

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 6286/DEL/2015 (A.Y Block Period)

ITA No. 6285/DEL/2015 (A.Y Block Period)

Institute of Development Banking Professional B-7/1A Vasant Vihar New Delhi AAAA17650M (APPELLANT)	Vs	CIT(E) Pratyaksh Kar Bhawan, 26 th Floor, E-2 Block, Civil Centre, J. L. N. Marg New Delhi (RESPONDENT)
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Appellant by	Sh. R. K. Mehra, CA
Respondent by	Sh. Vijay Verma, CIT DR

Date of Hearing	17.09.2018
Date of Pronouncement	20.09.2018

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee in respect of order dated 28/9/2015 passed by Commissioner of Income Tax (Exemptions), New Delhi u/s 12AA (1)(b) read with Section 12A of the Income Tax Act, 1961.

2. The grounds for appeal are as under:- **ITA No. 6286/DEL/2015**

“1. That on the facts and in the circumstances of the petitioner’s case, the learned Commissioner of Income tax (Exemptions) erred in law and on facts in wrongly considering the Society as mutual society kind of

organization working for the mutual benefit of members, without showing as to how the members are benefited from the Society and completely ignoring that none of the objects of the Society suggested any mutuality of interest as held by the Commissioner of Income tax (Exemptions).

2. *That on the facts and in the circumstances of the petitioner's case, the learned Commissioner of Income tax (Exemptions) erred in law and on facts in refusing to grant registration under section 12A of the Income tax Act, 1961 by holding that none of the objects of our Society are covered within the definition of charitable purpose in terms of section 2(15) of the Income tax Act, 1961.*

3. *That on the facts and in the circumstances of the petitioner's case, the learned Commissioner of Income tax (Exemptions) erred in law and on facts in refusing to grant exemption under section 80G(5) of the Income tax Act, 1961 to the Society*

4. *That the order made is bad in law."*

ITA No. 6285/DEL/2015

"1. *That on the facts and in the circumstances of the petitioner's case, the learned Commissioner of Income tax (Exemptions) erred in law and on facts in wrongly considering the Society as mutual society kind of organization working for the mutual benefit of members, without showing as to how the members are benefited from the Society and completely ignoring that none of the objects of the Society suggested any mutuality of interest as held by the Commissioner of Income tax (Exemptions).*

2. *That on the facts and in the circumstances of the petitioner's case, the learned Commissioner of Income tax (Exemptions) erred in law and on*

facts in refusing to grant registration under section 12A of the Income tax Act, 1961 by holding that none of the objects of our Society are covered within the definition of charitable purpose in terms of section 2(15) of the Income tax Act, 1961 and ignoring the fact that the petitioner society happens to be an educational institute within the meaning of section 10(23C) of the Income tax Act, 1961.

3. That on the facts and in the circumstances of the petitioner's case, the Ld. Commissioner of Income Tax (Exemptions) erred in law and on facts in refusing to grant exemption u/s 80G (5) of the Income tax Act, 1961 to the Society.

4. That the order made is bad in law."

3. The assessee is a society registered under Societies Registration Act, 1860 on 10.02.2014. It filed application(s) on 24.03.2015 in Form No. 10A seeking registration u/s 12A and in Form No. 10G seeking exemption u/s 80G of the Income Tax Act, 1961. The assessee was issued a letter/notice dated 24.03.2015 requesting it to submit the documents/explanations in support of its claim of exemption fixing the case for 24.04.2015. On subsequent dates, details were submitted before the CIT(E). The CIT (Exemptions) held that the assessee is not eligible for grant of Registration u/s 12A as none of its object are covered within the definition of charitable purpose as given in Section 2(15) of Income Tax Act, 1961. Therefore, the assessee's request for grant of Registration u/s 12A was rejected along with grant of exemption u/s 80G was also rejected.

4. Being aggrieved by the order passed by the CIT (Exemptions), the assessee filed these two appeals before us.

5. The Ld. AR submitted that the assessee filed all the details as explained u/s 12AA in respect of Application for Registration & Exemption u/s 80G of

the Act before the CIT(E). The Ld. AR submitted that the object of the society was to serve the general public only which was overlooked by the CIT (Exemptions).

6. The Ld. DR submitted that as per 1922 Act, business was permitted for relief to poor, education, medical relief and any other object of general public utility subject to the primary purpose theory unless the business was done mainly by the beneficiaries. The rule of application of income existed. As per 1961 Act the concept of profit motive was introduced with respect to any other object of general public utility. Here came the concept of dominant purpose theory. The dominant purpose theory means that if that dominant purpose is not to earn profit, but any other object of general public utility trust will remain charitable even if profit is earned. It is different from primary purpose theory which is in relation to section 11(4A)/13(1)bb. From A.Y. 1977-78, the principal of primary purpose was introduced for business in respect of relief to poor, education and medical relief by section 13(1)bb. For any other object of general public utility the principle of profit motive continued and so the dominant purpose theory. From A.Y. 1984-85, primary purpose theory was introduced in section 11(4A) as section 13(1)(bb) was deleted. In A.Y. 1992-93 the principle of incidental to primary purpose was introduced in section 11(4A). With effect from A.Y. 1984-85, the words not involving any activities for profit were omitted from section 2(15). For any other object of general public utility i.e. from A.Y. 1984-85 to 2008-09, the concept of profit motive did not apply nor was there a need for dominant purpose theory. Restrictions in section 11(4A), however applied in case of business and apply till date. In A.Y. 2009-10, a new concept was introduced which specifically prohibited certain activities and used the words "irrespective of application of income of such activities". Moreover, the concept of trade, commerce and business was introduced rather than concept of profit and such activities were prohibited. Business continued to be allowed for relief to poor etc and so was the application of primary purpose theory and incidental to primary purpose theory

in respect of the same. For any other object of general public utility, bar on profit motive, was still not there. But activities of business/trade/commerce were prohibited i.e profit from other activities was permitted under the clause. So the dominant purpose theory is not relevant now. Therefore, from A.Y. 2009-10, the decisions based on the concept of profit motive and dominant purpose theory are no longer relevant and decisions for A.Y. 2009-10 onwards permitting prohibited activities by relying on decisions related to these concepts and on such principles are per-incuriam/sub-silentio with respect of these arguments.

7. We have heard both the parties and perused the material available on record. Since, before the CIT(Exemptions), the assessee has not elaborated the documentary evidences in respect of aims and objects of the assessee Institute regarding education provided to the general public order of the CIT(Exemptions) is also not elaborate as to how the assessee fail to conduct the object of the assessee Institute. The contentions taken by the Ld. DR are the principles of law but it can be followed when the proper adjudication of the matter is done. In the present case CIT(Exemption) has not taken proper cognizance of the correct state of the assessee society's purpose and object. Thus, it will be appropriate to remand back these issues before the CIT (Exemptions) for looking into the same and the assessee also should provide all the required evidences before the CIT(Exemptions). Needless to say, the assessee be given full opportunity of hearing by following principals of natural justice. As regards issue of registration after verifying all the documents, the CIT (Exemptions) should take a proper decision whether to grant the Registration u/s 12AA of the Act or not to the assessee Institute. As regards, the appeal relating to 80G Exemption, the same is consequential to a registration u/s 12AA. Hence, this issue also should be remanded back to the file of the CIT(Exemptions). Therefore, both the appeals are partly allowed for statistical purpose.

8. In result, both the appeals filed by the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on 20th SEPTEMBER, 2018.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 20/09/2018

*R. N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	17.09.2018
Date on which the typed draft is placed before the dictating Member	18.09.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	20.09.2018
Date on which the final order is uploaded on the website of ITAT	20 .09.2018
Date on which the file goes to the Bench Clerk	20.09.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	