

**N THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.527/Del./2017

ITA No.528/Del./2017

Escorts Skill Development, vs. CIT (Exemptions),
15/5, Mathura Road, Chandigarh.
Faridabad.

(PAN : AADCE8404A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.M. Mehta, AR
REVENUE BY : Smt. Nidhi Srivastava, CIT DR

Date of Hearing : 24.04.2019

Date of Order : 26.04.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. The Appellant, Escorts Skill Development (hereinafter referred to as the 'assessee/applicant') by filing the present appeal sought to set aside the impugned orders both dated 29.12.2016

passed by the Commissioner of Income-tax (Exemptions),

Chandigarh on the grounds inter alia that :-

“ITA NO.527/DEL/2017

1. That the learned CIT (Exemptions) erred in rejecting the application filed u/s 80G(5)(vi) of the Income-tax Act, 1961 consequent to his declining to grant registration u/s 12A of the Income-tax Act to the appellant trust.

2. That the learned CIT (Exemptions) erred in rejecting the application u/s 80G without looking at the merits of the matter and merely rejecting the application on the ground that the application for registration u/s 12A has been rejected.”

“ITA NO.528/DEL/2017

1. That the learned CIT(Exemptions) erred in rejecting the application for registration u/s 12A of the Income-tax Act, 1961 merely on assumptions, presumptions and apprehensions, without appreciating the factual, legal and statutory position for grant of registration.

2. That the learned CIT(Exemptions) failed to appreciate that activities of the appellant, inter alia, include the main activity of 'providing vocational training' in various fields under the skill development programme of Government of India to create skilled manpower in the country and is covered under both 'education', & 'advancement of any other object of general public utility' as provided in Section 2(15) of Income Tax Act.

3. That the learned CIT(Exemptions) erred in rejecting the application u/s 12A on the ground that the appellant company has been formed specifically to carry out the CSR obligations of the parent company. He failed to appreciate that the 'vocational training' is a part of the permitted CSR activities notified by the Government of India which can be carried out by the company on its own or through a Trust / Society / Section 8 company.

4. That the learned CIT(Exemptions) has failed to carry out the mandatory requirement of satisfying himself about the objects and genuineness of the activities of the appellant institution but instead going beyond his mandate by looking into the purposes of creation of the appellant institution and declining the registration primarily for same reason.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : the applications moved by the assessee company in Form No.10A and 10G for registration under section 12AA of the Income-tax Act, 1961 (for short 'the Act') and approval u/s 80G of the Act respectively have been rejected by the Id. CIT on the grounds inter alia that the primary aim for forming the company by the assessee/applicant u/s 8 of the Companies Act, 2013 is merely to comply with the requirement of Corporate Social Responsibility (CSR); that the company has been formed to implement the CSR activities of financing/parental company; that the composition of applicant company is restricted and to that extent is not amenable to the public charity; that it does not ensure to have been formed to extend benefit to the general public and as such, does not partake the meaning of public charitable company; that there is no rationale for seeking further exemption on the basis of some activities when the skill development activities undertaken by the applicant are already subsidized by the Government of India and that the activities of training also do not fall under any limb of charitable activities defined u/s 2(15) of the Act. Consequently, the Id. CIT (E) also declined the approval u/s 80G of the Act.

4. Feeling aggrieved, the assessee/applicant company has come up before the Tribunal by way of filing the present appeals by challenging the impugned orders passed by Id. CIT.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, applicant company has been registered u/s 8 of the Companies Act, 2013 by the Central Government after being satisfied that the same has been constituted with charitable objects etc. It is also not in dispute that vide reply dated 07.12.2016, applicant produced before the Id. CIT (E) audited finance for the period ending 31.03.2016, receipt and payment account for the financial year 2015-16, copy of agreement dated 09.11.2016 executed with the National Skill Development Corporation, acknowledge of Income-tax return for AY 2015-16 & 2016-17 along with computation of income and copies of bank statement since its inception. It is also not in dispute that the applicant company is a part and parcel of Escorts Limited who is main member of the applicant company. It is also not in dispute that the corpus fund in totality has been contributed by the predominant stakeholders. It is also not in dispute that the Director of the

applicant company, Shri G.B. Mathur is also on the Board of Directors of Escorts Limited. It is also not in dispute that the applicant company is working solely with the funds provided by its main contributor, M/s. Escorts Ltd. while fulfilling their CSR obligation.

7. Before proceeding further, we would like to examine aims and objects of the applicant company which are extracted for ready perusal as under :-

“3.(A) The objects for which the company is established are:

To establish and run in India or abroad educational institutions like school, college, apprentice training, practical training classes, vocational training, boarding facilities, GO, gurukuls, teaching classes, placement services, libraries, hostels, canteens, science and non-science stream labs and workshops of all professions and of all allied nature of classes and to conduct courses for under graduate, graduates and post graduate degree and diploma in the subjects and branches of all types of disciplines/faculties such as commerce, hardware, software, computers, science, arts, business management, engineering, science medical industrial, pharmacy, mining, military, music, dance, acting, sports, journalism, and any other field of

education and to act as advisors, consultants, promoters, partners or associates for such business and to get affiliated/associated with Indian and/or Foreign Universities, institutes, colleges and grant degrees/diplomas etc on behalf of such affiliated institution, to provide learning solutions and to achieve the object to establish and run educational institutions, and to conduct practical practices/workshops thereof including distance learning programs with or without electronic media or E-business help and to grant franchise of and to run and set up all support facilities for such students including hostels, canteens, mess, enjoyment and recreational facilities and/or to act as advisors, consultants for setting up such institutes/classes and business as may be incidental or necessary for the achievement of the above object.

(B) The objects for doing of all such other lawful things as are incidental or conducive to the attainment of the above objects are:

(i) To purchase, hire or otherwise acquire and maintain suitable buildings, apartments, computer equipments, appliances, furniture and other fittings in any country for its establishments for the objects for which the Company is established;

(ii) To subscribe for, become a member of and cooperate with any other Association, national or international, whether incorporated or not, whose objects are, altogether or in part, similar to those contained in this Memorandum and to obtain from and communicate to any such Association, such information as may be likely to fulfill the objectives of this Company.

(iii) To receive grants, gifts, loans, subscriptions, donations or any other financial contribution in cash and securities and of any property, either moveable or immovable: within the country or/and abroad and, to vary, alter or transfer such investments from time to time. etc.”

8. Bare perusal of the impugned order passed by the Id. CIT (E) goes to prove that registration and approval u/s 12AA and 80G of the Act has been declined on the grounds inter alia that applicant company has been constituted as a captive company by the Escorts Limited in order to redeem their CSR obligation; that there is a close arrangement vide which corporate entity is not only able to redeem its CSR obligation but also at the same time able to control the finances of the applicant company; and that resultantly the money which would not have been otherwise deductible as

expenditure is now being claimed exempt and that there is no rationale for seeking further exemption on the same activities being performed by the applicant company under CSR obligation.

9. In the backdrop of the aforesaid facts and circumstances of the case, the Id. AR for the applicant company contended inter alia that the applications u/s 12A and 80G of the Act have been wrongly rejected by the Id. CIT (E) by ignoring the fact that the main activity of the applicant company is providing vocational training in various fields under the “Skill Development Programme of Government of India”; that vocational training is part of CSR activities notified by the Government of India which can be carried out by the applicant company on its own or through a Trust/Society/Company registered u/s 8 of the Companies Act, 2013 and relied upon the decisions of (i) *Nanak Chand Jain Charitable Trust vs. CIT (E), Chandigarh – (2018) 91 taxmann.com 197 (Delhi-Trib.)*; (ii) *Process-cum-Product Development Centre vs. Addl. CIT – (2019) 103 taxmann.com 191 (Delhi-Trib.)*; (iii) *CIT, Faridabad vs. IILM Foundation Academy – (2016) 75 taxmann.com 214 (P&H)*; (iv) *CIT (E), Chandigarh vs. Shri Shirdi Sai Darbar Charitable Trust (Dharamshala) – (2017) 81 taxmann.com 49 (P&H)*; and (v) *Director of Income-tax (E) vs.*

M/s. Group Vocational Training Centre Trust in ITA No.199/2015.

10. However, on the other hand, ld. DR for the Revenue relied upon the order passed by the ld. CIT (E) and contended that charitable activities under the garb of CSR activities are mere camouflage to get the registration u/s 12AA and 80G of the Act.

11. By now, it is settled principle of law and fact that CSR activities are public charitable activities per se, which fact is also evident from section 8 of the Companies Act, 2013. At the same time, when we examine the aims and objects of the applicant company in totality, the same are to establish and run educational institution like school, colleges, apprentice training, practical training classes, vocational training, boarding facilities, NGO, gurukuls, teaching classes, etc. in India and abroad which certainly falls under the charitable activities u/s 2(15) of the Act.

12. Applicant company has brought on record Note on Skill Development Initiation, available at pages 23 to 25 of the paper book, wherein it is recorded that applicant company in the past 8 months has got affiliated to Infrastructure Equipment, Construction

and Agriculture Sector skill councils and has set up training institute at Faridabad having quality workshops and has delivered training to nearly 200 learners. Applicant company has also partnered with National Small Industry Corporation for imparting training on heavy equipment operators for which they have trained and certified about 30 trainees as Backhoe loader and PNC crane operators who have been placed with its dealers. Applicant company is having candidate data base of about 1000 candidates. The Revenue has not brought on record iota of evidence to prove that the youths trained by the applicant company have not been employed elsewhere. Even otherwise, there cannot be any restraint on a trainee to get the placement as per his convenience.

13. Merely because of the fact that the applicant company has been established to comply with the CSR obligations, the registration u/s 12AA of the Act cannot be denied, particularly when CSR activities are also charitable activities as defined under the Act.

14. Coordinate Bench of the Tribunal in case cited as *Process-cum-Product Development Centre vs. Addl. CIT – (2019) 103 taxmann.com 191 (Delhi-Trib.)* held that :-

“Where assessee was conducting various skill training programs for students to get placement activities would fall within definition of education under section 2(15), thus entitling it for exemption under section 10(23C)(iiiab).”

15. Identical issue “*as to whether registration u/s 12AA of the Act can be denied to a trust merely formed for complying with the CSR obligation of the settler company*” has been decided in favour of the assessee/applicant by answering the question in negative in case cited as ***Nanak Chand Jain Charitable Trust vs. CIT (2018) 91 taxmann.com 197 (Delhi-Trib.)***.

16. Ld. CIT (E) was only required to firstly satisfied himself if the trust has been established for charitable activities and its activities are genuine for the purpose of grant of registration u/s 12AA of the Act, rest of the suspicion and apprehensions raised by the ld. CIT (E) can be taken care of by the Revenue at the time of framing assessment. Moreover, the ld. CIT (E) declined the registration merely on the basis of assumptions and presumptions.

1. Following the decision rendered by the coordinate Bench of the Tribunal in case cited as ***Nanak Chand Jain Charitable Trust vs. CIT (2018) 91 taxmann.com 197 (Delhi-Trib.)*** and case decided by Hon’ble High Court of Punjab & Haryana in ***CIT vs. IILM Foundation Academy – (2016) 75 taxmann.com 214***

(P&H), we are of the considered view that imparting “skill development training”, by the applicant company which is also a flagship project of the Government of India for sustaining its growth rate and to create the pool of skill worker to further enhance its growth and development is a charitable activity following within the definition education u/s 2(15) of the Act entitling the applicant company for registration u/s 12AA of the Act and consequent approval u/s 80G of the Act, hence both the appeals filed by the applicant company are allowed directing the ld. CIT (E) to provide registration u/s 12AA to the assessee and grant consequent approval u/s 80G of the Act.

17. Resultantly, both the appeals filed by the assessee/applicant are allowed.

Order pronounced in open court on this 26th day of April, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 26th day of April, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)- VI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**