld. representative, the assessee's claim for exemption under Section

11 of the Act has to be examined after the order of the Director of Income Tax (Exemptions) for the assessment years 2003-04 to 2010-11.

3. The Ld. representative for the assessee further clarified that consequent to the order of the CBDT condoning the delay in filing the application for registration under Section 12AA of the Act for the assessment years 2003-04 to 2010-11, the Director of Income Tax (Exemptions) has to now examine whether registration has to be granted after satisfying himself about the fulfilment of conditions prescribed under the provisions of the Act. After the order of the Director of Income Tax (Exemptions), the matter has to be re-examined by the Assessing Officer. Therefore, the Ld. representative submitted that the matter may be remitted back to the file of the Assessing Officer for reconsideration.

4. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that though the assessee claims that Advocates' Welfare Fund established by Bar Council of Tamil Nadu, is not an independent legal entity, the registration was granted separately to the Advocates' Welfare Fund on the basis of application filed by the Fund itself on 25.02.2011. The Advocates'

Welfare Fund applied for Permanent Account Number and the Income Tax Department has allotted Permanent Account Number. Therefore, according to the Ld. D.R., for all practical purposes, the Advocates' Welfare Fund was treated as a separate legal entity. Therefore, according to the Ld. D.R., the contention of the Ld. representative for the assessee that the Advocates' Welfare Fund was established by Bar Council of Tamil Nadu and it is not a separate legal entity is misconceived.

5. Referring to the order of the Director of Income Tax (Exemptions) dated 29.08.2011, the Ld. D.R. submitted that the registration was granted to Advocates' Welfare Fund under Section 12AA of the Act. However, the application filed by the Bar Council of Tamil Nadu for condonation of delay for assessment years 2003-04 to 2010-11 was allowed by the CBDT. The Advocates' Welfare Fund has not filed any application for condonation of delay for registration under Section 12AA of the Act. Therefore, according to the Ld. D.R., in the case of Advocates' Welfare Fund, no purpose would be served even if the matter was remitted back to the file of the Assessing Officer. According to the Ld. D.R., in the case of Advocates' Welfare Fund, the registration was granted with effect from 25.02.2011. Moreover, the Advocates' Welfare Fund has not

filed any application for condoning the delay for earlier assessment years. Therefore, it may not be necessary to remit the matter back to the file of the Assessing Officer.

6. I have considered the rival submissions on either side and perused the relevant material available on record. The order of the Director of Income Tax (Exemptions) dated 29.08.2011 clearly says “Bar Council of Tamil Nadu and its unit Advocates' Welfare Fund” in the preamble portion of the order. It is not in dispute that Bar Council of Tamil Nadu was established under the provisions of the Advocates Act, 1961. The Bar Council of Tamil Nadu constituted a fund called Advocates' Welfare Fund for the welfare of the practicing advocates. The assessee now claims before this Tribunal that the application for registration under Section 12AA of the Act was filed on 25.02.2011 and the Director of Income Tax (Exemptions) granted approval under Section 12AA with effect from 25.02.2011. The Bar Council of Tamil Nadu has filed the application before the CBDT for condonation of delay in filing the application for registration under Section 12AA of the Act for the assessment years 2003-04 to 2010-11. In fact, the delay was condoned and the matter was left to the discretion of the Director of Income Tax (Exemptions) to satisfy himself about the fulfilment of the conditions

prescribed under the Act which are necessary for granting registration under Section 12AA of the Act. It is not in dispute that for assessment years 2003-04 to 2010-11, the claim of exemption under Section 11 of the Act was rejected by the authorities below on the ground that there was no registration under Section 12AA of the Act. In view of the CBDT's order dated 27.05.2016, condoning the delay in filing the application for assessment years 2003-04 to 2010-11, this Tribunal is of the considered opinion that the matter needs reconsideration by the Assessing Officer in the case of Bar Council of Tamil Nadu.

