

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. 49/JP/2021

Gear Training and Research Foundation, 718, 5 th Floor, Anchor Mall Madrampura, Ajmer Road, Civil Lines, Jaipur	बनाम Vs.	CIT (Exemption), Jaipur
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAICG4094M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Sh. Rajeev Sogani (FCA)
राजस्व की ओर से / Revenue by : Sh. B. K. Gupta (PCIT)

सुनवाई की तारीख / Date of Hearing : 05/08/2021
उदघोषणा की तारीख / Date of Pronouncement : 02/11/2021

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 30.03.2021 wherein the assessee has challenged the rejection of application seeking registration u/s 12AA of the Act.

2. At the outset, the Id. AR submitted that there has been a delay in filing the present appeal by 27 days. It was submitted that the impugned order was passed by the Id. CIT(E) on 30.03.2021 and the same was received by the assessee on 30.03.2021 and ordinarily, the

appeal should have been filed before the Tribunal on or before 28.05.2021. However, the same was filed on 17.06.2021. It was submitted that the delay so happened in filing the present appeal was on account of the 2nd outburst of COVID-19 Pandemic and consequent lockdown announced by the State Government. It was accordingly submitted that due to lockdown, the assessee was prevented from filing the present appeal and the delay so happened was not deliberate. In support, the reliance was also placed on the decision of Hon'ble Supreme Court dated 27.04.2021 wherein the period of limitation in filing of appeal, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended with effect from 14th March, 2021 till further orders. It was accordingly submitted that the delay so happened in filing the present appeal was beyond the control of the assessee and the same may be condoned and appeal of the assessee be heard on merits.

3. Per contra, Id. Pr.CIT/DR did not raise any specific objection and fairly accepted that the explanation so furnished by the Id. AR regarding delay in filing the present appeal on account of COVID-19 pandemic may be considered by the Bench as it deems fit and appropriate.

4. After hearing both the parties and considering the material on record, we find that there was a reasonable cause for delay in filing the present appeal due to COVID-19 pandemic and lockdown imposed in the state of Rajasthan which was beyond the control of the assessee. Therefore, the delay so happened is hereby condoned and the appeal so filed by the assessee is hereby admitted for adjudication on merits.

5. On merits, the Id. AR submitted that the appellant is a company incorporated under the provisions of Section 8 of the Companies Act, 2013 and promoted by Garment Exporters Association of Rajasthan (GEAR) which was established in 1978 for helping out garments exporters and the promoter entity, GEAR is also registered u/s 12A of the Act. It was submitted that the main object of the appellant company is to develop Training and Research centre to facilitate "Skill Development" to the entire chain of work force engaged at various level in the Garment and Textiles Industry. The Memorandum of Association and Articles of Association are placed at APB 18-45.

6. It was submitted that an application seeking approval u/s 12AA in Form 10A was filed with the office of Id CIT(E) on 05.08.2020 which was however rejected by Id. CIT(E) vide his order dated 30.03.2021 for the sole reason that the object no. 1,2,4 & 5 as stated in the memorandum of association are having element of commercial/business nature.

7. It was submitted that running a Skill Development Centre is imparting education and which also helps the poor. Therefore, proviso to Section 2(15) is not applicable. It was submitted that promoting business/economic activities, alternatively, are charitable in nature falling under the last limb "any other object of general public utility" of the definition of charitable purpose u/s 2(15) of the Act.

8. It was submitted that the Id. CIT(E) has accepted the objects being charitable in nature and after having found the objects being

charitable in nature, has rejected the application for the reason of "elements of Commercial/Business nature". It was submitted that Id. CIT(E) has totally ignored the fact that the applicant before him was a company incorporated u/s 8 of the Companies Act, 2013 and attention is drawn towards following clauses contained in the memorandum of association of the appellant company:

"No Objects of the Company shall be carried out without the permission of the competent authorities whomsoever and no objects of the company shall be carried out on commercial basis.

The profits, if any, or other income and property of the company, whensoever derived, shall be applied, solely for the promotion of its objects as set forth in this memorandum.

No portion of the profits, other income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to person who, at any time are, or have been members of the Company or to any one or more of them or to any person claiming through any one or more of them.

No remuneration or other benefit in money or monies worth shall be given by the Company to any of its members, whether officers or members of the Company or not, except payment of out of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the Company.

No alteration shall be made to this Memorandum of Association or to the Articles of Association of the Company which are for the time being in force, unless an ordinary or special resolution of the Members or a Central Government approval as may be applicable as per prevailing laws has been obtained and alteration has been previously submitted to and approved by the Registrar of Companies, Jaipur, Rajasthan.

If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this Company and operating on non profits basis, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

The Company can be amalgamated only with another Company registered under section 8 of the Companies Act, 2013 and having similar object.

If upon a winding up or dissolution of the Company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst

the members of the Company but shall be given or transferred to such other Company having objects similar to the objects of the company and operating on non profits basis, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 224 of the Act.”

In view of the above, it was submitted that no commercial/business nature is possible while undertaking the activities by the appellant company.

9. Without prejudice to above, it was submitted that alleged commercial/business nature of activities cannot be a reason for rejection of the application u/s 12AA and in support, reliance was placed on the following judicial precedents:

- CIT vs Gujarat Maritime Board [2021] 123 taxmann.com 35 (Guj)
- Rajasthan Housing Board vs CIT [2012] 21 taxmann.com 77 (Jp)
- Mahatma Gandhi Charitable Society vs CIT [2013] 142 ITD 565 (Cochin)
- Madras Motor Sports Club vs DIT [2013] 90 DTR 197 (Chennai)
- Gujarat Cricket Association vs DIT [2012] 19 ITR 520 (Ahd)

10. It was further submitted that the provision of section 13(8) introduced in the Finance Act, 2012 w.r.e.f. 01.04.2009 may be considered where it has been provided that nothing contained in section 11 and 12 shall operate where provisions of first proviso to section

2(15) become applicable in any previous year. This makes it clear that allegation of commercial/business nature cannot be a reason for rejection of application u/s 12AA. It was submitted that activities of commercial/business nature whether actually carried out or not and allowability of benefit u/s 11 and 12 can be examined by the Assessing Officer at the time of regular assessment for the relevant previous years. In view of the above, it was submitted that the order of CIT(E) denying approval u/s 12AA deserves to be quashed and he may be directed to grant approval to the appellant company.

11. Per contra, the Id. Pr. CIT/DR in his submission taken us through the application filed by the appellant company in Form No. 10A wherein the object of the appellant company has been specified as advancement of other objects of General Public Utility. It was further submitted that on perusal of its memorandum of association, it is seen that the objects no. 1, 2, 4 & 5 are having elements of commercial/business nature and the appellant company failed to furnish valid explanation on why these activities should not be considered as commercial in light of section 2(15) of the Act. Given that it was a limitation matter and inspite of giving sufficient opportunities, the appellant company failed to produce details and furnish explanation, therefore, the Id CIT(E) rejected the application based on material available on record.

12. It was further submitted that merely because the assessee company has been registered u/s 8 of the Companies Act, the same by default does not necessarily mean that it shall be eligible for registration u/s 12AA of the Act. It was submitted that both are separate legislation

operating in respective domain and in absence of anything mentioned in the Income Tax Act, the companies registered u/s 8 of the Companies Act does not necessarily qualify for registration u/s 12AA of the Act. The company, where it seeks registration u/s 12AA, has to independently apply seeking registration and file requisite documentation in support of its application, and the Commissioner has to consider its objects and genuineness of activities and then take appropriate action in terms of either accepting or rejecting its application seeking registration u/s 12AA of the Act. It was accordingly submitted that there is no infirmity in the findings of the Id. CIT(E) in rejecting application of the assessee company seeking registration u/s 12AA of the Act.

13. We have heard the rival contentions and perused the material available on record. It is observed that the precise reason for the rejection of assessee's application seeking registration u/s 12AA by the Id CIT(E) was basis his finding that "on perusal of its memorandum of association, it is seen that the objects no. 1, 2, 4 & 5 are having elements of commercial/business nature and the appellant company failed to furnish valid explanation on why these activities should not be considered as commercial in light of section 2(15) of the Act." We find that in response to show-cause notice dated 13.03.2021 wherein this matter was initially enquired by the Id CIT(E), the assessee company vide its submission dated 19.03.2021 has submitted that "the main object of the applicant trust as contained in object no. 1, 2, 4 & 5 are interconnected to develop training and research centre to facilitate "skill development" to the entire chain of work force engaged at various levels in the Garment and Textile Industry. The object is covered under

section 2(15) as the advancement of any other object of general public utility. The objects are not for the private or personal interest of the members but the objects are to promote the garment industry in general. It is clearly mentioned in the memorandum of association that no objects of the company shall be carried out on commercial basis and therefore, it cannot be said that these objects are having an element of commercial/business nature." We therefore find that the assessee company did submit its response to the show-cause notice and it is therefore not a case where the assessee company has failed to respond to the queries raised by the Id CIT(E). We however find that the Id CIT(E) has failed to take into consideration the explanation so offered by the assessee company.

14. Having said that, we may refer to the objects, including the objects highlighted by the Id CIT(E) in the show-cause notice, for which the assessee company has been established and incorporated as Section 8 company under the Companies Act, 2013 and the same reads as under:

"3) (a) The main objects for which the Company is established are:

1. To promote, establish, set up, maintain, operate, advance, improve, enhance, devise, evaluate, execute, protect and develop Training and Research Centres to facilitate 'skill development' to the entire chain of work force engaged at various level in the Garment and Textile Industry. The key objective is to define the skill requirements of the industry and to create a deployable

talent pool of workforce for the Garment and Textile Industry. Enhancing the ability and the skills of the already existing employees involved in the Garment and Textile Industry for understanding the global trends. Generating more employment opportunities in the Garment and Textile sector by providing advanced skill development training.

2. To set up business incubators so that eligible entrepreneurs can be adequately incubated in various skills and be provided the opportunity to set up their own business enterprises.

3. To establish, set up, maintain, operate, advance and improve testing laboratories and conducting research in the field of Garment and Textile Industry.

4. To establish, set up, maintain, operate, advance and improve conference/meeting halls and provide a common platform to buyers and sellers for the promotion of Garment and Textile trade. To convene, when necessary or expedient, conferences, seminars, exhibitions/trade fairs or other kinds of meetings at such places and at such time as considered desirable.

5. To promote Rajasthan Traditional Hand Work, Art Work, Hand Block/Tie and Dye and other traditional techniques of Garment and Textile sector at national and international level.

No objects of the Company shall be carried out without the permission of the competent authorities whomsoever and no objects of the Company shall be carried out on commercial basis.”

15. The first object talks about facilitating setting up training and research centre for skill development of the work force engaged in the field of garment and textile industry. The second object talks about setting up business incubators to provide opportunity to the eligible entrepreneurs. The third object talks about setting up testing laboratories and conducting research in the field of garment and textile industry, the fourth object talks about setting up conference and meeting halls for buyers and sellers for promotion of garment and textile trade and the first object talks about promoting traditional techniques of garment and textile at national and international level. Considering the aforesaid objects in its entirety and reading them harmoniously rather than disjointly, we find that these objects are clearly in the field of general public utility and it is manifest from the memorandum of association that these objects of the assessee company shall not be carried out on commercial basis.

16. Further, we find that the assessee company by virtue of being incorporated u/s 8 of the Companies Act, 2013 has committed to the approving authorities under the parent legislation that its activities are for the promotion of its aforesaid objects and it shall intend to apply its profits or income in promoting its objects and intends to prohibit the payment of any dividends to its members and has gone ahead and provided specific clauses in its memorandum of association to this effect. We find that the said commitment and undertaking on part of the assessee company as part of its charter provides an additional level of comfort in terms of determining the real intent and objectives behind setting up of the assessee company and whether the same is for the

purposes of earning profits or for the purposes of carrying out activities in pursuance of its objectives of enhancing the skill set of manpower in the field of garment and textile sector by setting up training and research centres, identifying and nurturing the budding entrepreneurs in the field of garment and textile sector and providing them initial handholding in form of business incubation centres, setting up testing laboratories to maintain and improve the quality and standards of production and facilitating the trade and commerce by setting up conference and meeting halls and organizing such conferences and meetings from time to time and lastly, promoting the traditional garment and textile techniques and products.

17. Further, we find that under section 12AA(a)(ii) of the Act, the Id CIT(E) has to examine compliance of requirements of other law as are material for the purposes of achieving its objects and in the instant case, approval by the sanctioning authority and grant of registration under section 8 of the companies act is one such material requirement for achievement of its objectives which the assessee company has fulfilled and which should have been considered by the Id CIT(E) before rejecting the application seeking registration u/s 12AA of the Act.

18. We may clarify that merely because the assessee company has been registered u/s 8 of the Companies Act, we are not saying that the same by default mean that it shall be eligible for grant of registration u/s 12AA of the Act as the legislation is currently not worded to support the said proposition. All we are saying is that where another arm of the government administering the company law legislation has examined

the objects and intended application of profits and has granted the registration as section 8 company, the said registration allows the assessee company to take necessary steps to seek separate and independent registration u/s 12AA and where such an approval is placed on record, as part of assessee's application u/s 12AA and supporting documentation as required under law, it shall provide an additional level of comfort to the Id CIT(E) in terms of examining the true intent behind its objects of setting up/incorporation and also for the purposes of examining compliance of other laws material for achievement of its objectives under section 12AA(a)(ii) of the Act.

19. In view of the aforesaid discussions and in the entirety of facts and circumstances of the case, the appellant company's application seeking registration u/s 12AA for undertaking the aforesaid objects of general public utility deserve to be accepted as falling within the purview of charitable purpose u/s 2(15) of the Act. In terms of examining the allowability of benefit u/s 11, 12 r/w section 13, it is a settled position that the same can be examined on year to year basis by the Assessing officer and he shall be free to take action, as per law including under section 13(8) as so provided in the statute, during the course of regular assessment proceedings. We accordingly direct the Id CIT(E) to grant approval to the assessee company u/s 12AA of the Act.

In the result, the appeal of the assessee company is allowed.

Order pronounced in the open Court on 02/11/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/11/2021.

Ganesh Kumar

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

1. अपीलार्थी / The Appellant- Gear Training and Research Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- CIT (Exemption), 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. 49/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar