

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

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER  
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA Nos. 522 to 525/Chd/2018**

(Assessment Years : 2008-09 to 2011-12)

M/s Winsome Foundation  
H.No. 351, Sector 9-D  
Chandigarh

Vs.

ACIT,  
C-1(1)  
Chandigarh

PAN No. AAATW0070G

(Appellant)

(Respondent)

Assessee by : Shri. Tej Mohan Singh  
Department by : Sh. Yoginder Mittal

Date of hearing : 11/07/2018  
Date of Pronouncement : 12/07/2018

**ORDER**

**PER BENCH:**

All the above appeals have been filed by the Assessee against the separate order of the Ld. CIT(A)-2, Chandigarh dt. 15/03/2018.

2. Ld. AR submitted that the issue involved in all the years is similar. We shall take ITA No. 522/CHD/2018 as the lead case.

(a) That the Ld. CIT(A)-2 has failed to appreciate the facts and circumstances of the case and has thereby erred in holding that the appellant is not eligible for exemption u/s 11(2) of the Income Tax Act 1961, in view of the Cancellation of Registration u/s 12A of the Income Tax Act 1961 by the CIT on 18/03/2013.

(b) The order of the CIT(A)-2 is devoid of any merits as cancellation of Registration cannot apply retrospectively.

3. Brief facts of the case are that during the year under consideration the assessee has shown income from other sources of Rs. 75,435/- and exempt income of Rs. 10,96,957/- along with short term capital loss of Rs. 10,67,936/-. The assessee has given donations to other parties amounting to Rs. 3,15,095/-. During the assessment proceedings the assessee was asked to produce receipt vouchers of these donations and to explain how these donations were allowable business expenses, but no satisfactory explanation was given by the assessee. Therefore, Assessing Officer denied the exemption u/s 11(2) of the Income Tax Act 1961, and also disallowed the donation of Rs. 3,15,095/- made to other organization and taxable income of Rs. 75,436/- was added back to the returned income of the assessee.

4. It was submitted before the Ld. CIT(A) by the assessee that notice u/s 148 was issued on the basis of cancellation of registration u/s 12AA of the Income tax Act 1961 by the CIT-1 on 18-03-2013. The assessee trust was granted registration u/s 12A of the Income Tax Act 1961 on 28-04-1995. The assessee trust was carrying out its activities as per the objects of the trust. The assessee trust had income from interest from banks and rental income which was applied towards the objects of the trust. Trust-deed as well as details and evidence of the charitable activities carried out which are in consonance with the objects with the trust have been submitted. The assessee further invited attention to the instruction no 1132 dated 05-01-1978 of the CBDT wherein donations given to another charitable organizations tantamount to application of income.

5. Ld. CIT(A) confirmed the addition holding that it is pertinent to note that, considering the state of affairs of the assessee's trust for the AY 2008-09 and 2009-10, the Ld. CIT-1, Chandigarh passed order u/s 12AA(3) of the I.T Act dated 18.03.2013 cancelling the registration granted to the assessee society u/s 12A of the I.T Act. The same was confirmed by Hon'ble ITAT vide its order in ITA No. 397/CHD/2013 dated 04.12. 2017. It was observed that the business activity of the trust was trading in mutual funds as its main object and therefore it was not carrying out any charitable activity. It was also noted that only a meager portion of the total receipts were spent on charitable purposes in the FYs 2007-08 to FY 2009-10. The only application of the income was giving donations to the other purported charitable institutions which could not be treated as application of its income in terms of section 11(l)(a) of the Act. The purpose for which salary was paid by the assessee society did not appear to be genuine. The registration was cancelled u/s 12AA(3) on 18.03.2013 but the factors which led to this action of the Ld. CIT had its roots in AY 2008-09 to 2010-11. The facts noted by the Ld. CIT existed during the relevant previous year, on the basis of which the Ld. CIT came to the conclusion that the assessee was not eligible for the registration u/s 12A and therefore not eligible for the consequential benefits of section 11.

6. The Ld. AR has submitted that the matter of revocation of Registration is pending before the Hon'ble High Court of Punjab & Haryana and argued that the cancellation of Registration cannot be applied retrospectively.

7. We have gone through the order of the Co-ordinate Bench of ITAT in the case of the assessee in ITA No. 397/CHD/2013 dt. 04/12/2017 wherein it was held as under:

8. Since the assessee had been granted registration u/s 12A vide order dated 03.05.1995 and the amendment to the objects, including therein the objects of giving donations, was made only thereafter i.e. w.e.f. 09.01.2000, a query was raised by the Bench to the Ld.Counsel for the assessee, whether subsequent to the amendment made to the trust deed the assessee had applied for fresh registration u/s 12A and had been granted the same. To this, the Ld. counsel for assessee answered in negative. The Ld. counsel for assessee was thereafter asked as to why when its objects of giving donations was not considered for the purpose of grant of registration u/s 12A and when clearly this was the only activity in which the assessee society was indulging in the past three years, it should not be held that the activities of the assessee society were not in consonance and as per its stated objects and hence not genuinely carrying out charitable activities. The Ld. counsel for assessee in response to the same submitted that in any case even without inclusion of the activity of giving donations in the objects of the assessee society, the act of giving donations tantamounted to application of funds as per section 11(1)(a) of the Act as accepted by the Revenue also vide the CBDT Circular No.1132 issued on 05.01.1978 which stated so in unambiguous terms.

9. We have heard the rival contentions and having gone through the order of the Ld. Commissioner of Income Tax we find no reason to interfere with the same. The fact that the assessee society has been applying its income solely by way of giving donations to other institutions, as is evident from the audited financial figures of the past three years as reproduced above, is not disputed. It is also an admitted fact that the activity of giving donations was included as part of its stated objects in the trust deed by way of amendment to the trust deed made on 09.01.2000 i.e. subsequent to the grant of registration u/s 12A of the Act on 03-05-95, meaning thereby that the activity of giving donations was not considered while granting registration u/s 12A of the Act. It is also an admitted fact that subsequent to the amendment made, no fresh registration u/s 12A had been sought by the assessee. Clearly, therefore, the act of the assessee society in applying/utilizing its income solely by way of giving donations to other institutions was not in consonance with its approved objects. Moreover, we find no merit in the contention of the Ld. counsel for assessee that the donations made by it tantamounted to utilization/application of its income as per the provisions of section 11(1)(a) of the Act. Undoubtedly, as per the Instruction issued by the CBDT No.1132 dated 5.1.1978 and in view of various decisions of the Hon'ble High Courts, donations to other charitable trusts is to be

treated as application of income as per the provisions of section 11(1)(a) of the Act, but we find that the assessee's case is not covered by this proposition of law. As per CBDT Instruction and case laws, it is permissible under law for charitable trusts to donate for charitable or religious purposes and apply its income for the said purpose but the benefit of application cannot be claimed if it is found that the funds are being diverted for non-charitable purposes. The CBDT Instruction states so as under:

**BOARD'S INSTRUCTION NO. 1132 DATED 5TH JANUARY, 1978**

**Amounts paid as donation to other charitable trust—Availability of exemption under s. 11**

CHARITABLE TRUSTS

SECTION 11

*A question has been raised regarding the availability of exemption in the hands of charitable trusts of amounts paid as donation to other charitable trusts.*

*The issue has been considered by the Board and it has been decided that as the law stands at present, the payment of a sum by one charitable trust to another for utilisation by the donee trust towards its charitable objects is proper application of income for charitable purpose in the hands of the donee trust; and the donor trust will not lose exemption under s. 11 of the IT Act, 1961, merely because the donee trust did not spend the donation during the year of receipt itself.*

*The above position may kindly be brought to the notice of all officers working in your charge.*

The Hon'ble Gujarat High Court has held so in the case of CIT vs Sarla Devi Sarabhai Trust No.2 (1988) 172 ITR 698 and has been reiterated by the Hon'ble Allahabad High Court in the case of CIT vs J K Charitable Trust (1992) 196 ITR 31.

The underlying ratio emerging is that utilization of income by others is also to be treated as application provided it is utilized for charitable purposes only, which is ensured if given to another charitable trust or in case given to others, the utilization for charitable purposes by the donee should be ensured by the assessee.

10. The facts in the present case however we find do not meet up to the above requirement. The assessee admittedly has given donations to various organizations as reproduced in earlier part of our order. When asked to show during proceedings before the Ld. Commissioner of Income Tax as to how they were actually utilized by the donee societies/institutions, nothing was shown by the assessee. The assessee has, therefore, neither established the user of the donations for charitable purposes, nor demonstrated that the said donee

society was a charitable society registered u/s 12A of the Act. Meaning thereby that the assessee society has not demonstrated the application` of its funds for charitable purposes. The assessee, therefore, is not entitled to claim the donations as application of its income.

11. In view of the above, we agree with the Ld. Commissioner of Income Tax that the assessee is indulging in the activity of giving donations to other institutions which is not in consonance with the approved objects of the assessee society. We, therefore, uphold the action of the Ld. Commissioner of Income Tax in cancelling the registration granted u/s 12A of the Act by invoking the provisions of section 12AA(3) of the Act.

12. Ld. DR relied on the order of the Ld. CIT(A).

13. Since, the order of the Ld. CIT(A) is based on the order of the Tribunal, we see no reason to interfere in the order of the Ld. CIT(A).

14. As a result, all the appeals of the Assessee are dismissed.

Order pronounced in the open court.

Sd/-  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated : 12/07/2018

AG

Copy to:

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