7. Now coming to the Advocates' Welfare Fund, the Revenue claims that the assessee itself applied for Permanent Account Number to treat itself as a separate legal entity. However, the assessee claims that it is a part of Bar Council of Tamil Nadu, therefore, it cannot be treated as a separate legal entity. I have carefully gone through the Advocates Act, 1961 and the Advocates' Welfare Fund Act, 2001. Section 3 of Advocates Act, 1961 enables to constitute Bar Councils in the respective States. Section 4 of the Advocates Act, 1961 enables constitution of Bar Council of India. Section 5 of the Advocates Act, 1961 clearly says that every Bar Council established either under Section 3 or 4 of the Advocates

Act, 1961, shall be a body corporate having perpetual succession and a common seal, with a power to acquire and hold property. Therefore, Bar Council of Tamil Nadu is a statutory body constituted under Section 3 of the Advocates Act, 1961 as claimed by the assessee.

8. Section 3 of the Advocates' Welfare Fund Act, 2001 enables the respective State Governments to constitute a fund called "Advocates' Welfare Fund". Section 4 of the Advocates' Welfare Fund Act, 2001 enables the respective State Governments to appoint Trustee Committee for the purpose of administering the Fund. The office-bearer of the Bar Council of Tamil Nadu and Advocates' Welfare Fund are totally different. Bar Council of Tamil Nadu was administered by the elected Chairman or Vice-Chairman, while Advocates' Welfare Fund is administered by the Trustee Committee nominated by the respective State Governments. Therefore, it is obvious that Bar Council of Tamil Nadu and Advocates' Welfare Fund are two different statutory bodies established under the respective statutory enactments, namely, the Advocates Act, 1961 and the Advocates' Welfare Fund Act, 2001. Sub-section (2) of Section 4 of the Advocates' Welfare Fund Act, 2001 clearly says that Trustee Committee of Advocates' Welfare

Fund shall be a body corporate having perpetual succession and common seal with power to acquire and hold and dispose of the property. Therefore, the Parliament in its wisdom made it very clear that Bar Council of Tamil Nadu is a separate legal entity and Advocates' Welfare Fund is another legal entity. Therefore, this Tribunal is of the considered opinion that the two entities have to be treated separately and the registration, if any, for claiming exemption under Section 11 of the Act has to be obtained separately. In other words, the registration obtained by the Bar Council of Tamil Nadu under Section 12AA of the Act cannot be a basis for claiming exemption under Section 11 of the Act for Advocates' Welfare Fund. The Advocates' Welfare Fund and the Bar Council of Tamil Nadu, shall obtain the necessary approval / registration under Section 12AA of the Act, separately.

9. In the case before us, even though the preamble of order of the Director of Income Tax (Exemptions) dated 29.08.2011 says "Bar Council of Tamil Nadu and its unit Advocates' Welfare Fund", the body of the order clearly says that the registration was granted only to the Fund and not to the Bar Council. The CBDT, however, after examining the application filed by the Bar Council of Tamil Nadu, found that the registration was granted with effect from

25.02.2011 on the basis of application dated 25.02.2011. Therefore, there is a confusion as to whether the Bar Council of Tamil Nadu and Advocates' Welfare Fund have filed any joint application for registration or the individual application filed by the respective statutory body was clubbed together by the Director of Income Tax (Exemptions) and passed a common order. These facts are not clear from the order of the lower authorities. Under the scheme of the Income-tax Act, each statutory body has to file independent application for registration under Section 12AA of the Act. Be that as it may, now registration was granted apparently to the Advocates' Welfare Fund by the order of the Director of Income Tax (Exemptions) dated 29.08.2011 and the CBDT has condoned the delay in filing the application for registration under Section 12AA of the Act for the assessment years 2003-04 to 2010-11 to the Bar Council of Tamil Nadu. In view of these factual confusion, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the registration granted by the Director of Income Tax (Exemptions) on 29.08.2011 and the

order that may be passed by the Director of Income Tax (Exemptions) consequent to the order of CBDT dated 27.05.2016 and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.

10. In the result, the appeals filed by both the assesseees and the Revenue are allowed for statistical purposes.

Order pronounced on 15th July, 2016 at Chennai.

sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 15th July, 2016.

Kri.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assesseees
2. Assessing Officers
3. आयकर आयुक्त (अपील)/CIT(A)-VII, Chennai-34
4. DIT(Exemptions), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.