

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1585/CHD/2017

निर्धारण वर्ष / Assessment Year : 2016-17

(u/s 12AA)

Shri Vaish Aggarwal Panchayat Moti - Chowk, Kurukshetra 136118	बनाम	The CIT (Exemption), Chandigarh
स्थायी लेखा सं./PAN NO: AAJTS3498K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Raghav Garg, CA
राजस्व की ओर से/ Revenue by : Sh. Sarabjit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 09.12.2021
उद्घोषणा की तारीख/Date of Pronouncement : 05.01.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

This appeal is preferred by the assessee against order dated 29.09.2017 passed by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as 'CIT(E)'], wherein, the assessee's application in Form No. 10A seeking registration u/s 12A of the Income Tax Act, 1961 (in short 'the Act') was rejected.

2. The grounds raised by the assessee are as under:-

1. The Worthy CIT (Exemption) has grossly erred on law and on facts in refusing to register the appellant Society on arbitrary, unreal and flimsy grounds.

2. *The Worthy CIT (Exemption) has also erred in law in refusing the registration without finding any objectionable in objects of the society or finding any in genuineness in the activities of the Appellant Society.*
3. *The Appellant craves for permission to add, delete, and modify any or all the grounds of appeal.*

3. The Ld. Authorised Representative (AR) submitted that the assessee's application for registration u/s 12A of the Act was wrongly refused by the Ld. CIT (E). He drew our attention to paragraph 7 of the impugned order to submit that the reasons, as specified in the said paragraph by the Ld. CIT(E), for refusal to grant registration is that the assessee had failed to provide copy of the Memorandum of Association (MOA) to the Trust as well as it had also failed to provide copy of Receipt and Payment account for three years which had been specifically called for by the Ld. CIT(E). The Ld. AR, referring to the paper book filed by the assessee, pointed out that the copy of Form 10A along with covering letter had copy of Memorandum of Association as well as bye laws annexed at pages 15 to 40 in the said paper book. It was also submitted that consolidated financial statement as well as stand-alone financial statement of financial year 2016-17 were also submitted along with application filed by the assessee. It was further submitted that it was a wrong contention on the part of the Ld. CIT(E) that these papers had not been filed. On the issue of non-filing of Receipt and Payment Account, it was submitted that the Receipt and Payment account was not prepared because the assessee is a Society which is exempt from applicability of Accounting Standard – 3 (Cash

Flow statement), which has been issued by the Institute of Chartered Accountants, wherein, it has been specified that where the turnover and borrowings of an entity is less than Rs. 10 crores and 2 crores respectively, such statement is not required to be drawn up. It was also submitted that the Ld. CIT(E) has taken adverse view on collection of School fee and the corresponding expenditure without calling for any further explanation, evidences or details from the assessee society, and therefore, there was a gross violation of principles of natural justice. It was also submitted that the Registering Authority, at the time of granting of registration has to be only satisfied towards the charitable nature of the objects of the assessee society and be assured of the genuineness of those activities and that the Registering Authority cannot go beyond the objects at the stage of Registration. It was submitted that the Ld. CIT(E), on the facts of the case, be directed to grant exemption to the assessee society.

4. Per contra, the Ld. Departmental Representative (DR) submitted that the Ld. CIT(E) had made very pertinent and relevant observations regarding the activity of the society. It was also submitted that the assessee had not provided a copy of the amended Memorandum of Association and, therefore, it was a valid ground for rejection of the assessee's application.

5. We have heard the rival contentions and have also perused the material on record. The Ld. AR has argued vehemently for the assessee being granted the registration u/s 12A of the Act. As per the records, it

is evident that the assessee had provided copy of the Memorandum of Association as well as bye-laws along with Form No. 10A vide letter dated 28.02.2017. This Memorandum of Association, which was filed along with form No. 10A, was the amended MOA and the MOA which existed prior to its amendment (which was made in 2016) was not filed. However, the Memorandum of Association and bye-laws which had been submitted along with Form 10A have not been considered by the Ld. CIT(E) in the proper perspective in as much as, although the Ld. CIT(E) has not drawn any adverse inference from the objects contained in the Memorandum of Association, he has rejected the application of the assessee by simply stating that the pre-amended Memorandum of Association had not been filed.

5.1 We have also gone through the Memorandum of Association and we note that the assessee society has been formed to provide educational facilities to all including the disadvantaged group of society to establish and run various types of educational institutions i.e. schools, colleges / University for art, science, commerce etc. as well as to acquire land, building, funds for running of Dharamshala / Institutions by way of receiving donation, fee, contributions, grants, loans etc. However, we note that the Ld. CIT(E) has not considered these objectives of the assessee society while rejecting the application of the assessee. The Ld. CIT(E) has also stated irrelevant reasons like non-filing of the Receipt and Payment Account as well as stating that the veracity of the income and expenditure account could not be established. It is the assessee's

contention that these details were not called for by the Ld. CIT(E). Therefore, on an overall view of the facts of the case and considering the settled law that the Ld. CIT(E) has to satisfy himself about the genuineness of the objectives of the society, which in the present case, the Ld. CIT(E) has not done as per the mandate laid down by law, we restore this file to the office of the Ld. CIT(E) for the purpose of reconsidering the application of the assessee society by examining the objects of the assessee society and by satisfying himself about the genuineness of the objectives of the society at this stage and not further. Needless to say that the Ld. CIT(E) will grant adequate opportunity to the assessee to support its claim prior to the passing of the order afresh.

6. In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 05th January. 2022.

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

Dated : 05.01.2022

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar