

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

ITA No.1721/Del/2015

Institute of Marketing & Management, B-11, Qutab Institutional Area, New Delhi.	Vs.	CIT (Exemptions), New Delhi.
PAN : AAAAI0016R		
(Appellant)		(Respondent)

Assessee by : Shri Ved Jain, CA
Shri Ashish Chadha, CA
Department by : Smt. Meeta Singh, CIT-DR
Date of hearing : 10-04-2018
Date of pronouncement : 30-05-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 14.01.2015 passed by the ld. CIT(Exemptions), New Delhi (hereinafter referred to as “the CIT”) cancelling the registration granted u/s 12A(a) of the I.T. Act, 1961.

2. Facts of the case, in brief, are that the assessee is a society registered u/s 12A(a) vide order dated 04.04.1975 (No.DIE/(c)(1-429) and is also approved u/s 80G(5)(vi) vide order dated 20.05.2009, valid for the A.Y. 2010-11 to A.Y. 2012-13. Further, it was also notified u/s 10(23C)(iv) for the assessment year 2008-09 and onwards vide DGIT(E)’s order

No.DGIT(E)/10(23C)(iv)/2008/1164 dated 12.11.2008. However, the exemption granted to assessee u/s 10(23C)(iv) has been withdrawn by DGIT(E) vide its order ref. DGIT(E)/10(23C)(iv)/W/8/118/2011-12/1869 dated 28.02.2012.

3. The ld. CIT observed that the assessee has been filing its return of income claiming exemption u/s 11 of the I.T. Act. It is running educational institutes in the name and style of Institute of Marketing and Management, New Delhi. He observed that during the course of assessment proceedings for assessment years 2009-10 and 2010-11, the Assessing Officer had noted a large number of discrepancies in the accounts and affairs of the assessee society for which he had rejected the claim of exemption u/s 11 and held its income to be taxable as AOP. Keeping in view the discrepancies noted in the assessment order passed by the Assessing Officer and also the DGIT's order withdrawing approval u/s 10(23C)(iv), notice u/s 12AA(3) was issued to the assessee pointing out certain discrepancies as per para 2.1 of the order of the ld. CIT.

4. The assessee filed a reply vide submission dated 01.11.2012 and 04.12.2012. The assessee also requested that the proceedings may be kept in abeyance till the issue of withdrawal of exemption u/s 10(23C)(iv), which is presently before the Hon'ble High Court, is decided. It was subsequently brought to the notice of the ld. CIT that all these issues based on which the

additions were made in the assessment order, based on which notice u/s 12AA(3) has been issued, has been decided in favour of the assessee by the Tribunal. The assessee in its elaborate submission enclosed the copy of the order of the Id. CIT(A) as well as the order of the Tribunal and argued that the Tribunal has verified and after examining various issues has already found that there is no ground for revoking of exemption u/s 11 of the I.T. Act. Therefore, proceedings for withdrawal of exemption u/s 12A may be dropped.

5. However, Id. CIT observed that the order of the Tribunal is not acceptable and an appeal has been filed before the Hon'ble High Court challenging the same. It also came to the notice of the Department that the assessee has withdrawn its writ petition before the Hon'ble High Court challenging the withdrawal of exemption u/s 10(23C)(iv) and the writ petition has been dismissed as withdrawn. He, therefore, again asked the assessee to explain its position afresh in reference to its withdrawal of writ petition challenging the order of the DGIT withdrawing approval u/s 10(23C)(iv) of the I.T. Act. There was no response from the side of the assessee. The Id. CIT thereafter proceeded to decide the issue on merit. He observed that DGIT while considering the assessee's case for continuation of exemption granted u/s 10(23C)(iv) has pointed out certain irregularities in the affairs and functioning of the assessee society. The same are reproduced by the Id. CIT at para 3 of his order. He

observed that the DGIT concluded that the activities of the institute are not solely for education and run for profit. It has been observed that there are numerous instances where the fees collected from the students had not been spent on their education but on repairs & renovations on a lavish scale in the residence of Executive President. Further, no satisfactory evidence was furnished with regard to purchase of Library books, huge amounts paid to Babu Lal and also the reason for sale of HUDA plot for a paltry sum of Rs.15,00,000/-. This, according to him, was a classic instance of colossal mismanagement of the funds of the institution for dubious purpose. It has been held that the institution is engaged in the activities which cannot be said to be for charitable purposes or are in accordance with the objects for which the institution was established. The Assessing Officer while framing the assessment has also pointed out the same irregularities in its functioning. Keeping in view of the above irregularities pointed out by the DGIT and by the Assessing Officer, he again issued a show-cause notice to the assessee to explain as to why the registration granted u/s 12A(a) of the I.T. Act be not withdrawn. Rejecting the various explanations given by the assessee and observing that the violations regarding norms of Registrar of Societies, violations with regard to AICTE norms and financial irregularities and further observing that the assessee misconducted itself by claiming that it is approved

u/s 35(1)(iii) of the I.T. Act and donations made to it enjoy income tax exemption, the ld. CIT cancelled the registration granted u/s 12A(a) of the I.T. Act. Since he cancelled the registration granted u/s 12A which is a primary requirement for granting approval u/s 80G(5), the approval granted u/s 80G(5) dated 20.05.2009 was also cancelled.

6. Aggrieved with such order of the ld. CIT, the assessee is in appeal before the Tribunal by raising the following grounds :-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Exemptions) cancelling the registration granted to the assessee under section 12A(a) of the Act is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(Exemptions) has erred both on facts and in law in cancelling the registration granted under Section 12A(a), solely on the basis of observation made by the AO during the assessment proceedings.

3. On the facts and circumstances of the case, the learned CIT(Exemptions) has erred both on facts and in law in cancelling the registration on the basis of findings given by the AO in assessment proceeding despite the fact that the such findings of the AO stands reversed by the CIT(A) and Hon'ble ITAT has confirmed the order of CIT(A).

4. The act of the learned CIT(Exemption) in not following the order of Hon'ble ITAT is in disregard to the principle of judicial discipline whereby the lower authorities are bound to follow the order of the higher authorities.

5. On the facts and circumstances of the case, the learned CIT(Exemptions) has erred both on facts and in holding that the activities of the assessee is not as per law and are not genuine.

6. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

7. Ld. counsel for the assessee referring to the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Islamic Academy of Education reported in 229 taxmann.com 274 submitted that the Hon'ble High Court in the

said decision has held that where the assessee trust was fulfilling its main object of imparting education by establishing educational institution and taking admission of students every year registration of trust could not be cancelled only on basis that trustees were misappropriating funds of said trust.

8. Referring to the decision of the Kolkata Bench of the Tribunal in the case of Dr. B.G. Memorial Trust vs. CIT vide ITA no.516/Kol/2017 order dated 15.09.2017, he submitted that where the activities of the trust in relation to its educational activities have not been doubted and on the basis of same activities registration u/s 12AA was granted to the assessee, simply because the assessee has received donation from some parties which are involved in the bogus transactions cannot be the basis for denial of the registration certificates.

9. Referring to the decision of the Delhi Bench of the Tribunal in assessee's own case vide ITA no.4182/Del/2013 order dated 21.02.2014 for assessment year 2009-10, he submitted that the Tribunal has dealt with all the additions made by the Assessing Officer in respect of all those discrepancies and has decided the case in favour of the assessee. Further, ld. CIT(A) relying on the order of the Tribunal for assessment year 2009-10 has decided the issue in favour of the assessee for assessment years 2010-11 and 2011-12. Further, the appeal filed by the Revenue against the order of the Tribunal has already been dismissed by the Hon'ble High Court. Therefore, in view of the order of the

Tribunal in assessee's own case for assessment year 2009-10 which has been followed by the Id. CIT for assessment years 2010-11 and 2011-12, the order of the Id. CIT cancelling the registration granted earlier u/s 12A(a) should be set-aside.

10. The Id. DR on the other hand heavily relied on the order of the Id. CIT.

11. We have considered the rival arguments made by both the sides, perused the order of Id. CIT and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. The provisions of section 12AA(3) read as under :-

“Procedure for registration.

12AA. (1) xxxxx

(2) xxxxx

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.”

12. We find the Id. CIT cancelled the registration granted earlier basically on the following grounds :-

- (a) *The Assessing Officer in the assessment proceedings for assessment years 2009-10 and 2010-11 had noted a large number of discrepancies in the accounts and affairs of the assessee society and rejected the claim of exemption and held its income to be taxable of AOP.*

- (b) *The DGIT has withdrawn the approval u/s 10(23C)(vi) on account of various irregularities pointed out by him and holding that the activities of the institution are not run solely for education and run for profit.*
- (c) *There are violations regarding norms of Registrar of Societies and norms of AICTE.*
- (d) *The assessee misconducted itself by claiming that it is approved u/s 35(1)(iii) and donations made to it enjoy income tax exemption.*

13. So far as the order of the Assessing Officer rejecting the claim of exemption u/s 11 is concerned, we find the Id. CIT(A) allowed the exemption u/s 11 and on further appeal filed by the Revenue, the Tribunal vide order dated 21.02.2014 (supra) has held that the Id. CIT(A) was correct in holding that the allegations cannot be the basis for denying the exemption u/s 11 of the I.T. Act. It has further upheld the observations of the Id. CIT(A) that exemption u/s 11 is available on compliance of the conditions as prescribed in section 11 and section 12 of the I.T. Act. Since the Id. DR could not point out any error or defect in the finding given by the Id. CIT(A), the Tribunal held that the objects of the assessee society being education in nature and fall within the meaning of charitable purpose u/s 2(15) of the I.T. Act and since the society was registered u/s 12A allowed the claim of exemption u/s 11 of the I.T. Act. Since the appeal filed by the Revenue has already been dismissed by the Tribunal and upheld by the Hon'ble High Court and the assessee society is imparting education which is not in dispute, therefore, Id. CIT, in our opinion, is not justified in cancelling the

registration granted earlier by invoking provisions of section 12AA(3) of the I.T. Act. The addition, if any, can be made by the Assessing Officer in the regular assessment but registration cannot be cancelled only on the basis of certain violations by the trustees unless and until it is proved that the assessee trust is not fulfilling its main object of imparting education.

14. We find the Hon'ble Karnataka High Court in the case of Islamic Academy of Education (supra) while deciding a somewhat identical issue has observed as under :-

“4. The appeal was admitted to consider the following substantial questions of law:

Whether the Tribunal was correct in holding that the registration granted u/s. 12A of the Act had been incorrectly cancelled u/s. 12AA(3) of the Act by the Commissioner despite being satisfied based on material detected in the course of search that the activity of the trust was not genuine and was not being carried out in accordance with the objects of the trust?

5. The learned counsel for the revenue assailing the impugned order contended that the material on record discloses that cash was found in the residential premises of the Chairman which was offered to tax by the Trust. A sum of `3.5 Crores is admitted to be a bogus entry and offered to tax. Advances are made to the family members of the Trust out of the Trust fund which are kept outside the accounts and reflected in the coded words. The activities of the Trust are not carried out in accordance with law and contrary to the provisions of the Income Tax Act. Therefore, he submits that a case for cancellation is made out and the Tribunal erroneously set-aside the CIT order.

6. Per contra, learned counsel appearing for the assessee submitted that when once the genuineness of the Trust is not disputed and when the object of the Trust namely imparting education has been carried on uninterruptedly, a case for cancellation of the Trust is not made out. If there are violations, such as not accounting the money received which was found in the possession of the Trustees, bogus entries in the accounts and payments made to the members of the family which are recorded in code numbers, the benefit under section 11 of the Income Tax Act need not be extended and such amounts should be taxed. But that is not a justification for cancellation of registration of the Trust.

7. Section 12AA provides for procedure for cancellation of registration of the Trust or Institution by the Commissioner of Income Tax. The power of cancellation of registration flows from the power to register. However, there has been unnecessary

litigation on this issue. Under what circumstances, the registration of a Trust or Institution granted under section 12A could be cancelled by the Commissioner of Income Tax was the subject matter of various interpretation by the various High Courts. In order to avoid such unnecessary litigations, the Parliament introduced sub-section (3) to section 12AA by Finance (No.2) Act of 2004 with effect from 1.10.2004 which reads as under:

“Section 12AA(3): Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]”

As is clear from the circular No.5 of 2005 dated 15.7.2005 issued by the Central Board of Direct Taxes, the aforesaid section was amended so as to specifically provide that if the Commissioner of Income Tax is satisfied that the activities of any Trust or Institution are not genuine or are not being carried out in accordance with the objects of the Trust or Institution, he shall, after giving reasonable opportunity of being heard to the concerned Trust or Institution, pass an order in writing cancelling the registration granted under the said section. Therefore, in view of the aforesaid express provision, registration granted to a Trust could be cancelled under two circumstances namely,

- (1) When the activities of the Trust or Institution are not genuine; and*
- (2) The activities of the Trust or Institution are not being carried out in accordance with the objects of the Trust or Institution.*

Only if the Commissioner is satisfied that any one of these conditions exists, then he shall pass an order in writing cancelling the registration of such Trust or Institution. Therefore what follows is, except the aforesaid two grounds and on no other ground, an order cancelling registration of the Trust could be passed.

8. In the instant case, the material on record shows that the Trust has established educational institution and imparting medical education. Every year, students are admitted. Huge investment is made for construction of buildings for housing the college, hostel and to provide other facilities to the students who are studying in the College. The College is recognized by the Medical Council of India, State of Karnataka and all other statutory authorities. Therefore, it cannot be said that the Trust is not genuine. Admittedly, the students are being admitted every year. Students are studying in all courses. Thus the object of the constitution of the Trust namely imparting of education is going on uninterruptedly. Therefore, it cannot be said that the activities of the Trust are not being carried out in accordance with the objects of the Trust. When the aforesaid two conditions are fully satisfied, on the ground that the trustees are misappropriating the funds of the Trust the registration of the Trust cannot be cancelled. If the trustees are misappropriating the funds, if they are

maintaining false accounts, it is open to the authorities to deny the benefit under section 11 of the Income Tax Act, but that is not a ground for cancelation of registration itself. That is precisely what the Tribunal has held. Therefore, the substantial question of law is answered in favour of the assessee and against the revenue. There is no merit in this appeal. Accordingly, the appeal is dismissed.

15. Respectfully following the decision cited above and considering the fact that the assessee trust is imparting education as per its main objects, we are of the opinion that the ld. CIT is not justified in cancelling the registration u/s 12AA(3) of the I.T. Act. We accordingly set-aside the order of the ld. CIT and restore the registration granted earlier.

16. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 30th May, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 30-05-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(Exemptions)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi