

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI

**BEFORE SHRIANIL CHATURVEDI, ACCOUNTANT MEMBER**  
AND  
**SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**  
(Through Video Conferencing)

ITA No. 438/Del/2021  
(Assessment Year: 2021-22)

Pryas Ek Pahel,  
CA, Mr.Sahu, M Sahu &  
Associates, CA, H. No. 651, FF,  
Sec-10A, Near Meenakshi Public  
School, Gurgaon  
PAN: AADTP0780F  
(Appellant)

Vs. CIT(E),  
Chandigarh

(Respondent)

Assessee by :	Shri MR Sahu, CA
Revenue by:	Shri Vipul Kashyap, Sr. DR
Date of Hearing	07/03/2022
Date of pronouncement	21/03/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The present appeal is preferred by the Assessee/Society Appellant herein, against the order dated 08.03.2021 impugned herein passed by CIT(E), Chandigarh (hereinafter called in short as the "Id. Commissioner"), u/s 12AA(1)(b)(ii) of the Income-tax Act, 1961 (in short "the Act") for the Assessment Year 2021-22, whereby the application for registration u/s 12AA of the Act was rejected.

2. Brief facts of the case are that the Appellant/Society had filed an application on 17.07.2020 for registration u/s 12AA(1)(b)(ii) of the Act before the Ld. Commissioner, which was taken into consideration by the Ld. Commissioner, while affording opportunity vide letter dated 19<sup>th</sup> August 2020 whereby the Appellant was asked to provide certain documents/clarification by 10.09.2020, in response to which the Appellant filed the reply along with documents, to the query raised through ITBA portal.

Thereafter, on consideration of the same, the application of the appellant was dismissed by the Id. Commissioner mainly on the ground *"That the appellant for the Assessment Year 2018-19 corresponding to FY 2017-18 has not filed its ITR and therefore no tax has been paid. The applicant should have added the amount shown against corpus fund during the year into its income and then it should have filed the correct ITR and paid taxes. Unless the legitimate tax against the income as discussed above is paid, the application for registration u/s 12AA of the Act cannot be considered. The Appellant has illegally taken the benefit of provisions of income tax for getting tax exemption benefits and has tried to subvert income tax laws."*

3. Aggrieved by the order passed by the Id. Commissioner the appellant preferred the instant appeal which is under consideration before us.

4. Heard the parties and perused the material available on record. At the outset the Id. AR argued that as per judgments of the Hon'ble Apex Court and High Courts, the Id. Commissioner while considering the application for grant of registration u/s 12 of the Act, is supposed to consider the objects of the society/trust and genuineness of its activities but cannot go beyond the scope as

done in this case by the Ld. Commissioner. In support of its contention the Id. AR also relied upon the following judgments:-

- a. Ananda Social and Educational Trust  
(2020) 114 taxmann.com 693 (SC)
- b. CIT Vs. BKK Memorial Trust  
(2013) 29 Taxmann.com 286 (P&H)
- c. HarNihal Charitable Trust Vs. CIT(E)  
(2021) 131 taxmann.com 155 (Ch. ITAT)
- d. CIT(E) Vs. ShriShridiSaiDarbad Charitable Trust  
(2017) 81 Taxmann.com 49

5. On the contrary the Id.CIT DR refuted the claim of the Appellant and submitted that Appellant Society was created on 19<sup>th</sup> July 2016, however, the application was filed only on 17.07.2020 without seeking condonation of delay, hence, the applicant society cannot be given any undue benefit by granting a registration for the past period and even otherwise the Ld. Commissioner is at liberty as per the provisions of section 12 of the Act to consider all the relevant factual position of the case, in order to properly adjudicate the application filed.

6. Heard the parties and perused the material available on record. The Ld. Commissioner rejected the application u/s 12 AA of the Appellant on the sole ground *“that the Assessee has shown the corpus fund to the extent of Rs. 4 lacks in its balance sheet for the F.Y. 2017-18, which is the income of the applicant and thus, the applicant become liable to pay tax for that year. The applicant has not filed any income tax return for the Assessment Year 2018-19 and therefore, no tax has been paid. The applicant should have added the amount shown against the corpus fund during the year into its income and then it should have filed the correct ITR and paid tax. Unless the legitimate tax against the income as discussed above is paid, the application for registration u/s 12AA cannot be considered.”*

6.1 The Ld. Commissioner considered the tax liability qua corpus donation which was not an issue before the Id. Commissioner for determination and acted like an Assessing Officer, which is not permissible as held by the Hon'ble Punjab and Haryana High Court in the case of CIT , Rohtak Vs. BKK Memorial Trust (ITA No. 5/2012 decided on 16.10.2012){2013 (29) Taxmann.com 286 (P&H)} and therefore, in our considered view the sole ground of rejection of application for registration u/s 12AA of the Act by the Id. Commissioner is un-sustainable, thus the same is set aside.

6.2 It is well settled, as also noted by the Ld. Commissioner in its order, *that the provisions of section 12AA of the Act necessitate examination of two basic conditions for grant of registration u/s 12AA. The same include apart from the examination of the objects of the society, satisfaction of the competent authority in respect of genuineness of the activity as well particularly when the applicant is an ongoing entity.*

6.3 We find the Ld. Commissioner in order to appraise the activities and whether the same were in sync with the stated objects, accorded an opportunity vide notice dated 19.08.2020 by which the Assessee was requested to provide around 26 documents/ clarifications as mentioned in paragraph 5 of the order, by 10.09.2020. The appellant through ITBA portal replied the said queries and also filed relevant documents and the Ld. Commissioner placed the same on record and examined thoroughly qua objects and activities of the Appellant, as it clearly appears from the last part of para no. 5 of the order.

6.4 It is relevant to note here that though the Ld. Commissioner thoroughly examined the objects and activities of the Appellant

/Society however, in any part of its order neither discussed about the objects and activities of the appellant nor raised/mentioned any objection and even otherwise has not given any adverse findings qua object and activities of the Appellant which goes to show that the Ld. Commissioner found the objects and activities of society sync with the parameter of section 12AA of the Act and accepted in totality.

6.5 Even otherwise our attention was drawn by the Id. AR to the objects of the society, from where also it's clear that objects of the society are in sync with the parameters of section 12AA of the Act and even otherwise we do not find any material contrary against the object and activities of the society to controvert its claim.

7 Coming to the issue specifically raised by the Ld. CIT DR to the effect that the applicant society was created on 19<sup>th</sup> July 2016 whereas the application for registration u/s 12AA of the Act was filed on 17<sup>th</sup> July 2020 after four years of the creation of society and therefore, the application for registration u/s 12AA of the Act filed by the applicant was barred by limitation as well and without condoning the delay, the same cannot be considered. Even otherwise, the applicant cannot be given undue benefit from the date of creation and/or the past period of its operation.

7.1 In our considered view, the contention of the Id. DR is unsustainable because there is no limitation period prescribed for filing an application u/s 12AA of the Act and even otherwise the Assessee's application if is to be allowed then the registration can be granted from the date of application only and the applicant would be entitled to enjoy the benefits of the registration from the date of registration only i.e. the date of application but not otherwise for the period prior to that.

8 In cumulative effect, we are inclined to set aside the order passed by the Ld. CIT(E) and to direct the Ld. Commissioner to forthwith grant registration u/s 12AA of the Act to the Appellant herein, suffice to say the Ld. Commissioner shall at liberty to impose any condition(s) as per law while granting registration, hence ordered accordingly .

9 In the result, appeal filed by the appellant society stands allowed.

Order pronounced in the open court on 21/03/2022.

-Sd/-  
**(ANIL CHATURVEDI)**  
ACCOUNTANT MEMBER

-Sd/-  
**(N.K. CHOUDHRY)**  
JUDICIAL MEMBER

Dated:21/03/2022  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi