

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1114/JP/2019
निर्धारण वर्ष/Assessment Years : 2019-20

Poojya Sindhi Panchayat Kanwar Nagar(Regd), 87, Sindhu Bhawan, Kanwar Nagar, Jaipur.	बनाम Vs.	The CIT, (Exemption), Jaipur.
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADAP 6165 B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri K.L. Moolchandani (C.A.)
राजस्व की ओर से/ Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 16/12/2019
उदघोषणा की तारीख/Date of Pronouncement : 19/12/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(E), Jaipur dated 31.07.2019 wherein the assessee has taken the following ground of appeal:-

"1. On the facts and circumstances of the case, the Id. CIT(Exemptions) has factually and legally erred in holding that the applicant Trust is not fit for registration and thereby rejecting registration application u/s 12A of the Act, without appreciating the various contentions of the appellant and also the facts of the

case in right perspective. Thus the order so passed deserves to be quashed and registration deserves to be allowed to the appellant trust."

2. Briefly the facts of the case are that the assessee society has moved an application for seeking registration U/s 12AA of the Act on 15.01.2019 before the Id CIT(E). Thereafter after seeking necessary information and documentation, the Id. CIT(E) has held that the activities of the assessee-society are not charitable in nature and therefore, registration U/s 12AA of the Act was rejected. Against the said order, the assessee society is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the assessee is a registered Society (Registration No.623/Jpr/2015-16) since 1.10.2015 and is engaged in charitable and religious activities viz. holding of eye camps, yoga classes, celebration of festivals like Dushshera, Holi, Chetichand, anniversary of Saints, maintaining Water Coolers and huts for Public at large, holding Seminars and public meetings to create conducive and harmonious atmosphere in the Society, to discourage social evils like dowry, uncalled for Pump and Show in social functions like marriages and death ceremonies etc., to settle mutual differences and disputes of the parties amicably by mutual understanding and counseling and to assist the financially back-ward and needy persons by providing them premises i.e, public Parks, Dharamshalla rooms & Utensils etc. on `No-loss and No Profit' basis. For the purpose, the premises are obtained on rent from M/s Brahampuri Refugee Co-operative Society, a registered Co-operative Society to let out the same to needy and down trodden persons to

perform social obligations and other functions at affordable rates as evident from the Income and Expenditure A/c of last three years. From these A/cs, it is noted that the Society did not earn any income from hiring of these premises.

4. It was further submitted that the assessee-society had applied for registration u/s 12AA of the I.T. Act vide application dated 15.1.2019. For the purpose, all the required details, documents & photographs etc. were produced along with 'Receipt and Expenditure A/c' etc. Having examined such details of receipts and expenditure and other documents, the Id. CIT(E) appeared to be satisfied about the objects of the society being of 'charitable nature of these activities', except the alleged activity of hiring Dharamshalla, Parks & Utensils etc. on rent. The Id. CIT (Exemption) was of the view that hiring of Dharmshalla, Parks and Utensils etc. on rent were 'commercial activities' in nature and were hit by section 2(15) of the Act after amendment w.e.f. 1.4.2016. Accordingly, the registration application u/s 12AA of the Act was rejected vide order u/s 12AA(1)(b) of the Act dated 31.7.2019.

5. It was further submitted that Id. CIT(E) had incorrectly interpreted the meaning of 'Commercial Activities' as envisaged u/s 2(15) of the Act and had also misunderstood the working of the 'Receipts and Expenditure A/c' to hold that the Society had 'income' from these activities forming 73.8% to 80.15% which is more than 20%, to arrive at incorrect and illogical findings. Again, at the time of granting registration u/s 12AA of the Act, the Id. CIT(E) is required to look into the genuineness of the Society and its objectives only as held

by number of judicial authorities. In the present case, however the Id. CIT(E) has travelled beyond his jurisdiction to reject the application and the findings of Id. CIT(E) are assailed on the following counts:-

I. At the outset, it may be pointed out that the Id. CIT (E) had incorrectly mentioned that the 'income' from commercial activities is forming 73.80%, 80.15% & 74.18% is more than 20% of the income of the Society, is therefore hit by section 2(15) of the Act. It appears that the Id. CIT (E) had misconstrued the meaning of 'income' with 'receipts'. On careful study of the 'Receipt and Expenditure A/c' as reproduced in the order for last three years, it is noted that the Society did not earn any income from the alleged commercial activities as opined by the Id. CIT (E). From the details of 'Receipts and Expenditure A/c' it is noted that in the first year, i.e. in the F.Y. 2015-16, the Society had more expenditure than receipts by Rs.8,784/, thus no 'income' was earned by the Society during this year. Again, in next two years also i.e. in F.Y. 2016-17 & 2017-18, there were nominal surplus of Rs. 9,297/- & Rs. 43,194/- respectively which included the receipts of Rs.75,000/- & Rs. 1,53,000/- from interest and donations as evident from the Receipt and Expenditure A/c. Thus in these years, 'no' income was earned from hiring of Dharamshalla, Parks and Utensils etc. as alleged by the Id. CIT(E). Accordingly, the Id. CIT (E) had incorrectly worked out the 'Income' of the Society at 73.80%, 80.15% & 74.18% of the receipts and had rejected the application on the basis of incorrect working of income as pointed out above. In the circumstances, the Id CIT (E) was not justified to reject the application for registration by invoking

provisions of section 2(15) of the Act on the basis of incorrect working of the 'income' allegedly earned by the Society.

II. Again the Id. CIT (E) had misinterpreted the meaning of 'Commercial Activities'. For undertaking the commercial activities, 'Consideration' is an essential 'ingredient'. In the present case, this ingredient is missing as the Society did not undertake the above activities for any 'Consideration' as explained above. In fact, the Society has been undertaking these activities with an object to serve the down trodden persons on no loss and profit basis. The element of profit motive in these activities was missing as evident from the Receipts & Expenditure A/c. The meaning of 'commercial activity' has been defined as under:

"The advancement of any other object of general public utility shall not qualify as a charitable purpose, if the same involves the carrying on of any activity in the nature of trade, commerce or business or rendering of any service in relation to any trade, commerce or business for consideration"

In view of above definition, the Society did not undertake any commercial activity for 'Consideration'. Accordingly, the provisions of section 2(15) of the Act do not come into play in this case.

III. Lastly, on the date, it is a settled Law that at the stage of grant of registration under section 12A of the Act, the Id. CIT(E) is supposed to examine only genuineness of the Trust and its objects. It is not appropriate on the part of the Commissioner to examine the aspect of

application of income at the stage of granting registration under section 12AA, which is to be examined by the Assessing Officer on a year to year basis at the time of claiming exemption under section 11 of the Act. At the time of grant of registration, the jurisdiction of the Id. CIT (E) is restricted to verify the genuineness of the Society and to ascertain as to whether the objects of assessee are charitable or not. For the purpose, reliance was placed on the decisions in case of CIT vs. D.P.R. Charitable Trust (2011) 61 ITR (M.P), Anjaneya Medical Trust vs CIT Kozhikode (2016) 382 ITR 399 (Kerala) and others.

6. It was further submitted that in this case, the Id. CIT (E) was satisfied about the genuineness of the Society and its objects. He did not dispute the 'genuineness' of the Society and its 'objects' etc. at any stage, In the circumstances the application for granting registration u/s 12AA of the Act should be accepted and Registration u/s 12AA deserves to be granted.

7. Per contra, the Id. CIT/DR referring to the objects of the assessee-society as well as the income and expenditure account for last 3 years submitted that the assessee-society is engaged in the activity of providing parks, building and Satsang bhawan, Utensils on rent/commission and receipts/consideration thereof forms substantial income and is the nature of commercial/business income of the assessee-society. It was submitted that the assets like Satsang bhawan, park are not reflected in the balance sheet. Therefore, the receipts/consideration are nothing but commercial income in lieu of services given and any case the receipts/consideration form a

substantial parts of its income which cannot be termed as charitable in nature. It was accordingly submitted that the receipts from these commercial activities constitute 73.80% for F.Y. 2015-16, 80.18 for F.Y. 2016-17 and 74.18 for F.Y. 2017-18 which is clearly hit by the proviso to Section 2(15) of the Act. It was accordingly submitted that the Id. CIT(E) has rightly held that the activities of the assessee society are not charitable in nature as its predominantly carried out activities of providing parks/building, satsang bhawan, utensils on rent/commission.

8. We have heard the rival contentions and perused the material available on record. The assessee society is an existing society registered under the Society registration Act since 01.10.2015 and thereafter it has moved an application before the Id. CIT(E) on 15.01.2019 seeking registration u/s 12AA of the Act. Therefore, being an existing and running society at the time of moving an application, the Id. CIT(E) was well within his jurisdiction to examine not just its objects of the assessee society but also the fact that the activities of the assessee-society are genuine and are in consonance with the object for which the society has been established. The Id. CIT(E) referring to the receipts from hiring of premises and utensils held that though this activities qualify as general public utility, however, given quantum of the receipt, it was held that these are the predominant activities which are carried out by the assessee-society on commercial basis. The Id. CIT(E) has also held that the various buildings/parks for which the assessee has shown receipts are not reflected in its balance sheet and the assessee has not produced any evidence of title of these assets. During the course of hearing, the Id. AR submitted that the assessee

society has taken premises on nominal rent from M/s Brahampuri Refugee Co-operative Society and the said premises are provided to needy persons to perform social obligation and other activities at affordable rate on no profit and no loss basis and a copy of the rent deed/IKarnama was submitted. We find that existence of such an arrangement between the assessee-society and M/s Brahampuri Refugee Co-operative Society was not brought to the notice of the Id. CIT(E) which has probably resulted in the his findings where he says that no such assets are reflected on the balance sheet of the assessee company. In light of the same, we are of the opinion that this arrangement of taking premises on hire and giving it to needy persons as so claimed by the assessee society need to be examined afresh by the Id CIT(E). Further, the Id. AR has submitted that the predominant activity of the assessee-society is not hiring of the premises rather predominant activities of the assessee-society are holding of eye camps, yoga classes, celebration of festivals like Dushshera, Holi, Chetichand etc. and the receipts arising out of the hiring of premises are incidental receipts and the same are used for advancement of its main objectives. We prima facie find force in the arguments of the Id AR. The predominant activities where so carried out by the assessee society as so claimed will not necessarily result in any receipts, rather the assessee society has to incur expenses towards carrying out such activities and in order to fund such activities, where the premises and other places are given on rent and receipt arising therefrom will only be reflected in the financial statements and are used for carrying out the main activities, the latter activities will qualify as ancillary and in fulfillment of main activities and not the main and predominant

activities. However, we find that the said facts regarding carrying out main activities as so claimed by the assessee society are not emerging from the order of the Id. CIT(E) and thus not borne out of the records before us, though the assessee society has submitted some photographs which would again need verification. Therefore, in the interest of justice and fair play, we deem it appropriate that the matter is set-aside to the file of the Id CIT(E) to decide the matter afresh after providing reasonable opportunity to the assessee-society. In the result, the matter is set aside to the file of the Id. CIT(E) and the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 19/12/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2019.

*Santosh

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

1. अपीलार्थी / The Appellant- Poojya Sindhi Panchayat Kanwar Nagar (Regd), Jaipur.
2. प्रत्यर्थी / The Respondent- CIT (Exemptions), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1114/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar