

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1263/Del/2019 : Asstt. Year :

IILM University, Plot No. 69-71, DLF Golf Course Road, Sector-53, Gurgaon, Haryana-122003	Vs	CIT(Exemptions), Chandigarh
(APPELLANT)		(RESPONDENT)
PAN No. AAJJI0518H		

Assessee by : Sh. Rohit Jain, Adv.

Revenue by : Ms. Vanita Sharma, CIT DR

Date of Hearing: 17.03.2021

Date of Pronouncement: 22.03.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(E), Chandigarh dated 29.12.2018.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the impugned order dated 29.12.2018 passed by the learned Commissioner of Income Tax (Exemption) ['CIT (E)'] under Section 12AA of the Income Tax Act, 1961 ("the Act") is bad-in-law and clearly beyond jurisdiction.

1.1 That on the facts and circumstances of the case, the impugned order having been passed by the CIT (E) without affording adequate opportunity of being heard to the appellant, is violative of

principles of natural justice and is, therefore, illegal and bad in law inasmuch as:

a) the impugned order has been passed by the CIT(E) without providing any opportunity of being heard to the Appellant himself, which is clearly in contravention of the provisions of Section 12AA of the Act;

b) the CIT(E) drew adverse inferences and making certain baseless allegations, without judiciously appreciating the legal and factual submissions of the Appellant;

c) the first show cause notice ('SCN) dated 19.12.2018 was issued only at the fag end of the limitation period and then, the impugned order was passed rejecting the Appellant's application for registration under Section 12A of the Act on altogether different grounds for which no SCN was issued.

d) The CIT(E) relied on certain extraneous documents/information without even confronting the same to the Appellant.

2. That the CIT (E) erred on facts and in law in passing the impugned order exceeding jurisdiction conferred under Section 12AA of the Act without appreciating that at the time of granting registration under Section 12A of the Act, the CIT(E) only needs to examine genuineness of the objects and activities of the trust/institution.

2.1 That the CIT (E) erred on facts and in law in not appreciating that the alleged contraventions /factors/consideration, basis which the registration has been denied in the impugned order, falls within the scope of Assessing Officer, which could be seen only at the time of assessment after granting of registration.

2.2 That the CIT (E) erred on facts and in law in leveling various baseless allegations merely on conjectures and surmises, without appreciating that

the Appellant was notified under Haryana Private Universities Act, 2006 & was under an obligation to Act in accordance with the provisions of the said Act and there has in fact been no allegation/ finding by the Competent Authority of any contravention under the said Act.

WITHOUT PREJUDICE

3. That the CIT(E) erred on facts and in law in relying, and reading totally out of context, certain contents of the Appellant's website, without appreciating that:

- (a) The same was not confronted to the Appellant;*
- (b) The interpretation drawn basis the same was not only erroneous but also not warranted at all.*

4. That the CIT (E) erred on facts and in law in alleging that the land used by the Appellant University has been 'transferred' by IILM Education Trust ('Sponsoring Body') without any terms and conditions without appreciating that such land being owned by the Sponsoring Body vested with the Appellant to the extent of its usage as University in accordance with the provisions of the Haryana Private Universities Act, 2006.

5. That the CIT(E) erred on facts and in law in alleging that lease rent payment was made by the Appellant to IILM Education Trust for the above land without appreciating that such a conclusion was factually incorrect inasmuch as the said lease rent was not paid to IILM Education Trust but to a third party towards Hostel facility (outside university campus) maintained for students and faculties.

6. That the CIT(E) erred on facts and in law in alleging that regular huge amounts were transferred by Appellant University to Dr. Sujata Shahi in contravention of provisions of Section 13(1)(c) of the Act without appreciating that:

(a) no personal payment / benefit was paid /conferred to Dr. Sujata Shahi except for salary towards her working as Vice Chancellor of the Appellant University;

(b) the conclusion drawn was clearly erroneous based on incorrect facts & conjectures and surmises; and

(c) without prejudice, alleged contravention of Section 13(1)(c) of the Act, if any, was not to be seen at the time of grant of registration under Section 12A of the Act.

7. That the CIT(E) erred on facts and in law in alleging that the Appellant failed to submit approved fees structure without appreciating that the Appellant was not required to get the approval for fees structure as per the provisions of the Haryana Private Universities Act, 2006 which required the Appellant to intimate for information only.

8. That the CIT(E) erred on facts and in law in alleging that the Appellant failed to provide complete books of accounts for verification without appreciating that:

(a) the Appellant was asked to produce complete books of accounts only at the fag end of the limitation period;

(b) the Appellant had offered during the proceedings to submit any specific ledger/voucher etc. on being so intimated;

(c) the Appellant had duly placed on record provisional financial statements, receipts & payments account, copies of the bank statements;

(d) the Appellant was not provided reasonable opportunity to produce the complete books of account even though the impugned order was passed after two days of last hearing and two days

*were still left before the expiry of the limitation period; and
(e) without prejudice, scope of verification of complete books of accounts falls within the scope of the assessing officer at the time of assessment."*

3. The Id. CIT(E) refused the grant of registration on the following grounds:

- i) That no property has been vested in the Applicant University. The Applicant University is functioning from the property owned by the sponsoring body.
- ii) There were no terms and conditions subject to which the land was given by the sponsoring body to the applicant University as there was no MoU of any sort between the applicant and the sponsorer.
- iii) The applicant has paid Rs.37,00,000/-towards lease rent to the sponsoring organization.
- iv) The Vice-Chancellor has been paid salary more than the salary which has beneficial to the recipient at the cost of the trust.
- v) The applicant failed to provide fee structure which has been approved by the regulating agency.
- vi) The applicant has not submitted books of accounts.

4. In this regard, the provisions of the Income Tax Act relating to the granting of registration u/s 12AA are as under:

"The [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause

(a) [or clause (aa) 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 off 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.....

5. The definition under section 2(15) of the Act defining charitable purpose as an inclusive definition under which the trust or institution carrying on the following activities are said to have carried on charitable activities:

(a) Relief to the poor;

(b) Education;

(c) Medical relief;

(d) Preservation of environment;

(e) Preservation of monuments or places or objects of artistic or historic interest;

(f) Advancement of any other object of general public utility.

6. In order to avail the benefit of exemption under section 11/12 of the Act the activities of the trust or institution is to be charitable for purposes. The conditions for applicability of sections 11 and 12 of the Act are provided under section 12A of

the Act and one of the conditions is that the person in receipt of the income which claims to be for charitable purposes is to make an application for registration of the trust or the institution in the prescribed form and in the prescribed manner to the Commissioner within the stipulated period of creation of the trust or the establishment of the institution. On receipt of the application in the requisite form No.10A along with Instrument of creation of the trust or the institution, the procedure for registration of the trust or the institution by the Commissioner is provided under section 12AA of the Act.

7. Admittedly, at the time of grant of registration the Commissioner is not empowered to examine the application of income but he has to examine whether the application is made in accordance with the requirements of section 12A of the Act and whether form No.10A has been proper or not. The Commissioner is further to examine whether the objects of the trust are charitable or not and also to satisfy himself about the genuineness of the activities of the trust or the institution. The Commissioner is not to examine the application of income at this juncture. The Hon'ble Supreme Court in *CIT v. U.P. Forest Corpn.* [1998] 230 ITR 945/97 Taxman 259 (SC), held that in order to take advantage of the provisions of section 11 of the Act, the trust or the institution has to get itself registered. Whether the income of the institution can be regarded as being held for charitable purposes and whether the institution is entitled to registration under section 12A of the Act, requires investigation of facts. In view thereof, section 12AA of the Act recognizes the principle laid down by the Hon'ble Supreme Court and Commissioner under section 12AA of the Act is

empowered to call for such documents or information from the trust or the institution in order to satisfy himself that the objects of trust are charitable and also about the genuineness of the activities of the trust or the institution and is also empowered to make such enquiries as he deem necessary in this regard. From the enquiries conducted by the Id. CIT (E), we find that Id. CIT (E) has not brought anything on record to prove that the objects of the trust or institution are not charitable in nature. Reliance is being placed on the judgment of the Hon'ble Jurisdictional High Court in the case of Ophthalmic and Optometry Research Education Centre In ITA No. 1687/Del/2010 and Judgment of Hon'ble Supreme Court in the case of Ananda Social and Education Trust 2020 (2) TMI 1293. Hence, we set aside the order of the Id. CIT (E) declining the registration u/s 12AA.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 22/03/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 22/03/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR