

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्रीमती दिवा सिंह, न्यायकि सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR, AM

आयकर अपील सं./ITA NO. 1159/Chd/2017
Under Section 12AA

M/s Aphaj Gaue Sewa Ashram Ram Bagh Road Barnala Punjab	बनाम	The CIT(Exemption) Chandigarh
स्थायी लेखा सं./PAN NO:	AACTA0753E	
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Tej Mohan Singh

राजस्व की ओर से/ Revenue by : Dr. Gulshan Raj

सुनवाई की तारीख/Date of Hearing : 28/08/2018

उदघोषणा की तारीख/Date of Pronouncement : 25/09/2018

आदेश/Order

PER DR. B.R.R. KUMAR:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(E), Chandigarh dt. 29/06/2017.

2. In the present appeal Assessee has raised the following grounds:

1. That the Ld. CIT has erred in law as well as on facts in rejecting registration under section 12AA of the Act which is arbitrary & unjustified.
2. That the Ld. CIT has rejected the claim only for the reason that registration is being sought after a lapse of 17 years since its creation and further there is no dissolution clause in the MOA which is not the requirement for claiming registration under section 12AA and as such the order is arbitrary and unjustified.
3. That the registration has been refused only on the basis of suspicion, conjectures and surmises as is evident from the various unfounded findings as enumerated in the body of the order which is not permitted under the Law and as such the order refusing registration is illegal, arbitrary and unjustified.

3. As per the order of the Ld. CIT(E), an application in Form No. 10A was received in this office on 23.12.2016 seeking registration u/s 12A of the Income Tax Act, 1961. The application reveals that the society is an ongoing entity that has been in operation since 20.09.2000.

4. The stated aims and objects of the society are to construct, maintain and run the Aphaj Gaue Ashram at Bamala or any other place in India; to take care of disabled, aged, ill and handicapped cows and the alike; to construct, open/run hospital, dispensary, Eye Bank, Blood Bank, educational institution, institutions, including department of scientific research for the reception and the treatment of persons suffering from illness or otherwise needing medical aid or to hire on rent building or hospital for reception and treatment or persons suffering from illness or otherwise in need of medical aid for reception, rehabilitation or to render financial assistance to the institutions established for the achievement of the above objects in India; to build immoveable properties for carrying on above mentioned activities and other promotional pursuits, also for creating regular sources of income and set up special funds and trusts to manage such properties and funds; to construct building for rental purpose for the maintenance of the trust; to seek and receive donations, state grants, funds and other financial assistance for fulfilling the above objects; to provide financial aid to the needy, poor families for the fulfilment of their social obligations like marriage of daughter etc.

5. The provisions necessitated examination of two basic conditions for grant of registration u/s 12AA. The same include, apart from the examination of objects of the society, satisfaction of the competent authority in respect of genuineness of activities as well particularly when the applicant is an ongoing entity.

6. The financial statements submitted by the applicant reflect the following:-

F.Y.	Gross Receipt	Net Surplus (%)	Fixed Assets	C ash & Bank	Additions
2013-14	Rs. 29,39,275/-	Rs. 4,28,626/- (14.6%)	Rs. 35,44,332/-	Rs 9,75,475/-	Rs. 34,925/-
2014-15	Rs. 28,06,553/-	Rs. 2,92,160/- (10.4%)	Rs. 52,44,109/-	Rs. 15,89,257/-	Rs. 20,61,947/-
2015-16	Rs. 30,19,567/-	(-) 1,31,122	Rs. 57,45,866/-	Rs. 9,10,961/-	Rs. 8,23340/-
2016-17	Rs. 35,69,216/-	(-) 4,45,425	Rs. 55,30,226/-	Rs. 9,99,677/-	Rs. 74,305/-

7. Ld. CIT(E) held that major source of the receipt is through sale of milk and manure while major expenditure is on fodder & feed. Financial statements of the F.Y. 2016-17 reveals that the society has incurred expenditure of Rs. 9,54,619/- towards purchase of milk which do not corroborate with that of the aims & object of the society. The major source of receipts has been shown from sale of milk which clearly point out that the activities are of commercial nature and not of charity as claimed. The issue of both purchase and sale of milk clearly establishes that this is an enterprise that predominantly aims at sale/commerce of/in milk. The activities do not partake the character of 'charitable purpose' as envisaged in section 2(15) of the Act. It is also clear from the documents on record that the main objects of the society i.e. taking care of disabled, aged, ill and hand capped cows have not been pursued. Moreover, there is no evidence of activities carried out towards fulfilment of other objects of the society mentioned in the MoA.

8. He further held that, in the absence of the Dissolution clause, the presumption of the law is that the assets and liabilities of the society will be distributed amongst the members of the society in case the society closes its operations or is disbanded. The provision} of Section 13(l)(c) of the Act are clearly attracted without this dissolution clause. Lack of dissolution clause is also in contravention to the necessary conditions laid down by the Society's Registration Act, 1360.

9. Giving the above rationale, Ld. CIT(E) held that society cannot be termed to fall under the category of "charitable purpose" and the application for grant of registration u/s 12 AA was rejected.

10. Before us, Ld. DR submitted Aims and Objects of the Trust alongwith details of the Trustees and office bearers. Copies of the Audit Report under section 12A (b) in Form 10B alongwith balance sheet and income and expenditure account have been filed. During the course of hearing in response to the Court query as to number of cows farming part of Gaushala, Area , Record of Vaccination and the medicines, the assessee has submitted the details from page no. 1 to 99 of the Paper Book. These additional evidences since required for adjudication of the case have been accepted under Rule 29 of ITAT Rules.

11. Ld. AR has also argued that all the cows in the Ashram are handicapped cows and not able to produce milk on a commercial basis. The assessee has also submitted an affidavit from Shri. Baljinder Singh claiming that the milk sold by the Trust is from the cows maintained by him and the society has only helped him in selling the milk. However no evidence of receipt of the money by Shri Baljinder Singh has been submitted.

12. He relied on the orders in the case of DIT(E) Vs. Sabarmati Ashram Gaushala Trust in ITA No. 1162 of 2013, DIT(E) Vs. Shree Nashik Panchvati Panjrapole 397 ITR 501 (Bombay), CIT(E) Vs. Tara Educational & Charitable Trust in ITA No. 247 of 2015 and CIT-II Vs. Surya Educational & Charitable Trust 355 ITR 280 (P&H). Based on the above evidences it was argued that the exemption needs to be considered by the Authorities.

13. Ld. DR on the other hand argued that it was not very clear on the records and census as to how many animals are crippled and how many were milch yieldy and argued that physical verification is required to determine the eligibility under section 12AA.

14. We have heard Ld. Representatives of both the parties and perused the material available on record and we find that interest of justice would be met by sending the file back to the file of the DIT(E) to examine the issue afresh regarding the dissolution clause, existence of animals, physical verification of health status and to verify the evidences regarding the purchase and sale of milk by conducting enquiries as deem fit and to take a decision in accordance with the provisions of the Income Tax Act,1961, and keeping in view the established judgments quoted above.

15. Order pronounced in the open Court.

Sd/-
दिवा सिंह
(DIVA SINGH)
न्यायकि सदस्य/ Judicial Member
 AG
 Date: 25/09/2018

Sd/-
डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
 सहायक पंजीकार/ Assistant Registrar