

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.S.SAINI, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.500(Asr)/2016

Assessment Year:2016-17

The Litchi Estate Pathankot
O/o Deputy Director
Horticulture, Near Bedi Filling
Station, G.T. Road, Pathankot,
Distt. Pathankot.

Vs.

CIT(Exemptions),
Chandigarh

[PAN:AAAAL 9546P]

(Appellant)

(Respondent)

Appellant by: Sh. P.N.Arora (Ld. Adv.)

Respondent by: Smt. Parwinder Kaur (Ld. CIT-DR)

Date of hearing: 11.02.2019

Date of pronouncement: 12.02.2019

ORDER

PER N.K.CHOUDHRY, JM:

This appeal has been preferred by the Assessee/Applicant (hereinafter called as Appellant) against the order dated 29.07.2016 passed by the Ld. CIT(Exemptions), Chandigarh u/s 12AA of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The assessee has raised the following grounds of appeal.

"1. That assessment order passed by the CIT u/s 12AA is against the facts of the case and is untenable under the law.

2. That the contention of the CIT that the Assessee has not commenced Charitable Activities is wrong.

3. That the CIT has denied the exemption on account of non utilization of funds and accumulating the grant, which is untenable under the law.

4. That CIT has mentioned in his order that 'No Evidence with regard to the activities having actually been carried out

has been brought out since the inception of the society' is wrong, in spite of sufficient evidences of activities carried out by the society submitted by the assessee.

5. *That the Contention of the CIT that the Litchi is grown by the big landlords and not by the small farmers are wrong.*

6. *It was wrongly contended that Litchi cultivation on a large scale may lead to depletion of existing forest cover.*

7. *The composition of the society and involvement of Government has been questioned on the ground that it does not represent a public charitable character is not justified in denying the exemptions.”*

3. At the outset, it is observed that there is a delay of three days in filing the instant appeal, which has been explained by the Ld. AR by submitting that the Appeal in the instant case was sent through post, which may have received by the Tribunal late and the delay of three days could have been occurred, however, delay is neither intentional nor malafide and but a reasonable one. On the contrary, the Ld. DR did not raise any objection because of the meager delay.

4. Having considered the delay which is meager and the cause explained by the assessee seems to be reasonable and logical and hence, we are inclined to condone the delay of three days in filing of the instant appeal.

5 Now will proceed to the merit of the appeal.

In this case, the appellant society has filed the application u/s 12AA on dated 12.01.2016 by disclosing the facts that the society was formed as a charitable society on dated 9th March, 2011 by the Govt. of Punjab in order to promote the cultivation of litchi in the District Pathankot and its surrounding areas with the following aims and objects and functions.

- (i) *to promote and propagate Litchi plantations and Litchi based industry.*
- (ii) *to make arrangements for treatment, packaging, storage, marketing, processing, preservations, transport and export of Litchi.*
- (iii) *to formulate policy & action plan for promotion of Litchi cultivation,*
- (iv) *to help establishment of cold storages, packing house and processing factories concerned to Litchi.*
- (v) *to take steps for the promotion of technical know-how for the proper maintenance, packing marketing etc., to the Litchi growers.*
- (vi) *to undertake or assist in undertaking programmes for employment generation, growth and diversification of agriculture and industries based on Litchi.*
- (vii) *To organize technology transfer through, training and extension to the growers.*
- (viii) *To promote organization of marketing chains both for domestic and export marketing of Litchi.*
- (ix) *to build a skilled cadre for managing the Litchi plantations.*
- (x) *to accelerate the development of rain fed and kandi regions through Litchi.*
- (xi) *To promote measures for increasing the utilization of irrigation potential, water conservation and its efficient management.*
- (xii) *to organize/catalyze the primary producers of litchi in suitable groups towards the performance of activities related to the achievement of the objectives of the Society;*
- (xiii) *to pave the way for establishment of integrated producers' organizations with forward and backward linkages related to Litchi, other fruits and vegetables.*
- (xiv) *to prepare, print and publish papers, periodicals, monographs and books on Litchi, other fruits and vegetables in furtherance of the objectives of the Society.*
- (xv) *to provide quality nursery plants, various other inputs such as fertilizers, insecticides/pesticides, machinery' equipment, packing material etc., either directly or through authorized sale outlets.*

FUNCTIONS

- (a) *to advise the Government regarding policy initiatives in respect of citrus crops and industry in order to promote citrus and other juicing crops;*
- (b) *to make rules and by-laws for the conduct of the affairs of the Society and add to, amend, vary or rescind them from time to time;*
- (c) *to arrange funds (cash / kind), grants, gifts, donations, benefactions, fees and other charges, securities, property and infrastructure of any kind, from, any department government, industry, NGQ, society, individual, etc;*

- (d) *to meet the expenses which the Society may incur with respect to the formation, registration and operations out of the funds of the Society;*
- (e) *to open Bank Accounts of any type including overdraft accounts and operate the same in ordinary course of business;*
- (f) *to own, establish or have and maintain offices, branches and agencies for the purpose of carrying on its business;*
- (g) *to purchase, take on lease or otherwise acquire any land to establish citrus orchards / nurseries or any land, building, infrastructure or other property movable or immovable which may be otherwise necessary and deal with, dispose off or write off any property or loss therein in such manner as the Society' may deem fit*
- (g) *to hire contractual staff for field work, professional for accounts, secretarial and audit work.*
- (i) *to take staff /experts on deputation from other departments, governments industry, etc. or as contribution of industry to the Society,*
- (j) *to outsource the other activities, day to day operations as and when required and in the manner as the Society may deem fit.*
- (k) *to do all other such things as the Society may consider necessary, incidental or conducive to the attainments of its objectives.*

6. The Appellant has challenged the order dated 29.07.2016 passed by the Ld. CIT(E), Chandigarh, whereby he rejected the application filed u/s 12AA of the Act, which was taken into consideration by the Ld. CIT(E) while issuing the notice dated 19.02.2016 and thereafter another letter dated 12.07.2016 was issued to the appellant in order to check the suitability of the application and to seek further clarification. The appellant, in response to the aforesaid notices filed detailed reply which was

considered by the Ld. CIT(E) and thereafter rejected the application on various grounds.

7. Having heard the parties and perused the material available on record. The Ld. CIT(E) while rejecting the application has observed first observed that the appellant has not done anything for nearly about five years since its inception on 9th March, 2011, however it appears from the written submissions of the appellant that the appellant's project is at preliminary stage and is in process to commence its practical activities for the benefit of the farmers and regularly making surveys and liaison among the farmers of the area, State and Central Govt. for obtaining grants and other related matters, therefore, as the practical work was not commenced so no expenditure was shown in the income and expenditure. In our view, there is no embargo to grant the exemption to newly established entity if it has not done any activity since its inception, therefore, this ground of rejection does not seem to be logical.

7.1 Second ground of rejection was that the appellant has received grant of Rs. 1 Crores from the Govt. and has deposited in the form of FDR and earned the interest. In this context, the claim of the appellant is that the CIT(E) has not raised any query in this regard, however it is the fact that the appellant is at initial stage and treatment to grant in-aid is being done strictly according to the guidelines of the Ministry of Agricultural & Co-operation, which mandates that the grantee institution should maintain separate audited account for the project and if it is found expedient to keep a part or whole of the grant in a bank account earning interest, thus earned interest should be reported to the Department and will be treated as a credit to the grantee

to be adjusted towards future installments of the grant, therefore, the appellant kept the amount of interest on FDR as liability side of the balance sheet as the society has no power to spend it until and unless it will be adjusted in the future installments of grant in aid. In our considered opinion, the ground of rejection under consideration also lacks merit as the Appellant has followed the guidelines of the Govt. applicable thereto.

7.2 Third ground of rejection was that the appellant could not submitted any copy of MOU with the Govt. in support of grant in-aid received from the Govt. of Punjab. In the absence of the same, it is difficult to corroborate the rationale behind the grants, time frame accorded and whether the society has utilized/made attempts to utilize the same within the stipulated time. On specific query by the Bench for non-furnishing of MOU, it is revealed that as the project is of the State Govt. qua promotion of LITCHI crops, so MOU is not required for own project of State Govt., however it is a fact that the Ld. CIT(E) did not raise any query qua MOU and therefore if the opportunity be given to produce the same then the appellant undertake to submit the said MOU if any, before the Ld. CIT(E).

7.3 In fourth ground of rejection the Ld CIT(E) observed about the cultivation of a "Litchi" and made certain remarks that one cannot but exclaim at what may happen if the poor farmers given in to the possibility of lucre adopt these cultivation patterns that has in-built necessities of mechanization and crop fail. In addition the applicant has made a claim with respect to preservation of environment (including water-sheds, forest and wild life). How this is going be adjusted has not being brought out. On the contrary it is well nigh possible that cultivation on a

large scale may lead to depletion of existing forest cover. Additionally, claiming cultivation to mean preservation of environment seems to be hyperbole. From the perusal of the order, it does not reflect that the Ld. CIT(E) has ever asked any clarification qua use of cultivation of Litchi, however by his own wisdom and knowledge made certain casual observations without providing any opportunity to the appellant to explain.

7.4 Fifth ground of rejection relates to the composition of the society. At the time of grant of registration the CIT(E) is required to satisfy about the objects and genuineness of the society, therefore in our view this ground of rejection is also seems to be causal observation but not plausible.

8. As per section 12AA of the Act, the procedure for registration of a trust or institution is as follows:—

12AA. (1) *The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) ²[or clause (ab)] of sub-section (1) of section 12A, shall—*

- (a) *call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*
- (b) *after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—*
 - (i) *shall pass an order in writing registering the trust or institution;*
 - (ii) *shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,*

and a copy of such order shall be sent to the applicant:
Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

9. According to proviso of clause (b) of clause (1) of section 12AA of the act, before passing an order for refusal of registration, it is mandatory to give a reasonable opportunity of being heard to the applicant. The principle of **audi alteram partem**, which mandates that no one shall be condemned unheard is part of the rules of natural justice. Natural justice is a great humanizing principle intended to invest the law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must always be done, whether a fair opportunity to be heard has been given or not to the person affected.

10. While coming to instant case, the Id. CIT(E), vide letter dated 19-02-2016 sought reply from the Appellant and again vide letter dated 12-07-2016 sought certain clarifications and thereafter the reply of the Appellant was perused and the application u/s. 12AA was rejected on various reasons which are specifically replied by the appellant by filing brief synopsis. It reflects that after receiving reply from the appellant, no opportunity was accorded to the appellant qua various issues as highlighted by us, either for confrontation and/or for establishing its case for grant of registration before passing the order impugned herein, which according to our considered view amounts to violation of rule of '*Audi Alteram Partem*' hence on this ground also the order under challenge can not survive. In cumulative effect, to follow the rule of principle of justice and in order to end the litigation, in our considered view justice would be met if the opportunity be given to the Asseeeee to plead its case in reasonable manner before the Ld CIT(E), hence in the peculiar facts and circumstances, we are inclined to set aside the

order under challenge and therefore the case is remanded back to the file of Ld. CIT(E) for deciding afresh in view of the aforesaid observations and further enquiry, required if any, after giving proper opportunities of being heard to the appellant within 03 months of this Order. The Appellant shall be under obligation to co-operate with the proceedings before the Ld. CIT(E) and to file all relevant documents as would be desirable as well as pointed out in the order impugned herein, and in failure of appellant, the Ld. CIT(E) shall be at liberty to draw the advance inference, required if any.

11. In the result, the appeal filed by the Appellant is allowed for statistical purposes.

Order pronounced in the open Court on 12-02-2019.

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:12.02.2019
/PK/ Ps.

Copy of the order forwarded to:

- (1) The Litchi Estate Pathankot O/o Deputy Director Horticulture, Near Bedi Filling Station, G.T. Road, Pathankot, Distt. Pathankot.
- (2) The CIT(Exemptions), Chandigarh.
- (3) The SR DR, I.T.A.T., Amritsar

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