

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR  
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1092/JP/2019  
निर्धारण वर्ष / Assessment Year :.....

Mancan Foundation, Udaipur. C/o-Shah Patni & Co. Chartered Accountants, S.B. One, Babu Nagar, JLN Marg, Jaipur- 302015.	बनाम Vs.	C.I.T.(Exemption) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFTM 7600 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Pramod Patni (CA)  
राजस्व की ओर से / Revenue by : Shri Ambrish Bedi (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 12/01/2021  
उदघोषणा की तारीख / Date of Pronouncement : 29/01/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

The present appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Exemption), Jaipur (in short, the CIT(E)) dated 27/06/2019 passed U/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 (in short, the Act). In this appeal, the assessee has taken following grounds:

- "1. The learned Commissioner of Income Tax has grossly erred in fact as well as in law in Rejection the Application for Registration u/s. 12AA of Income tax Act, 1961 of the appellant company:*

- i. Holding that the activities of the Foundation are not Charitable in nature and it is predominantly carrying out business on commercial basis.*
- ii. The Trust having undertaken sponsored programs and activities which solely cater to product branding activities for the sponsoring multinational pharma companies, its activities cannot be held as Charitable within the meaning of sec. 2(15) of ITA.*
- iii. The Foundation's activities are not charitable but predominantly commercial in nature.*
- iv. Since the Foundation has undertaken only Sponsored programs for which it has been a recipient amounts on which TDS has been deducted and the conditions of which sponsorships prevent the freedom of the Foundation to spend the amounts for any activities on its volitions, such activities undertaken cater to the profit motives of such sponsoring multinational companies and hence its activities cannot be held to be charitable in nature u/s 2(15) of ITA and thus Registration u/s. 12AA to such a Trust/ Foundation cannot be granted.*
- v. The CIT Exemption, while rejecting the Registration has gone by his wrong notion to conclude that such sponsored programs was the sole activities of the Foundation in in doing so ignoring the wide range of charitable object specified in its Charter for formation, all of which are with the ultimate object of charitable activities with no objects of commercial nature.*

*The appellant prays leave to add to, alter and / or amend the aforesaid grounds of appeal at or before the time of hearing of appeal.”*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. There is delay of 09 days in filing this appeal, for which the assessee has filed application for condonation of delay.

3. We have heard the Id AR of the assessee as well as the Id. DR on condonation of delay in filing this appeal. In the application of condonation of delay, the assessee has stated as under:

*"The Order for rejection of Registration dt. June, 28, 2019 pursuant to my application for such Registration u/s 12AA of ITA was received by me sometime on July 29<sup>th</sup>, 2019 which Order was shared by me with my tax consultant Mr. Veenu Hiran, FCA, 5-C, Madhuban, Mohan Niwas, for information and needful action.*

*Later we had discussion on the Order received and subsequent to which I conveyed my decision to contest the order for Rejection of Registration in appeal to the learned ITAT to my tax consultants who in their other pre-occupation of filing of ITR's in July/ Aug.2019 missed out in filing the desired appeal in time. Thus Sir/s, the pre-occupation of my tax consultant lead to his oversight and missing to file the Appeal within timelines of 60 days resulting into same being delayed after a delays of 9 days.*

*Sir, since such delay was unintended and consequential to timelines of compliances of law at the end of my tax Consultant and further the issue being critical for the continuity of activities of the Charitable Trust set up by me, I humbly seek pardon for the minor delay and request the Lordship/s to condone the minor delay of 9 days in the interest of justice and equity in the interest of the Trust and its objects of charitable nature viz., Cancer awareness and guidance and assistance to the people at large.*

*A favourable disposal of this application leading to acceptance the Appeal as filed within time would thus be highly appreciated and regarded."*

4. On the other hand, the Id CIT-DR has vehemently opposed the prayer for condonation of delay.

5. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In case of Collector, Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come on the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should

be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

6. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case we find that the assessee has explained cause of delay that due to act of tax consultant, who in their other preoccupation of filing of ITR in July/August, 2019 missed out in filing the present appeal. In view of the above contentions as well as facts and circumstances of the case and in the principles of natural justice, we condone the delay of 09 days in filing the present appeal and admit the same for hearing.

7. The facts of the case in brief are that the assessee filed application before the Id. CIT(E) seeking registration U/s 12AA of the Act. However, the Id. CIT(E) after considering the case of the assessee passed order U/s 12AA(1)(b)(ii) of the Act dated 27/06/2019 thereby rejected the application for registration U/s 12AA of the Act.

8. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before the ITAT by taking the grounds mentioned above.

9. Rival contentions have been heard and record perused. As per facts of the present case, the Id. CIT(E) has denied the registration U/s 12AA of the Act laying emphasis on the nature of contributions made by the pharmaceuticals companies terming the same as "sponsorship" and also holding that such contributing companies also deducting TDS on their such sponsorship contributions and therefore same being largely driven by their object of maximizing the profits of the sponsors/sponsoring entities and any activities so conducted with such sponsorships cannot be termed as charitable activities. The Id. CIT(E) has further held that the Trust was not Charitable but predominantly carrying on business on commercial basis.

10. On the other hand, the Id AR of the assessee has reiterated the same arguments as were raised before the Id. CIT(E) and relied on the written submissions filed before the Bench and the same is reproduced below:

1. *The learned CIT(Exemption) has denied registration u/s 12AA laying emphasis on the nature of contributions made by the pharmaceutical companies terming the same as " Sponsorship" and also alleging that such contributing companies also deducting TDS on their such sponsorship contributions and hence same being largely driven by their Object of maximizing the profits of the Sponsors/ sponsoring entities and any activities so conducted with such sponsorships cannot be termed as charitable activities.*

*Hence the Trust was not Charitable but predominantly carrying on business on commercial basis. In coming to such finding and conclusion, the learned CIT(E) has not even considered the Objects of the Trust, not for profit basis & intent and also the overall scheme and theme of activities which were actually undertaken to make people at large aware of Cancer Disease, its dangers and what preventive care against the same was possible.*

2. *The CIT(E) has acting with strong bias against the pharma companies in general that in concluding the issue of registration, has not even bothered to appreciate the jurisprudence on the issue of granting registration on the basis of Objects of the trust and its overall intent and purposes.*
3. *Commencement of activities not a pre-condition for Granting Registration to a Trust. Thus, commencement or carrying out actual activities and/ or review of such activities to ascertain if factually in the nature of Charitable Object of the Trust is not required nor necessary for grant of Registration u/s 12AA, if the Objects defined are Charitable in nature pursuant to Sec.2(15) of ITA. Decisions relied in support of this contention are:*
  - i. *Ananda Social & Education Trust [2020] 114 [taxmann.com](#) 693 (SC)*
  - ii. *[2015] 58 [taxmann.com](#) 335 (Rajasthan)/[2015] 2014]*
  - iii. *CIT v. Vijay Vargiya Vani Charitable Trust 232 Taxman 340 (Rajasthan)/ [2014] 369 ITR 360 (Rajasthan)*
  - iv. *Abacus Foundation v. CIT. [2017] 88 [taxmann.com](#) 661 (Kolkata ITAT)*

*Similarly held by the ITAT, Bench on consistent basis in many of its decisions in the past including that of Auroveda Integral Foundation v. CIT (Exemption), Jaipur — Appeal No. 988/JP/2016-Order dt. 23.02.2017.[ Jaipur Bench of ITAT]*

4. *Holding of Talks & Events for Cancer awareness and prevention in different strata of people even with the help of sponsorship & contributions from business entities and/or generation of Surplus in the conduct of any charitable activity, is in itself cannot be a reason for denial of Registration on the pretext of the purpose or intent of the Trust to be that of carrying an activity of profit making or to be in the nature of trade/ commerce/ business. What needs to be seen the basic Objects and purposes and the overall intent and not the basis of resources to carry out such activities or an outcome of any such activities of charitable nature undertaken without any intent or purpose of profit. Reliance placed on the following judgements in support of the above:*
  - i. *Credai Bengal v. ITO(Exemption) [2019] 110 [taxmann.com](#) 113 (Kolkata - Trib.)*
  - ii. *Fragrance & Flavours Association [2018] 92 [taxmann.com](#) 325 (Mumbai Trib.)*
  - iii. *India Olympic Association [2018] 96 [taxmann.com](#) 184 (Delhi - Trib.)*
  - iv. *Rajasthan Cricket Association V ACIT [2017] 79 [taxmann.com](#) 464 (Jaipur -Trib.)*
5. *Deduction of TDS on the amounts of Contributions / donation made by the contributors terming the contributions/ donations as a Sponsorship money for an Event/s with certain directives cannot make such*

*Contributions as commercial receipt/s in the hands of the receiving charitable organization on basis of presumptive inference that same made with the object of a promotional nature of expenses or for publicity of the Donor organization in return. Reliance placed on the following in support:*

6. *Further similarly, merely because the donors were pharmaceutical companies and they deducted TDS from their contributions to the Charitable Trusts, same would not convert a contribution or donation into a commercial receipt in the hands of the recipient charitable organization, on basis of presumptive inference, as long as assessee had credited amount as donations and also issued donation receipts. Reliance placed on the following in support:*

*i. Heart Care Management v. DIT Exemption [2012] 22 taxmann.com 105 (Delhi)"*

11. After having gone through the facts of the present case and after hearing the parties at length, we found that while denying the registration U/s 12AA of the Act and coming to the conclusion that nature of contributions made by the pharmaceutical companies and deducting TDS on such sponsorship contributions are largely driven by their Object of maximizing the profits of the Sponsors and therefore, the activities of the assessee were not termed as charitable activities. However, while coming to such conclusion, the Id. CIT(E) has not considered the object of the Trust. As per the objects of the Trust, the same is not on profit basis and the intent and also the overall

scheme and theme of activities which were actually undertaken to make people at large aware of Cancer Disease, its dangers and what preventive care against the same was possible. The Id AR has also drawn our attention towards the activity filed by the settler trustee of the appellant wherein it has been specifically mentioned that the said Trust was found in February, 2018 with the objects of carrying out charitable activities primarily in the field of Cancer awareness and preventive care and to extent all kind of possible facilities, support and assistance to Cancer patients including the terminally ill patients amongst the public at large and without any object of profit making or monetary gains/benefit from such activities. The aims and objects have been such upto this date of functioning has been and continues to be same viz, awareness about Cancer ailments, detection of the disease early based on specific symptoms, educate about preventive care and support those suffering from any type of Cancer ailments. It was further affirmed and confirmed that the purpose and object of setting up of the Mancan Foundation was purely to carry out and conduct programs/event/talks to educate the public at large about the disease, to build awareness and preventive care of the disease, its timely symptoms, its detection in day to life of a common man and help and support such cancer victims in best manner possible. In the

said affidavit, it was categorically mentioned that the foundation has never since its inception and till date undertaken any activities such as carrying out of Clinical Trials of any Drugs or products either for its own benefit or for any donor/contributing entities so as to directly or indirectly benefit any commercial activities of any such drugs manufacturing/marketing companies nor it has any such objects in its Charter of such a nature. It was further stated in the affidavit that a primary condition and requirement for undertaking any such activities as that of Clinical Trials of drugs or products, there is a requirement of obtaining a prior approval and registration with the ethics Committee which itself is registered with Drug Controller of Govt. of India (DCGI) and the Foundation neither has such approval/registration nor had ever applied or obtained the same in the past.

12. Apart from the above, we are of the view that commencement of activities are not necessary to be evaluated while granting of registration U/s 12AA of the Act. In this regard, we draw strength from the decision of Hon'ble Supreme Court in the case of **Ananda Social & Education Trust (2020) 114 taxmann.com 693 (SC)** wherein it was held that "*Section 12AA provides for registration of a Trust and such registration can be applied for any a trust which has*

*been in existence for some time and also by a newly registered trust and there is not stipulation that trust should have already been in existence and should have undertaken any activities before making application for registration.*

13. We are of the view that holding of Talks and events for Cancer awareness and prevention in different sections of people with sponsorship and contributions from business entities or surplus generated in any charitable activity, is in itself not an activity of/for making profit or in the nature of trade, commerce or business. In this respect, we draw strength from the following decisions:

- (i) Credai Bengal Vs ITO (Exemption) (2019) 110 taxmann.com 113 (Kolkata Trib)
- (ii) Fragrance & Flavours Association (2018) 92 taxmann.com 325 (Mumbai Trib)
- (iii) India Olympic Association (2018) 96 taxmann.com 184 (Delhi-Trib)
- (iv) Rajasthan Cricket Association Vs ACIT (2017) 79 taxmann.com 464 (Jaipur-Trib)

14. Although while rejecting the registration U/s 12AA of the Act, the Id. CIT(E) has also specifically held that TDS was being deducted by such contributing companies on their sponsorship contributions, therefore, these activities cannot be termed as charitable activities.

However, in this regard, we are of the view that deduction of TDS would not convert a sponsorship for events/donations into commercial receipt on the basis of presumptive inference. In this regard, we rely on the decision in the case **of Heart Care Management Vs DIT Exemption (2012) 22 taxmann.com 105 (Delhi)** wherein it was held that *"whether, merely because donors were pharmaceutical companies and they deducted TDS, it would not convert a donation into a commercial receipt on basis of presumptive inference as long as assessee has credited amount as donations and also issued donation receipts"*.

14. Since, Section 12AA of the Act pertains to registration of the trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the object of the Trust is genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of Section 12AA. There the Commissioner would be bound to record the finding that an activity or activities actually

carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust. As far as the facts of the present case are concerned, the objects of the Trust were not considered by the Id. CIT(E), therefore, we are of the view that overall scheme and theme of the activities which are undertaken by the appellant is to make people at large aware of Cancer diseases, its dangers and what preventive care against the same was possible. Therefore, at the time of issue of granting registration, the only basis which is required to be considered is the overall objects of the Trust and its overall intent and not the basis of resources to carry out such activities or an outcome of any such activities of charitable nature undertaken without any intent or purpose of profit. Therefore, keeping in view our above discussion, we set aside the order passed by the Id. CIT(E) and direct him to grant registration U/s 12AA of the Act to the appellant. However, in case at a later stage, after granting registration, if it is found that the activities of the appellant actually carried out by the Trust are not genuine, being not in accordance with the objects of the Trust, then in that eventuality, the Id. CIT(E) is at liberty to invoke the provisions of sub-section (3) of Section 12AA of

the Act independently. With these observations, we allow the present appeal in terms indicated hereinabove.

15. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 29<sup>th</sup> January, 2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 29/01/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Manchan Foundation, Udaipur.
2. प्रत्यर्थी / The Respondent- The C.I.T.(Exemption), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1092/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar