

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-2” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

1. **ITA No. 5273/DEL/2019 (A.Y. 2008-09)**
2. **ITA No. 5274/DEL/2019 (A.Y. 2009-10)**
3. **ITA No. 5275/DEL/2019 (A.Y. 2010-11)**
4. **ITA No. 5276/DEL/2019 (A.Y. 2012-13)**
5. **ITA No. 5277/DEL/2019 (A.Y. 2014-15)**
6. **ITA No. 291/DEL/2020 (A.Y. 2016-17)**

Jaibharat Mandal Ramlila and Dharmshala Society, Umargate Hansi, Hisar, Haryana-125033 PAN- AAAAJ3492J	<u>Vs</u>	Income-tax Officer, (Exemptions), Rohtak.
APPELLANT		RESPONDENT
Appellant by		Sh. Pulkit Saini, CA
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		06.01.2022
Date of pronouncement		23.03.2022

ORDER

PER KUL BHARAT, JM:

This is a bunch of six appeals, preferred by the assessee, pertaining to different assessment years, against different orders of the learned Commissioner of Income-tax (Appeals). Since the assessee has raised identical grounds in this bunch of appeals, all these appeals are taken up together.

2. ITA no. 5273/Del/2019 pertaining to assessment year 2008-09 is taken as lead case. The assessee has raised following grounds of appeal:

“1. That the orders of the Authorities below CIT(A)Hisar and that of the Assessing officer ITO(Exemption) Rohtak are liable to be quashed, being arbitrary, illegal, without jurisdiction and justification so far as impugned and additions as being sustained are concerned.

2. That the Ld. CIT (A) appeal was wrong in sustaining an arbitrary and illegal action' of the Assessing officer ITO (exemption) Rohtak, in initiating the reassessment proceedings u/s 147 against the appellant deemed exempted public charitable society in order to hold the same being non exempted/unregistered entity and as such the same is liable to be quashed being, arbitrary, illegal, without jurisdiction and any justification / reasons.

3. That the Learned CIT (A) was not justified in brushing aside the contention of the appellant that the A.O. does not have jurisdiction over the appellant to issue notice u/s 148 after four years and initiating the reassessment proceedings u/s 147 of the Act, without any basis, reasons or material or record, specifically when all material facts and informations were on record as adduced by the appellant assessee at the time of processing/assessment. In as much as, the action of reopening/reassessment was initiated at the instant of Audit to the action law may not permit for that reason also the orders requires to be Quashed.

4. That the Ld. CIT (A) erred in holding that the A.O. ITO (exemption) is vested with relevant jurisdiction under the provisions of Income Tax Act 1961 to reassess the appellant deemed exempted society as an unexempted/unregistered one by merely rejecting the contentions of the appellant and holding the same being non exempted charitable society.

5. That as per the provisions of the Income Tax Act, Income Tax authorities can exercise powers and functions conferred on, or, as the case may be assigned to such authority by or under the Act. Since in the instant case the decision of holding public charitable society being exempted or not exempted only vests with CIT(exemption) only for that reason also the impugned orders of the authorities below i.e. CIT (A) and that of A.O. ITO (exemption) Rohtak deserves to be annulled.

6. That the Ld. CIT (A) was also wrong in sustaining wrongly the self assumed authority jurisdiction for holding deemed exempted society as a non exempted one, since such authority vests with CIT (exemption) only for that reason also the order deserves to be annulled and the appellant society requires to be assessed as a deemed exempted society as before since AY 2000-01 till AY 2009-10 and consistency requires to be maintained by all means.

7. That the authorities below Ld. CIT (A) HISAR/LDH and A.O. ITO (exemption) Rohtak were absolutely wrong is not appreciating that the appellant society performed all which were required and prescribed to obtain registration/ exemptions u/s 12A/12AA of the Act. that is filing of form no 10 within the time prescribed under the Act and furnishing all relevant papers through AO, before concerned CIT (S)/ Panchkula as well as CIT (exemption) Chandigarh as prescribed and as directed from time to time and also by sending repeated reminders to procure the exemption certificate in physical form, but surprisingly the same was not received till date, nor any order of rejection of the application was ever communicated or sent to the appellant assessee, though the same is mandatory to be sent/served on the appellant assessee within six months from the date of application and not thereafter under the provisions of section 12AA of the Act. Accordingly, as such, the appellant society deserves to be assessed as deemed exempted entity as before since(AY 2000-01 till AY 2009-10) and consistency requires not to be disturbed.

8. That as such the authority below CIT (A) Hisar/ LDH was wrong in sustaining the finding of the A.O. ITO (exemption) Rohtak, that the appellant charitable society do not fulfill the conditions for claiming deduction u/s 11 of the IT Act 1961 without appreciating that all the conditions for the purpose stand fulfilled as mandate under the provisions of the Act. As such the orders require to be quashed.

9. That the Ld. CIT (A) as well as A.O. ITO exemption also misdirected themselves in not following the law laid down by the Allahabad High Court in the case "Society for The Promotion of Education V/S CIT(2015)372 ITR 222 A11 and the Honourable Apex Court in the case "CIT V/S Kanpur society for the promotion of Education(2016) 67 Taxman.com264 S.C. and denied the status of deemed charitable society, by narrating wrong facts action being bad in law and void ab- initio requires to be annulled.

10. That the authorities below were also wrong and misdirected themselves by holding that activities of the society were not charitable and was that of commercial nature, contrary to the facts, assuming the donations

of paltry sums received as voluntarily donations against use of Dharamshala hall for Condolence, Meetings like Rasam Pagrees, Shok Sabhas and other ceremonial social functions and gatherings etc. and assuming notional by that the donations received were similar to the charges as received by owners of banquet hall, findings being perverse requires to be annulled, since no normal person can believe in this modern age that a commercial banquet hall can be made available with petty sums/donations ranging from Rs.100 to Rs. 1100 or as per the wishes of the donors and so on from which even the Electric expenses are not met.

11. *That the Ld. CIT (A) Hisar was wrong in sustaining the action of A.O. ITO (exemption) Rohtak in holding that the purpose of society being not a charitable purpose, in spite of the fact that maintaining Dharamshala/ Inn/ Sarai for any public ceremonial purpose like Condolence meetings (RassamPagdi, ShokSabhas) and other social ceremonies etc. for the public at large which in itself certainly is a charitable purpose. The A.O. ITO (exemption) has no authority to interpret the purpose of the registered society in its own arbitrary way as such the impugned order being bad in law deserves to be modified being without jurisdiction.*

12. *That the authority below CIT (A) Hisar further erred in sustaining the arbitrary reassessment and wrongly determined additions, excess over receipt and expenses as income of the deemed charitable society at Rs.654890/- for the AY 2008-09 against the originally returned and assessed income of the said society at nil contrary to the law and facts of the case.*

13. *That the Authorities below CIT(A) as well as ITO(exemption) were also wrong in assessing the deemed exempted society at the maximum marginal rate as an AOP without appreciating that excess receipt over expenses were never distributed among the members and was always used for charitable purposes of the society as prescribed under the provisions of the Act.*

14. *That the authorities below were also grossly erred in opining and directing for initiation of penal proceedings u/s 271 (1) (c) of the Act against the appellant, action being bad in law requires to be set aside.*

15. *The order of the authorities below are also liable to be quashed being conjectural and not being a speaking order.”*

3. The facts, giving rise to the present appeal are that the assessee is a

registered charitable society, having its registered office at Hansi. An application seeking registration u/s 12A was moved to the Competent Authority on 3.11.1989, but no formal order was passed by the concerned authority. The Assessing Officer issued a notice u/s 148 of the Income-tax Act, 1961, hereinafter referred to as the “Act” on 30.3.2015. In response to the notice, the counsel for the assessee sought reasons for issuance of notice. The assessee stated before the Assessing Officer that the return of income filed on 30.9.2008 vide acknowledgement no. 09454 may be treated as return filed in response to notice u/s 148 of the Act. Thereafter, the Assessing Officer proceeded to make assessment. The Assessing Officer noticed that a perusal of income expenditure account and ledger of rent receipts revealed that during the year under appeal the assessee had earned income from rent receipts at Rs. 8,59,018/-, interest at Rs. 2,44,601/- and donation at Rs. 3,71,963/-. After debiting various expenses the net surplus was arrived at Rs. 6,54,889/-. The Assessing Officer observed that the assessee society was not registered u/s 12AA of the Act and, therefore, he was of the view that the assessee was not entitled for exemption u/s 11 & 12 of the Act. The Assessing Officer proceeded to assess the assessee as association of persons, by making an addition of Rs. 6,54,889/-.

4. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), Hisar. The learned CIT(Appeals) vide consolidated order pertaining

to the assessment years 2008-09, 2009-10 & 2010-11 sustained the addition and dismissed the appeal. Now the assessee is in appeal before this Tribunal.

5. The only effective ground in this appeal is regarding disallowance of claim of exemption u/s 11 & 12 of the Act and thereby sustaining the addition of Rs. 6,54,889/-.

6. The learned counsel for the assessee reiterated the submissions as made in the synopsis and submissions dated 23.10.2021. For the sake of convenience the synopsis and submissions filed by the assessee are reproduced herein below:

“SYNOPSIS

The Appellant, a charitable society, is registered under the provisions of the Societies Registration Act, 1860 vide certificate no. 2 of 1988-89 and is engaged in charitable work including maintaining and running a Dharamshala for the benefit of the general public.

The assessee is in appeal against the Id. CIT(A)'s orders under section 250(6) upholding the assessment order(s).

Ground of Appeal No. 1, 2, 4-9 Deeming the assessee as non-registered u/s 12A contrary to the provisions of the Act

The primary issue in all the appeals pertains to wrongful denial of claim of exemption under section 11/12 of the Act by deeming the assessee as non-registered u/s 12A on the ground that the assessee has not been able to produce any registration document in physical form u/s 12A of the Act.

The legislature with the intention of promoting the charitable work has provided for exemption of income from property held for charitable

purposes under section 11 and income from voluntary contributions of trusts/institutions held for charitable purpose under section 12 of the Act upon complying with the mandate of section 12A of the Act which as it stood at the time of it becoming applicable to the charitable society mandated only that an application for registration is made in the prescribed form and in the prescribed manner. The legislature did not stress upon getting a registration certificate as a necessary condition for application of provisions of section 11 and 12, deliberately, on account of inordinate delays taken by the department in deciding the application u/s 12A. Therefore, unless the said application was specifically rejected, the trust/institution ought to be considered compliant with the section 12A.

The appellant, complied with the aforesaid condition and mandate of section 12A by making an application for registration u/s 12A on 03.11.1989 to the then jurisdictional authority, Commissioner of Income Tax, Rohtak which is duly acknowledged vide letter dated 08.06.1999 and 06.07.1999 from the department (refer pg. no. 29-30 of paper book).

The assessee has complied with the letters/notices of the concerned authority(s) for evaluation of the application (refer pg. no. 31-39 of paper book).

The assessee has filed multiple request letters/reminders times with the concerned authority for grant of registration document in physical form (refer pg. no. 31-39 of paper book).

The department has perused and examined the application on multiple occasions and even thereafter, has consciously taken the decision to not reject the application of the assessee (refer pg. no. 29-39 of paper book).

The letter from the office of JCIT, Hisar through the ITO specially requested the CIT, Panchkula to intimate in writing the outcome of application u/s 12A/12AA made by the assessee. The letter also acknowledged the receipt of application on 03.11.1989, examination of the said application by the department and the deemed grant of registration considered by the assessee.

Even upon receipt of above letter from office of JCIT, the concerned authority did not reject the application which further proves that the

concerned authority had consciously taken the decision to not reject the application of the assessee.

