

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 6546/Del/2018

Dada Sangu Memorial Society, Vill-Asawari, Tehsil-Charikhi Dadri, Bhiwani, Haryana PAN AABAD0781H	Vs.	CIT (Exemption) Chandigarh.
<b>(Appellant)</b>		<b>(Respondent)</b>

Asstt. Year: -

Assessee by:	Shri Ved Jai, Advocate
Department by :	Ms. Nidhi Srivastava, CIT, DR
Date of Hearing	23/07/2019
Date of pronouncement	16/10/2019

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal preferred by the assessee against order dated 30.7.2018 passed by the Ld. CIT(Exemption) Chandigarh denying benefit of registration u/s 12AA of the Income Tax Act, 1961 (hereinafter called the Act).

2.0 Brief facts of the case are that the assessee is a society registered with the Registrar of Societies, Haryana and is running a school in the name of DSM Public School since 02.05.2011. As per the Memorandum, the main objects of the society are imparting education in computer, science, commerce, arts, physical education, ANM GNM D.Ed B.Ed M.Ed, LLB and professional courses in Law, Paramedical Engineering and Technical, Information Technology etc. The Society has also as its objects providing conventional and non-conventional education on regular and correspondence basis.

2.1 The assessee filed application in Form No. 10A on 15.01.2018 seeking grant of registration u/s 12A of the Act. The Ld. CIT (Exemptions) sought various documents and other information with respect to the assessee's application. After going through the various documents and evidences submitted by the assessee, the Ld. CIT (Exemptions) rejected the assessee's application vide order dated 30.7.2018 *inter alia* on the following grounds:

- i) That the amount received in land and building fund was not corroborated by any documentary evidences

- ii) That the assessee had not deposited the whole amount as shown in the receipts and payments accounts in the bank account
- iii) That since the assessee has been claiming exemption u/s 10(23C) of the Act, the assessee could not shift track mid-way from section 10(23C) to section 12AA of the Act.
- iv) That since the assessee had annual receipts of more than Rs. 1 crore, therefore, the claiming of exemption u/s 10(23C) was itself not tenable.

2.2 Aggrieved by the rejection of application, assessee is now in appeal before this Tribunal and has raised the following grounds of appeal:

1. *“On the facts and circumstances of the case, the order under section 12AA passed by the learned Commissioner of Income Tax (Exemption) {CIT(E)} is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in rejecting the application of the assessee for grant of registration under section 12A of the Income Tax Act, 1961,*
3. *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in rejecting the application of the assessee for registration under section 12A despite the same being complete and was in compliance to the provisions of the Act*

4. *On the facts and circumstances of the case; the learned CIT (E) has erred both on facts and in law in holding the aims and objects of the society not being charitable in nature.*
5. *On the facts and circumstances of the case, the learned CIT(E) has erred both on facts and in law in rejecting the registration under section 12A of the Act by making reference to the receipt and expenditure of the society ignoring the fact that these are matter for consideration at the stage of assessment and not at the time of registration.*
6. *On the facts and circumstances of the case, he learned CIT(E) has erred both on facts and in law in holding the activities conducted by the assessee as not being genuine, despite the assessee bringing all the material and evidence on record to prove the same.*
7. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3.0 The Ld. Authorised Representative submitted that although the Ld. CIT (Exemptions) has raised numerous objections like amount received towards land and building fund not being verifiable, entire amount of receipts not being deposited in the bank account etc., the Ld. CIT (Exemptions) has not at all doubted the genuineness of the activities and the objects of the society. It was submitted that the Ld. CIT (Exemptions) has not drawn any inference that the activities of the society were not being carried out. It was submitted that the reasons stated by the

Ld. CIT (Exemptions) for denying the grant of registration were matters to be examined at the time of regular assessment proceedings because as per the provisions of the Act, the approving authority has to only examine the objects of the society/trust and the genuineness of the activities of the Society/Trust at the time of considering the assessee's application for grant of registration. It was submitted that the Ld. CIT (Exemptions) has neither doubted the genuineness of the activities and nor has doubted the charitable nature of the objects.

3.1 The Ld. AR also submitted that the observations of the Ld. CIT (Exemptions) that the assessee could not claim of benefit of registration u/s 12 of the Act as it had earlier been claimed exemption u/s 10(23C) of the Act was not correct. It was submitted that it was settled law that the assessee is free to avail registration/exemption under any of the alternative provisions if more than one alternative were available and the assessee fulfilled the eligibility conditions.

3.2 The Ld. AR also submitted that the observation of the Ld. CIT (Exemptions) that the assessee had annual receipts of more than one crore was also factually incorrect as the Ld. CIT

(Exemptions) had included receipts from non-educational activities also while computing the gross receipts.

3.3 The Ld. AR placed reliance on numerous judicial precedents in support of his contentions and prayed that the Ld. CIT (Exemption) should be directed to grant registration to the assessee society.

4.0 In response, the Ld. CIT (DR) submitted that the Ld. CIT (Exemptions) had examined the receipt and payment accounts of the assessee's society as well as the bank statement and it was evident from these documents that the assessee had not deposited the entire receipts in the bank account and, thus, there was an indication that the assessee society's indulgence in cash transactions would not make the activities of the society amenable to proper verification. Ld. CIT (DR), while placing extensive reliance on the order of the Ld. CIT (Exemptions) submitted that the assessee society was dealing with public money and it was important that there should be transparency in such dealings. The Ld. CIT (DR) also submitted that the Ld. CIT (Exemptions) had pointed out specific discrepancies in the accounts of the assessee society with reference to the land and building fund and the same could not be verified in absence of

relevant details. The Ld. CIT (DR) also submitted that the case laws being relied upon the Ld. AR were on different set of facts and were, therefore, not applicable to the facts of the present case.

4.1 The Ld. CIT (DR) prayed that the appeal of the assessee deserved to be dismissed.

5.0 We have heard the rival submissions and have also perused the material on record. A perusal of the impugned order shows that the Ld. CIT (Exemptions), while considering and thereafter rejecting the assessee's application for grant of registration, has apparently not examined the objects of the assessee society nor has examined the genuineness of the activities. The Ld. CIT (Exemptions) has gone on an entirely different tangent wherein he has drawn adverse inference from the amount received in land and building fund and the fact that the assessee has not deposited the entire amount of receipts in the bank account. We are in agreement with the averment of the Ld. AR that at the time of grant of registration u/s 12AA, the Ld. CIT (Exemptions) is empowered only to examine the genuineness of the objects and activities of the society. The discrepancies, as pointed out by the Ld. CIT (Exemptions), if existing, are

essentially a matter of examination and adjudication during the course of assessment proceedings. We also note that the observations of the Ld. CIT (Exemptions) that the assessee cannot shift from claiming exemption u/s 10(23C) to claiming exemption u/s 11/12 of the Act is not legally tenable. The Hon'ble Apex Court as well as the various Hon'ble High Courts have clearly held that where the assessee is running a hospital or a school and if both options are available before it, i.e. either to apply for exemption u/s 10(23C) of the Act, or claim exemption u/s 12AA of the Act, it is not justified to decline exemption u/s 12AA of the Act on the ground that it should have claimed exemption u/s 10(23C) of the Act. It is also a settled law for the purpose of granting exemption u/s 12AA of the Act that the Ld. CIT (Exemptions) has to satisfy himself about the objects and genuineness of the activities of the assessee. The Ld. CIT (Exemptions), in the present appeal, has not commented on these two essential points. The Hon'ble Jurisdictional Punjab & Haryana High Court in the case of Commissioner of Income Tax II, Chandigarh vs. Surya Educational & Charitable Trust reported in 2011(10) TMI 47 has held as under :-

“8. We have heard learned counsel for the appellant, but find no merit in the present appeals. As per Section 12AA of the Act, an application for registration of the Trust and Institution is required to be made within one year from the date of creation of the Trust or the Establishment of such Institution. The procedure for registration of the Trust or Institution is prescribed under Section 12AA of the Act. In terms of Clause (a) of Section 12AA of the Act, the Commissioner is to satisfy himself about the genuineness of the activities of the Trust on such inquiries as he may deem necessary. Sub-section (1A) and (2) of Section 12AA of the Act, are procedural in nature, whereas Sub-section (3) of Section 12AA of the Act, empowers the Commissioner to cancel the registration of the Trust or Institution, if he is satisfied that the activities of such Trust or Institution are not genuine or are not carried out in accordance with the objects of the Trust or Institution.

9. Section 11 of the Act contemplates that the income as specified therein shall not be included in the total income of the previous year of the person in receipt of the income derived from the property held under the Trust wholly for charitable or religious purposes, whereas Section 12 of the Act, deals with the contributions received by the Trust or an Institution, established for charitable and religious purposes, receiving contribution, shall not be an income in terms of Section 11 of the Act. The benefit of Sections 11 and 12 of the Act, are available only if such Trust or Institution is registered under Section 12AA of the Act.

10. On the other hand, Section 10(23C) of the Act are the provisions of the Act in substitution of the earlier provisions of Section 10(22) of the Act as to which income shall not be included in computing the total income of any person. Therefore, the provisions of Sections 11, 12 or Section 10(23C) of the Act, deal with the income of a Trust or of the Institution and the circumstances as to when such income is to be excluded for computing the total income, but the basis of

*such benefit is the registration under Section 12AA of the Act. Unless a Trust or Institution is registered under Section 12AA of the Act, such Trust or Institution shall not be entitled to exclude from its total income, deductions or contributions or from other sources. Therefore, the principles laid down for excluding the income from consideration under Section 10(22) now 10(23)(C) or Sections 11 and 12 are not applicable while considering the application for registration under Section 12AA of the Act. The application for registration is required to be made within one year of the creation of the Trust. Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust is undertaking at present and also which it may contemplate to undertake. The insertion of sub-section (3) to Section 12AA of the Act, clarifies the said fact, when it empowers the Commissioner to cancel the registration if the activities of the Trust are not carried out in accordance with such objects.*

*11. Therefore, the object of Section 12AA of the Act, is to examine the genuineness of the objects of the Trust, but not the income of the Trust for charitable or religious purposes. The stage for application of income is yet to arrive i.e. when such Trust or Institution files its return. Therefore, we find that the judgments referred to by the learned counsel for the appellant are not applicable to the facts of the present case arising out of the question of registration of the Trust and not of assessment.”*

5.1 Accordingly, since the Ld. CIT (Exemptions) has neither examined the objects nor has examined the genuineness of activities of the society, we restore the issue to the file of the Ld. CIT (Exemptions) to re-consider the assessee's application as per law and the settled judicial precedent as stated above.

6.0 In the final result the appeal of the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 16<sup>th</sup> October, 2019.**

**sd/-**

**(O.P. KANT)  
ACCOUNTANT MEMBER**

**sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 16.10.2019

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi