

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1185/Chd/2017
(Assessment Year : 2017-18)

Gaushala Trust Society,
Spatu Road,
Ambala City.

Vs.

The CIT(Exemptions),
Central Revenue Building,
5th Floor, Sector-17E,
Chandigarh.

PAN: AABAG6754D
(Appellant)

(Respondent)

Appellant by : Shri Rohit Goyal, CA
Respondent by : Shri Gulshan Raj, CIT DR
Date of hearing : 26.04.2018
Date of Pronouncement : 11.07.2018

ORDER

PER ANNAPURNA GUPTA, A.M. :

This appeal has been preferred by the assessee against the order of learned Commissioner of Income Tax (Exemptions), Chandigarh (hereinafter referred to as CIT(Appeals)) dated 31.5.2017 relating to assessment year 2017-18, refusing grant of registration u/s 12A of the Income Tax Act, 1961 (in short the 'Act').

2. Briefly stated, the assessee had filed an application in Form No.10A seeking registration as a charitable trust for claiming exemption of its income u/s 11 and 12 of the Act. The Ld.CIT(E) noted from the application that the assessee society was an ongoing entity since 1913 with the following aims and objects as outlined in para 2 of the order as under:

“2. The stated ostensible aims and objects of the society are to make general improvement of cows and its off springs and thus to increase milk yield; to develop such cattle into cows, oxen and bulls of good pedigree; to take care of old, tame and lame and famine- stricken cows, oxen, bulls, calves and their pedigree and to give maximum help/protection to aforesaid; to supply pure milk in the illaqa at reasonable rates; to feed up and develop the calves and selected various pedigrees into stud-bulls and to provide such bulls to villages for improvement of cows bread at reasonable rates.”

3. With this background the Ld.CIT(E) proceeded to examine whether the assessee was entitled for registration as per the provisions of section 12A of the Act and, therefore, issued a questionnaire seeking to examine the fulfillment of the conditions for grant of registration u/s 12AA, being the genuineness of the objects and the genuineness of the activities carried out by the assessee. Due replies were filed by the assessee, after considering which, the Ld.CIT(E) held that the assessee had failed to fulfill the basic conditions for being eligible for grant of registration, since its major emphasis was on creating income from sale of milk, enhancing FDR's and earning interest on the same and that there was no income from property of the assessee society, as the title of land in the name of the society, was under litigation for the past many years. The Ld.CIT(E) denied the registration also for the reason that there was no corpus fund received by the assessee society and the same was created only by way of accretion in the shape of profits, which the Ld.CIT(E) held, did not partake the character of corpus donations as envisaged u/s 11(1)(d) of the Act and further that there were no voluntary donations received by the assessee and

thus no income that could be covered by the provisions of sections 11 and 12 of the Act. The Ld.CIT(E) also found the claim of the society of treating more than 500 cows as not genuine for the reason that the assessee gaushala was running a Government Veterinary hospital in its premises since it had employed a doctor from the Government for treating injured and sick cows and only meagre amount had been spent by it on medicine and, therefore, it was not the assessee who was treating the sick and injured cows but the Government which was doing so, which belied the claim of the assessee that it was carrying out charitable activities of treating sick and injured cows. For the above reasons, the Ld.CIT(E) refused the grant of registration u/s 12A of the Act. The relevant findings of the Ld.CIT(Appeals) in paras 7 to 10 of the order are as under:

“7. On 18.05.2017, Sh. Karan Jain, C.A., Counsel for the applicant attended and filed, written submissions in response to above noted queries, While examining the Income & Expenditure statements for the F.Y 2016-17 it transpired that major emphasis of the society is on creating income from, sale of milk and enhancing FDRs and earning interest on the same. This issue also exacerbated by the fact that the income from sale milk in F.Y. 2015-16 was 56.31 lacs and. the same has readied to 63.51 lacs in F.Y. 2016-17. This arrangement clearly leads to conclude that society has been diverted from its object of serving the old, tame and lame cows and got involved in commercial activity of selling of milk. Moreover the claims of the applicant that it is taking care of more than 500 old and lame cows loses its veracity as how old and lame cows could produce that huge quantity of milk that would increase income on account of milk sale from 56 lacs to 63 lacs.

8. It has also been observed that title of land in the name of the society is under litigation from last many tinder this scenario it clearly leads to conclusion that there is no income from property and it might possibly be the case of encroachment on government land, by the applicant. Further perusal of financial statements reveals that no evidence of corpus funds being shown, in. the balance sheet being received as such has been provided by the applicant rather the

accretions in the shape of profits are being taken to corpus every year by the applicant. This doesn't take partake the character of corpus donations as envisaged in section 11(1)(d). Moreover, Perusal of Income & Expenditure reveals no voluntary donations as envisaged in section 12 of I.T. Act has been, received and there is no income that could be covered, by the provision of section 11 & 1.2 of IT. Act.

9. It has also been, revealed from the submissions that a veterinary hospital is running in the premises of Gaushala and government has employed a doctor which, clearly establishes that it is a government hospital being managed by the government and society has nothing to do with it. The issue gets exacerbated by the fact, that society has claimed exemption u/s 10(23C)(v) in the previous year on account of charitable activities of serving of injured, or sick cows which in actuality is being done by the Govt. Veterinary Hospital. The same claim was even rejected by the Assessing office in last assessment; This issue also gets impinged by the fact that out of the total income of 90 lacs as on 31.03.2017 only a sum of 92,982/- has been spent on medicines which is merely 1.02%. This arrangement clearly leads to the conclusion that claim of society that it is treating more than 500 cows is not genuine rather it is operating on commercial principal and focusing on generating income on account of milk sale and creation of Fixed Assets. Moreover, no justification for the claim of exemption, after 113 years of incorporation of the society has been provided by the applicant

10. In the instant case, given all of the above. The application, under section 12.A for grant of registration is rejected.”

4. Aggrieved by the same, the assessee has come up in appeal before us, raising the following ground of appeal:

“1. The learned Commissioner of Income Tax (Exemptions) has erred in laws and facts and law in not registering the applicant Trust u/s 12AA.”

5. During the course of hearing before us, the Ld. counsel for assessee first stated the facts relating to the assessee society pointing out that the assessee society was more than 100 years old and had been established with the object to take care and to give shelter to old and lame cows, whom the public do not keep with them. That it was taking care of more than 500 cows and was running a cow hospital by

employing the Government doctor to serve the old and helpless cows. The Ld. counsel for assessee stated that it was providing free medical facilities for the treatment of any cow brought by general public. The Ld. counsel for assessee further stated that the cost of maintenance of cow was being met out of selling milk of these very cows. The Ld. counsel for assessee drew our attention to the submissions made in this regard before the Ld.CIT(E) placed at Paper Book page NO.29 as under:

"1. Assessee is engaged in the activities to take care and to give shelter to old and lame Cows, whom the public do not, keep with them and are of status of without owner. Presently the Gaushala is taking care of more than 500 cows. To meet the purpose of serving ill & helpless cows, Gaushala is maintaining a cow hospital in which Government employed a doctor. A Veterinary Hospital is running in the premises of Gaushala and a regular veterinarian is engaged there whose main responsibility is to treat the cows of Gaushala and the Gaushala Hospital is providing free medical facility for the treatment of any cow brought for treatment by General Public. Gaushala is also providing medicines for cows free of cost.

As the Gaushala is engaged in taking care of old and lame Cows and running a Government Veterinary Hospital in the premises itself 'which is an evidential proof of its charitable activities. Thus, exemption under Section 10(23C) is claimed. Photocopy of Assessment order for the A.Y. 2014-15 is enclosed herewith.

2. Financial Statement as on 31.03.2017 i.e. Receipt & Payment Account, Balance Sheet and Income & Expenditure Account are attached herewith.

The Gaushala Trust Society was established in February 1913 with the object to take care and to give shelter to old and lame Cows, whom the public do not keep with them and the Gaushala is serving its object from more than last 100 years. The motto of Gaushala is "GAU SEWA - ISHWAR SEWA". Presently the Gaushala is taking care of more than 500 cows. For meeting out the cost of Maintenance of Cows, the Society sells the milk of Cows which is an allied work as after providing medical aid, good and nutritious feed, it produces milk. For feeding the cows, the society has its own agriculture land on which the feed for cows are sown. As the number of cows are more than 500 therefore Milk sale is of considerable amount but

the fact is that main source of funds for meeting out day to day maintenance expenses like feed, consumables, labour etc is the Milk sale. During the year 2015-16 the total expenses of the Gaushala excluding Depreciation was Approx. 78 Lacs as against the milk sale of Rs. 63 Lacs. From the above it is clear that the. presumption of engagement of Gaushala in commercial activities of sale of milk is not correct.”

6. The Ld. counsel for assessee thereafter stated that the basis on which the Ld.CIT(E) held that the assessee was not entitled to grant of registration u/s 12A of the Act were either on misappreciation of facts or were irrelevant to the issue of grant of registration. Drawing our attention to the contention of the Ld.CIT(E) that the assessee was indulging primarily in the commercial activity of selling milk, the Ld. counsel for assessee stated that the generation of milk and selling of the same was an allied activity and incidental activity of the assessee society arising from its main activity of looking after cows. Ld.Counsel for the assessee, in this regard stated that out of 500 cows which it was looking after, only 80 cows were producing milk while the balance were either non milk producing cows or those not used for breeding or they were bulls used for breeding or were cows which were breedable and were not giving milk at that time. In this regard, the Ld. counsel for assessee drew our attention to a certificate of the Veterinary Surgeon certifying monthly progress report of the gaushala for the month of March, 2017, to the office of the Deputy Director, ICD Project Ambala City. The Ld. counsel for assessee stated that this progress report showed the number animal/cows which were there with gaushala and their break-up on the basis of whether they were milk cows,

breedable cows, buffaloes, heifers etc. and also their daily milk production, annual milk production, monthly and yearly expenses on the cows. The Ld. counsel for assessee drew our attention to the analysis of the data in the said monthly report by way of a chart submitted before us as under:

Cows (in Milk/Breedable)		Cows/Bullocks(Non Milk Producing/ Not used for Breeding)		Bulls used for Breeding	
Description	Nos.	Description	Nos.	Description	Nos.
Current Milk Bearing cows	80	Disabled Cows non Milk Producing	103	Good Bulls used for breeding	5
Breedable but not milk bearing currently	105	Calves Male	48		
Female Heifers	43	Sterlised Bullocks	73		
Calves Female	52	Bulls not used for breeding	31		
TOTAL	280	TOTAL	255	TOTAL	5

7. Pointing out to the above the Ld. counsel for assessee stated that it was evident from the above that out of the 540 cows owned by it, only 80 cows were currently bearing milk and only 280 in all were capable to give milk, while the rest were either disabled, sterilized or male cows or were bulls. The Ld. counsel for assessee, therefore, stated that the above statistics clearly revealed that major objective of the assessee society was not to indulge in milk generation and sale of the same. The Ld. counsel for assessee drew our attention to an analysis of the milk realization by assessee society for the year ending 31-03-2017 and pointed out there from that even as per the said data of the annual milk production of the assessee society, which was correlated with the data as certified by the Veterinary doctor and revenue generation on account of the same which tallied with the revenue generated from the sale of milk as

reflected in the income and expenditure account of the assessee , the total milk yielding cows available with the assessee society were approximately 75. The Ld. counsel for assessee further pointed out that the selling price of the milk was Rs.38/- to Rs.40/- per litre which was far less than the market price and which proved that the intention of the assessee society was not to indulge in any commercial activity and generation of huge profits by sale of milk. The Ld. counsel for assessee further pointed out that in any case, the assessee society was not earning any surplus from the sale of milk and to substantiate the same. The Ld. counsel for assessee pointed out that against the revenue generated from the sale of milk during the year 2015-16 of Rs.63,51,321/-, the expenses incurred in the gaushala amounted to Rs.75 lacs approximately, thus resulting in loss from this activity carried out by the assessee society. The Ld.Counsel for the assessee stated that it was amply clear from the above that the activity of selling milk by the assessee society was in no way the primary object of the assessee society and was also not carried out with the object to earn profits, and, therefore, the findings of the Ld.CIT(Appeals) in this regard were incorrect and hence denial of registration for the above reason.

8. Drawing our attention to the next contention of the Ld. CIT(E), which was not actually taking care of old and lame cows but only getting it done at no expenses to the

assessee society through a Government Veterinary doctor and spending very meagre amount for treating the said animals by way of purchase of medicines etc, Ld.Counsel for the assessee stated that the Ld.CIT(E) had again misappreciated the facts and contention on this issue. The Ld. counsel for assessee stated that it was the Government of Haryana which had extended the facilities and doctors for the hospital and, therefore, it cannot be stated that for this reason, the assessee was diverted from its object of serving old and lame cows. As far the meagre amount spent on taking care of these cows, the Ld. counsel for assessee stated that the objective of the assessee society was to give shelter and take care of old and lame cows and for this purpose it provided feed and other consumables including medicines to the cows. Further the Ld. counsel for assessee stated that the Government of Haryana had extended the facilities and doctors and also provided medicines available with them for treating the cows at the gaushala and besides, the assessee society had also spent an amount of Rs.1,44,842/- towards medicines purchased for taking care of the cows. The Ld. counsel for assessee stated that it is clearly evident that the assessee was indulging in its stated objective of taking care of old and lame cows and finding of the of the Ld.CIT(E) that the expenditure on medicine was very low and thus the assessee was not carrying out its stated object, had no basis at all and was irrelevant. The Ld. counsel for assessee drew our attention to its

contention before the Ld.CIT(E) in this regard reproduced at Paper Book page No.30 as under:

“5. During the year 2015-16 the office has raised a query that out of total Receipts, only 1.06% amount is spent for medicine Purchased. The above correlation has no relevance to form a presumption that Gaushala is not following the basic principles of Gaushala. The main object of Gaushala is to-give shelter and take care of old and lame cow. To fulfilling its objects Gaushala provides Feed and other Consumables including Medicines etc to cows and provide proper medical checkup to Cows, time to time so that the Cows maintained by Gaushala may remain Healthy. Further a regular veterinarian is engaged there whose main responsibility is to treat the cows of Gaushala and the Gaushala Hospital is proving free medical facility for the treatment of any cow brought for treatment by general public. The expenses incurred for Medicine Purchase of Rs. 144842.00 only does not mean that Society is not following the basic purpose of its establishment. As the Cows maintained at Gaushala are healthy and the outsiders who brought their cows for medical treatment and consultancy are duly satisfied. It is worthwhile to state here that Govt of Haryana who has extended the facilities & doctors in the hospital also provide medicines available with them and rest of the medicines are purchased by us.

9. Taking up the contention of the Ld.CIT(E) that the assessee was indulging only in the activity of enhancing its FDRs and earning interest on the same, the Ld. counsel for assessee stated that it had been clearly pointed out to the Ld.CIT(E) that FDRs had been made from the fund received from the Government out of compulsory acquisition of land of the assessee society in the year and the assessee Gaushala was holding on to the FDRs due to the uncertainty regarding premises on which it was running gaushala which was taken on lease, as it was under litigation for the past many years. The Ld. counsel for assessee stated that FDRs were being kept to be utilized if the assessee had to vacate its present premises and shift to a new place. The Ld. counsel for assessee drew our

attention to its submissions made in this regard before the Ld.CIT(E) reproduced at page 30 of the Paper Book as under:

“6. The FDR's appearing in the Balance Sheet are made of the Fund received from Government out of Compulsory acquisition of Land of Gaushala in the year. The Present premises of Gaushala is taken by it on Lease which is under litigation from last many Years. The Gaushala is Holding FDR's due to the future Uncertainty regarding its Premises, in case Gaushala has to vacant the premises it has to buy the Premises so that the Cows can be shifted there. Therefore Holding of FDR is not under the Discretion of Gaushala but it is bound to hold the FDR due to the uncertainty of Litigation outcome . A copy of lease deed is enclosed herewith.”

10. The Ld. counsel for assessee stated that it is clearly evident from the above that it was not the objective of the assessee society to enhance its FDRs and the finding of the Ld.CIT(E) in this regard was, therefore, incorrect on facts.

11. Thereafter the Ld. counsel for assessee drew our attention to the findings of Ld.CIT(E) that since the title of land in the name of society was under litigation it had no income from property and it was probably a case of encroachment on Government land by the assessee. Our attention was also drawn to the finding of Ld.CIT(E) at para 8 of its order that the assessee did not have any corpus fund and was creating the same out of the profit generated year to year, which as per the Ld.CIT(E) did not partake the character of corpus donation. The Ld. counsel for assessee further pointed out the findings of the Ld.CIT(E) that no voluntary donation had been received by the assessee and it had no income which could be covered by the provisions of section 11 and 12 of the Act. The Ld.

counsel for assessee stated that the above findings of the Ld.CIT(E) were wholly irrelevant for the purpose of grant of registration u/s 12A of the Act since they did not impinge on the genuineness of either its objects or the activities carried out by it.

12. The Ld. counsel for assessee stated that it was clearly evident that the assessee society was entitled to grant of registration u/s 12A of the Act and the Ld.CIT(E) had on the basis of irrelevant consideration and by mis-appreciation of facts before it denied the same. Reliance was placed by the Ld. counsel for assessee on the following judgments of the Hon'ble High Court in support of its contention:

- 1) CIT Vs. Delhi Kannada Education Society
246 ITR 731 (Delhi HC)
- 2) Secondary Board of Education Orissa Vs. ITO
(1972) 86 ITR 408 (Orissa HC)
- 3) DIT(Exemptions), Mumbai Vs. Shree Nashik
Panchvati Panjrapole (2017) 397 ITR 501
- 4) DIT(Exemptions Vs. Sabarmati Ashram
Gaushala Trust (2014) 362 ITR 539

13. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(E).

14. We have heard the rival contentions, and also carefully gone through the documents and case laws referred to before us. The issue before us pertains to refusal of grant of registration u/s 12A of the Act. That the assessee society was established with the object of making general improvement of cows and to take care of old and lame cows, oxen, bulls, etc. is not disputed. Further, we find that it is

not the case of Revenue that the said stated objects were not charitable in character. The contention of the Revenue, we find, is that the assessee was not genuinely carrying out its stated objects and the reason and basis for arriving at this conclusion was the following:

- 1) That the assessee was primarily indulging in the activity of selling milk, yielded by the cows, on commercial lines.
2. That it was enhancing its FDRs from such income derived from sale of milk for the purpose of earning interest thereon.
- 3) That it was spending meagre amount on medicines thus belying its claim that it was looking after old and lame cows.

The Revenue has also contended that the assessee is not entitled to registration u/s 12A for the reason that it has neither any income from property, nor has it any income either in the nature of corpus donation or voluntary donation which are covered by the provisions of sections 11 and 12 of the Act.

15. On careful consideration of the contentions of both the parties, we find merit in the contention of the Ld. counsel for assessee. The facts and figures, as pointed out to us and which have not been controverted by the revenue, substantiate the contention of the Ld.Counsel for the assessee, that it was primarily indulging in its stated

objects of looking after cows and activity of the sale of milk was only an incidental activity. We find that the assessee had contended that it had 500-540 cows and that out of the above, only 80 cows were milk producing. The Ld.Counsel, on this basis, has asserted that majority of the cows with the assessee society were solely for being taken care of, which was the stated object of the society also. This fact was evidenced by the monthly progress report of the assessee society, issued by the Dy.Director, ICD Project, Ambala. The assessee had also corroborated the same by submitting an analysis of milk realization by the gaushala for the year ended 31-03-2017, reflecting therein that the revenue generated from the sale of milk, at below market price, was possible from milk produced by 75 cows only, on the basis of average daily milk produced by the cows in the gaushala as certified by the deputy director ICD, Ambala. The monthly progress report of the assessee society was placed before the Ld.CIT(E) also and facts stated therein have not been controverted by the Revenue. The same have not been controverted even before us, nor has the Ld. DR pointed out any infirmity in the analysis of the said monthly progress report of the assessee society placed by the assessee before us during the course of hearing. The Revenue also has not pointed out any infirmity in the analysis of the milk realization by the assessee society in the year ending 31.3.2017. Thus, the fact that out of 500-540 cows being looked after by the assessee society, only 80 cows were milk yielding, remains an uncontroverted fact.

We also find that the assessee had demonstrated from its financial statements that the entire revenue earned from the sale of milk was utilized in its activity of looking after all the cows. It is clearly evident from the aforesaid fact that only a small proportion of cows with the assessee yielded milk which was sold by the assessee and the revenue generated thereof was utilized in maintaining all the cows, which majorly were not producing milk. Therefore clearly the activity of selling milk was only an ancillary activity of the assessee, the surplus generated from which were utilized for achieving its main object of maintaining and looking after lame and disowned cows, etc. Therefore, we hold that the denial of grant of registration to the assessee u/s 12A for the reason that it was primarily indulging in the commercial activity of selling milk is against the facts of the case and is totally unwarranted.

16. Further we find no merit in the contention of the Revenue that the fact that the assessee was spending only meagre amount on medicine, proved that it was not indulging in its stated object of looking after lame and sick cows. As rightly pointed out by the Ld. counsel for assessee, its stated object was not merely treating sick cows but looking after and maintaining disowned cows and the financial statements of the assessee society for the year ending 31.3.2017, 31.3.2016 and 31.3.2015, clearly showed that it was carrying out its stated object, having spent substantial amount on procuring feed for the cows

alongwith medicines. Besides, we find that the assessee society had explained that the cows were being looked after by the doctor which was provided by the Veterinary Hospital of the Government. Therefore we find no merit in the reasoning of the revenue that the low spend on medicines is a pointer to the fact that the assessee was not carrying out its stated object.

17. Further, we find no merit in the contention of the Revenue that the assessee was only indulging in creating FDRs and earning interest therefrom, since we find that the assessee had stated that FDRs had been made from funds received on acquisition of land owned by it and that it was holding on to the said FDRs to meet any eventuality of being displaced from its present premises which was being disputed. The Revenue has not controverted the above statement of the assessee. Therefore, the assessee having explained that the FDRs had not been created from the income generated from sale of milk, the denial of registration for this reason also is rejected.

18. We further agree with the Ld. counsel for assessee that the denial of registration for the reason that it had no corpus donation or voluntary donation or any income from property, are irrelevant consideration of grant of registration since the only satisfaction which the Ld.CIT(E) has to arrive at when granting registration is vis-à-vis the genuineness of the objects and the activities of the assessee

society and the fact that it is getting corpus donation or voluntary donation is irrelevant to the said consideration.

19. For the above reason, we set aside the order of the Ld.CIT(E) in refusing grant of registration of the assessee society and direct that the same be granted to the assessee society.

20. In the result, the appeal of the assessee, therefore, stands allowed.

Order pronounced in the Open Court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 11th July, 2018

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh