

**IN THE INCOME TAX APPELLATE TRIBUNAL,
PATNA BENCH, VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI A.T. VARKEY, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 311 & 312/Pat/2018
Assessment Year: 2018-19**

AMS EDUCATIONAL & WELFARE FOUNDATION		CIT(EXEMPTION), Patna
1 st Floor, Abdur Rahman Complex, Churipatti, Kishanganj - 855107, Bihar.	Vs.	
PAN: AAEAA4729P		
(Appellant)		(Respondent)

Present for:

Appellant by : Shri K.M. Mishra, Advocate (AR)

Respondent by : Shri Sanjay Mukherjee, CIT(DR)

Date of Hearing : 22.03.2022

Date of Pronouncement : 29.03.2022

ORDER

Per Girish Agrawal, Accountant Member:

Both the appeals by the assessee are arising out of different orders passed by Ld. CIT(Exemption), Patna vide Order No. ITBA/EXM/S/EXM-1/2018-19/1012780653(1) and Memo No. CIT (E)/Pat/12AA & 80G/Reg/04(23)2018-19/4525-29 both dated 03.10.2018 u/s 12AA and 80G(5)(vi) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') for the A.Y 2018-19.

2. The assessee is in appeal before this Tribunal on the following grounds:

ITA No.311/Pat/18 for A.Y 2018-19

1. For that the CIT had erred in rejecting application for grant of registration in view of the fact that the society has been created for charitable purpose and the aims and object noted in byelaws of the society demonstrate that it has been created only for charitable purpose.

2. For that the CIT Exemption has fail to appreciate the fact that the society has collected donation and detail of which has been supplied but due to non-consideration of the details adverse inference was drawn.

3. For that the CIT further erred in holding that the petitioner has no bill and voucher with regard to the expenses. The appellant had all bill and voucher and details and those were submitted for verification and examination to CIT.

4. For that the CIT further erred in holding that the assessee had not submitted details of benefices. The appellant had not only submitted details rather had explained expenses which were incurred by way of aid to poor and education to poor and orphaned.

5. For that the appellant society is entitled to get registration as the whole of the aims and object of the society is charitable and the expenditure as per profit and loss account also demonstrate that the expenditure were made on relief to poor, education etc.

6. For that, the CIT failed to appreciate that at the stage of granting registration only aims and object of the society is required to be examined not books of account and evidence.

7. For that any other ground may be urged at the time of hearing

8. For that, the ground herein above is not prejudicial to each others.

ITA No. 312/Pat/18 for the A.Y 2018-19

1. For that the order rejecting application is bad in laws because the appellant qualify for grant of registration.

2. For that the CIT has fail to appreciate that the appellant had received donation and subscription from known person which were expended wholly on charitable activities.

3. For that the appellant society fulfill the condition as laid down under section 80 G (5) as the activities of the society is wholly charitable and has been establish for providing relief to poor and imparting education to orphan without charging tuition fee.

4. For that the CIT erred in holding that the assessee had not provided details of beneficiaries as the full details of beneficiaries has been provided along with 'books of account wherein details of donation and subscription was separately accounted for.

5. For that any other ground may be urged at the time of hearing

6. For that, the ground herein above is not prejudicial to each others.

3. Shri K.M. Mishra, Advocate (AR) represented the assessee and Shri Sanjay Mukherjee, CIT (DR) represented the department.

4. Brief facts as culled out from records are that the assessee was established on 03.05.2015 as a society and registered under the Society Registration Act, 1860 vide Certificate No. 818 of 2015-16. The objects of the society are incorporated in para 4 of the Memorandum, which includes promotion of modern cultural, technical, medical, medical, dental, moral, scientific and vocational education for students of all religions, caste, creed & sex so as to raise their living and social standard enabling them to serve the nation as best as possible. The assessee had filed an application on 20.04.2018 in the prescribed Form No.10A before the Ld. CIT(E) for grant of registration u/s. 12AA of the Act and approval for exemption u/s. 80G(5) of the Act. The Ld. CIT(E) issued notice requiring the assessee to submit the relevant documents in support of its application which was attended by the authorized representative of the assessee who filed the written submissions and documents in support of its claim. On examination of the documents

available on record the Ld. CIT-E noted certain deficiencies about the genuineness of the activities of the assessee and rejected the application for granting of registration u/s. 12AA of the Act. The observations made by the Ld. CIT(E) in respect of deficiencies are reproduced as under:-

On examination of documents available on record the following deficiencies have been detected:-

(2) Genuineness, of activities: Under the heading 'Procedure for registration', the I.T. Act, 1961 provides u/s 12AA (b) that, "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"

(A) Keeping into consideration of the full adherence to the norms delineated in the above section of the Act, the materials available on record have been perused to examine the application on both the prescribed grounds i.e. (i) objects of Trust/Society and (ii) the genuineness of activities claimed. During the course of examination, it is found that the applicant in his audit report has claimed some activities as to have been performed in previous years, but he failed to produce/submit such documents (evidences) in support of his claimed activities that could establish its genuineness. Merely, mentioning few nomenclatures of social activities in the audit report could not be treated itself as a proper evidence for its performance too. In absence of cogent supporting documents (evidences) the claimed activities of the applicant could not be established beyond all doubts.

(B) It is natural that no charitable activity could be performed without spending some money. In reverse, during the course of examination, if amount spent against a claimed activity remains unverified, the performance of activity automatically becomes doubtful. Hence, it becomes natural and incidental to verify the expenses made against a particular activity for the purpose of examining its genuineness. During the course of examination it is found that the applicant has not submitted any bills or vouchers of the expenses made against the activities claimed.

Hence, the expenses claimed against the performance of activities remain unverified. Consequently and naturally, the claimed activities become doubtful.

(3) Details of Beneficiaries:- The applicant was asked vide questionnaire issued from this office to provide complete details of beneficiaries of the claimed activities but he failed to submit the same.

(4) Donation:- On perusal of Income and Expenditure account of the Society/Trust, it is apparent that the applicant is continuously receiving donations from various sources. The applicant was asked to submit/produce donation register and receipts vide questionnaire issued from this office, but he failed to submit the same. Hence, in absence of the above mentioned requirements the genuineness of the same remains unverified.

(5) In view of such, I am not satisfied about the genuineness of the activities of the Trust/Society as claimed and hence the application filled in form no. 10A for grant of registration u/s 12AA of the Income Tax Act, 1961 is hereby rejected.”

Aggrieved by rejection of application, now the assessee is before this Tribunal.

5. Shri K.M. Mishra, Advocate, Learned Counsel for the assessee placed on record the written submissions and took us through the paper book to demonstrate that all the required documents and evidences in support of the application were placed before the Ld. CIT(E) were before him for due consideration. He strongly objected on the observations made by the Ld. CIT(E) that “*it is natural and incidental to verify the expenses made against particular activity for the purpose of examining its genuineness*”. The Ld. Counsel further submitted that the action of the Ld. CIT(E) was not in accordance with law while giving observations that “*during the course of the examination it is found that the applicant has not submitted any bills or vouchers of the expenses made against the activities claimed. Hence, the expenses claimed against the performance of the activities remain unverified. Consequently*

and naturally the claimed activities become doubtful". The Ld. Counsel submitted that in respect of donations, the Ld. CIT(E) was wrong in holding that the applicant failed to submit/produce donation register and receipts, thereby holding that the genuineness of the donations remained unverified. To support the contentions made by the Ld. Counsel, he invited our attention to the submissions made before the Ld. CIT(E) vide pages 38-42 of the Paper Book (PB). From the said submissions, The Ld. Counsel of the assessee pointed out that details of donation and their purpose along with bank account copies were also furnished in the proceedings before the Ld. CIT(E). The Ld. Counsel also pointed out to the Annual Accounts, which were placed/filed before the Ld. CIT(E) for the relevant AY and the earlier years. The Ld. Counsel further submitted that at the stage of granting approval the Ld. CIT(E) could only verify the objects of the society and not the income received or expenditure incurred. The bills or vouchers of the expenditure cannot be examined at this stage. The enquiry u/s. 12AA/80G of the Act is limited to the aims and objects, which are incorporated in the bye laws of the society. Ld. Counsel placed reliance on the judgment of Hon'ble High Court of Karnataka in the case of Garden City Educational Trust [2011] 330 ITR 480 (Kar) dated 15.07.2009.

6. Per contra, Shri Sanjay Mukherjee, CIT (DR) vehemently argued and placed reliance on the observations of the Ld. CIT(E) in the order and supported the rejection of application filed by the assessee in this regard. Ld. CIT(DR) placed reliance on the judgment of Hon'ble High Court of Punjab & Haryana in the case of Savior Charitable Trust [2013] 35 taxmann.com 295 (P&H) dated 22.01.2013.

7. We have heard both the parties and perused the material on record including the judgments cited and gone through the paper book. From perusal of the written submissions made by the assessee before

the Ld. CIT(E), we note that they are dated 04.10.2018, 14.09.2018, but bears acknowledged stamp/seal of the office of the CIT(E), Patna which is dated 11.10.2018. It is noted that impugned order of the Ld. CIT(E) is dated 03.10.2018 whereas the submissions made and received by the O/o the CIT(E) are dated 11.10.2018. On a specific query by the Bench to the Ld. Counsel of the assessee on these dates, it was submitted by him that the impugned order of rejection of application was passed by the Ld. CIT(E) without considering the submissions made by the assessee for which the assessee should not be made to suffer.

8. In the present set of facts and circumstances and considering the material and the relevant documents on record, we find it fit and proper to set aside the matter to the file of the Ld. CIT(E) and to reconsider the application made by the assessee for grant of registration and approval u/s. 12AA/80G of the Act by taking into account the material which is already on record and to pass a fresh order in accordance with law. Needless to say that the assessee be given reasonable opportunity of being heard with liberty to file any further details/documents before the Ld. CIT(E) in support of its application for grant of registration or approval.

9. In the light of above observations and in the interest of justice and fair play, we set aside the impugned order and restore the matter back to the file of Ld. CIT(E) to re-consider the application made for registration u/s 12AA afresh by providing reasonable opportunity of being heard to the assessee. The assessee is also directed to be diligent and comply with the requirements as per law before the Ld. CIT(E) for expeditious disposal of the application of registration made u/s 12AA of the Act. Accordingly, appeal of the assessee is allowed for statistical purpose.

10. Appeal of the assessee vide ITA No. 312/Pat/2018 relates to rejection of application for approval u/s 80G of the Act against the order passed by Ld. CIT(E), Patna u/s 80G(vi) of the Act. The issue involved in this appeal is common to the one above wherein we have restored the matter back to the file of Ld. CIT(E) for re-consideration of the application made by the assessee. Since the finding and observations of Ld. CIT(E) are identical, we set aside the order of the Ld. CIT(E) by adopting the same view taken in the above appeal in ITA 311/Pat/2018 and restore the matter back to the file of Ld. CIT(E) for re-consideration of the application made by the assessee. Accordingly, appeal of the assessee is allowed for statistical purpose.

11. Before parting, we would like to draw the attention to the settled position of law that so far as granting of registration u/s 12AA of the Act is concerned, the jurisdiction of CIT(E) is only to verify the objects of the trust / institution and the genuineness of its activities, meaning thereby that he has to satisfy himself that the objects are charitable in nature and that the activities are being carried on or to be carried on are genuine, and nothing else. Application of fund could be a matter which would arise for consideration at later stage, i.e. at the stage of assessment by the Assessing Officer.

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

Order pronounced in the open court on 29.03.2022.

Sd/-
(A.T. VARKEY)
JUDICIAL MEMBER

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Kolkata, Dated:29.03.2022

*PP, Sr. P.S.

Copy to:

- The Appellant: AMS EDUCATIONAL & WELFARE FOUNDATION, 1st
Floor, Abdur Rahman Complex, Churipatti, Kishanganj-855107, Bihar.
2.The Respondent: CIT(Exemption), Patna.
3.The CIT, Concerned
4.The CIT (A) Concerned.
5. The DR Concerned Bench (ITAT Patna)

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By Order

Senior P.S