There has been a dereliction of duty or lapse on the part of the concerned authority to not issue a registration certificate in physical form. On the other hand, there is no lapse on the part of the assessee. Therefore, if the department was to be allowed to deem the society as non-registered u/s 12A and deny the associated exemption u/s 11 and 12, for a failure on its part to carry out its duty to explicitly accept or reject the application, would not only tantamount to going against the intent of the legislature and object of the provisions of the Act but also would be synonymous to making the assessee pay for the lapse on the part of the department.

Section 12A was amended by the Finance (No. 2) Act, 1996 which substituted the words "whichever is later" with the words "whichever is later and such trust or institution is registered under section 12AA". Further, the Finance (No. 2) Act, 1996 added a new section 12AA w.e.f. 01.04.1997 prescribing the procedure for registration. Section 12AA provided that the concerned authority on receipt of application u/s 12A shall call for such documents and make such inquiries as he may deem necessary but shall pass an order in writing, within 6 months, granting registration to the applicant or refusing such registration.

Therefore, the application of the assessee for registration u/s 12A dated 03.11.1989 if it is deemed to be pending as on 01.04.1997 before the concerned authority had to be decided within 6 months, that is, by 30.09.1997 by an order in writing either granting the registration or refusing such registration.

The query letter dated 16.03.1999, 08.06.1999 and 06.07.1999 regarding the application for registration moved by the assessee on 03.11.1989 is an evidence that the said application was not lifeless and that it was pending before the concerned authority and stood transferred u/s 12AA (refer pg. no. 29, 30, 34 of paper book).

Further, CBDT vide Instruction No.16/2015 [F.No.197/38/2015-Ita.1], dated 06.11.2015 prescribes that the aforesaid time limit of six months is to be strictly followed by the Commissioner of Income Tax (Exemptions) while passing order under section 12AA and in case of any laxity suitable administrative action may be initiated by the CCIT(Exemptions).

There is no alternative available with the department once the limitation period of six months has been expired, the concerned authority becomes Functus Officio as regards the application under consideration before him. If the worthy Commissioner does not pass an order either granting or refusing the registration within the prescribed six months period u/s 12AA, then the application is deemed to have been granted.

The aforesaid view has been upheld by the hon'ble Supreme Court, various High Courts and the Special bench of ITAT Delhi.

Reliance in this regard is placed on the following case laws:

Commissioner of Income-tax v. Society for Promotion of Education, Adventure Sport & Conservation of Environment [2016] 382 ITR 6 (SC)

Society for the Promotion of Education, Adventure Sport & Conservation of Environment v. CIT [2015] 372 ITR 222 (Allahabad High Court)

Director of Income-tax, (Exemptions) v. ST. Ann's Education Society [2020] 425 ITR 642 (Karnataka)

CIT vs. TBI Education Trust [2018] 257 Taxman 355 (Kerala)

CIT vs. Sahitya Sadawart Samiti Jaipur [2017] 396 ITR 46 (Rajasthan High Court)

Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT [2007] 111 TTJ (Delhi) (SB) 424/17 SOT 281 (Delhi) (SB)

In regard thereof, it is humbly submitted that the application for registration u/s 12A dated 03.11.1989 which was pending before the concerned authority, as evidenced by the continuation of proceedings by the department (refer pg. no. 29-39 of paper book), and stood transferred under the jurisdiction of section 12AA as per its provisions ought to have been decided, in writing by 30.09.1999.

Without prejudice to the above, the assessee has been regularly filing its return of income declaring total income of Rs. Nil as a deemed registered charitable society for many decades and had been originally assessed as a registered charitable society eligible for exemption/s 11 up to AY 2009-10. The assessee has complied with all the requirements prescribed under section 11, 12, 12A of the Act and the rules framed there under applicable to registered charitable society u/s 12A including filing of Form 10B, audited account reports, financial statements, resolutions etc.

The issue of deemed registration had also been scrutinized and examined for the assessment of income of AY 2000-01, 2001-02 and 2002-03 (refer pg. no. 40-49 of paper book) by the respective AOs. In the statement of statutory income attached to the Income tax return and the reply to the query letters, it had been responded that the assessee had filed an application on 03.11.1989 and details of proceedings and examination were supplied. It was further stated in the response that based on the examination that has been conducted and time period that has expired the assessee should be deemed as a registered charitable society. This position had been accepted by the then AOs and had been the accepted position of the department upto original assessment of AY 2009-10. In regard thereof, no adverse view was taken by the department in the assessment of income upto original assessment of AY 2014-15 (refer pg. no. 44-61 of paper book).

There is no change in the facts and circumstances justifying the revenue to take a different view of the matter. This not only is unjust to the assessee being against the principles of consistency but also to the members of the society whose personal reputation in the society would take a setback if the society is termed non-charitable. Reliance in this regard is placed on the decision of the hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 193 ITR 321 (SC) and in the case of Godrej & Boyce Manufacturing Company Ltd. v. DCIT [2017] 394 ITR 449 (SC).

In regard thereof, the Id. CIT(A) erred in law and on facts of the case to uphold the assessment order deeming the appellant society as non-registered u/s 12A of the Act and thereby, denying the benefit of exemption u/s 11 and

12 of the Act. Accordingly, it is respectfully submitted that the CIT(A)'s order being contrary to the provisions of law and against the intent of the legislature ought to be set aside.

Ground of Appeal no. **10-11**: Holding the society as non charitable on the basis of surmises and conjectures

The CIT(A) has further upheld the view of the AO that the dharamshala was run on commercial basis by wrongly relating the voluntary donation receipts of nominal amounts varying amount between Rs. 100 to Rs. 1100 with the booking charges for marriages, ring ceremonies, Rasam pagdi, condolence meeting etc. Further, the CIT(A) holds that the rules of the society, proclaiming that dharamshala will be provided free of charge for short duration meetings and for others some charge might be made towards electricity, cleaning and maintenance charges, are suggestive that a business activity is being run.

It is necessary to point out that all the donations are made voluntarily there is no compulsion to pay any booking charge for the dharamshala. The rules clearly provide that no charge shall be taken for short duration meetings or condolence meetings. However, people on their own accord pay a nominal amount as voluntary donations towards the electricity supply charges, diesel charges for running generator to provide electricity, cleaning charges, etc. for marriages, social ceremonies and sometimes for Rasam pagdi (shok sabha). Sometimes the donation receipt is also taken to prove the booking is genuine and not frivolous.

The Ld. CIT(A) and the AO have made these allegations based on donation receipt which are as low as Rs. 51 in some cases and mostly is between Rs. 100 to Rs. 2000. In today's time and age one cannot even find someone for one time cleaning in that amount let alone book a banquet hall. The comments made by the CIT(A), that the assessee's contention that commercial banquet halls charge some thousands and lakhs for bookings is not relevant and charges depend upon location, ambience, area and other factors, is clear mockery of judicial position and responsibility provided upon them. Such statements reflect lack of practical knowledge, apathetic attitude towards one's duties, devoid of rationality and abuse of position.

The donation receipt linked to bookings of social ceremonies is mostly of nominal amount covering part of electricity and cleaning expenses which also is made by the concerned party voluntarily as a surety that sufficient diesel for electricity and person for cleaning is available beforehand.

Further, to understand whether the trust/institution is created for charitable purpose which can be allowed the exemption u/s 11 and 12, one has to refer to the definition of charitable purposes in section 2(15) which provides an inclusive definition of the word charitable purposes which includes relief of the poor and advancement of any other object of general public utility. The purpose of assessee to manage and run dharamshala provided free of cost to the general public can be said to fit into these two specific references.

Further the first proviso to section 2(15) provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business.

The expression business is of wide scope and has been held, by the hon'ble Supreme Court in multiple cases, to denote an activity carried on with the intention of earning profit.

Reliance in this regard is placed on the decision of the hon'ble Supreme Court in the case of Senairam Doongarmall v. CIT [1961] 42 ITR 392 (SC) wherein it has been held that:

“The word "business" is not defined exhaustively in the Income-tax Act, but it has been held both by this court and the Judicial Committee to denote an activity with the object of earning profit. To say that a business is being carried on, means no more than that profit is to be earned by a process of production. ”

Reliance in this regard is further placed on the decision of the hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234 (SC) wherein it has been held that:

“The difficult question, however, still remains: What is the meaning of "charitable purpose" which is only indicated but not defined by section 2(15) of the Act? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has to be used up for what is recognised as charity. The very concept of charity denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental or even accidental and immaterial. The action which flows from charitable thinking is not directed towards benefiting one's self. It is always directed at benefiting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable. ”

Even the institutions like ICAI, Bar Council of Delhi, etc. which charges in thousands to write exams or for getting enrolled or for annual membership fees have been held to be charitable because there is no profit motive. Reliance in this regard is placed on the decision of the hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India v. Director General of Income-tax (Exemptions) [2013] 358 ITR 91 (Delhi).

The objects of the society provide clearly that income of the society if any is to be used for the objects of the society and no portion thereof is to be transferred to the members directly or indirectly. Further the members are also barred from being appointed to any salaried office of the society.

In regard thereof, no activity being carried in the nature of trade, commerce or business whereas there is no profit motive in providing the facility of dharamshala. The donations received are voluntary in nature and covers only part of the electricity and cleaning charges used by the concerned person.

Without prejudice to the above, the second proviso to section 2(15) provides that first proviso will not be applicable in case the aggregate value of the receipts from such activities referred to therein is twenty-five lakh rupees or less in the previous year. The amount alleged to be linked towards booking, electricity and cleaning charges by the AO in aggregate is much less than this prescribed limit as stated below:

<i>Assessment year</i>	<i>Donation alleged towards booking and maintenance</i>
<i>2008-09</i>	<i>Rs. 3,64,202</i>
<i>2009-10</i>	<i>Rs. 6,56,711</i>
<i>2010-11</i>	<i>Rs. 4,63,144</i>
<i>2012-13</i>	<i>Rs. 4,40,146</i>
<i>2014-15</i>	<i>Not dealt by the AO. Denied exemption only on the basis of absence of registration certificate in physical form.</i>

In regard thereof it is respectfully prayed that the Id. CIT(A) erred in holding the assessee to be a commercial venture and the order of the CIT(A) ought to be set aside.

Ground of Appeal no. 3 : Notice issued u/s 148 and the reassessment proceedings u/s 147 for the AY 2008-09 and 2009-10 are without jurisdiction, void and bad in law

Without prejudice to the above, for the AY 2008-09 and AY 2009-10, reassessment proceedings have been initiated u/s 147 which provides for reopening of assessment as per procedure prescribed where the Assessing Officer has reason to believe that income has escaped assessment.

In this regard, it is submitted that the accepted position of the department, as demonstrated supra, had been that the assessee is deemed registered u/s 12A/12AA and therefore, the reasons to believe supplied by the AO that assessee shall be deemed non registered are nothing but mere change of opinion. The hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd [2010] 320 ITR 561 (SC) has held that mere change of opinion cannot per

se be reason to reopen assessment. Therefore, the impugned assessment orders are without jurisdiction and ought to be set aside.

Further, the procedure laid out for issue of notice u/s 148 for re-opening of assessment prescribes that reasons to believe must be recorded and dated before issue of the notice u/s 148, whereas, in the present case, the reasons to believe had not been recorded before the issue of notice as is evidenced by the copy of order sheet(refer page no. 63-66 of paper book) and the copy of reasons furnished by the AO are also not dated (refer pg. no. 67 of paper book). [Reliance in this regard is placed on the decision of the hon'ble Delhi HC in the case of CIT v. Atul Jain [2008] 299 ITR 383 (Delhi)].

In regard thereof it is respectfully prayed that the assessment proceedings u/s 147 are without jurisdiction and the order of the CIT(A) upholding the assessment order ought to be set aside.

Ground of Appeal no. 12 and 15 : General

Ground of Appeal no. 13 and 14 : Consequential

Thus, it is respectfully prayed to your Honour, in light of aforesaid submissions, to allow the exemption u/s 11 and delete the impugned additions upheld by the CIT(A).”

“SUBMISSIONS

The Appellant, a charitable society, is registered under the provisions of the Societies Registration Act, 1860 vide certificate no. 2 of 1988-89 and is engaged in charitable work including maintaining and running a Dharamshala for the benefit of the general public. The assessee had filed its return of income u/s 139 of the Income Tax Act, 1961 (“the Act”) for the relevant assessment year(s) at the total income of Rs. Nil which was processed u/s 143(1) of the Act.

The income of the assessee for the assessment years 2008-09 and 2009-10 was however reassessed u/s 143(3) r.w.s. 147 of the Act at Rs. 6,54,890 and

Rs. 7,67,320 respectively. For the remaining assessment years, that is, 2010-11, 2012-13 and 2014-15, the case of the Appellant was selected for scrutiny and assessed under section 143(3) of the Act at an income of Rs.11,27,795 for AY 2010-11, Rs. 10,99,430 for AY 2012-13 and Rs. 12,49,170 for AY 2014-15.

The above additions in the relevant assessment years have been made by disallowing the exemption under section 11 of the Act by deeming the assessee as a nonregistered charitable society u/s 12A of the Act and by wrongly assuming the society as being run on a commercial venture by linking the scanty sum of Rs. 100 to Rs. 1000 donated voluntarily as a charge taken for booking of dharamshala for marriages, condolence meetings, rasam pagdi, shok sabhas, etc.

The Id. CIT(A)'s orders under section 250(6) upholding the assessment order(s) and the consequent additions/disallowances in the aforesaid orders have been challenged in appeal before your Honour.

Our submissions in relation to the common grounds of appeal(s) raised are as hereunder:

Ground of Appeal No. 1, 2, 4-9: Deeming the assessee as non-registered u/s 12A contrary to the provisions of the Act

The primary issue in all the appeals pertains to wrongful denial of claim of exemption under section 11/12 of the Act by deeming the assessee as non-registered u/s 12 A on the ground that the assessee has not been able to produce any registration document in physical form u/s 12A of the Act.

The appellant, a charitable society, was registered in the year 1988-89 with the Registrar of Firms & Societies, Haryana with the aim and object of carrying out charitable work including maintain and running a dharamshala for the benefit of the general public.

The legislature with the intention of promoting the charitable work has provided for exemption of income from property held for charitable

purposes under section 11 and income from voluntary contributions of trusts/institutions held for charitable purpose under section 12 of the Act.

Further, for the purpose of claiming exemption u/s 11 and 12, one has to comply with the mandate of section 12A of the Act which provides the conditions for the applicability of section 11 and 12.

The said section 12A was omitted by the Direct Tax Laws (Amendment) Act, 1987, and was reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4- 1989.

Therefore, section 12A became applicable to the society only from 1.04.1989. The relevant extract of the said section 12A as it stood at the time of its first application to the society, is reproduced hereinbelow:

“12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the [Chief Commissioner or Commissioner] before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later:

*..... .
..... .*

It is pertinent to point out that section 12A as it stood at the time of it becoming applicable to the charitable society mandated only that an application for registration is made in the prescribed form and in the prescribed manner. The legislature did not stress upon getting a registration certificate as a necessary condition for application of provisions of section 11 and 12, deliberately, on account of inordinate delays taken by the department in deciding the application u/s 12A. Therefore, unless the said application was specifically rejected, the trust/institution ought to be considered compliant with the section 12A.

The aforesaid claim of the assessee is further strengthened by the amendment made by the Finance (No. 2) Act, 1996 which substituted the

words “whichever is later” with the words “whichever is later and such trust or institution is registered under section 12AA ”

The relevant extract of the said section 12A after the aforesaid amendment read as under:

“12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the [Chief Commissioner or Commissioner] before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [whichever is later and such trust or institution is registered under section 12AA]:

[Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution,—

(i) from the date of the creation of the trust or the establishment of the institution if the Chief Commissioner or Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) from the 1st day of the financial year in which the application is made, if the Chief Commissioner or Commissioner is not so satisfied;]

It is important to note that the words “and such trust or institution is registered under section 12AA” are noticeable by their absence before the aforesaid amendment by the Finance(No. 2) Act, 1996. Therefore, in our humble submission the condition before the aforesaid amendment spoke only of making the prescribed application and evidently by not adding the words “and such trust/institution is registered” or providing a time limit to decide the application for registration, a deeming provision was inherent in section 12A that the applicant society/trust must be deemed registered unless the concerned authority explicitly rejects the application u/s 12A.

In the present case, the assessee complied with the aforesaid condition and mandate of section 12A by making an application for registration u/s 12A on 03.11.1989 to the then jurisdictional authority, Commissioner of Income Tax, Rohtak which is duly acknowledged vide letter dated 08.06.1999 and 06.07.1999 from the department (refer pg. no. 29-30 of paper book). Subsequently, the jurisdiction and the application were transferred to the CIT, Panchkula and thereafter to the CIT(Exemption), Chandigarh. The assessee has complied with all the letters/notices of the concerned authority(s) and has filed request letters/reminders multiple times with the concerned authority for grant of registration document in physical form (refer pg. no. 31-39 of paper book). It is important to point out that even after perusing and examining the aforesaid application for registration u/s 12A on multiple occasions, the application has never been rejected by the concerned authority (refer pg. no. 29-39 of paper book).

It is also relevant to mention here that the intention of the Legislature is to give the persons engaged in charitable activities relief in the matter of payment of tax on the income applied for charitable purposes. If a person applies for registration and does everything, on its part, in compliance with the requirements of the Act, then the Legislature does not want it to be burdened with tax on its income and therefore, relief has been provided to him in respect of paying income tax u/s 11 and 12 of the Act. Reliance in this regard is placed on the decision of hon'ble Supreme Court in the case of Sanjeev Lai vs. CIT [2014] 365 ITR 389 wherein the court in addition to the afore stated made the following observation:

“In the case of Oxford University Press v. CIT [2001] 247 ITR 658/115 Taxman 69 this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. ”

Therefore, in our humble submissions, considering the aforesaid mandate of section 12A, facts of the case and the principles with regard to the interpretation of Statute pertaining to the tax laws, a deeming principle was inherent in section 12A at the time of filing the application, that is before the

amendment made by the Finance(No. 2) Act, 1996, by the conspicuous absence of words “and such trust or institution is registered” that the society should be deemed to be registered u/s 12A when the assessee on its part has made the application and complied with the necessary conditions of the aforesaid section and the application of the assessee has not been rejected.

Further, it is evident by the various correspondences attached regarding application for registration u/s 12A, in the form of query letters from the department, reply to questionnaires, hearings fixed before the concerned authority and request letters sent to the department, that the department has perused and examined the application on multiple occasions and therefore, has consciously taken the decision to not reject the application of the assessee (refer pg. no. 29-39 of paper book). Even after the letter from the office of JCIT, Hisar through the ITO requesting the CIT, Panchkula to intimate in writing the outcome of application u/s 12A/12AA made by the assessee and acknowledging the receipt of application on 03.11.1989, examination of the said application by the department and the deemed grant of registration considered by the assessee, the concerned authority did not reject the application which further proves that the concerned authority had consciously taken the decision to not reject the application of the assessee

There has been a dereliction of duty or lapse on the part of the concerned authority to not issue a registration certificate in physical form. On the other hand, there is no lapse on the part of the assessee. Therefore, if the department was to be allowed to deem the society as non-registered u/s 12A and deny the associated exemption u/s 11 and 12, for a failure on its part to carry out its duty to explicitly accept or reject the application, would not only tantamount to going against the intent of the legislature and object of the provisions of the Act but also would be synonymous to making the assessee pay for the lapse on the part of the department.

It is respectfully submitted that the case of the assessee is one in which the application has been examined multiple times and the concerned authority based on the examination has consciously not rejected the application of the assessee. Therefore, it would not be wrong to say that in actuality the application of the assessee has been accepted and there is a lapse on the part of the concerned authority in merely issuing the registration certificate in physical form.

In regard thereof, the Id. CIT(A) erred in law and on facts of the case to uphold the assessment order deeming the appellant society as non-registered u/s 12A of the Act and thereby, denying the benefit of exemption u/s 11 and 12 of the Act.

Accordingly, it is respectfully submitted that the CIT(A)'s order being contrary to the provisions of law and against the intent of the legislature ought to be set aside.

Without prejudice to the above, as stated supra that vide Finance (No. 2) Act, 1996 section 12A was amended to provide that the provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the person in receipt of the income has made an application for registration of the trust or institution in the pre-scribed form and in the prescribed manner to the Chief Commissioner or Commissioner and such trust or institution is registered under section 12AA.

Further, the Finance (No. 2) Act, 1996 added a new section 12AA w.e.f. 01.04.1997 prescribing the procedure for registration. Section 12AA provided that the concerned authority on receipt of application u/s 12A shall call for such documents and make such inquiries as he may deem necessary but shall pass an order in writing, within 6 months, granting registration to the applicant or refusing such registration, if he is not satisfied, and a copy of such order shall be sent to the applicant.

Therefore, the application of the assessee for registration u/s 12A dated 03.11.1989 if it is deemed to be pending as on 01.04.1997 before the concerned authority had to be decided within 6 months, that is, by 30.09.1997 by an order in writing either granting the registration or refusing such registration.

The query letter dated 16.03.1999, 08.06.1999 and 06.07.1999 regarding the application for registration moved by the assessee on 03.11.1989 is an evidence that the said application was not lifeless and that it was pending before the concerned authority and stood transferred u/s 12AA (refer pg. no. 29, 30, 34 of paper book).

Any ambiguity with respect to applicability of section 12AA on the pending applications was done away with insertion of subsection 1A to section 12AA by the Finance Act, 1999 with effect from 01.06.1999 providing that all applications pending on which no order has been passed before 01.06.1999 shall stand transferred on 01.06.1999 before the concerned authority to decide.

The relevant extract of section 12AA is reproduced hereunder:

“Procedure for registration.

*12AA. (1) The [***] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) of section 12A, shall—*

- (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*
- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—*
 - (i) shall pass an order in writing registering the trust or institution;*
 - (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,*

and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

[(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that subsection from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (b) of subsection (1) shall be passed before the expiry of six months from the end of the month in which the application was received under

clause (a) of section 12A.]”

Section 12AA(2) unambiguously states that the order granting or refusing the registration shall be passed in writing before the expiry of six months from the end of month in which application is received. The expression used is shall as against may, which makes the provision mandatory for the concerned authority.

Further, CBDT vide Instruction No.16/2015 [F.No.197/38/2015-Ita.l], dated 06.11.2015 prescribes that the aforesaid time limit of six months is to be strictly followed by the Commissioner of Income Tax (Exemptions) while passing order under section 12AA and in case of any laxity suitable administrative action may be initiated by the CCIT(Exemptions).

In regard thereof, it is humbly submitted that the application for registration u/s 12A dated 03.11.1989 which was pending before the concerned authority, as evidenced by the continuation of proceedings by the department (refer pg. no. 29-39 of paper book), and stood transferred under the jurisdiction of section 12AA as per its provisions ought to have been decided, in writing by 30.09.1999.

In case the department is given the benefit of subsection 1A even then the order granting or refusing the registration had to be passed in writing in all possibilities before 31.12.1999.

There is no alternative available with the department once the limitation period of six months has been expired, the concerned authority becomes Functus Officio as regards the application under consideration before him. If the worthy Commissioner does not pass an order either granting or refusing the registration within the prescribed six months period u/s 12AA, then the application is deemed to have been granted.

Reliance in this regard is placed on the following case laws:

Decision of hon'ble Supreme Court in the case of Commissioner of Income-tax v. Society for Promotion of Education, Adventure Sport & Conservation of Environment [2016] 382 ITR 6 (SC) wherein the hon'ble Apex Court held that once an application is made under section 12AA and in case the same is not responded to within six

months, it would be taken that the application is registered under the provision. Relevant extract of the decision is as under:

“3. The short issue is with regard to the deemed registration of an application under Section 12AA of the Income Tax Act. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

4. The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of 24.02.2003, at the worst, the same would operate only after six months from the date of the application.

5. We see no basis for such an apprehension since that is the only logical sense in which the Judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under Section 12AA of the Income Tax Act in the case of the respondent shall take effect from 24.08.2003.”

The Hon'ble Supreme Court in the case of Society for the Promotion of Education case {supra} in a Civil Appeal, upheld the judgment of the Allahabad High Court in the case of Society for the Promotion of Education, Adventure Sport & Conservation of Environment v. CIT [2015] 372 ITR 222 where it was held that the purpose of providing six months' time-limit to the CIT would become meaningless if there is no cause of action or outcome at the end of six months. Therefore, after the expiry of six months the registration will be deemed to have been granted. The judgment of the High Court merges in the judgment of the Hon'ble Supreme Court and the declaration by the High Court assumes the authority of a precedent by the Hon'ble Supreme Court on the principles of doctrine of merger. The relevant extract of the decision is as under:

“13. Moreover, the view we are inclined to take as above furthers the object and purpose of the aforesaid statutory provision. In our view for the interpretation of a statute 'purposive construction' of the enactment which gives effect to the legislative purpose/intendment, if necessary must be

followed and applied. The doctrine of purposive interpretation is well-accepted and has been applied in India by the Apex Court following the English Law on the subject. Explaining as to what 'purposive construction' is, Lord Smith in R. (Haw) v. Secretary of State for the Home Department [2006] 3 All ER 428 at page 438, in paragraph 42, observed "A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

.....

18. Considering the pros and cons of the two views, we are of the opinion that by far the better interpretation would be to hold that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be a deemed grant of registration. We do not find any good reason to make the assessee suffer merely because the Income-tax Department is not able to keep its officers under check and control, so as to take timely decisions in such simple matters such as consideration of applications for registration even within the large six month period provided by section 12AA(2) of the Act.

19. We accordingly direct the respondents, subject to any order which may be passed under section 12AA(3), to treat the Petitioner Society as an Institution duly approved and registered under section 12AA and to recompute its income by applying the provision of section 11 of the Act. Accordingly, a formal certificate of approval will be issued forthwith to the petitioner by the respondent No. 2. "

Decision of the hon'ble Karnataka High Court in the case of Director of Income-tax, (Exemptions) v. ST. Ann's Education Society [2020] 425ITR 642 (Karnataka) wherein the application of assessee for

registration u/s 12A was rejected after a period of six months and the question before Hon'ble court was whether the application for registration u/s 12A could have been decided after a period of six months from the date of presentation of application. The hon'ble High Court while deciding this issue held that given the mandatory provision requiring order to be passed on application under section 12A within six months has not been complied with and therefore, registration under section 12A should be deemed to have taken effect after six months from date of presentation of application. The relevant extract of the decision is as under:

“7. We have considered the submissions made on both the sides and have perused the record. Admittedly, an application under Section 12A of the Act on 17.09.1999 and order on the aforesaid application has been passed beyond a period of six months i.e., on 30.10.2001. Therefore, in view of law laid down by Supreme Court, the registration under Section 12A of the Act shall be deemed to have taken effect after six months from the date of presentation of the application i.e., 18.03.2000.”

Decision of the hon'ble Rajasthan High Court in the case of CIT vs. Sahitya Sadawart Samiti Jaipur [2017] 396 ITR 46 wherein it has been held that in all the circumstances either due to defect in the application or on merits of it the Commissioner, under sub-section (2) of section 12AA is supposed to grant or refuse registration within 6 months from the end of months in which application was received, where the Commissioner disposed of application with delay of around three years, the Tribunal was justified in granting registration with effect from the date of application. Relevant extract of the decision is as under

“7. The view taken by the tribunal is very clear that the registration will take effect from the date of application. In our considered opinion, in view of the observation made by the Tribunal, the registration will be granted from 30.5.2002. The issue is answered in favour of the assessee.

The appeal stands dismissed. ”

To the same effect is the decision of the hon'ble Kerala High Court in the case of CIT vs. TBI Education Trust [2018] 257 Taxman 355 (Kerala) wherein it has been held that where assessee-society filed an application under section 12A for grant of registration and same was responded after nine months, registration was deemed to be granted automatically on expiry of six months period as specified in section 12AA(2). Relevant extract of the decision is as under:

“5. It cannot but be noticed that Section 12AA(2) specifically provides that on an application, an order granting or refusing registration shall be passed before the expiry of the six months of the date on which the application was received. We also directed the revenue to produce the files, which are before us. We see from the files that the application was filed on 10.10.2006. A report was called for from the Income-Tax officer which was submitted only on 24.07.2007, after almost nine months. The communication of the Commissioner of Income-Tax based on which such report was made also is seen to be dated 12.01.2006 referred to in the report of the Income-Tax Officer. The Income-Tax Officer has recommended the registration under Section 12AA(2). However an adverse report is seen authored by the Joint Commissioner of Income-Tax dated 31.07.2007 addressed to the Commissioner of Income-Tax. There has been some adjournments later and eventually the order impugned before the Tribunal dated 29.11.2007 was passed. We cannot but notice that there was unreasonable delay insofar as complying with the mandatory provision under Section 12AA(2).

6. In this context, we have to notice the directions of the CBDT issued as Instruction No. 16/2015(F.No. 197/38/2015-ita-l) DATED 06.11.2015 which we extract hereunder:—

"Sub-section (2) of Section 12AA of the Income-Tax Act, 1961 prescribes that every order granting or refusing registration under clause (b) of sub-section (1) of that section shall be passed before the expiry of six months from the end of the month in which the application was received under clause(a) or clause(aa) of the sub-section (1) thereof. Thus while processing the application under Section 12 AA of the Act, the time limit of six months has

to be adhered to by the Commissioner of Income Tax (Exemptions). However, it has been brought to the notice of the Board that the said time limit has not been observed in some cases.

2. The undersigned is directed to convey that the aforesaid time limit of six months is to be strictly followed by the Commissioner of Income Tax (Exemptions) while passing order under section 12AA. The CCIT(Exemptions) may monitor the adherence of prescribed time limit and initiate suitable administrative action in case any laxity in adhering to the same is noticed."

7. The CBDT has thought it fit, obviously from experience of dealing with delayed applications, that the mandatory provision has to be complied with in letter and spirit. The officers of the Department are necessarily bound by the directions so issued by the CBDT; which in the present case is a reiteration of the mandate statutorily prescribed. In the present case, we see failure to comply with the mandatory provision as provided under section 12AA(2); the circular having come later to the impugned order.

8. The instruction by CBDT gives us a clear picture of how the Board expected the Officers to treat the mandatory provision under section 12AA(2) as being scrupulously relevant and significant insofar as a consideration of an application filed under section 12AA within the time stipulated in sub-section (2). We have to look at the present case also in the light of the Supreme Court decision in Society for the Promotion of Education case (supra). The learned Standing Counsel, Government of India, (Taxes) would take serious objection insofar as pointing out that there is no declaration of law as found in the decision of the Hon'ble Supreme Court and a mere concession made by the learned Counsel appearing for the Department. It cannot be taken as a concession on behalf of the Department or being the opinion of the Department is the argument. It is also urged that this Court should be concerned with the interpretation of the provision to advance the course of

law and not a mere concession by a Counsel before the Hon 'ble Supreme Court in a solitary instance.

9. *On a reading of the order passed in Society for the Promotion of Education case (supra) we are not convinced that there was any concession made by the learned Additional Solicitor General who appeared in the matter for the Income-Tax Department. As we discern from the order, the Commissioner of Income-Tax, Kanpur had filed an appeal from the deemed registration granted under Section 12A for reason solely of an application under Section 12AA of the Act having not been acted upon for six months. The appeal arose from the judgment dated 03.04.2008 of the High Court of Judicature, Allahabad. When the matter was considered by the Hon 'ble Supreme Court, the Full Bench decision of the Allahabad High Court cited, herein above, by the Revenue was passed and we do not see the said decision having been placed before the Hon 'ble Supreme Court. Rather than a concession, the learned Additional Solicitor General specifically informed the Hon'ble Supreme Court that the only apprehension of the Department was regarding the date on which the said deemed registration, would be effected; whether it is on the date of application or on the expiry of six months. The Civil Appeal before the Hon'ble Supreme Court was disposed of expressing the apprehension to be unfounded, but all the same clarifying that the registration of the application under Section 12AA would only take effect from the date of expiry of six months from the date of application. The effect of disposal of a Civil Appeal as has been laid down in Kunhayammed v. State of Kerala [2000] 113 Taxman 470/245 ITR 360 (SC) hence assumes significance. The Hon'ble Supreme Court in Society for the Promotion of Education case (supra) in a Civil Appeal, approved the judgment of the Allahabad High Court allowing deemed registration under Section 12AA; but applicable only from the date of expiry of the six month period as mandated in subsection(2) of Section 12AA. The judgment of the High Court merges in the judgment of the Hon 'ble Supreme Court. The opinion as expressed by the Allahabad High Court, regarding deemed registration under Section 12A for reason only of non consideration of an*

application under Section 12AA within a period of six months from the date of filing, having not been differed from by the Hon 'ble Supreme Court in the Civil Appeal; the declaration by the High Court assumes the authority of a precedent by the Hon'ble Supreme Court on the principles of doctrine of merger. Despite the compelling persuasion of the learned Senior Counsel to interpret the provision as has been interpreted by the Full Bench of the High Court of Allahabad we find ourselves, incapacitated so to do and obliged to respectfully follow Society for the Promotion of Education case (supra).

In such circumstance, respectfully following the decision of the Hon 'ble Supreme Court we answer the question in favour of the assessee and against the revenue and reject the appeal. The registration however is applicable only from the date of expiry of the six months from the date of application. ”

Decision of the hon'ble special bench of the ITAT Delhi in the case of Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust v. CIT [2007] 111 TTJ (Delhi) (SB) 424/17 SOT 281 (Delhi) (SB) wherein it was held that the CIT has to mandatorily pass an order within 6 months from the end of the month in which the application for registration is filed. In case the CIT fails to pass an order within 6 months, then it must be deemed to have been allowed, because if the application is to be treated as pending, then the CIT would be getting an extended period of limitation which the Act does not allow. If it is to be held that the application must be deemed to have been rejected then the assessee would not be able to file an appeal against the refusal to the Tribunal in the absence of a written order containing the reasons for refusal and the remedy of appeal will be rendered illusory. Therefore, it is clear that the orders have to be passed within the time-limit prescribed and if not, the application should be deemed to have been granted. The Tribunal further justified such an action as the rights of the department would still be protected even after such deemed registration by invoking subsection (3) of section 12AA which permits the CIT to cancel the registration by an order in writing.

To the same effect is the decision of the IT AT, Delhi bench in the case of:

Sardari Lai Oberai Memorial Charitable Trust v. ITO [2005] 3 SOT 229

Sambandh Organisation v. CIT [2006] 156 Taxman 183 (Delhi) (Mag.)

In regard thereof, it is respectfully submitted that on account of law laid down by the hon'ble Supreme Court, various High Courts, and the special bench IT AT Delhi, the applicant society ought to be deemed registered with effect from expiry of six months from the introduction of section 12AA, that is from 30.09.1999 and in the worst case with effect from 30.11.1999, the date on which period of six months expired from the insertion of subsection (1A) to section 12AA.

Accordingly, it is respectfully submitted that appeal of the assessee may kindly be allowed and the CIT(A)'s order being bad in law ought to be set aside.

Without prejudice to the above, the assessee has been regularly filing its return of income declaring total income of Rs. Nil as a deemed registered charitable society for many decades and had been originally assessed as a registered charitable society eligible for exemption/s 11 upto AY 2009-10. The assessee has complied with all the requirements prescribed under section 11, 12, 12A of the Act and the rules framed thereunder applicable to registered charitable society u/s 12A including filing of Form 10B, audited account reports, financial statements, resolutions etc.

The legislature has framed the provisions of section 11 and 12 with the intent to encourage charitable activities. There are few people who are moved by their conscience to do some good for the society and invest their finances, energy and personal repute for the greater good of the society. The assessee has abided by the provisions of the Act to the extent it was in its control. No member of the society is allowed to take a penny from the income of the society as salary or profit. There has been a lapse or dereliction of duty on the part of the concerned authority and not the assessee. Yet, from the last 7-8 years the members of the society who are in their late 60s and 70s have made to run from pillar to post filing request letters /reminders to issue a registration certificate in physical form.

It is pertinent to point that in addition to the examination of application u/s 12 A, the issue of deemed registration had also been scrutinized and examined for the assessment of income of AY 2000-01, 2001-02 and 2002-03 (refer pg. no. 40-49 of paper book) by the respective AOs. In the statement of statutory income attached to the Income tax return and the reply to the query letters, it had been responded that the assessee had filed an application on 03.11.1989 and details of proceedings and examination were supplied. It was further stated in the response that based on the examination that has been conducted and time period that has expired the assessee should be deemed as a registered charitable society. This position had been accepted by the then AOs and had been the accepted position of the department upto original assessment of AY 2009-10. In regard thereof, no adverse view was taken by the department in the assessment of income upto original assessment of AY 2014-15 (refer pg. no. 44-61 of paper book).

By deeming the assessee as non registered u/s 12A and terming it non charitable amounts to taking a different stand by the revenue even when the facts and circumstances continue to remain the same. There is no change in the facts and circumstances justifying the revenue to take a different view of the matter. This not only is unjust to the assessee being against the principles of consistency but also to the members of the society whose personal reputation in the society would take a setback if the society is termed non charitable. Reliance in this regard is placed on the decision of the hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT [1992] 193 ITR 321 (SC) and in the case of Godrej & Boyce Manufacturing Company Ltd. v. DCIT [2017] 394 ITR 449 (SC).

Therefore, on account of being against the Principle of consistency and the principles of natural justice also the CIT(A)'s order ought to be quashed and the assessee ought to be granted the status of registered charitable society u/s 12A of the Act.

Without prejudice to the above,

when despite several reminders/request letters being filed with the concerned authority, the assessee was not given a registration certificate in physical form and simultaneously the assessee was being assessed as non registered institute for several AY(s) in appeal before the hon'ble bench,

then out of sheer desperation the assessee moved a fresh application on 23.03.2015 acknowledged by letter from the department on 07.07.2015 (refer pg. no. 62 of paper book).

Further, it is pertinent to mention that provisions of section 12A had been amended by the Finance (no. 2) Act, 2014 applicable w.e.f. 01.10.2014 to insert a proviso in section 12A(2) that if application is made on or after 01.06.2007 then benefit of exemption u/s 11 and 12 shall also be available for all the assessment years for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year.

It is further provided that no reassessment of income u/s 147 shall be made by the AO for the AYs preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year. Relevant extract of the amended section 12A is as under:

"[(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made:]

[Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

Provided further that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was

refused registration or the registration granted to it was cancelled at any time under section 12AA.]”

Further it would be relevant to reproduce the explanatory note to the provisions of the Finance (No.,2) Act 2014 as given in CBDT Circular No. 1/15 dated 21.1.2015:

“8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability is fastened even though they may otherwise be eligible for exemption and fulfil other substantive conditions. However, the power of condonation of delay in seeking registration was not available.

8.3 In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Income-tax Act has been amended to provide that in a case where a trust or institution has been granted registration under section 12AA of the Income-tax Act, the benefit of sections 11 and 12 of the said Act shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

8.4 Further, it has been provided that no action for reopening of an assessment under section 147 of the Income-tax Act shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year. ”

The first proviso to section 12A(2) was brought in the statute only as a retrospective effect, with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by the said trust. The benefit of retrospective application alone could be the intention of the legislature and this point is further strengthened by the Explanatory Notes to Finance (No.2) Act, 2014 issued by the Central Board

of Direct Taxes vide its Circular No. 01/2015 dated 21.1.2015. Apparently, the statute provides that registration once granted in subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the Id. A.O., unless the registration granted earlier is cancelled or refused for specific reasons. The statute also goes on to provide that no action u/s 47 could be taken by the AO merely for non registration of trust for earlier years.

In the present case:

The notice for reassessment of income for the AY 2008-09 and AY 2009-10 was issued after the date of application clearly contrary to the provisions of section 12A quoted above. Section 2(8) defines assessment to include reassessment

The assessment proceedings for AY 2014-15 were also initiated after the deemed date of registration.

The appeal against the assessment orders for the AY 2010-11 and 2012-13 were pending in appeal before the CIT(A). Those appeals were the continuation of the original proceedings and that the power of the Commissioner of Income-tax was co-terminus with that of the assessing officer were two well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the assessing officer' within the meaning of that term as envisaged under the proviso. It follows there-from that the assessee which obtained registration u/s 12AA of the Act during the pendency of appeal was entitled for exemption claimed u/s 1 of the Act. [Reliance in this regard is placed upon:

*CIT v. Mayur Foundation [2005] 274 ITR 562 (Gujarat High Court)
SNDP Yogam vs ADIT(Exemptions) [2016] 161 ITD 1(Cochin - Trib.)/[2017] 186 TTJ 277 (Cochin - Trib.)]*

Therefore, in regard to the provisions of proviso(s) to section 12A(2), the deemed registration u/s 12A has to be given effect to retrospectively for all

the AYs in appeal before the tribunal and the benefit of section 11 and 12 shall be eligible to the assessee for the relevant AYs.

*Ground of Appeal no. **10-11**: Holding the society as non charitable on the basis of surmises and conjectures*

The CIT(A) has further upheld the view of the AO that the dharamshala was run on commercial basis by wrongly relating the voluntary donation receipts of nominal amounts varying amount between Rs. 100 to Rs. 1100 with the booking charges for marriages, ring ceremonies, Rasam pagdi, condolence meeting etc. Further, the CIT(A) holds that the rules of the society, proclaiming that dharamshala will be provided free of charge for short duration meetings and for others some charge might be made towards electricity, cleaning and maintenance charges, are suggestive that a business activity is being run.

The relevant extract of the CIT(A)'s order is as under:

On merits also, the AO has duly brought on record that the assessee was running a banquet hall and the receipts against the various functions booked have been shown as donation. These booking amounts vary as per circumstances and the activity of trust has rightly been held by the AO as business activity being carried on by the assessee. When a donation is paid, the donor does not get any service in return for the same. If the money is paid for any service/space provided by the assessee then it cannot be said to be a donation but a charge paid for the services enjoyed by the payee or use of space owned by the assessee by the person paying the amount who holds function at the hall owned by the assessee. The arguments of the AR that banquet charges huge amount in thousand and lacs is not relevant here because the charge will depend upon the facilities provided, the ambiance, the area, the location and such other factors. Once, a price is charged for allowing the use of space owned by the assessee then it cannot be termed as donation. The AO has duly brought on record and it has not been denied by the AR also that the assessee society was booking the space for marriage and ring ceremonies etc. and at the time of booking itself a receipt was issued

on which the amount deposited is also mentioned. The AR has filed the list of such bookings for marriage and ring ceremonies, Rasam Pagdi etc. during the appellate proceedings also. The AR has filed copies of 'RULES AND REGULATION OF THE BHARAT MANDAL, RAMLILA AND DHARMSHALA SOCIETY HANSI. (HISAR) HARYANA' some of which are reproduced below.

14. The booking of the Ram Lila and Dharamshala follows the rules of first come first serve. No preference should be given to any particulars case.

15. The funds of the society will not be used by any members for the personal gain of the member.

16. The society would be the only purchasing Authority of any kind of property of the Ram Lila and Dharamshala.

17. The executive committee Society will pass the donation for the booking of Ram Lila and Dharamshala and daily electricity charges and cleaning charges will be extra.

18. There will be no charges for the meeting which will be held for short time.

19. There will be no charges for the booking of condolence meeting.

From the above, it is clear that no charges will be taken for meeting which are held for short time and booking of condolence meeting which naturally means that the society will be charging the sum for other type of functions/ceremonies. It is not a case that the assessee will not charge anything for every type of functions and will receive only the donations. It is explicitly clear that charges will be applicable for all the bookings except for the above two purposes as per point 18 & 19 above. Thus, from the Rules & Regulations itself it is clear that

the assessee was running a commercial venture. Under the facts and the circumstances of the case, the action of the AO in disallowing the benefit of section 11 & 12 of the Act in the absence of any certificate issued under section 12A to the assessee, is found as per law and hence upheld.

Accordingly, these grounds of appeal are dismissed.

It is necessary to point out that all the donations are made voluntarily there is no compulsion to pay any booking charge for the dharamshala. The rules clearly provide that no charge shall be taken for short duration meetings or condolence meetings. However, people on their own accord pay a nominal amount as voluntary donations towards the electricity supply charges, diesel charges for running generator to provide electricity, cleaning charges, etc. for marriages, social ceremonies and sometimes for Rasam pagdi (shok sabha). Sometimes the donation receipt is also taken to prove the booking is genuine and not frivolous.

The Id. CIT(A) and the AO have made these allegations based on donation receipt which are as low as Rs. 51 in some cases and mostly is between Rs. 100 to Rs. 2000. In today's time and age one cannot even find someone for one time cleaning in that amount let alone book a banquet hall. The comments made by the CIT(A), that the assessee's contention that commercial banquet halls charge some thousands and lakhs for bookings is not relevant and charges depend upon location, ambience, area and other factors, is clear mockery of judicial position and responsibility provided upon them. Such statements reflect lack of practical knowledge, apathetic attitude towards one's duties, devoid of rationality and abuse of position.

Clearly the Id. CIT(A) does not know that the dharamshala is located in one of the small but prominent cities of Haryana which is under process of being declared as a district, on the main road that enters into the city and in the main market. The donation receipt linked to bookings of social ceremonies is mostly of nominal amount covering part of electricity and cleaning expenses which also is made by the concerned party voluntarily as a surety that sufficient diesel for electricity and person for cleaning is available beforehand.

Further, to understand whether the trust/institution is created for charitable purpose which can be allowed the exemption u/s 11 and 12, one has to refer to the definition of charitable purposes in section 2(15) as it stood on before amendment made by Finance Act, 2015 relevant for the AYs in appeal which is quoted below:

“(15) "charitable purpose" includes relief of the poor, education, — (yoga,) medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year;”

Section 2(15) provides an inclusive definition of the word charitable purposes which includes relief of the poor and advancement of any other object of general public utility. The purpose of assessee to manage and run dharamshala provided free of cost to the general public can be said to fit into these two specific references.

Further the first proviso provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business.

The expression business is of wide scope and has been held, by the hon'ble Supreme Court in multiple cases, to denote an activity carried on with the intention of earning profit.

Reliance in this regard is placed on the decision of the hon'ble Supreme Court in the case of Senairam Doongarmall v. CIT [1961] 42 ITR 392 (SC) wherein it has been held that:

“The word "business" is not defined exhaustively in the Income-tax Act, but it has been held both by this court and the Judicial Committee to denote an activity with the object of earning profit. To say that a business is being carried on, means no more than that profit is to be earned by a process of production. ”

Reliance in this regard is further placed on the decision of the hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234 (SC) wherein it has been held that:

“Ordinarily profit motive is a normal incident of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit. The expression "business", as observed by Shah J., speaking for the court in the case of State of Gujarat v. Raipur Mfg. Co. [1967] 19 STC 1 (SC), though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in, the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive. By the use of the expression "profit motive" it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity.

..... .

The difficult question, however, still remains: What is the meaning of "charitable purpose" which is only indicated but not defined by section 2(15) of the Act? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has to be used up for what is recognized as charity. The very concept of charity denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental or even accidental and immaterial. The action which flows from charitable thinking is not directed towards benefiting one's self. It is always directed at benefiting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable.

We think that this governing idea of charity must qualify purpose of every category enumerated in section 2(15) of the Act of 1961. We think that the words introduced by the Act of 1961 to qualify the last and widest category of objects of public utility were really intended to bring out what has to be the dominant characteristic of each and every category of charity. They were intended to bring the last and most general category in line with the nature of activities considered truly charitable and mentioned in the earlier categories. ”

Even the institutions like ICAI, Bar Council of Delhi, etc. which charges in thousands to write exams or for getting enrolled or for annual membership fees have been held to be charitable because there is no profit motive.

Reliance in this regard is placed on the decision of the hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India v. Director General of Income-tax (Exemptions) [2013] 358 ITR 91 (Delhi) wherein it has been held that:

“67. The expressions "trade", "commerce" and "business" as occurring in the first proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and

cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to Section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008. The relevant extract to the Speech is as under:-

'..... "Charitable purpose" includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.'

The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce".

.....

70. Although in that case the statutory provisions being considered by the Supreme Court were different and the utilisation of income earned is, now, not a relevant consideration in view of the express words of the first proviso to section 2(15) of the Act, nonetheless the test of dominant object of an entity would be relevant to determine whether the entity is carrying on business or not. In the present case, there is little doubt that the objects of the activities of the petitioner are entirely for charitable purposes.

73. The petitioner institute has been established to perform a function of regulating the profession of Chartered Accountants. The functions

performed by the petitioner institute are in the genre of public welfare and not for any private gain or profit and in this view, it cannot be said that the petitioner is involved in carrying on any business, trade or commerce. ”

In the case of the assessee the objects of the society are charitable, to supervise, control and manage the dharamshala and to carry on other charitable works with the consent of the members for the benefit of general public. There is no motive to make profit out of the society. The objects of the society provide clearly that income of the society if any is to be used for the objects of the society and no portion thereof is to be transferred to the members directly or indirectly. Further the members are also barred from being appointed to any salaried office of the society.

In regard thereof, no activity being carried in the nature of trade, commerce or business whereas there is no profit motive in providing the facility of dharamshala. The donations received are voluntary in nature and covers only part of the electricity and cleaning charges used by the concerned person.

In regard thereof it is respectfully prayed that the Id. CIT(A) erred in holding the assessee to be a commercial venture and the order of the CIT(A) ought to be set aside.

Without prejudice to the above, the second proviso provides that first proviso will not be applicable in case the aggregate value of the receipts from such activities referred to therein is twenty-five lakh rupees or less in the previous year. The amount alleged to be linked towards booking, electricity and cleaning charges by the AO in aggregate is much less than this prescribed limit as stated below:

<i>Assessment year</i>	<i>Donation alleged towards booking and maintenance</i>
<i>2008-09</i>	<i>Rs. 3,64,202</i>
<i>2009-10</i>	<i>Rs. 6,56,711</i>
<i>2010-11</i>	<i>Rs. 4,63,144</i>
<i>2012-13</i>	<i>Rs. 4,40,146</i>
<i>2014-15</i>	<i>Not dealt by the AO. Denied exemption only on the basis of absence of registration certificate in physical form.</i>

In regard thereof it is respectfully prayed that the Id. CIT(A) erred in holding the assessee to be a commercial venture and the order of the CIT(A) ought to be set aside.

Ground of Appeal no. 3 : *Notice issued u/s 148 and the reassessment proceedings u/s 147 for the AY 2008-09 and 2009-10 are without jurisdiction, void and bad in law*

Without prejudice to the above, for the AY 2008-09 and AY 2009-10, reassessment proceedings have been initiated u/s 147 which provides for reopening of assessment as per procedure prescribed where the Assessing Officer has reason to believe that income has escaped assessment.

In the present case, the reasons to believe furnished by the AO are that the assessee has not produced any physical registration document u/s 12A/12AA and therefore it is not registered the aforesaid section.

In this regard, it is submitted that the accepted position of the department, as demonstrated supra, had been that the assessee is deemed registered u/s 12A/12AA and therefore, the reasons to believe supplied by the AO are nothing but mere change of opinion. The hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd [2010] 320 ITR 561 (SC) has held that mere change of opinion cannot per se be reason to reopen assessment. Therefore, the impugned assessment orders are without jurisdiction and ought to be set aside.

Further, the procedure laid out for issue of notice u/s 148 for re-opening of assessment prescribes that reasons to believe must be recorded and dated before issue of the notice u/s 148, whereas, in the present case, the reasons to believe had not been recorded before the issue of notice as is evidenced by the copy of order sheet (refer page no. 63-66 of paper book) and the copy of reasons furnished by the AO are also not dated (refer pg. no. 67 of paper book). [Reliance in this regard is placed on the decision of the hon'ble Delhi HC in the case of CIT v. Atul Jain [2008] 299 ITR 383 (Delhi)].

In regard thereof it is respectfully prayed that the assessment proceedings u/s 147 are without jurisdiction and the order of the CIT(A) upholding the assessment order ought to be set aside.

Ground of Appeal no. 13 : The assessee being taxed at wrong rates of tax

Consequential.

Ground of Appeal no. 12 and 15 : General

Ground of Appeal no. 14 : Consequential

Thus, it is respectfully prayed to your Honour, in light of aforesaid submissions, to allow the exemption u/s 11 and delete the impugned additions upheld by the CIT(A).”

7. On the contrary, learned DR opposed these submissions and supported the orders of authorities below. Learned Sr. DR vehemently argued that it was incumbent upon assessee to furnish the certificate of Registration u/s 12A of the Act. He contended that for claiming exemption u/s 11 and benefit of Section 12 of the Act, the assessee is required to get itself registered u/s 12 of the Act. He contended that merely making of an application is not sufficient for getting exemption u/s 11 and 12 of the Act. Moreover, the assessee failed to produce copy of application and other relevant supporting evidences. Therefore, he submitted that the authorities below were justified in rejecting the claim of the assessee. He further submitted that the case laws as relied by the assessee are distinguishable and as such are not applicable on the facts of the present case.

8. Learned counsel for the assessee in rejoinder pointed out that the application was made way back in the year 1989. He submitted that the assessee had filed

correspondence that took place between the Department and assessee. He submitted that the learned CIT(Appeals) recorded this point in the impugned order. He submitted that it is incorrect to state that the case laws as relied by the assessee are not applicable on the facts of the present case. He further contended that return of the assessee was processed and the claim of exemption was accepted by the Revenue itself from assessment year 2000-01 to 2009-10. He further contended that vide letter dated 26.02.2015 the assessee yet again approached the learned CIT(Exemption) requesting him to supply copy of registration as sought vide application dated 3.11.1989, but of no avail. He contended that once application is made and it is not rejected by the Competent Authority, it would be presumed that necessary approval was granted. He contended that law did not envisage at the relevant time that the Competent Authority would issue a certificate of registration. Therefore, making of an application under the prescribed rules, was sufficient for claiming exemption u/s 10 of the Income-tax Act.

9. I have heard rival submissions and perused the material available on record. The contention of the assessee that it had filed an application seeking registration u/s 12A of the Act on 3.11.1989 appears to be true. It is seen that assessee has filed letter dated 08.06.1999 issued by the Income-tax Officer, Head Quarters (Technical) for Commissioner of Income-tax, Panchkula, calling upon the assessee

to appear and explain the existence of the institution and genuineness of its activities. Another letter was issued on 6.7.1999. In response to the said letter the assessee filed its response on 13.7.1999. It is also seen that a letter dated 16.3.1999 was issued by the Income-tax Officer, Ward-1, Hisar regarding claim of registration u/s 12A of the Act. Further, it is seen that vide letter dated 25.6.2014 the assessee has reminded the Revenue Authority regarding granting of registration. I find that the claim of the assessee was disallowed purely on the basis that the assessee was not granted registration u/s 12A of the Act. It would be appropriate to reproduce the relevant sections 12 & 12A of the Act for the sake of clarity:

“[Income of trusts or institutions from contributions.

12. Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.]

[Conditions as to registration of trusts, etc.

12A. The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the [Chief Commissioner or Commissioner] before the 1st day of

July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later:

Provided that the [Chief Commissioner or Commissioner] may, in his discretion, admit an application for the registration of any trust or institution after the expiry of the period aforesaid;

Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds twenty-five thousand rupees in any previous year, the account of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.]”

10. It is noticed that the law on this issue further undergone change vide Finance (No. 2) Act, 1996, thereby a new provision was inserted. Section 12AA that prescribed the procedure for registration u/s 12A of the Act. For the sake of clarity section 12AA of the Act is reproduced below.

“Procedure for registration.

*12AA. (1) The [***] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) of section 12A, shall—*

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to

register the trust or institution,

and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

[(1A) All applications, pending before the Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Commissioner and the Commissioner may proceed with such applications under that subsection from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (b) of subsection (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) of section 12A.]”

11. The Revenue has not disputed the fact regarding issuance of the letters dated 08.06.1999, 6.7.1999 and 16.3.1999. Therefore, it can be safely inferred that application seeking registration u/s 12A was pending before the Competent Authority on 6.7.1999. It is also noticed that in response to the letter dated 6.7.1999 the assessee filed a letter dated 13.7.1999. It goes to demonstrate in unequivocal terms that the application of the assessee was pending consideration before the learned Commissioner at that point of time. As per sub-section (1A) of Section 12AA, all applications pending before the Competent Authority at relevant time stood transferred to CIT(Exemption), who was required to pass a formal order

of refusal or granting of registration within six months. However, in the case in hand, no such action is brought to my notice.

12. Learned counsel for the assessee insisted that in the absence of any order of refusal of registration by the Competent Authority, the assessee trust may be treated as deemed to have been registered u/s 12AA of the Act. In support of this deposition learned counsel relied on various case laws.

13. Learned counsel for the assessee relied on the judgment of Hon'ble Supreme Court rendered in the case of CIT Vs. Society for Promotion of Education Adventure Sports and Conservation of Environment (2016) 382 ITR 6 (SC). Reliance was made on the judgment of Hon'ble Allahabad High Court in the case of Society for Promotion of Education Adventure Sports and Conservation of Environment Vs. CIT (2015) 372 ITR 222.

14. Further, learned counsel for the assessee placed reliance on the following case laws:

- a) Director of Income Tax (Exemptions) Vs. St. Ann's Education Society (2020) 425 ITR 642 (Kar.)
- b) CIT Vs. TBI Education Trust (2018) 257 Taxman 355 (Ker.)
- c) CIT Vs. Sahitya Sadawart Samiti Jaipur (2017) 396 iTR 46 (Raj.)
- d) Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham Trust Vs. CIT (2007) 111 TTJ (Delhi) (SB) 424/17 SOT 281 (Delhi)(SB)
- e) Sardari Lal Oberai Memorial Charitable Trust v. ITO (2005) 3 SOT 229

f) Sambandh Organisation v. CIT (2006) 156 Taxman 183 (Delhi) (Mag.)

15. Admittedly Revenue has not placed any formal order by the Competent Authority regarding refusal of registration. The Revenue has also not rebutted the fact that assessee was allowed claim of exemption up to assessment year 2009-10. In the light of the undisputed fact that the application of the assessee was pending consideration as on 6.7.1999 and no formal order of rejection or grant of registration is available on record, it is to be decided whether in view of the case laws and provision of law, assessee can be treated as deemed to have been registered u/s 12AA and more particularly, under the peculiarity of facts of the present case.

16. In the case of Society for Promotion of Education Adventure Sports and Conservation of Environment Vs. CIT (2015) 372 ITR 222 (All), the Division Bench of the Hon'ble Allahabad High Court held that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be a deemed grant of registration, by observing as under:

“Considering the pros and cons of the two views, we are of the opinion that by far the better interpretation would be to hold that the effect of non-consideration of the application for registration within the time fixed by section 12AA(2) would be a deemed grant of registration. We do not find any good reason to make the assessee suffer merely because the Income-tax

Department is not able to keep its officers under check and control, so as to take timely decisions in such simple matters such as consideration of applications for registration even within the large six month period provided by section 12AA(2) of the Act.

We accordingly, direct the respondent, subject to any order which may be passed under section 12AA(3), to treat the petitioner society as an institution duly approved and registered under section 12AA and to recomputed its income by applying the provision of section 11 of the Act. Accordingly, a formal certificate of approval will be issued forthwith to the petitioner by respondent No. 2”

17. It is pertinent to note here that the decision of the Division Bench in the case of Promotion of Education Adventure Sports and Conservation of Environment (supra) was overruled by the judgment of the Full Bench of the same Hon’ble Allahabad High Court rendered in the case of CIT Vs. Muzafar Nagar Development Authority (2015) 372 ITR 209 (FB) by observing that the Division Bench in the case of Promotion of Education Adventure Sports and Conservation of Environment (supra) had not laid down the correct law position.

18. However, the Hon’ble Supreme Court in the case of CIT Vs. Society for Promotion of Education Adventure Sports and Conservation of Environment (2016) 382 ITR 6 (supra) approved the decision of the Division Bench of the Hon’ble Allahabad High Court in the case of Society for Promotion of Education Adventure Sports and Conservation of Environment (supra), by observing as under:

“There is no appearance on behalf of the sole respondent despite service of notice and adjournment sought for on a couple of occasions earlier.

The short issue is with regard to the deemed registration of an application under section 12AA of the Income-tax Act, 1961. The High Court has taken the view that once an application is made under the said provision and in case the same is not responded to within six months, it would be taken that the application is registered under the provision.

The learned Additional Solicitor General appearing for the appellants, has raised an apprehension that in the case of the respondent, since the date of application was of February 24,2003, at the worst, the same would operate only after six months from the date of the application.”

We see no basis for such an apprehension since that is the only logical sense in which the judgment could be understood. Therefore, in order to disabuse any apprehension, we make it clear that the registration of the application under section 12AA of the Income-tax Act in the case of the respondent shall take effect from August 24,2003.”

19. In the present case application for registration was made way back in the year 1989 and after ten years the Competent Authority sought explanation regarding the application. Thereafter, claim of exemption was allowed for many years. All of sudden, the Officer wakes up out of slumber, issues notices for reopening of assessment purely on the ground that the assessee could not furnish the requisite certificate of registration u/s 12AA of the Act and proceeded to make assessment. I am conscious of fact, there are divergent views on the issue of deemed registration amongst the Hon'ble High Courts of Allahabad, Madras, Karnataka, Rajasthan and Kerala. The Hon'ble High Court of Karnataka, Rajasthan

and Kerala have ruled in favour of the assessee on the other hand Hon'ble High Courts of Gujrat, Madras and Full Bench of Hon'ble Allahabad High Court have ruled against the assessee. Hence, the issue in hand is debatable and two views are possible. The Hon'ble Apex court however affirmed the decision of the Hon'ble Division Bench of Allahabad High Court in the case of Society for Promotion of Education Adventure Sports and Conservation of Environment (supra) by declaring that the registration of the application under section 12AA of the Act shall be with effect from 24.08.2003. It is seen that the case of the assessee stands at better footing as in the present case the Revenue itself has been treating the income of the assessee as exempt treating the assessee as a charitable society. Under these peculiarity of facts and circumstances and respectfully following the judgment of Hon'ble Supreme Court rendered in the case of Society for Promotion of Education Adventure Sports and Conservation of Environment (supra), I hereby hold that action of the Assessing Officer for not treating the assessee society eligible for exemption is not justified under the facts and circumstances of the present case. Therefore, I direct the Assessing Officer to give benefit available u/s 11 and 12 of the Act. Before parting, it is clarified that this order would not preclude the Revenue Authorities from tracing the order, if any, passed in respect of application dated 3.11.1989 and take necessary action as prescribed under the law. The grounds raised in the appeal are allowed.

20. Hence, the appeal of the assessee is allowed in the terms indicated hereinabove.

ITA No. 5274/Del/2019 (A.Y. 2009-10):

21. In ITA no. 5274/Del/2019 for A.Y. 2009-10, the assessee has taken following grounds of appeal:

“1. That the orders of the Authorities below CIT(A)Hisar and that of the Assessing officer ITO(Exemption) Rohtak are liable to be quashed, being arbitrary, illegal, without jurisdiction and justification so far as impugned and additions as being sustained are concerned.

2. That the Ld. CIT (A) appeal was wrong in sustaining an arbitrary and illegal action' of the Assessing officer ITO (exemption) Rohtak, in initiating the reassessment proceedings u/s 147 against the appellant deemed exempted public charitable society in order to hold the same being non exempted/unregistered entity and as such the same is liable to be quashed being, arbitrary, illegal, without jurisdiction and any justification / reasons.

3. That the Learned CIT (A) was not justified in brushing aside the contention of the appellant that the A.O. does not have jurisdiction over the appellant to issue notice u/s 148 after four years and initiating the reassessment proceedings u/s 147 of the Act, without any basis, reasons or material or record, specifically when all material facts and informations were on record as adduced by the appellant assessee at the time of processing/assessment. In as much as, the action of reopening/reassessment was initiated at the instant of Audit to the action law may not permit for that reason also the orders requires to be quashed.

4. That the Ld. CIT (A) erred in holding that the A.O. ITO (exemption) is vested with relevant jurisdiction under the provisions of Income Tax Act 1961 to reassess the appellant deemed exempted society as an unexempted/unregistered one by merely rejecting the contentions of the appellant and holding the same being non exempted charitable society.

5. *That as per the provisions of the Income Tax Act, Income Tax authorities can exercise powers and functions conferred on, or, as the case may be assigned to such authority by or under the Act. Since in the instant case the decision of holding public charitable society being exempted or not exempted only vests with CIT(exemption) only for that reason also the impugned orders of the authorities below i.e. CIT (A) and that of A.O. ITO (exemption) Rohtak deserves to be annulled.*
6. *That the Ld. CIT (A) was also wrong in sustaining wrongly the self assumed authority jurisdiction for holding deemed exempted society as a non exempted one, since such authority vests with CIT (exemption) only for that reason also the order deserves to be annulled and the appellant society requires to be assessed as a deemed exempted society as before since AY 2000-01 till AY 2009-10 and consistency requires to be maintained by all means.*
7. *That the authorities below Ld. CIT (A) HISAR/LDH and A.O. ITO (exemption) Rohtak were absolutely wrong is not appreciating that the appellant society performed all which were required and prescribed to obtain registration/ exemptions u/s 12A/12AA of the Act. that is filing of form no 10 within the time prescribed under the Act and furnishing all relevant papers through AO, before concerned CIT(S)/ Panchkula as well as CIT (exemption) Chandigarh as prescribed and as directed from time to time and also by sending repeated reminders to procure the exemption certificate in physical form, but surprisingly the same was not received till date, nor any order of rejection of the application was ever communicated or sent to the appellant assessee, though the same is mandatory to be sent/served on the appellant assessee within six months from the date of application and not thereafter under the provisions of section 12AA of the Act. Accordingly, as such, the appellant society deserves to be assessed as deemed exempted entity as before since(AY 2000-01 till AY 2009-10) and consistency requires not to be disturbed.*
8. *That as such the authority below CIT (A) Hisar/ LDH was wrong in sustaining the finding of the A.O. ITO (exemption) Rohtak, that the appellant charitable society do not fulfill the conditions for claiming deduction u/s 11 of the IT Act 1961 without appreciating that all the conditions for the purpose stand fulfilled as mandate under the provisions of the Act. As such the orders require to be quashed.*
9. *That the Ld. CIT (A) as well as A.O. ITO exemption also misdirected themselves in not following the law laid down by the Allahabad High Court in the case "Society for The Promotion of Education V/S CIT(2015)372 ITR*

222 A11 and the Honourable Apex Court in the case “CIT V/S Kanpur society for the promotion of Education(2016) 67 Taxman.com264 S.C. and denied the status of deemed charitable society, by narrating wrong facts action being bad in law and void ab- initio requires to be annulled.

10. That the authorities below were also wrong and misdirected themselves by holding that activities of the society were not charitable and was that of commercial nature, contrary to the facts, assuming the donations of paltry sums received as voluntarily donations against use of Dharamshala hall for Condolence, Meetings like Rasam Pagrees, Shok Sabhas and other ceremonial social functions and gatherings etc. and assuming notional ly that the donations received were similar to the charges as received by owners of banquet hall, findings being perverse requires to be annulled, since no normal person can believe in this modem age that a commercial banquet hall can be made available with petty sums/donations ranging from Rs.100 to Rs. 1100 or as per the wishes of the donors and so on from which even the Electric expenses are not met.

11. That the Ld. CIT (A) Hisar was wrong in sustaining the action of A.O. ITO (exemption) Rohtak in holding that the purpose of society being not a charitable purpose, in spite of the fact that maintaining Dharamshala/ Inn/ Sarai for any public ceremonial purpose like Condolence meetings (RassamPagdi, Shok Sabhas) and other social ceremonies etc. for the public at large which in itself certainly is a charitable purpose. The A.O. ITO (exemption) has no authority to interpret the purpose of the registered society in its own arbitrary way as such the impugned order being bad in law deserves to be modified being without jurisdiction.

12. That the authority below CIT (A) Hisar further erred in sustaining the arbitrary reassessment and wrongly determined additions, excess over receipt and expenses as income of the deemed charitable society at Rs.767320/- for the AY 2009-10 against the originally returned and assessed income of the said society at nil contrary to the law and facts of the case.

13. That the Authorities below CIT(A) as well as ITO(exemption) were also wrong in assessing the deemed exempted society at the maximum marginal rate as an AOP without appreciating that excess receipt over expenses were never distributed among the members and was always used for charitable purposes of the society as prescribed under the provisions of the Act.

14. That the authorities below were also grossly erred in opining and directing for initiation of penal proceedings u/s 271 (1)(c) of the Act against

the appellant, action being bad in law requires to be set aside.

15. The order of the authorities below are also liable to be quashed being conjectural and not being a speaking order.”

22. There is no dispute that the facts of the case and the grounds of appeal taken by the assessee in ITA no. 5274/Del/2019 for A.Y. 2009-10 are similar to ITA no. 5273/Del/2019 for A.Y. 2008-09, excepting figure of addition. The learned representatives of the parties have also taken the same arguments as were raised in ITA no. 5273/Del/2019 (A.Y. 2008-09). In ITA no. 5273/Del/2019, I have directed the Assessing Officer to give benefit available u/s 11 and 12 of the Act to the assessee. Facts and circumstances of the case being identical in both the assessment years, the finding given in ITA no. 5273/Del/2019 would also apply mutatis mutandis in the present appeal as well. Accordingly, for the very same reasons as given for A.Y. 2008-09, herein also I hold that the Assessing Officer was not justified in not treating the assessee society eligible for exemption U/s 11 & 12 of the Act. I direct the Assessing Officer to give benefit available u/s 11 and 12 of the Act to the assessee. Grounds of appeal raised in the appeal are allowed.

23. Assessee's appeal is allowed in terms as indicated in para 19 above .

ITA No. 5275/Del/2019 (A.Y. 2010-11):

21. In ITA no. 5275/Del/2019 for A.Y. 2010-11, the assessee has taken following grounds of appeal:

- “1. That the orders of the Authorities below CIT(A)Hisar and that of the Assessing officer ITO(Exemption) Rohtak are liable to be quashed, being arbitrary, illegal, without jurisdiction and justification so far as impugned and additions as being sustained are concerned.
2. That the Ld. CIT (A) erred in holding that the A.O. ITO (exemption) is vested with relevant jurisdiction under the provisions of Income Tax Act 1961 to assess the appellant deemed exempted society as an unexempted/ unregistered one by merely rejecting the contentions of the appellant and holding the same being non exempted charitable society.
3. That as per the provisions of the Income Tax Act, Income Tax authorities can exercise powers and functions conferred on, or, as the case may be assigned to such authority by or under the Act. Since in the instant case the decision of holding public charitable society being exempted or not exempted only vests with CIT(exemption) only for that reason also the impugned orders of the authorities below i.e. CIT (A) and that of A.O. ITO (exemption) Rohtak deserves to be annulled.
4. That the Ld. CIT (A) was also wrong in sustaining wrongly the self assumed jurisdiction for holding deemed exempted society as an non exempted one, since such authority vests with CIT (exemption) only for that reason also the order deserves to be annulled and the appellant society requires to be assessed as a deemed exempted society as before since AY 2000-01 till AY 2009-10 and consistency requires to be maintained by all means.
5. That the authorities below Ld. CIT (A) HISAR and A.O. ITO (exemption) Rohtak were absolutely wrong is not appreciating that the appellant society performed all which were required and prescribed to obtain registration/ exemptions u/s 12A/12AA of the Act. that is filing of form no 10 within the time prescribed under the Act and furnishing all relevant papers through AO, before concerned CIT(S)/ Panchkula as well as CIT (exemption) Chandigarh as prescribed and as directed from time to time and also by sending repeated reminders to procure the exemption certificate in physical form, but surprisingly the same was not received till date, nor any order of rejection of the application was ever communicated or sent to the appellant assessee, though the same is mandatory to be sent/served on the appellant assessee within six months from the date of application and not thereafter under the provisions of section 12AA of the Act. Accordingly, as such, the appellant society deserves to be assessed as deemed exempted entity as before since(AY 2000-01 till AY 2009-10) and

consistency requires not to be disturbed.

6. *That as such the authority below CIT (A) Hisar/ LDH was wrong in sustaining the finding of the A.O. ITO (exemption) Rohtak, that the appellant charitable society do not fulfill the conditions for claiming deduction u/s 11 of the IT Act 1961 without appreciating that all the conditions for the purpose stand fulfilled as mandate under the provisions of the Act. As such the orders require to be quashed.*

7. *That the Ld. CIT (A) as well as A.O. ITO exemption also misdirected themselves in not following the law laid down by the Allahabad High Court in the case "Society for The Promotion of Education V/S CIT(2015)372 ITR 222 A11 and the Honourable Apex Court in the case "CIT V/S Kanpur society for the promotion of Education(2016) 67 Taxman.com264 S.C. and denied the status of deemed charitable society, by narrating wrong facts action being bad in law and void ab- initio requires to be annulled.*

8. *That the authorities below were also wrong and misdirected themselves by holding that activities of the society were not charitable and was that of commercial nature, contrary to the facts, assuming the donations of paltry sums received as voluntarily donations against use of Dharamshala hall for Condolence, Meetings like Rasam Pagrees, Shok Sabhas and other ceremonial social functions and gatherings etc. and assuming notional ly that the donations received were similar to the charges as received by owners of banquet hall, findings being perverse requires to be annulled, since no normal person can believe in this modern age that a commercial banquet hall can be made available with petty sums/donations ranging from Rs.100 to Rs. 1100 or as per the wishes of the donors and so on from which even the Electric expenses are not met.*

9. *That the Ld. CIT (A) Hisar was wrong in sustaining the action of A.O. ITO (exemption) Rohtak in holding that the purpose of society being not a charitable purpose, in spite of the fact that maintaining Dharamshala/ Inn/ Sarai for any public ceremonial purpose like Condolence meetings (RassamPagdi, Shok Sabhas) and other social ceremonies etc. for the public at large which in itself certainly is a charitable purpose. The A.O. ITO (exemption) has no authority to interpret the purpose of the registered society in its own arbitrary way as such the impugned order being bad in law deserves to be modified being without jurisdiction.*

10. *That the authority below CIT (A) Hisar further erred in sustaining the arbitrary reassessment and wrongly determined additions, excess over receipt and expenses as income of the deemed charitable society at*

Rs.1127795/- for the AY 2010-11 against the originally returned and assessed income of the said society at nil contrary to the law and facts of the case.

11. That the Authorities below CIT(A) as well as ITO(exemption) were also wrong in assessing the deemed exempted society at the maximum marginal rate as an AOP without appreciating that excess receipt over expenses were never distributed among the members and was always used for charitable purposes of the society as prescribed under the provisions of the Act.

12. That the authorities below were also grossly erred in opining and directing for initiation of penal proceedings u/s 271 (1)(c) of the Act against the appellant, action being bad in law requires to be set aside.

13. The order of the authorities below are also liable to be quashed being conjectural and not being a speaking order.”

22. Identical grounds as raised in ITA no. 5275/Del/2019 (reproduced above), have been taken in ITA no. 5276/Del/2019 (A.Y. 2012-13) and 5277/Del/2019 (A.Y. 2014-15), excepting difference in figure of addition. In A.Y. 2012-13 the addition made is Rs. 10,99,430/- as against the nil returned income; whereas in A.Y. 2014-15 the addition made is Rs. 12,49,170/- as against the nil returned income. Therefore, it is not necessary to reproduce grounds of appeal for these assessment years.

ITA No. 291/Del/2020 (A.Y. 2016-17):

23. In ITA no. 291/Del/2020 for A.Y. 2016-17, the assessee has taken following grounds of appeal:

“1. That the orders of the Authorities below CIT(A)Hisar and that of the Assessing officer ITO(Exemption) Rohtak are liable to be quashed, being

arbitrary, illegal, without jurisdiction and justification so far as impugned and additions as being sustained are concerned.

2. *That the Ld. CIT (A) erred in holding that the A.O. ITO (exemption) is vested with relevant jurisdiction under the provisions of Income Tax Act 1961 to assess the appellant deemed exempted society as an unexempted/ unregistered one by merely rejecting the contentions of the appellant and holding the same being non exempted charitable society.*

3. *That as per the provisions of the Income Tax Act, Income Tax authorities can exercise powers and functions conferred on, or, as the case may be assigned to such authority by or under the Act. Since in the instant case the decision of holding public charitable society being exempted or not exempted only vests with CIT(exemption) only for that reason also the impugned orders of the authorities below i.e. CIT (A) and that of A.O. ITO (exemption) Rohtak deserves to be annulled.*

4. *That the Ld. CIT (A) was also wrong in sustaining wrongly the self assumed authority jurisdiction for holding deemed exempted society as a non exempted one, since such authority vests with CIT (exemption) only for that reason also the order deserves to be annulled and the appellant society requires to be assessed as a deemed exempted society as before since AY 2000-01 till AY 2009-10 and thereafter, as such the consistency requires to be maintained by all means.*

5. *That the authorities below Ld. CIT (A) HISAR/LDH and A.O. ITO (exemption) Rohtak were absolutely wrong is not appreciating that the appellant society performed all which were required and prescribed to obtain registration/ exemptions u/s 12A/12AA of the Act. that is filing of form no 10 within the time prescribed under the Act and furnishing all relevant papers through AO, before concerned CIT(S)/ Panchkula as well as CIT (exemption) Chandigarh as prescribed and as directed from time to time and also by sending repeated reminders to procure the exemption certificate in physical form, but surprisingly the same was not received till date, nor any order of rejection of the application was ever communicated or sent to the appellant assessee, though the same is mandatory to be sent/served on the appellant assessee within six months from the date of application and not thereafter under the provisions of section 12AA of the Act. Accordingly, as such, the appellant society deserves to be assessed as deemed exempted entity as before since(AY 2000-01 till AY 2009-10) and subsequently and consistency requires not to be disturbed.*

6. *That as such the authority below CIT (A) Hisar/ LDH was wrong in*

sustaining the finding of the A.O. ITO (exemption) Rohtak, that the appellant charitable society do not fulfill the conditions for claiming deduction u/s 11 of the IT Act 1961 without appreciating that all the conditions for the purpose stand fulfilled as mandate under the provisions of the Act. As such the orders require to be quashed.

7. *That the Ld. CIT (A) as well as A.O. ITO exemption also misdirected themselves in not following the law laid down by the Allahabad High Court in the case "Society for The Promotion of Education V/S CIT(2015)372 ITR 222 A11 and the Honourable Apex Court in the case "CIT V/S Kanpur society for the prom. of Education(2016) 382 ITR SC 6 and denied the status of deemed charitable society, by narrating wrong facts, action being bad in law and void ab- initio requires to be annulled.*

8. *That the worthy CIT(A) was also wrong and misdirected himself by holding suo-motto, even without any grounds of appeal that activities of the society were not charitable and were that of commercial nature, contrary to the facts, assuming the donations of paltry sums received voluntarily against use of Dharamshala hall for Condolence, Meetings like Rasam Pagrees, Shok Sabhas and other ceremonial social functions and gatherings etc. and assuming notionally that the donations received were similar to the charges as received by owners of banquet hall, findings being perverse requires to be annulled, since no normal person can believe in this modern age that a commercial banquet hall can be made available with petty sums/donations ranging from Rs.100 to Rs. 1100 or as per the wishes of the donors and so on from which even the Electric expenses are not met.*

9. *That the authority below CIT (A) Hisar/LDH further erred in sustaining the arbitrary and wrongly determined additions/income of the deemed charitable society at Rs.713,620/- for the AY 2016-17 against the originally returned and assessed income of the said society at nil contrary to the law and facts of the case.*

10. *That the authorities below were also grossly erred in opining and directing for initiation of penal proceedings u/s 271 (1)(c) of the Act against the appellant, action being bad in law requires to be set aside.*

13. *The order of the authorities below are also liable to be quashed being conjectural and not being a speaking order."*

24. It is not disputed that the sole effective ground involved in all these appeals is whether for the assessment years in question the assessee is eligible for

exemption U/s 11 and 12 of the Act. The learned representatives of the parties have also taken the same arguments as raised in ITA no. 5273/Del/2019 (A.Y. 2008-09). In ITA no. 5273/Del/2019, I have directed the Assessing Officer to give benefit available u/s 11 and 12 of the Act to the assessee. Facts and circumstances of the case being identical in all the appeals, for the detailed reasons given in ITA no. 5273/Del/2019, I hold that the Assessing Officer was not justified in not giving benefit of 11 & 12 of the Act. Hence, orders of the authorities below for all these assessment years are set aside. I direct the Assessing Officer to give benefit available u/s 11 and 12 of the Act to the assessee.

25. In the result, all the appeals stand allowed in terms as indicated in para 19 above.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 23/03/2022.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI