

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.17/Ind/2021
Assessment Year: 2019-20

AIC Prestige Inspire Foundation, Indore	<u>बनाम</u>	CIT, Exemption Bhopal
(Appellant / Assessee)	<u>/Vs.</u>	(Respondent/ Revenue)
PAN: AARCA1971A		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Ms. Simiran Bhullar, CIT-DR	
Date of Hearing	23.05.2022	
Date of Pronouncement	20.06.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal filed by the assessee is directed against the order dated 30.09.2020 of learned Commissioner of Income-Tax (Exemption), [**Ld. CIT(E)**], Bhopal u/s 12AA(1)(b)(ii) of the Income Tax Act 1961.

2. The assessee is a company incorporated u/s 8 of the Companies Act, 2013, established for various objects set out in the Memorandum of Association (MOA) filed to the Registrar of Companies which *inter alia* are to set up and run Atal Incubation Centres in partnership with Atal Innovation Mission, Niti Ayog, Govt. of India; encourage entrepreneurship and

innovations, etc. On 11.03.2019, the assessee filed first-application to the Ld. CIT(E) in Form No. 10A for grant of registration u/s 12AA of the Act but the Ld. CIT(E) rejected application vide first-order dated 27.09.2019 by making following observations:

- (i) Certain objects of the assessee [as mentioned in the order of Ld. CIT(E)] are commercial in nature and they are not covered under “charitable purpose” in terms of section 2(15).
- (ii) The assessee has not provided MOU or Agreement with Niti Ayog and accounts.
- (iii) There is a provision to share the benefits of the assessee-company among its members.
- (iv) The objects of assessee permit activities outside India.

The assessee amended its Memorandum of Association and Articles of Association under the Companies Act, 2013 and removed the objects for which the Ld. CIT(E) had raised objection. Thereafter, the assessee filed second-application on 20.01.2020 in Form No. 10A alongwith all required documents for grant of registration. However, vide second-order dated 30.09.2020, the Ld. CIT(E) has summarily rejected the second-application of the assessee by observing as under:

“The objects of the company claimed to set up and implement “Atal Incubation Centre (AIC)”. It is seen that the application for the grant of Registration u/s 12AA has already been rejected vide order dated 27.09.2020 (correct date is 27.09.2019). There has been no change in the object while making this application hence the present application is also rejected and the Registration u/s 12AA is refused.”

Feeling aggrieved by the aforesaid order dated 30.09.2020 of Ld. CIT(E), the assessee has filed present appeal and now before us.

3. The assessee has raised following grounds:

1. On the facts and circumstances of the case, the Ld. CIT (Exemption), Bhopal erred in rejecting registration of the foundation u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 by stating that the objects of the foundation were not changed from the original thus not genuine, which is wrong, illegal and unjustified.

2. The appellant runs incubation centre for start-up under the scheme of NITI Aayog and allied work which is a Charitable Object.

3. The appellant prays for the relief and request to grant registration under section 12AA of the I.T. Act 1961.

4. The appellant carves leave to add, alter or amend any grounds of appeal as and when the necessity and occasion arises.”

4. Ld. AR submitted that the Ld. CIT(E) has rejected the assessee's second-application dated 20.01.2020 on the sole reason that there is no change in the objects. The Ld. AR submitted that the fact is that the assessee had already omitted the objectionable objects before filing second-application and therefore the reasoning given by Ld. CIT(E) is far from truth. Ld. AR submitted that in fact the assessee had resolved all objections raised by Ld. CIT(E) in his first-order dated 27.09.2019. Although the Ld. AR made an elaborate submission to canvas as to how the assessee has made resolutions of all objections of Ld. CIT(E), we sum up the submissions of Ld. AR briefly as under:

(i) Objection No. 1 - Certain objects of the assessee [as mentioned in the order of Ld. CIT(E)] are commercial in nature and they are not covered under “charitable purpose” in terms of section 2(15):

Ld. AR submitted that although the objects noted by Ld. CIT(E) were helpful for the promotion of charitable objects of the assessee, yet the assessee removed those objects for the satisfaction of Ld. CIT(E). In the written Synopsis submitted before us, the Ld. AR has made a list of the objects which were objected to by Ld. CIT(E) and therefore “omitted” by the assessee. Further, drawing our attention to Page No. 94, 95, 116 and 117 of the Paper-Book, the Ld. AR vehemently submitted that on multiple occasions, the assessee had loudly brought it to the notice of Ld. CIT(E) that the objectionable objects have been removed. Ld. AR further submitted that the assessee is a company governed by its

parent law i.e. the Companies Act, 2013 and therefore it had to undergo a long-process of amending its Memorandum of Association so as to omit or amend the objects. Ld. AR submitted that the assessee has furnished a copy of amended Memorandum of Association, approved under Companies Act, 2013, to the Ld. CIT(E) and the same is also placed in the Paper-Book. Ld. AR submitted that despite this, the Ld. CIT(E) has made a wrong finding that “there has been no change in the object”.

- (ii) Objection No. 2 - The assessee has not provided MOU or Agreement with Niti Ayog and accounts:

Ld. AR submitted that the copies of Income-tax Return with audited accounts were duly filed to Ld. CIT(E) and the same are placed at Page No. 61 to 91 of the Paper-Book.

- (iii) Objection No. 3 - There is a provision to share the benefits of the assessee-company among its members:

Ld. AR submitted that the assessee is a company incorporated u/s 8 of the Companies Act, 2013. Ld. AR submitted that section 8 of the Companies Act, 2013, which reads as under, itself debars the assessee from distribution of profits:

“Section 8. Formulation of companies with charitable objects, etc.—

(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow

that person or association of persons to be registered as a limited company under this section without the addition to its name of the word – Limited, or as the case may be, the words – Private Limited, and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.”

Ld. AR further carried our attention to Page No. 37 of the Paper-Book and referred to the undernoted Para No. 10 of the Memorandum of Association, which also provides categorically that in the event of the winding up or dissolution of the company, the surplus shall not be distributed to the members of the company:

“If upon a winding up or dissolution of the Company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the Company, but shall be given or transferred to such other company, having object similar to the objects of the Company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of judicature that has or many acquire jurisdiction in the matter.”

(iv) Objection No. 4 - Objects permit activities outside India:

Ld. AR submitted that the clause dealing with the activities outside India has already been deleted and the Memorandum of Association stands amended on this aspect, before filing the second-application for grant of registration.

With these submissions, the Ld. AR submitted that all of the objections raised by the Ld. CIT(E) in first-order have been duly met by the assessee and there remained no objection at the time of filing second-application. Hence the Ld. CIT(E) has wrongly rejected second-application of the assessee. Therefore, the Ld. AR requested to direct the Ld. CIT(E) to grant registration.

5. Per contra the Ld. DR relied upon the order of Ld. CIT(E) but could not controvert the submission of the Ld. AR.

6. We have perused the material available on record and also considered the submission of Ld. DR. After a careful consideration, we observe that

although there were objections raised by Ld. CIT(E) on the first-application of the assessee, yet the assessee has removed those objections before filing second-application on 20.01.2020. We observe from the submission of Ld. AR, which we do not narrate again to avoid repetition, that there does not survive any of the objections raised by Ld. CIT(E). We also observe that the Ld. CIT(E) has rejected second-application of the assessee with the sole reason that there is no change in objects. Except this one reason, the Ld. CIT(E) has not mentioned any other reason to reject the second-application. In this regard, we find that the Ld. AR has successfully submitted that the objectionable objects had already been removed before filing second-application and this submission of Ld. AR has not been controverted by the Ld. DR. We observe that the rejection of second-application for grant of registration u/s 12AA of the act amounts to miscarriage of justice. Therefore, we are of the considered view that the assessee deserves registration u/s 12AA of the Act. Hence we direct the Ld. CIT(E) to grant the registration as applied for by the assessee.

7. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 20.06.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 20.06.2022

Patel/Sr. PS

- Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	24.5.22
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	