

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI****BEFORE NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER****ITA No. 4671 /DEL/2018**G.B. Public Educational
Society,
Village& PO Tilpat,
Faridabad.
PAN- AACAG5160C**APPELLANT**Vs Commissioner of Income-tax
(Exemptions), Chandigarh.**RESPONDENT****Appellant by
Respondent by****None
Ms. Sapna Bhatia, CIT (DR)****Date of hearing
Date of pronouncement****31.08.2022
31.08.2022****ORDER****PER N.K. CHOUDHRY, JM:**

This appeal has been preferred by the Applicant/Appellant herein against the order dated 27.04.2018, impugned herein, passed by the learned Commissioner of Income-tax (Exemption), Chandigarh (in short "learned Commissioner") under Section 12AA of the income-tax Act, 1961 (in short 'the Act').

2. Though notice of hearing of this appeal was sent to the Appellant by speed post, however the Appellant neither attended the proceedings nor filed any adjournment application, therefore in the constrained circumstances and considering the issue involved in this appeal, we are deciding this appeal as ex-parte.

3. Heard the Id. DR, who vehemently supported the order impugned by submitting that the same is based on particular facts and circumstances and is a reasoned and logical order and hence, needs no interference.

4. We observe that in the instant case, the Appellant by claiming the aims and objects of the Appellant Society "*to establish, run & manage schools for education to keep spirit of nationalism and patriotism in youths; to run educational institution like schools, college for the benefits of poor, to develop the cultural/scientific/ fine arts/ literature/ sports and games activities among general public to provide financial aid to blind, disabled, helpless people, to establish Dharamshala, library and hospital, to award intelligent students, to renovate ruined Dharamshalas, to provide employment to poor widows etc.*", filed an application in form No. 10A on 24.10.2017 and sought registration u/s 12A of the Act.

4.1 The said application was taken into consideration by the Id. Commissioner. By notice dated 27.2.2018, the Appellant was asked to file requisite details/clarifications by 13.3.2018. On 13.3.2018 the AR of the Appellant attended and filed written submissions in response to letter dated 27.2.2018.

4.2 After considering the reply of the Appellant, the learned Commissioner rejected the application of the Appellant, mainly on the reasons that the rationale for shifting from 10(23C) to Section 11 & 12 of the Act is very perfunctory and there are no provisions that allow switching track midway.

Normal progression given the scheme of the Act entails seeking approval u/s 10(23C)(vi). Further no rationale was provided by the applicant for seeking registration after 22 years of its formation.

4.3 We have given thoughtful consideration to the 1st reason given by the Ld. Commissioner for rejection of the application u/s. 12A of the Act, to the effects that rationale for shifting from 10(23C) to Section 11 & 12 of the Act is very perfunctory and there are no provisions that allow switching track midway. Normal progression given the scheme of the Act entails seeking approval u/s 10(23C)(vi) of the Act.

4.4 We observe that the Co-ordinate Bench of the Tribunal in the case of CIT (E), Chandigarh vs. KhatuJi Para Medical Technology Educational & Research Society (ITA No. 593/Asr/ 2016 decided 31.08. 2017) dealt with identical issue and analyzed the similar observation of the Ld. CIT(E) for declining the registration u/s 12AA of the Act and directed the Ld. CIT(E) to grant the registration to the then Society .

4.4.1 The order passed by the Coordinate Bench in the aforesaid case was challenged before the Hon'ble Punjab & Haryana High Court and Hon'ble Court vide its judgment dated 8th April, 2019 in appeal No.141/2018 [2019]106 Taxmann.com 344 (P&H), upheld the finding of the Tribunal. For the sake of brevity and ready reference the relevant part of the order is reproduced herein below.

“2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is an educational society registered on 19.9.2003 under the Societies Registration Act, 1860 and since 2003 has been running educational institutes for education. It filed an application dated 15.3.2016 in Form 10A for registration under Section 12AA of the Act. The Commissioner of Income Tax (Exemptions) [for brevity "the CIT(E)"] vide order dated 30.9.2016 (Annexure A-1) rejected the said application by observing as under:—

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(z) Self-confessedly the sole object of the society has been projected as providing education. In that context the applicant had all reasons to apply for exemption under the provision of section 10(23C) (vi) rather than 12AA. This issue gets corroborated when for the past numerous years the society has been filling returns and claiming exemption u/s 10(23C)(iiiad). In answer to a specific query seeking the rationale for application u/s 12AA it has been stated that since the receipts are below 1 crore the society is claiming exemption u/s 10(23C)(iiiad). This following the statutory provisions would have necessitated an application u/s 10(23C)(vi) as per the scheme of the I.T. Act, 1961. Is it the case that the moment receipts exceeded Rs.1 crore the institution has ceased to be existing "Solely for educational purposes" and "not for profits".

(ii) Although the Judicial precedents have allowed alternative claims either for 12AA or 10(23C) but at the same time have not allowed shifting from one provision to the other when the applicant has consistently availed benefits for a number of years under section 10(23C) (iiiad). Natural progression entails and entitles the educational societies to go for 10(23C)(vi) in such cases. There are no fresh circumstances projected that would warrant examination of the eligibility of the institution under a different code with different conditionalities.

(Highlighted by us)

9. Notwithstanding the same, the claim for registration u/s 12AA was examined. The Audited accounts reveals that over the period of time the emphasis of the society is mainly on creation of assets rather than on redeployment of funds towards education. The Income & Expenditure statements and Balance Sheets further indicate that during the F.Ys. 2014-15 and 2015-16 the emphasis of the society has been mainly on adding to their car, motorcycle, scooter.'

3. *Feeling aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 31.8.2017 (Annexure A-2) allowed the appeal and directed the CIT(E) to grant registration under Section 12AA of the Act to the assessee. Hence, the present appeal.*

4. *We have heard learned counsel for the appellant and do not find any merit in the appeal.*

5. *The Tribunal has noticed that the CIT(E) was not correct to the extent that the assessee would have applied under Section 10(23C) of the Act instead of Section 12AA of the Act because the Apex Court as well as jurisdictional High Court had clearly held that where the assessee was running hospital or school and if both the options were available before it, i.e., either to apply for exemption under Section 10(23C) of the Act or claim exemption under Section 12AA of the Act, it was not justified to decline exemption under Section 12AA that it should have claimed exemption under Section 10(23C) of the Act. For granting exemption under Section 12AA of the Act, the CIT(E) had to satisfied himself about the objects and the genuineness of the activities of the assessee and once the CIT(E) having accepted that the main aim of the society was running of college and educational institutions and made no adverse observation regarding genuineness of the objects or the activities carried on by the society, then the registration under Section 12AA of the Act could not have been denied holding that it was entitled to exemption under any other provision. With regard to the finding of the CIT(E) that the emphasize of the society was mainly creation of assets rather than redeployment of funds towards education, the Tribunal had noticed that during the financial year 2014-15 value of car, motorcycle and scooter were Rs. 2.17 lakhs and in 2015- 16, it were Rs. 2.30 lakhs and the society surplus amount was @ 5.52% only, which cannot be termed as higher and certainly to run institute, the vehicles were required. Further, the apprehension and assumption of the CIT(E) that the society must be charging some funds, was based on the assumption and surmises and had no logical reasoning. Accordingly, the Tribunal has rightly directed the CIT(E) to grant registration under Section 12AA of the Act to the assessee. The findings recorded by the Tribunal read thus:—*

"6. We have gone through the facts and circumstances of the case and rival submissions of the parties as well as documents available on record and order passed by the Ld. CIT(E). In the instant case, object of the assessee is not in doubt. The observation of the assessee CIT(E) is not correct to the extent that the assessee would

have applied u/s 10(23C) of the Act instead of Sec.12AA of the Act because the Apex Court as well as jurisdictional High Court clearly held that where the assessee trust running hospital or school and if both the options available before it i.e., either to apply for exemption u/s 10(23C) or claim exemption u/s 12AA of the Act therefore it is not justified to decline exemption u/s 12AA on the ground that it should have claimed exemption u/s 10(23C). It is settled law that for the purpose of granting registration u/s 12AA, scope of powers of the Ld. CIT(E) is limited to be being satisfied about the objects and the genuineness of the activities of the assessee and once the CIT(E) having accepted that the main aim of the society is running of college and educational institutions and made no adverse observation regarding genuineness of the objects or the activities carried on by the society then registration u/s 12AA could not be denied on the ground that it was entitled exemption under any other provision. Further in the case of CIT v. Bosotto Brothers Limited [1940] 8 ITR 41 (Mad). Hon'ble ITA NO.469/Asr/ 2018 Border People Educational Society vs. CIT(E) 6 Madras High Court held that if a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under that one which leaves him with a lighter burden. Meaning thereby, if, exemption is available to the assessee in two or more sections then the choice is for the assessee under which section exemption has to be claimed. With regard to the another objection of Ld. CIT(E), our attention was drawn by the Ld. AR to the audited balance sheet, where it is clearly shown that during the F.Y. 2015-16 value of car, motorcycle and scoter were 2.17 lakh and in 2015-16 it were 2.30 lakh and the society surplus amount was @ 5.52 % only. We are in agreement with the assessee that the surplus @ 5.52 % cannot be termed as higher and certainly to run an institute, the vehicles are required, therefore, the observation of the CIT(E) is not correct to the extent that the emphasized of the society has been mainly to add car, motorcycle and scooter. In fact total receipts had been shown at Rs. 182,76,252/- during the F.Y. 2015-16, however, the value of the car, motorcycles and scooter were 2.30 lakh only, therefore, we are of the considered opinion that observation of the CIT(E) was not correct. Another observation of the CIT(E) was that the society is mainly emphasizing for creation of fixed assets rather than redeployment funds towards education. The Ld. AR drawn our attention regarding the receipts, the average annual fee for the F.Y. 2015-16 charged by the assessee was at Rs. 16,525 per student for IIT, B.Com students and Rs. 4,559 per student for

