

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. 60 & 61/JP/2021

Rajasthan Creative Alliance Network, Fateh Singh Market, Opp. Shereton Rajputana Hotel Place Road, Jaipur.	बनाम Vs.	CIT (Exemption), Jaipur
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECR 3414 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Sh. Rajeev Sogani (CA) &
Sh. Rohan Sogani (CA)
राजस्व की ओर से / Revenue by : Sh. Avdesh Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 10/11/2021
उदघोषणा की तारीख / Date of Pronouncement : 15/11/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals 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 as well as u/s 80G of the Act.

2. At the outset, the Id. AR submitted that there has been a delay in filing the present appeals by 44 days. It was submitted that the impugned orders were passed by the Id. CIT(E) on 30.03.2021 and the

same were received by the assessee on 30.03.2021 and ordinarily, the appeal should have been filed before the Tribunal within 60 days, however, the same were filed on 12.07.2021. It was submitted that the delay so happened in filing the present appeals 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 appeals 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 appeals of the assessee may be heard on merits.

3. Per contra, Id. Pr.CIT/DR did not raise any specific objection and fairly submitted 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 appeals 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 both the appeals so filed by the assessee are 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 25 of the Companies Act, 1956. The main object of the appellant company is to promote commerce, art, culture, social development, social upliftment by way of bringing the tourism industry and craft based retailers together by organizing various type of festivals, workshops, events, dustkar programmes, design mart shows for rural craftspeople and to facilitate improved access to the folk arts and music of the region. The memorandum of association and articles of association are placed as part of the paper book at pages 17-42. It was submitted that the application for seeking approval u/s 12AA in Form 10A was filed on 04.09.2020 which was rejected by Id. CIT (Exemption) vide order dated 30.03.2021. It was submitted that the Id CIT(Exemption) has rejected the application for the sole reason that the applicant company has not undertaken any activity of charitable nature. In this regard, it was submitted that there is no requirement under the law for undertaking minimum level of charitable activity for being eligible for approval u/s 12AA. There are enough judicial precedence which have held that for grant of approval u/s 12AA, there is no necessity of charitable activities having commenced. In support, reliance was placed on the decision of the Hon'ble Delhi High Court in case of DIT vs. Foundation of Ophthalmic and Optometry Research Education Centre (2012) 79 DTR 178 (Del) where it was held that "the statute does not prohibit or

enjoin the Commissioner from registering Trust solely based on its objects, without any activity, in the case of a newly registered Trust. The statute does not prescribe a waiting period, for a trust to qualify itself for registration". It was submitted that the said legal proposition is followed by the Jaipur Benches of the Tribunal in case of Tirtham trust vs. CIT (*ITA No. 722 & 723/JP/2012*). Further, attention was drawn towards the newly introduced provisions for registration of trust contained in Section 12AB (c), which provides that new trust will be provisionally registered for a period of three years without any enquiry. Further, attention was also drawn towards the provision of sub section (3) of section 12AA which empowers the Id. CIT(E) to withdraw exemption if he is not satisfied with the extent of activities carried out by charitable trust. Thus, the remedy being made available under the law, there is no justification to reject the application at the threshold level for the reason of non-commencement of activities. In view of the above, the order of Id. CIT(E) denying approval deserves to be quashed and he may be directed to grant approval as applied u/s 12AA as well as section 80G of the Act.

6. Per contra, the Id. Pr. CIT/DR in his submission taken us through the order of the Id CIT(E) and submitted that the Id CIT(E) while deciding on the application seeking registration u/s 12AA has to examine the objects of the assessee company and secondly, the genuineness of the charitable activities actually undertaken by it. It was submitted that being a limitation matter and inspite of giving sufficient opportunities, the appellant company failed to produce complete details and furnish explanation, therefore, the Id CIT(E) decided the application

based on material available on record and held that the appellant company failed to establish genuineness of the charitable activities actually undertaken by it and accordingly, the application seeking registration u/s 12 AA was rightly rejected by him.

7. It was further submitted that merely because the assessee company has been registered u/s 25 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 25 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.

8. We have heard the rival contentions and perused the material available on record. It is noted that the assessee company had filed an application with the office of the Id CIT(E) on 04.09.2020 seeking registration u/s 12AA of the Act. Thereafter, the assessee company was issued a letter dated 17.12.2020 by the Id CIT(E) asking them to submit certain documents/ explanation and to submit original registration

certificate and memorandum of association for verification. However, only part information/documentation was submitted by the assessee company. Thereafter, a show cause notice dated 11.03.2021 was issued asking for certain specific details/information and matter was fixed for hearing on 15.03.2021. In response to the show cause, the Id CIT(E) stated that the assessee company furnished part details and failed to furnish complete details regarding ownership proof of the company premises and details of activities and evidences as sought in point no. 22 of the questionnaire. Further, on perusal of income and expenditure account, it is observed that the applicant company has not undertaken any activity of charitable nature and thus, the genuineness of activities of the assessee company could not be established. Further, the Id CIT(E) held that under Rule 17A, certified copies of instrument establishing the assessee company needs to be verified with the originals. The Id. CIT(E) therefore stated that the assessee company has failed to furnish details and furnish explanation/documentation regarding genuineness of charitable activities undertaken by it inspite of giving sufficient opportunity and being a limitation matter, he decided basis material available on record and assessee company's application seeking registration u/s 12AA was rejected.

9. During the course of hearing, the Id. AR submitted that in response to the show cause dated 11.03.2021, the assessee company did submit its response vide letter dated 19th of March, 2021 and it is therefore, factually not correct that the assessee company has not submitted the requisite information and explanation as sought by the Id. CIT(E) rather he has failed to correctly appreciate the submissions so

filed by the assessee company. The Id A/R further submitted that registered office of the assessee society is situated at premises owned by the Director of the assessee company and a copy of no objection certificate was duly submitted as part of the aforesaid submissions.

10. It was further submitted that there were no charitable activities which were undertaken by the assessee company since its inception and in view of the same, any evidence in support of such activities which have not been started at first place could not have been submitted. It was reiterated that what needs to be examined is whether the objects of the assessee company are charitable or not and there is no requirement under law for undertaking any charitable activities for seeking registration under section 12AA of the Act. Per contra, the Id PCIT/DR reiterated that the Id CIT(E) while deciding on the application seeking registration u/s 12AA has to examine the objects of the assessee company and secondly, the genuineness of the charitable activities actually undertaken by it and where there are no activities undertaken by the assessee company then the Id CIT(E) cannot examine whether such activities are genuine and therefore, the Id CIT(E) was bound to refuse the registration to the assessee company. We find that the matter is no more *res-intergra* and an identical matter has come up for consideration before the Hon'ble Supreme Court in case of **Ananda Social & Educational Trust vs Commissioner of Income tax** [2020] 114 taxmann.com 693 (SC) wherein the Hon'ble Supreme Court was pleased to held as under:

"Civil Appeal No.4702/2014

4. This appeal has been preferred by the appellant -Director of Income-tax against the impugned judgment and order passed by the Delhi High Court holding that a newly registered Trust is entitled for registration under section 12AA of the Income-tax Act, 1961 (for short, the 'Act') on the basis of its objects, without any activity having been undertaken.

5. The above section provides for registration of a trust. Such registration can be applied for by a trust which has been in existence for some time and also by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration.

6. In brief, section 12AA of the Act empowers the Principal Commissioner or the Commissioner of the Income-tax on receipt of an application for registration of a trust to call for such documents as may be necessary to satisfy himself about the genuineness of activities of the trust or institution and make inquiries in that behalf; it empowers the Commissioner to thereupon register the trust if he is satisfied about the objects of the trust or institution and genuineness of its activities.

7. In the present case, the trust was formed as a society on 30-5-2008 and it applied for registration on 10-7-2008 i.e. within a period of about two months.

8. No activities had been undertaken by the respondent Trust before the application was made. The Commissioner rejected the application on the sole ground that since no activities have been undertaken by the trust, it was not possible to register it, presumably because it was not possible to be satisfied about whether the activities of the trust are genuine. The Income-tax Appellate Tribunal, Delhi (for short, the 'Tribunal') reversed the orders of the Commissioner. The Revenue Department approached the High Court by way of filing an appeal. The High Court upheld the order of the Tribunal and came to the conclusion that in case of a newly registered trust even though there was no activities, it was possible to consider whether the trust can be registered under section 12AA of the Act. This judgment is assailed before us.

9. Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

10. It was argued before us that the Commissioner is required to be satisfied about two things - firstly that the objects of the trust and secondly, its activities are genuine. If there have been no activities undertaken by the trust then the Commissioner cannot assess whether such activities are genuine and therefore, the Commissioner is bound to refuse the registration of such a trust.

11. We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant - Director of Income-tax and find that it is not possible to agree with the same. The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

12. Since section 12AA pertains to the 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 objects of the Trust are 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 of the Act. 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.

13. We therefore find that the view of the Delhi High Court in the impugned judgment is correct and liable to be upheld.

14. Ms. Bhatj, learned Senior Counsel for the appellant, fairly drew our attention to a judgment of the Allahabad High Court in titled as CIT v. R.S. Bajaj Society [2014] 42 taxmann.com 573/222 Taxman 111 (All.) which has taken the same view as that of the Delhi High Court in the impugned judgment. The Allahabad High Court has also referred to a similar view taken by the High Courts of Karnataka and Punjab & Haryana.

15. Apparently, a contrary view has been taken by the Kerala High Court in the case of Self Employers Service Society v. CIT [2000] 113 Taxman 703/[2001] 247 ITR 18. That view however does not commend itself. However, the facts in Self Employers Service Society (supra) suggest that the Commissioner of Income-tax had observed that the applicant for registration as a Trust had undertaken activities which were contrary to the objects of the Trust.

16. In the result, we find that there is no reason to interfere with the impugned judgment of the High Court of Delhi. The appeal is, accordingly, dismissed."

11. The Hon'ble Supreme Court in the aforesaid decision has thus clearly laid down that registration under section 12AA can be applied for by a trust/society which has been in existence for some time and also by a newly registered trust/society and the term 'activities' in the provision includes 'proposed activities'. It has been held that in case of a newly registered trust/society, the Commissioner is bound to consider whether the objects of the Trust/society are genuinely charitable in nature and whether the activities which the Trust/society proposed to carry on are genuine in the sense that they are in line with the objects of the Trust or not. It has been further held that the situation would be different and thus, a distinction has been drawn, in case of existing trust/society where the trust/society before applying for registration is found to have undertaken activities contrary to the objects of the Trust/society and in which case, the Commissioner would be bound to record the findings that the activities actually carried on by the Trust/society are not genuine being not in accordance with the objects of the Trust/society.

12. The question that arise for consideration is what would be the situation where the trust/society is in existence for quite some time prior to seeking registration and is not a newly registered trust/society and at the same time, has claimed to have not undertaken any activities in pursuance of its objects in the past, as in the instance case, where

the assessee company which was incorporated way back in year 2009 (date of incorporation is 9.02.2009) has applied for registration after almost more than a decade on 4.09.2020 and claims that it has not carried out any activities since its incorporation. In the aforesaid decision, the Hon'ble Supreme Court has held that registration can be applied for by a trust which has been in existence for some time and also by a newly registered trust and there is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration. Therefore, we are of the view that *ratio decidendi* of the aforesaid decision of the Hon'ble Supreme Court can be applied equally in the instant case where though the assessee company has been in existence for quite some time and is clearly not a newly registered company but at the same time, since no activities are carried on by it since its inception as so claimed by it, it can still apply for registration. However, in this case, where the assessee company is in existence for more than a decade, the Id CIT(E) is well within his jurisdiction to examine such claim of no-activity by the assessee company and where it is found that some activities were actually been carried on by the assessee company, he is bound to record his satisfaction as to whether the activities so carried on are genuine and in accordance with its stated objectives or not. Secondly, the Id CIT(E) is well within his jurisdiction u/s 12AA(1)(a)(ii) to examine whether the assessee company is compliant under the extant laws as applicable and whether there are any changes in the memorandum and articles of association, the objects clause and constitution etc. since its incorporation and at the time of seeking registration. And thirdly, what are the proposed activities of the

assessee company and whether they are genuine in the sense that they are in line with the objects of the assessee company or not again needs to be examined and a finding has to be recorded by the Id CIT(E) before he actually accepts or reject the application seeking registration u/s 12AA of the Act. We therefore set-aside the matter to the file of the CIT(E) to examine the matter afresh in light of aforesaid discussions after providing reasonable opportunity to the assessee company.

13. In ITA no. 61/JP/21, the Id CIT(E) has rejected the assessee company's application seeking registration u/s 80G on account of the fact that it has been denied registration u/s 12AA of the Act. Since we have set-aside the matter pertaining to registration u/s 12AA to the file of the Id CIT(E), this matter is also set-aside to the file of the Id CIT(E) to be decided afresh after providing reasonable opportunity to the assessee company.

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 15/11/2021.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 15/11/2021.

Santosh

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

1. अपीलार्थी / The Appellant- Rajasthan Creative Alliance Network, 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. 60 & 61/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar