

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

	I.T.A. No. 2425/DEL/2013	
	A.Y. : -----	
SRI DEVLOK TIRTH YATRA SAMITI, C/O RRA TAXINDIA, D-28, SOUTH EXTENSION, PART-I, NEW DELHI - 49 (PAN: AAHTS4866P)	VS.	COMMISSIONER OF INCOME TAX, DEHRADUN
(APPELLANT)		(RESPONDENT)

Assessee by : Dr. Rakesh Gupta, Adv. & Sh. Somil Aggarwal, Adv.
Department by : Sh. I.P.S. Bindra, CIT(DR)

Date of Hearing : 29-09-2016

Date of Order : 25-10-2016

ORDER

PER H.S. SIDHU : JM

Assessee has filed this Appeal against the impugned Order dated 26.3.2013 passed by the Ld. CIT, Dehradun on the following grounds:-

1. That having regard to the facts and circumstances of the case Ld. CIT has erred in law and on facts in canceling the registration u/s 12AA(3) without

holding the activities of the appellant institution as non-genuine and without holding the activities of the appellant not being carried out in accordance with the objects of the appellant institution, i.e. without assuming jurisdiction in accordance with law.

2. That Ld. CIT has erred in law and on facts in canceling the registration u/s 12AA(3) by making such incorrect observations having no bearing on the applicability of section 12AA(3).
3. That in any view of the matter and in any case, the action of Ld. CIT in withdrawing/cancelling the registration and that too with retrospective effect, under section 12AA(3) is bad in law and against the facts and circumstances of the case.
4. That having regard to facts & circumstances of the case, Ld .. CIT(A) has erred in law and on facts in passing the impugned order contrary to law and facts and without providing adequate opportunity of hearing and without considering the principles of natural justice.
5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

2. The brief facts of the case are that the assessee society was granted registration under section 12AA of the Income Tax Act, 1961 vide order dated 10.10.2008. However, while completing the assessment proceedings for the assessment year 2009-10, the AO

observed that the assessee was engaged in the activity of organizing tours to religious and historical places in India for general public on payment basis. The main finding of the AO was that the person who decides to undertake the tour organized by the assessee joins its members as a temporary member by paying membership fee of Rs. 100/-. This membership is valid for the duration of the trip and is cancelled after completion of the same. The members are passengers. The assessee is a tour operator and there is no element of charity involved. All terms and conditions for the members (yatris) were devised as an innovative method to camouflage its business activity and pass the same off as charity.

2.1 Therefore, a show cause notice for withdrawal of Registration u/s. 12AA of the I.T. Act, 1961 was issued to the assessee and in response to the same, Assessee's counsel attended the proceedings and he has stated that the assessee is doing charity and the surplus funds of the assessee trust have been used only for the purposes of objects of the trust. Copy of tickets of the passengers who undertook the journeys with the assessee society also filed and assessee relied upon the following case laws.

- (i) Disha India Micro Credit vs. CIT (ITAT Delhi)
- (ii) CTR Encyclopaedia on Indian Tax Laws (ITA No. 191 Bang/2009)
- (iii) Gaur Brahmin Vidya Pracharini Sabha vs. CIT (ITA No. 1905/Del/2009)

(iv) Padanilam Welfare Trust vs. DCIT (ITA No. 444/Mds/2010)

(v) Director of Income Tax (Exemptions) vs. The Chartered Accountants Study Circle (2012) 250 CTR (Mad) 70.

From the perusal of the Statement of accounts of the assessee it has been observed by the AO that the only object which is being followed is related to trips to various religious places. The modus operandi of the assessee is the same as any tour operator. Further perusal of the pamphlets issued by the assessee clearly define the conditions laid down for persons who opt for trips being conducted by the assessee. The main source of income of the assessee is receipt of income from the tours conducted to different places. Perusal of income and expenditure statements for the AY 2009-10 to 2011-12 (as mentioned at page no. 3 of the impugned order) clearly depict that expenses are being made purely in connection with obtaining the tours and have been wrongly given the nomenclature of "charitable expenditure" which is just to hoodwink the authorities and cannot justify the claim of exemption u/s. 12A. In view of the above, Ld. CIT has observed that the assessee has failed to substantiate his claim that the expenses under the head "charitable expenditure" as charitable expenses. Ld. CIT was of the considered opinion that the activities of assessee being totally on commercial lines, claim of exemption u/s. 12A is not admissible. Therefore, the activities of the assessee i.e., undertaking tours to various religious places, would not make the object clause charitable. Those were purely commercial activities and cannot be said to be intended for advancement of any object of general public

utility, no matter if in between tours, some religious discourse may have led to imparting some knowledge and helping human development. Ld. CIT further observed that since this is absolutely of no consequence as during religious tours people normally are in that state of mind and listen to or sing bhajans/ religious songs during the journey. In view of the above, the registration granted under section 12AA of the Income Tax Act, 1961 vide order dated 8.10.2008 was withdrawn vide order dated 26.3.2013 passed u/s. 12AA(3) of the I.T. Act, 1961 by the CIT, Dehradun.

4. Aggrieved with the order dated 26.3.2013, Assessee is in appeal before the Tribunal.

5. Ld. Counsel of the Assessee has stated that Ld. CIT has erred in cancelling the registration u/s. 12AA(3) without holding the activities of the assessee institution as non-genuine and without holding the activities of the assessee not being carried out in accordance with the objects of the assessee institution, i.e. without assuming jurisdiction in accordance with. He further submitted that the only effective issue in the present appeal is against the cancellation of registration by the CIT by invoking the powers u/s. 12AA(3) on the ground that assessee's activity of organizing tours to various religious places was on commercial lines. He stated that registration u/s. 12AA was granted by CIT on 10.10.2008 on the basis of the objects reproduced at page no. 1 of the impugned order according to which assessee was to conduct pilgrimage tours to elderly people for spread of religious and charitable feelings and teachings, running medical hospital etc. However, the assessee was carrying out the activities as per the terms of the charitable objects. He further stated that when registration was granted u/s. 12AA on

the basis of objects and activities as mentioned at page no. 1 of the impugned order and these very objects and activities are being carried out by the assessee, registration cannot be cancelled. In support of his contention, he referred to various following case laws.

- Sharda Educational Trust vs. CIT (Central) 147 ITD 281.
- Agra Development Authority vs. CIT 141 ITD 336 (Agra)
- CIT vs. Sarvodaya Ilakkiya Pannai 343 ITR 300 (Madras High Court)
- Maulana Mohammad Ali Jauhar Trust vs. CIT 63 DTR 416
- DIT(E) vs. Karnataka Industrial Area Development Board (2014) 219 Taxman 0539 (Karnataka)
- DIT(E) vs. Khar Gymkhana – ITA No. 2349 of 2013 dated 6.6.2016 - Hon'ble Bombay High Court.

In view of the above, he stated that the action of the Ld. CIT in cancelling the registration u/s. 12AA(3) is bad and the same may be cancelled.

6. On the other hand, Ld. DR relied upon the order of the Ld. CIT and stated that from the perusal of the statement of accounts of the assessee it has been observed that the only object which is being

followed is related to trips to various religious places. The modus operandi of the assessee is the same as any tour operator. He further stated that on perusal of the pamphlets issued by the assessee clearly define the conditions laid down for the persons who opt for trips being conducted by the assessee. The main source of income of the assessee is receipt of income from the tours conducted to different places and on perusing the figures thereof it reveals that the expenses are being made purely in connection with obtaining the tours and have been wrongly given the nomenclature of charitable expenditure which is just to hoodwink the authorities and cannot justify the claim of exemption u/s. 12A. Therefore, the assessee failed to substantiate his claim under the head "charitable expenditure" as charitable expenses. In view of the above, he stated that the order of the Ld. CIT may be upheld.

7. We have heard both the parties and perused the records. We find that only effective issue in the present appeal is against the cancellation of registration by the CIT by invoking the powers u/s. 12AA(3) on the ground that assessee's activity of organizing tours to various religious places was on commercial lines. We note that the registration u/s. 12AA was granted by CIT on 10.10.2008 on the basis of the objects reproduced at page no. 1 of the impugned order according to which assessee was to conduct pilgrimage tours to elderly people for spread of religious and charitable feelings and teachings, running medical hospital etc. However, the assessee was carrying out the activities as per the terms of the charitable objects. It was further noted that when registration was granted u/s. 12AA to the assessee on the basis of objects and activities as mentioned at page no. 1 of the impugned order and these very objects and activities are being carried out by the assessee, therefore,

registration cannot be cancelled. We further note that the AO in his assessment order dated 22.1.2016 relevant for the AY 2013-14 passed u/s. 143(3) of the I.T. Act, 1961 vide para no. 1 has observed that the assessee is engaged in the activity of organizing tours to religious and historical places in India for senior citizens. The society is purely religious and works for the charitable purposes. He further observed that if the society would have been carrying on the business activity for the motive of profit then it would have conducted a tour not to the religious place but to the places of fun and enjoyment not the religious temples but to the club and pubs, not in a second class third sleeper but luxury AC coaches would have been hired and instead of giving the knowledge of incredible India it would have given the lectures regarding dances and beaches. We find that it is a settled law when the registration was granted u/s. 12AA on the basis of objects and activities (mentioned at page no. 1 of the impugned order) and these very objects and activities are being carried out by the assessee, registration cannot be cancelled as held by the Coordinate Bench decision in the case of Sharda Educational Trust vs. CIT (Central) 147 ITD 271, 107 DTR 201 (Agra Trib) dated 24.5.2013.

7.1 We further find that registration cannot be cancelled by re-examination of the objects on the basis of which registration was originally granted and CIT does not have power of review as held in Chaturvedi Har Prasad Educational Society vs. CIT 134 TTJ 781 (Lucknow) dated 30.8.2010.

7.2 We also note that under section 12AA(3), the registration can be cancelled only on two grounds i.e. if the activities are not

genuine or are not being carried out in accordance with the objects. However, in assessee's case activity of conducting pilgrimage tours is in accordance with the objects and activities are not in-genuine and therefore how could the registration be cancelled and more so when there is no such finding at all in the impugned order to the above effect and only objection of the Ld. CIT was that the assessee was pursuing the said objects on commercial line – a ground which is not permissible ground u/s. 12AA(3) as held in CIT vs. Sarvodaya Ilakkiya Pannai 343 ITR 300 (Madras High Court).

7.3 We further find that Ld. CIT observed that the assessee is charging a fee for the tour and hence came to conclusion that the assessee basically a tour operator. However, in August, 2008 when the journey was organized out of 294 people who undertook the journey, 243 people paid and the remaining 51 were taken free of cost. Hence, there is no profit motive.

7.4. We further find that second objection of the Ld. CIT was relating to charging of fee from the passengers of Tirth Yatra's. However, on receiving of a token amount of Rs. 1000/- any person from general public can enroll for the Yatra. The said person becomes a temporary member of the society for the period of the Yatra. The total money charged from the individuals for the yatra is Rs. 21,500/- for a period of 31 days, which comes to less than Rs. 700/- daily. This includes provision of train tickets, bus hire, lodging charges, refreshments and three freshly cooked meals daily. Hence, it is established that charging such minimal amount could never be compared to an activity run with profit motive.

7.5 We further note that the Ld. CIT cancelled the registration without giving the date from which cancellation of registration would

take place and therefore in the absence of any date which registration would be cancelled, thus, the CIT's impugned order cannot be sustained, as held in the case of Sharda Educational Trust vs. CIT (Central) 147 ITD 271 (Agra Trib) dated 24.5.2013.

8. In the background of the aforesaid discussions and respectfully following the precedent, we are of the considered view that the order of the Ld. CIT in cancelling the registration is not in accordance with law. We therefore, set aside the impugned order of the Ld. CIT and restore the registration u/s. 12AA of the I.T. Act.

9. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 25/10/2016.

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 25/10/2016

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

Assistant Registrar, ITAT, Delhi Benches