B.CA Courses. Average annual fee for the F.Y. 2015-16 was Rs. 34,157 per student only and the fee being charged is quite reasonable and is less than the fees prescribed by the controlling Govt. Bodies. The Ld. AR also drew our attention that the Assessee's Institutes have also been approved/affiliated by/with Govt. Authorities on fulfillment of the norms and conditions and adherence thereto. On the aforesaid consideration, we are of the considered opinion, that the apprehension and assumption of the CIT(E) that society must be charging some funds, just based on the assumption and surmises and have no logical reasoning. Further observation with regard to salary structure and quality of education, we are of the view that lower salary cannot be made best to conclude that quality of education has been comprised and not in sync with the instruction issued by Maharaja Ranjit Singh State Technical University, Bathinda, while providing affiliation to an entity. On the aforesaid observation and conclusion, we are of the considered view that the assessee is entitled to get registration u/s 12AA of the Act and hence, we direct the Ld. CIT(E) to grant registration to the assessee society.

6. No illegality or perversity could be pointed out by the learned counsel for the revenue in the aforesaid findings recorded by the Tribunal which may warrant interference by this Court. No substantial question of law arises in the appeal. Consequently, finding no merit in the appeal, the same is hereby dismissed. Needless to say, it shall be open for the revenue to initiate action under sub-section (3) to Section 12AA of the Act for withdrawal/cancellation of the registration granted hereinabove, in case it comes to the notice of the revenue that the activities undertaken by the assessee are not genuine or are not being carried out in accordance with the objects of the trust or Institution or are not charitable in nature in terms of the provisions of the Act. "

4.4.2 We find the issue involved as highlighted by us, in the aforesaid decision of the Hon'ble Tribunal which got affirmed by the Hon'ble High Court, is pari-materia with the issue in hand.

4.4.3 In our considered view, for claiming the deduction, there is no bar for shifting from the provisions of Section 10(23C) (iiiad) to the

provisions of Section 12AA of the Act. If the Trust/Society is entitled to claim deduction under two provisions of the Act, then it is the wisdom of such entity to claim under either of two provisions as per its eligibility and applicability of the provision(s) and by following the parameters set therein.

4.4.4 Hence on the aforesaid analyzations, 1st reason of rejection that the rationale for shifting from 10(23C) to Section 11 & 12 of the Act is very perfunctory and there are no provisions that allow switching track midway and normal progression given the scheme of the Act entails seeking approval u/s 10(23C)(vi), is untenable, un-sustainable and not in conformity with the relevant provisions of the Act applicable thereto and the dictum laid down by the Hon'ble Higher Courts. Consequently the said reason of rejection of the application is set aside.

4.5 Coming to the 2nd reason of rejection of the application under consideration that no rationale has been provided for seeking registration after 22 years of its inception. We observe there is no limitation period prescribed for seeking registration u/s. 12A of the Act and therefore the Appellant is not under obligation to provide the rationale as demanded by the Ld. Commissioner in this case, hence this reason is also untenable and un-sustainable and therefore the same is also set aside.

4.6 We further observe that the Learned Commissioner has not given any definite findings on the objects and genuineness of activities of Appellant.

4.7 Hence, considering the facts in totality and for the ends of justice,, we are inclined to set aside the impugned order and to remand the case to the file of Ld. Commissioner for decision afresh qua objects of the Appellant and genuineness of its activities, suffice to say by affording reasonable opportunity of being heard to the Appellant. Order accordingly.

5. In the result, the appeal filed by the Appellant stands allowed for statistical purposes.

Order pronounced in open court on 31.08.2022.2022.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

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

MP