

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.526/PUN/2020

Association of Aesthetic Plastic Surgeons,
Add: C/o Medha Bhave, 101, Shah's Capital,
Ghantali Devi Road, Naupada,
Thane West-400602.

PAN : AAGTA5573J

.....अपीलार्थी / Appellant

बनाम / V/s.

CIT (Exemptions),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rohan Dedhia
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 23.03.2021
घोषणा की तारीख / Date of Pronouncement : 24.03.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee society directed against the order of the Learned Commissioner of Income Tax (Exemption), Pune dated 13.08.2020 denying the registration u/s 12AA of the Income Tax Act, 1961 ("the Act" for short).

2. The appellant raised the following grounds of appeal :-

- “1. On the facts and in the circumstances of the case, the Ld. CIT(E) has erred in holding that the activities of Trust are not charitable in nature and thereby refusing to grant registration u/s 12AA, whereas in fact the activities of the Trust are charitable in nature and Trust is eligible for registration u/s 12AA.
2. The appellant craves leave to add, alter, amend, delete and/or vary the above grounds of appeal/relief claimed at any time before the decision of the appeal.”

3. Briefly, the facts of the case are as under :-

The appellant society had made an application before the ld. Commissioner of Income Tax (Exemption) in Form No.10A for grant of registration u/s 12AA of the Act on 27.09.2019. On receipt of the said application, the ld. Commissioner of Income Tax (Exemption) called for certain details vide letter dated 02.11.2019 through ITBA portal, the same was complied with by the appellant society on 04.12.2019.

4. On consideration of the information filed, the ld. Commissioner of Income Tax (Exemption) taking note of the proposed activities of the appellant society had come to a conclusion that no evidence was filed to show that the appellant society had carried on the activities regarding the treatment of burns, surgeries for acid victims. The only activity carried out by the appellant society is conducting of seminars of doctors. The ld. Commissioner of Income Tax (Exemption) further observed that the some of the expenditures incurred are in the name of other persons. Last observation made by him is that the funds collected are utilized only for the purpose of making of FDs with the bank without utilising for objects for which the appellant society was formed. On the premise of the above observations, the ld. Commissioner of Income Tax (Exemption) had held that he was not satisfied with the charitable nature of the objects as well as genuineness of the activities of the appellant society, accordingly, denied the grant of registration u/s 12AA of the Act vide order dated 13.08.2020.

5. Being aggrieved by the above denial of the registration, the appellant is before us in the present appeal.

6. Before us, the ld. AR for the appellant contended that the appellant society had been carrying on various objects and one of the objects is conducting the seminars for the benefits of the doctors which is also part of the objects of the appellant society. He further submitted that the bills are in the name of the third party for the reasons that it represents the reimbursement of the expenses incurred by the resources person i.e. Speaker in the seminar. Thus, it was submitted that the observations made by the ld. Commissioner of Income Tax (Exemption) were not relevant to justifying denial of grant of registration u/s 12AA of the Act.

7. On the other hand, ld. CIT-DR relied on the orders of the lower authorities.

8. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the grant of approval of registration u/s 12AA of the Act. The ld. Commissioner of Income Tax (Exemption) had denied the grant of approval u/s 12AA of the Act on the premise that :

- (i) The appellant society had not carried on any activity;
- (ii) The bills for the expenditure incurred are in the name of third party;
- (iii) The funds collected for pursuit of the objects were remain unutilized and were utilized only for the purpose of FDs with the bank.

9. Based on the above observations, the Id. Commissioner of Income Tax (Exemption) had come to conclusion that the objects are not charitable in nature as well as the genuineness of the activities were not established.

10. On mere perusal of the impugned order, it would be clear that it is not a case of the Id. Commissioner of Income Tax (Exemption) that the objects for which the appellant society was formed are not charitable in nature and merely because the appellant society had not carried out any activity does not mean that the objects of the appellant society are not charitable in nature. In this context, it is apt to refer to the recent decision of the Hon'ble Supreme Court in the case of Ananda Social and Educational Trust vs. CIT, 272 Taxman 7 wherein the Hon'ble Supreme Court held that at the time of grant of registration, the Commissioner of Income Tax is only expected to examine and satisfy himself that the objects of the trust are charitable and its activities are in furtherance of the charitable in nature i.e. satisfy himself about the genuineness of the activities carried on by the assessee. Further, it is held that term "activities" include "proposed activities".

11. In the light of the dictum laid down by the Hon'ble Supreme Court cited (supra), even proposed activities can be considered as charitable in nature, therefore, the reasoning of the Id. Commissioner of Income Tax (Exemption) that since no charitable activity is carried out, registration u/s 12AA of the Act cannot be granted, cannot be sustained in the eyes of law.

12. The mere fact that the bills for the expenditure in the name of third party does not lead to the conclusion that the expenditure was not incurred by the appellant society. As rightly submitted by the Id. AR, it can be instance of reimbursement of expenditure incurred by resource

person/speaker at the seminar. In any event, it is an item of assessment which can only be considered at the time of assessment.

13. The other reason assigned by the ld. Commissioner of Income Tax (Exemption) to come to the conclusion that the funds collected remain unutilized for the purpose of pursuit of the objects of the appellant society but were utilized only for the purpose of making the FDs with the bank. Again this is an issue of assessment which can only be considered at the time of assessment, not at the time of grant of registration. The Co-ordinate bench of the Tribunal in the case of Brahman Sabha Karveer vs. CIT, Exemption vide ITA No.626/PUN/2020 order dated 07.01.2021 (wherein both of us) are party held as follows :-

“9. it is settled proposition that the issue of grant of registration u/s 12AA of the Act and the examination of exemption u/s 11 of the Act are two different and distinct procedures prescribed under the Act. The issues of exemption u/s 11 of the Act cannot be examined at the stage of grant of registration u/s 12AA of the Act because the stage of examination of issues u/s 11 of the Act would arise only after grant of registration u/s 12AA of the Act. This reasoning was applied by the Jurisdictional High Court in the case of CIT (Exemptions) vs. Mumbai Metropolitan Region Development Authority, 115 taxmann.com 71 and Goa Industrial Development Corp. vs. CIT, 116 taxmann.com 42 wherein the Hon’ble Jurisdictional High Court held that the mere introduction proviso to section 2(15) of the Act by itself would not render the activities of the assessee trust as non-genuine activities, so as to, entitle Commissioner of Income Tax (Exemption) to cancel and deny the registration u/s 12AA of the Act. Similarly, the Co-ordinate Bench of the Tribunal in the case of Sarthi Youth Foundation vs. CIT, Exemption vide ITA No.562/PUN/2020 order dated 18.12.2020 after referring to the several judicial precedents held as under :-

“9. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the grant of registration u/s 12AA of the Act. From the perusal of the impugned order, it is clear that the ld. Commissioner of Income Tax, Exemption, Pune denied the grant of registration u/s 12AA of the Act solely on the ground that the appellant trust had failed to furnish the evidence of expenditure of Rs.6.57 lakhs incurred during the financial year 2018-19. There is no allegation by the ld. Commissioner of Income Tax, Exemption, Pune that the expenditure has been incurred by the appellant trust for objects other than the charitable objects. Nor was it the case of the ld. Commissioner of Income Tax the objects of the trust are not charitable in nature. It is trite law that at the time of grant of registration, the Commissioner of Income Tax is only expected to examine and satisfy himself that the objects of the trust are charitable and its activities are in furtherance of the charitable in nature i.e. satisfy himself about the

genuineness of the activities carried on by the assessee as held by the Hon'ble Apex Court in the case of Ananda Social and Educational Trust (supra).

10. *In the present case as observed by us supra that the exercise undertaken by the ld. Commissioner of Income Tax, Exemption, Pune by calling for the evidence in support of the expenditure is beyond scope of his powers vested with him u/s 12AA of the Act and furthermore the proof of the expenditure is an item of assessment. The grant of registration and the assessment of income the trust are two different distinct procedure prescribed under the Act. In this regard, reliance can be placed on catena of the decisions :-*

- (i) Fifth Generation Education Society vs. CIT, 185 ITR 634;*
- (ii) Shantagauri Ramniklal Trust vs. CIT, 239 ITR 528;*
- (iii) M. Visvesvaraya Industrial Research And Development Centre vs. ITAT, 251 ITR 852;*
- (iv) New Life in Christ Evangelistic Association vs. CIT, 246 ITR 532;*
- (v) N.N. Desai Charitable Trust vs. CIT, 246 ITR 452; and,*
- (vi) CIT vs. Vijay Vargiya Vani Charitable Trust, 369 ITR 360.*

11. *From the perusal of the impugned order, it is crystal clear that the ld. Commissioner of Income Tax, Exemption, Pune had lost sight distinction between the process of registration and the exemption or assessment of income u/s 11 of the Act. Therefore, the reasoning given by the ld. Commissioner of Income Tax, Exemption, Pune cannot be sustained in law and, accordingly, we set-aside the order of the ld. Commissioner of Income Tax, Exemption, Pune dated 18.09.2020 passed u/s 12AA of the Act and direct the ld. Commissioner of Income Tax, Exemption, Pune to grant the registration u/s 12AA of the Act. Accordingly, the appeal of the assessee is allowed."*

10. *To the same effect, the decisions of the Hon'ble M. P. High Court in the case of CIT vs. D.P.R. Charitable Trust, 61 DTR 410 (MP) and CIT vs. Divine Shiksha Samiti, 428 ITR 552 (MP) and the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Manekji Mota Charitable Trust, 267 taxman 16 and even recently the Hon'ble Madras High Court in the case of Thanthi Trust vs. DIT (Exemptions) in Tax Case (Appeal) No.822 of 2018 dated 29th October, 2020 after referring to the above judicial precedents recognized distinction between the claim for grant of registration u/s 12AA of the Act and the claim for exemption u/s 11 of the Act and, accordingly, held that the item of exemption cannot be subject matter of examination at the time of grant of registration. Therefore, in the light of position of law discussed above, the reasoning of the ld. Commissioner of Income Tax (Exemption) cannot be upheld."*

14. Thus, having regard to the above discussion, the very basis of order of the ld. Commissioner of Income Tax (Exemption) cannot be sustained in the eyes of law. In any event, the ld. Commissioner of Income Tax (Exemption)

should not have come to conclusion that the objects of the appellant society are not charitable in nature and the genuineness of the activities are not established based on the above observations, these observations even are held to be correct cannot lead to the conclusion that the objects are not charitable and genuineness of the activities are in doubt. The ld. Commissioner of Income Tax (Exemption) had not referred to any material on record to show that income of trust was applied for the purposes other than the purposes for which the appellant society was formed. Therefore, the order of the ld. Commissioner of Income Tax (Exemption) is set-aside. The ld. Commissioner of Income Tax (Exemption) is directed to grant the registration u/s 12AA of the Act.

15. In the result, the appeal of the assessee stands allowed.

Order pronounced on this 24th day of March, 2021.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th March, 2021.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.