

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'बी.', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. 29/CHD/2021
[under Section 12AA(1)(b)]

M/s Trident Institute of Social Sciences Trident Group, Raikot Road, Sanghera, Barnala.	बनाम VS	The CIT (Exemptions), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAECT0033F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, CIT(A) &
Shri Bhavesh Jindal, CA

राजस्व की ओर से/ Revenue by : Shri Sarabjit Singh, CIT

तारीख/Date of Hearing : 16.11.2021

उदघोषणा की तारीख/Date of Pronouncement : 04.01.2022

VIRTUAL HEARING

आदेश/ORDER

PER DIVA SINGH

By the present appeal, the assessee assails the correctness of the order dated 24.03.2021 of CIT (Exemption) Chandigarh on the following grounds :

“1. That order passed under section 12AA(1)(b)(ii) by the Learned Commissioner of Income Tax (Exemptions), Chandigarh is against law and facts on the file in as much as he was not justified to reject the application for grant of registration u/s 12AA filed by the appellant on the ground that the appellant did not file any appeal against the earlier rejection by the Learned Commissioner of Income Tax (Exemptions) vide order dated 27.03.2017.

2. That the Learned CIT(Exemptions) was not justified to reject the application for grant of registration on the ground that the discrepancies which had been specifically pointed out at the time of earlier rejection, had not been removed whereas fact of the matter is that at that time the appellant had not started any activity corroborated with the stated aims and objects whereas now the appellant was in the process of setting up a hospital which has already been

set up even prior to 24.03.2021 i.e. date of rejection and is very much within the aims and objects of the appellant.”

2. The ld. AR inviting attention to the impugned order submitted that the assessee is a Society which was incorporated on 30.08.2011. Referring to the stated objects of the assessee Society which have been captured in para 2 of the impugned order, it was submitted that the Society was to promote, encourage, support, assist education, medical activities etc. and to promote hospitals, Nursing Homes. The permission in form No. 10A seeking registration u/s 12A on 15.09.2016 stood dismissed on 27.03.2017 primarily on account of the fact that CIT (E) was of the view that despite attracting much subscriptions and investments over the years, the assessee Society had not started to any activity. For the said purposes, specific attention was invited to Paper Book page 27 para 8. The ld. AR submitted that the assessee accepted the order and made efforts to build hospital in terms of its stated aims and objects. After starting its activity in a serious way, the assessee filed another application in Form No. 10A on 20.07.2020 again seeking registration u/s 12A of the Income Tax Act,1961. This application, it was submitted, which was dismissed by the CIT (E) ignoring the change in facts namely that the assessee society had started its construction operations from 27.10.2020. It was argued that despite noticing this change in facts in para 6, the CIT(E) proceeded to dismiss the application arbitrarily. It was

submitted that instead of considering this activity, the ld. CIT(E) dismissed the claim on the basis of generalistic observations concluding that major issues raised in the previous rejection order u/s 12AA had not been addressed. The general observation was again repeated in para 7 by ld. CIT(E) holding that fresh application "*without removing the discrepancies which had been specifically pointed out*, it was submitted, is contrary to the facts. Attention was invited to Paper Book page 37. Referring to the said copy of the balance sheet as on March 31, 2020, it was submitted, that in the 'Assets' column under the 'Fixed Assets' the assessee has shown capital work in progress to the tune of Rs.4,72,18,580/-. Addressing this expenditure, the ld. AR submitted that the assessee has started construction of hospital in line with his stated aims and objects in Bhopal. The ld. AR was required to show the documentary proof seeking necessary approvals for construction of the alleged hospital. The ld. AR submitted that this could be made available, however, these are not available with him readily. However, the order, it was his submission holding that the only remedy available to the assessee is file an appeal before the Hon'ble High Court it was submitted, is an incorrect appreciation of position of law. The order, it was his submission accordingly may not be sustained. For verification on facts, it was his submission that the issue may be remanded back.

3. The ld. CIT-DR relying upon the order submitted that merely stating that the assessee is constructing a hospital, did not detract from the factual position that the assessee has held on to its funds over a long period of time. Seeking Registration u/s 12A at this stage it was his submission is accordingly questionable. It was also his submission that the remedy is to appeal against the order which the assessee has not done and filing fresh application was not necessary. However, on query no specific provision was quoted in support of the above submission.

4. We have heard the rival submissions and perused the material available on record. We find that the arguments on behalf of the Revenue that the assessee should necessarily have appealed against the order and not come up by a fresh application subsequently after addressing the shortcomings pointed out is an incorrect appreciation of law. If on facts a taxpayer concurs with the finding of the CIT(E) that he has no case on the facts as they stand, then appealing against the order is an exercise in futility. The assessee in all fairness if it expects the grant of Registration on a subsequent date is necessarily required to ensure that the necessary criteria is fully met in law and spirit. Infact the adjudicating authority expecting that their orders are respected and complied with per force expect self corrective actions as maintainable in law. Applications seeking Registration on same set of facts may warrant dismissal on this

ground, however, where the taxpayer takes necessary steps to comply with the requirements, the application in a subsequent year cannot be outrightly dismissed. There is no bar to a taxpayer to ensure that he complies with the requirements of law on facts and then files a fresh application which has been done. The ld. CIT-DR was specifically required to bring to our notice any statutory bar or legal impediment. No provision of law supporting the view or any decision was brought to our notice by the Revenue. Considering the facts and the law, we hold that dismissal of the assessee's application on this ground *per-se* is contrary to the legal position as we understand.

5. Coming to the finding arrived at in para 6 & 7 of the impugned order, it is seen that the ld. CIT (Exemption) takes note of the fact that the assessee claims that its operations have started from 27.12.2020, however, he fails to consider the copy of the Balance Sheet which was stated to have been filed before the said Authority and shown to us. The said document demonstrates that expenditure for building a capital asset as claimed had started. However, the expenditure was for building a hospital needs verification on facts. Since filing of the Balance Sheet by itself may not be sufficient to fully demonstrate this claim and the facts need to be considered fully and correctly, accordingly, we set aside the impugned order back to the file of the CIT (E) directing the assessee to place full facts on record

qua the alleged stated construction activity of a hospital in Bhopal alongwith all necessary approvals/permissions sought from the appropriate Regulatory Authorities required for setting up a hospital. The Id. CIT (E) shall consider all necessary evidences filed and if need be, call forth for further supporting documentation and thereafter, shall pass an order in accordance with law after considering the assessee. Said order was pronounced in the presence of the parties via Webex.

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

Order pronounced on 04 January,2022.

Sd/-
(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar