

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.643/Ind/2014
Assessment Year: 2010-11**

Gyan Sagar Society, C/o Mahesh Thahirani, L, Triveni Colony, Indore	Vs.	Deputy Commissioner of Income Tax-Circle 1(1), Indore
(Appellant)		(Respondent)
PAN No.AKGPJ5075N		

Revenue by	Shri K.G. Goyal, Sr. DR
Assessee by	Shri Morish Goyal & N.D. Patwa, Advocates
Date of Hearing	17.7.2018
Date of Pronouncement	26.7.2018

ORDER

PER MANISH BORAD, AM.

This appeal filed by the assessee pertaining to the A.Y. 2010-11 is directed against the order of Id. Commissioner of Income-tax (Appeals)-I, Indore dated 12.06.2014 which is arising out of the order u/s 143(3) of the Income Tax Act dated 18.03.2013 passed by DCIT-1(1), Indore.

2. Briefly stated the facts as culled out from the records are that the assessee is a society registered under the MP Society Act, 1973 established for carrying out education activities for the benefit of public at large with non profit motive. As per Memorandum and rules and regulation of the society the income of the society will be utilized for the advancement and establishment of school, colleges etc and not distributable to the members of the society. The society is running schools in the name of Gyan Sagar Academy, Dewas and Gyan Sagar School, Ujjain and also running Ashoka Hostel, Indore. Application for registration u/s 12AA of the Act was first filed on 23.09.2002 and the same was rejected on 31.03.2003. Thereafter on appeal by the assessee, Tribunal vide order dated 10.3.2006 remanded the matter to the file of Ld.CIT(A) for fresh consideration. However till date no further proceedings have been carried out by the Ld.CIT(A). In the meantime out of abandon caution the assessee filed second application u/s 12AA of the Act on 28.302013 with the same objects as were mentioned in the previous application. On 24.9.2013 CIT(Exemptions) granted the registration u/s 12AA of the Act with effect from 1.4.2012. For the year under

appeal the assessee filed return of income on 14.10.2010 declaring NIL income. Statutory notices u/s 143(2) and 142(1) of the Act were served upon the assessee and the case was selected for scrutiny. The Ld.A.O while examining the records observed that the assessee has shown the gross receipt of Rs.11,15,616/- from running hostel in the name of Ashoka Hostel but the occupants do not belong to the school run by the society. Even though it was pleaded by the assessee during the proceedings that the object of running hostel was to provide accommodation facility to the needy and poor students and very nominal amount were charged without any profit but the Ld.A.O was not convinced with the submissions and came to a conclusion that running of Ashoka Hostel is a commercial activity and the assessee falls in proviso (1) to section 2(15) of the Act and therefore the assessee's activities cannot be considered as charitable in nature and hence the assessee was denied the exemption u/s 11 of the Act and income assessed at Rs. 27,98,574/-.

3. Aggrieved assessee preferred the appeal before Ld.CIT(A) but failed to succeed as Ld.CIT(A) confirmed the view taken by the Ld.A.O observing as follows;

“4. I have seen the assessment order, the grounds of appeal and submissions of appellant.

5. The appellant society came into existence in May, 2000. It started two schools namely Gyan Sagar Academy at Ujjain in July;2002 and at Dewas in July’2003. It also started a hostel in name of Ashoka Hostel at Indore.

6. The Society applied for registration u/s 12A of I.T. Act on 23.09.2002 which was rejected by Ld.CIT, Indore on vide order dt. 31.03.2003. Appellant filed appeal against the aforesaid order before the ITAT Indore Bench and Hon'ble'ble members, ITAT, Indore has set-aside the order of Ld.CIT, vide their order dated 10.3.2006, with a direction to decide the application of the assessee denovo, after giving due opportunity to the assessee. According to appellant this set-aside order is not yet decided by Ld.CIT & hence the same may be treated as deemed granting of exemption u/s 12-A of I.T. Act.

7. But as per the facts of this case, as the application of appellant u/s 12-A of I.T. Act was rejected by Ld.CIT, Indore through a written order, in such a case a deemed approval of application u/s 12A of I.T. Act is not possible, unless the Ld. CIT, Indore passes de-novo order in favour of appellant.

8. Even appellant held the same view, as having not got any approval u/s 12A of I.T. Act, appellant filed an application in Form 56D on 27.03.2009 in the office of Commissioner of Income Tax,

Indore for seeking recognition u/s 10(23)(VI) of the I.T. Act, as an educational institution. This application was rejected by CCIT, Indore vide a detailed order dated 26.03.2009, which is reproduced by Assessing Officer in body of assessment order at page no.11 to 15, in which even rejection of application made u/s 12-A was also duly considered.

9. Now let us come to merits of the case. As the Assessing Officer has very correctly pointed out, though getting registered u/s 12A of I.T. Act is an essential condition for getting exemption u/s 11 of I.T. Act, but getting registered alone is not sufficient, till appellant satisfies the Assessing Officer that all the activities carried out by it in a particular year are charitable in nature and not commercial. As held in the order for rejection of application u/s 10(23c) (VI) of I.T. Act, though schools are run by appellant for imparting education, but fees charged shows that they are run as commercial ventures and not run for poor and needy.

10. But the main objection raised by Assessing Officer in present case is that the Ashoka Hostel at Indore is run by appellant on commercial lines and such hostel is not in any way connected to schools at Dewas or Ujjain, as the persons residing there are not students of such schools. The hostel is run on commercial lines as it charges a fees of Rs.1,100/- per month from each occupant and it is not given free or at lesser fees to any persons from poor strata. Hostel activity is included as a separate and independent activity enshrined in "clause F" of Memorandum of Association and it is not in any way linked to clause A of promotion of education. The claim of appellant that it a mere rental income, is also devoid of truth, as

such hostels for students & working women not only provide rented premises, but they are accompanied with provision of beds, study table, cleaning, provision for food and breakfast etc. Hence such hostels are a pure business/commercial venture, which are hit by the proviso to section 2(15) of the I.T. Act, since the aggregate value of receipts from such activity was Rs.11,15,616/- i.e. exceeded Rs.10 lakhs. As per Section 2(15) which is explained at length in CBDT Circular No.11/2008 dated 19.12.2008, as appellant is carrying out a commercial activity of running a hostel hence it would not be eligible for exemption u/s 11 of the I.T. Act.

11.Hence disallowance of claim of exemption of Rs.27,98,570/- u/s 11 of I.T. Act is hereby confirmed,. In this regard reliance is placed on the decision in cases of Improvement Trust (2014) 62 SOT 121 (Amritsar Tribunal). Decision in case of Young Women's Christian Association of Madras (2014) 62 SOT 65 (Chennai Tribunal) is exactly on same facts, wherein since appellant was running a working women's hostel for business purpose only, denying exemption of income by applying proviso to section 2(15) to the assessee's case was upheld by the tribunal because running of hostel could not be regarded as business incidental to carrying on of main objective of assessee trust."

4. Aggrieved now the assessee has filed an appeal before the Tribunal raising following grounds of appeal.

1. The Commissioner of Income Tax (Appeals) is not justified in holding that assessee was not entitled to the deduction of Rs.2798570 under section 11 of the Income Tax Act.
2. The Commissioner of Income Tax (Appeals) is not justified in holding renting of property to the students as commercial activities.
3. The Commissioner of Income Tax (Appeals) is not justified in holding the applicability of proviso to section 2(15) of the Income Tax Act.
5. The Ld. Counsel for the assessee referring to the written submissions submitted that the first application for exemption u/s 12AA of the Act dated 28.3.2002 which was remanded by the Hon'ble Tribunal to Ld.CIT for fresh consideration has still not been disposed off. Same objects were mentioned in the second application dated 28.3.2013 and registration u/s 12AA was granted w.e.f. 1.04.2012. As objects remains the same and registration u/s 12AA w.e.f. 1.4.2012 has been granted, then the same should be applied for earlier years also. He made reference to CBDT

Circular-1 dated 21.1.2015 and also referred to following judgments mentioned in synopsis.

(a) SNDP Yogam (2016) 68 taxmann.com 152 (Cochin)

(b) Punjab Education Society (2018) 168 ITD 109 (Asr.)

(c) St. Jude Convent Schools (2017) 164 ITD 594 (Asr.)

(d) CIT vs Society for Promotion of Education, Allahabad (2017) 67 taxmann.com 264 (Supreme Court) and (e) CIT Vs Sahitya Sadawart Samiti Jaipur (2017) 88 taxmann.com 703 (Raj).

6. Further referring to the income earned from running the hostel he submitted that the quantum of income from hostel is very less in comparison to the revenue received by the society from running school at Dewas and Ujjain. The fees charged from the students is very nominal at Rs.1,100/- per month. This hostel is helpful to the students coming from villages near by to Indore and provide them facility to stay at Indore so that just for lack of proper stay and food facility, their education is not hindered. The hostel is not running on commercial basis and it is working for the attainment of main object of providing education. Reliance were placed on various

judgments viz (a) *Hoshiarpur Improvement Trust* 61 *taxmann.com* 162 (Asr.) (b) *CIT Vs Lucknow Development Authority* 38 *taxmann.com* 246 (All.), (c) *Rajasthan Cricket Association* 79 *taxmann.com* 464 (Jaipur) and (d) *DCIT vs Tamil Nadu Cricket Association* 88 *taxmann.com* 705 (Chennai). He further added that the main activity of the society is of running school and as the activity of running hostel is a very small scale and in case the Hon'ble Tribunal do not consider the activity of running hostel as against to the main object then at least deduction u/s 11 of the Act should be given to the income from running school and only the amount of income relating to running of hostel may be disallowed. On the other hand Ld. Departmental Representative supported the order of lower authorities.

7. We have heard rival contentions and records placed before us. The assessee is aggrieved with the findings of Ld.CIT(A) confirming the action of Ld.A.O making addition of Rs.27,98,570/- thereby denying the benefit of Section 11 of the Act which provides exemption to the income of the society earned from running for charitable activities. We find that the issues can be divide in two

parts namely (1) whether the assessee is a charitable society eligible for deduction u/s 11 of the Act (2) Whether deduction u/s 11 of the Act is available for the income earned from running hostel on chargeable basis.

8. First one is that whether the assessee is a charitable society eligible for deduction u/s 11 of the Act. We find that the application of the assessee u/s 12AA of the Act dated 23.02.2002 was rejected on 31.3.2003 was remanded back by Tribunal on 10.10.2006 for fresh consideration to Ld.CIT. As accepted by both the parties that till date the Ld.CIT has not carried out any set aside proceedings in order to comply to the order of the Tribunal dated 10.03.2006. We also find that the assessee in his second application u/s 12AA of the Act dated 28.3.2013 mentioned the same objects for getting registration u/s 12AA of the Act and was successful to get registration w.e.f. 1.4.2012 by order of Ld.CIT dated 24.9.2013. The Ld. Departmental Representative could not controvert this fact mentioned by the Ld. Counsel for the assessee that the objects of the society mentioned in the first application dated 23.09.2002 remains the same as mentioned in the second

application dated 28.3.2013. The assessee has been granted registration from 1.4.2012 and in the given case the Ld.CIT has failed to initiate any proceedings after the direction of Tribunal dated 10.6.2006 and in these given facts the assessee should be deemed to be considered as registered u/s 12AA from 23.9.2002 i.e. date of first application u/s 12AA of the Act. We are therefore of the considered view that the assessee is eligible for exemption u/s 11 of the Act being society running for the object to provide education and registration u/s 12AA of the Act.

9. Now coming to the second issue of quantum of deduction u/s 11 of the Act on the income earned from running hostel for needy students coming to Indore for getting education. Even though it is pleaded that very nominal amount has been charged to the students but the fact remains that the hostel is not connected to the school run by the society. It is accepted by the Ld. Counsel for the assessee that the students living in hostel are not from the school run by the society. Even though the magnitude of revenue from running hostel is lower in comparison to total revenue but still the ingredient of commercial nature is reflected. Now the question

before us is *“whether the assessee should totally be denied the benefit of section 11 or only the proportionate amount of income relating to running of hostel should be excluded from the total exemption available to the society u/s 11 of the Act”*.

10. We observe that the Hon'ble Apex Court in the case of Director of Income Tax V/s Bharat Diamond Bourse order dated 16.12.2002 (2003) 179 CTR (Supreme Court) 225 dealt with almost identical issue that *“if the dominant object of the assessee is charitable and another object which is ancillary or incidental may not be charitable in nature then whether the society should be treated as charitable or not?”*. The relevant quote by Hon'ble Apex Court reads as under;

“13. The decision of the Constitutional Bench in Additional Commissioner of Income Tax, Gujarat, Ahmedabad v. Surat Art Silk Cloth Manufacturer’s Association, Surat really clinches the issue. The assessee in Surat Art Silk case was an association established to promote commerce and trade in Art Silk Yarn, Raw Silk, Cotton Yard Art Silk Cloth, Silk Cloth and Cotton Cloth. Its objects, as evidenced from the memorandum of association, included inter alia, carrying on business in Art Silk Yarn, Raw Silk, Cotton Yard Art Silk Cloth, Silk Cloth and Cotton Cloth belonging to and on behalf of its members as

well as buying and selling and dealing in all kinds of cloth and yarn belonging to and on behalf of this members. The Constitutional Bench of this Court held that, if there are several objects of the institution, some of which are charitable and some non charitable and the trustees or the managers in their discretion may apply the income of the institution of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be exempted from tax. Where the main or primary objects are distributive, each and every one of the object must be charitable in order that the trust be held as a valid charity. But, if the primary or dominant purpose of the institution is charitable and another which, by itself, may not be charitable, but is merely ancillary or incidental to the primary or dominant object, it would not prevent the institution from validly being recognised as a charity. The test to be applied is, whether the object which is said to be non-charitable is the main or primary object of the trust or institution or it is ancillary or incidental to the dominant object which is charitable. Reiterating its earlier view in CIT v Andhra Chamber of Commerce (1965) 55 ITR 772) the Supreme Court said in Surat Art Silk case (supra) that if the primary purpose is advancement of objects for general public utility, the institution would remain charitable, even if an incidental non-charitable object for achieving that purpose was contemplated. In the case of Andhra Chamber of Commerce (supra) it was held that a Chamber of Commerce did not cease to be charitable merely because the members of the chamber were incidentally benefited in carrying out its main charitable purpose. This court approvingly followed the ratio in the case of Commissioner

of Inland Revenue v Yorkshire Agricultural Society (1928) 1 KB 611 and Institution of Civil Engineers v Commissioner of Civil Revenue (1932) 1 KB 149 for reaching the conclusion that merely because some facilities incidentally arose to the members of a society or institution in the course of carrying out its main charitable purpose, that by itself would not prevent the institution from being a charity.”

11. In light of above judgment and on examining the facts of the case of the assessee in the instant appeal we find that the main object of the society is of promotion of science, education, literature or fine arts and promotion of social welfare and imparting of knowledge etc. This object is a dominant object proved from the fact that during the year total revenue earned by the assessee society is Rs.2,23,69,987/- out of which Rs.2,12,03,926/- is from the fees received from the schools running at Dewas and Ujjain and around 5% of the total revenue relates to the receipt from hostel for students at Indore. Even if we look at the figures of the income, then out of the net income of Rs.27,99,574/- only Rs.1,43,762/- is attributed to income from hostel and remaining amount of Rs.26,55,812/- pertains to the income from running schools. It is nowhere doubted by the revenue authorities that the assessee is

successfully imparting education to students, running the school at Dewas and Ujjain and dominant activity of the society remains that of doing educational activities by running the school. As far as ancillary activities of running hostel is concerned even though a very nominal amount has been charged from the students we hold it to be a commercial activity being hit by proviso 1 to Section 2(15) of the Act and restrict the assessee from getting the benefit of Section 11 of the Act only for the amount of income earned from running school at Dewas and Ujjain at Rs.26,55,812/-. We therefore direct the Assessing Officer to grant the benefit u/s 11 of the Act to the assessee for the income earned from Gyan Sagar Academy, Dewas and Gyan Sagar School, Ujjain and sustain addition for the income of Rs.1,43,762/- earned from running of hostel.

12. In the result the appeal of the assessee is partly allowed.

The order pronounced in the open Court on 26.7.2018.

Sd/-

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

**(MANISH BORAD)
ACCOUNTANT MEMBER**

दिनांक /Dated : 26 July, 2018

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By order

Private Secretary/DDO, Indore

- 1.** Date of dictation : 24.7.2018
- 2.** Date on which the typed draft is placed before the Dictating Member : 24.7.2018
- 3.** Date on which approved draft comes to the Sr.P.S./P.S: 24.7.18
- 4.** Date on which the fair order is placed before the dictating Member for pronouncement: 25.7.18
- 5.** Date on which the fair order comes back to the Sr.P.S./P.S.:26.7.18
- 6.** Date on which the file goes to the Bench Clerk:
- 7.** Date on which the file goes to the Head Clerk:
- 8.** The date on which the file goes to the Assisstant Registrar for signature of the order.
- 9.** Date of Despatch of the Order: