

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH 'DB', DEHRADUN**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No.6240/Del./2017: Asstt. Year: 2016-17

Chaudhary Harchand Singh Atma Ram Education Trust, C/o. Parikshit Aggarwal FCA, House No. 1238, Sec-22B, Chandigarh	Vs	CIT(E), Lucknow
(APPELLANT)		(RESPONDENT)
PAN No. AABTC2457J		

Assessee by : Sh. None

Revenue by : Smt. Mayank Prabha Tomar, Sr. DR

Date of Hearing: 14.12.2022

Date of Pronouncement: 16.12.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(E), Lucknow dated 24.07.2017.

2. The assessee has raised the following grounds of appeal:

"1. That on the facts, circumstances and legal position of the case, the Worthy CIT has erred in passing that order in contravention of the provisions of Section 12AA of the Income Tax Act, 1961.

2. That on the facts, circumstances and legal position of the case, the Worthy CIT has erred in rejecting the application of the appellant for grant of registration u/s 12AA of the Act even when the objects of the appellant are charitable in nature. Worthy CIT (A) further erred in not understanding the objects and genuineness of activities carried out by the appellant.

3. That on the facts, circumstances and legal position of the case, the Worthy CIT has erred in

rejecting the application of the appellant for grant of registration u/s 12AA of the Act on issues/objections which are beyond the scope of powers for which examination can be carried out in proceedings u/s 12AA by a CIT.

4. That on the facts, circumstances and legal position of the case and in law, the impugned order deserves to be quashed, as no reasonable opportunity of being heard u/s 12AA was granted by the respondent."

3. The appeal has been filed against the order of the Id. CIT(E) by the assessee on 06.10.2017 and hearings have been conducted till 14.12.2022. During all these years, there was no compliance from the side of the assessee or the authorized representative whose power of attorney dated 03.10.2017 has been on record. We have perused the order of the Id. CIT(E). For the sake of ready reference and completeness, the order of the Id. CIT(E) is reproduced in *toto* as under:

"The above named society has Filed an application for registration u/s 12A(a) of the Income Tax Act, 1961 on 12.01.2017 with the Commissioner of Income Tax(Exemptions), Lucknow.

2. Subsequently, the applicant society was accorded an opportunity of being heard vide this office letter F. No. CIT(Exemp.)/Lko/12A/2576/2017-18/1547 dated 27.05.2016 sent to the applicant on address provided by him in Form No. 10A via Speed Post calling for specific queries regarding its application for registration u/s 12A for compliance on 29.06.2017. On that date i.e. 29.06.2017, Shri Rajeev Agarwal, GA appeared and filed part reply and sought an adjournment for 05.07.2017 for filing remaining reply regarding fee charged/authorized for each course, regarding the discipline of medicine (allopathetic/ ayurvedic) being pursued, regarding

the charges for the beds/rooms levied from the patients. On that date i.e. 05.07.2017, Shri Rajeev Agarwal, CA appeared and filed part reply and sought an adjournment for 12.07.2017. On that date i.e. 12.07.2017, Shri Rajiv Agarwal appeared and filed a letter. On perusal of the material available on record, it is found that payments, sourced out of the funds of the trust, are being made to the trustees including salary to society members who has been designated as Principal, which attracts the provisions of Section 13(1)(c) read with Section 13(3) of the Income Tax Act, 1961. Book of Accounts and Vouchers were again called for on 29.06.2017, but were never produced for verification.

3. On perusal of the material available on record and the financial statements submitted by the applicant, it is found that although the applicant has provided the high rates of the OPD fees, Nursing charges, Rate List of Pathology denoting the charges for the various pathology tests and receipts under ECG, GYN, IPD, OT, Panchkarma, Pathology and X-Ray. However the applicant has neither provided any vouchers to corroborate the fact that the said charges are actually being levied from the common public nor have these rates been verified through entries in the books of accounts which again places serious question on the apparently bogus and fake claims of charity being purported by the applicant so as to create a mirage whereby the applicant can secure the said registration. On perusal of the financial statements for the F.Y. 2015- 16, it is found that the applicant is in receipt of huge income by way of providing medical services in a commercial manner vide its 3 major centers namely Quadra Hospital, Quadra School of Nursing and Quadra Institute of Ayurveda. Out of these the Quadra Hospital is basically a commercial entity that is providing medical services on commercial lines which is evident from the hefty receipts amounting to the tune of Rs. 74,57,110/- for the F.Y. 2015-16. The other two centers namely

the Quadra School of Nursing and Quadra Institute of Ayurveda are basically commercially operated institutions that are providing various courses and levying hefty fee in lieu of the same. The receipts from the Quadra School of Nursing under the head of tuition fees amount to Rs. 1,19,57,500/- for the F.Y. 2015-16. In addition to that Hostel fee and Registration Fee is also being levied from the students. Same is the case with the Quadra Institute of Ayurveda wherein Tuition fee for the F.Y. 2015-16 amounts to Rs. 2,20,33,900/- and in addition to that Hostel Fee, Transportation Fees, Library Fees, and Registration Fee is also being levied from the students. Although huge income is being generated by the applicant from the Quadra Hospital, Quadra School of Nursing and Quadra Institute of Ayurveda, yet the expenditures of the applicant are primarily aimed at augmenting its business of providing medical services and medical education. There is literally no expenses connected with any act of charity. Thus the claim of the applicant that it is a charitable institution, hold no ground and is based on false notions. In absence of Books and Vouchers, even the fact whether fees was being charged for Nursing and Ayurveda Course for doctor, as specified by the State Government/ Medical/Nursing Council or not. The applicant is purely a commercial entity vested with profit motive and does not have any association with any act of charity. The applicant has made a tall list of claims namely Vehicle Running Expenses, Staff Welfare Expenses, Exam Fee, Festival Expenses, Garden Expenses, Genset Diesel, Telephone Expenses, Travelling & Conveyance, Repairs and Maintenance, Discount, Electricity Expenses etc. However in the lack of books of accounts and requisite vouchers, which the applicant has failed to provide, there is no other means by which the authenticity of the aforementioned claims can be established. Since the applicant has failed to produce the books of accounts and the vouchers the said expenses, as claimed by the applicant, appear nothing but a subterfuge by means of which the applicant intends to

reduce the differential between its exorbitant income and minimal expenses so that the net tax liability does not arise in the case of the applicant. This fact has been established by the applicant as perusal of the Income Tax Returns for the past FYs shows that despite have exorbitant income the applicant has been consistently filing tax returns with Nil income by fabricating bogus and fake expenses so as to minimize and overshadow the hefty profits that it is making out of its commercial activities. It is also worth noting that the applicant has made hefty investments by way of FDR QSN, Trust UPPCL, Trust FDR and is also having a lot of funds available as cash and bank balance. Despite have such amounts at hand to further the cause of charity the applicant has taken minimal interest in providing any element of charity except pursuing its commercial interests. It is important note here that on perusal of the material available on record, it is found that that payments, sourced out of the funds of the trust are being made to the trustees which include Dr. Rishabh Kumar Jain and Dr. Pradeep Kumar which attracts the provisions of Section 13(1)(c) read with sub-section (3) of the Income Tax Act, 1961. The above mentioned facts clearly establish that the applicant company instead of pursuing the objects and activities circumventing charity, is engaged in working towards the benefit of persons referred to in Section 13(3) of the Income Tax Act, 1961. The applicant company has, by this very act, come in clear violation of Section 13(1)(c) wherein a part of the income has been, during the previous year, applied to the benefit of the interested persons and thus has failed to conform to the norms mandated by law while considering the application for according the said registration. This is fatal to the claim of the applicant. Section 13(1)(c) of the I.T. Act, 1961 provides that where a part of income of charitable and religious trust or Institutions ensures or is used or applied directly or indirectly for the benefit of those persons specified in section 13(3), that a trust or institutions forfeits the exemptions u/s 11 even if only a

small portion of money is utilized or used or applied for benefit of a person mentioned in section 13(3) and accordingly the trust denied the exclusion except as per provisions section 13(4) of the Act. Reliance is also placed on CIT vs. Jamuna Lal Bajaj Seva Trust (1988) 171 ITR 568. On perusal of the financial statements, it is found that the applicant trust is primarily engaged in the business of providing medical services on a commercial basis with a motive of profit without providing any element of charity to the public at large. It is not desirable of an institution that claims to promote medical services in a charitable manner that it purports ways and means of generating income by pursuing activities in a commercial manner. Most expenses under the various debit heads as claimed to have been incurred by the applicant company in the financial statements for the previous year pertain to administrative expenses that are aimed at sustaining and augmenting the business of providing medical services that the applicant company is currently engaged in. None of the debit head relate to any of charitable activities carried out in pursuance of the objects that are characteristic of a charitable institution. This clearly goes to prove that the activities of the applicant are not genuine and this application is a mere attempt to secure tax benefits under the garb of charity. On perusal of the financial statements, it was found that during the demonetization period, a lot of cash deposits have been made into the accounts of the trust and its centers of medical education and the hospital. The fact that the applicant has had a history of existence but never applied for registration u/s 12A earlier raises certain queries regarding the application. The said application being pursued at a time when the applicant has come in receipt of a lot of cash deposits during the demonetization period during the F.Y. 2016-17 raises concerns regarding the fact that this application could be an attempt on the part of the applicant to avoid tax liability of the unaccounted cash deposits that have been accepted by the

applicant. According registration to such institutions, that not only have a commercial character void of any element of charity but have also pursued activities resembling to those of money laundering practices during the demonetization period, would be detrimental to the spirit of the norms mandated by law for according the said registration. Being a charitable institution, there is obligation on its part to conduct its activities in more transparent and reliable manner. In this background it is mandatory on the part of these voluntary organizations to keep their activities transparent and to maintain their books of account in reliable manner. In the instant case, neither has the applicant produced the books of accounts to evince the transparency in its activities nor has it provided any documentary evidences to substantiate the genuineness of its activities. This is fatal to the claim of the applicant.

4. In the case of CIT vs. National Institute of Aeronautical Engineering Education Society 2009,181 Taxman 205 (Uttarakhand) it was held that Clause (a) of sub-section (1) of section 12AA empowers the CIT to call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and may also make such inquiries, as he may deem necessary in this behalf. Said provision in section 12AA makes it clear that CIT is not supposed to allow registration with blind eyes. On perusal of the Income and Expenditure Account of the previous years it is found that the sole objective of the company is to make huge profits by undertaking the business of medical services in a totally profit oriented manner. 'Charity' is the soul of the expression 'charitable purpose'. Mere trade or commerce in the name of charity cannot be said to be a charitable purpose.

5. The Hon'ble ITAT Lucknow bench in order ITA No. 809/LKW/2014 dated 26.02.2015 has held that "We have considered the submissions of Ld. D.R. of the Revenue, perused

the material available on record and gone through the impugned orders of learned CIT-II, Kanpur. It is noted by the learned CIT in the order passed by him for rejecting the claim for registration u/s 12AA that the material required for formation of the satisfaction mandated by the Act is unavailable and therefore, it is held by learned CIT that the assessee has failed to fulfill the conditions for grant of registration u/s 12A of the Act. Similarly, in his order for rejecting the claim of the assessee for registration u/s 80G, he has given a finding that the assessee has failed to fulfill the conditions for approval u/s 80G of the Act. Hence, we do not find any justification to interfere in these orders of learned CIT”.

6. The law requires a conjunctive test whereby objects of the applicant society have to be charitable and genuineness of charitable activities should be established for registration of application u/s 12A. Mere recital of objects or activities without cogent or corroborative evidence is not sufficient by themselves to enable a registering authority to arrive at the satisfaction mandated by law. In the instant case, the documents on record do not suffice to establish the genuineness of activities. As such the findings of fact regarding its charitable activities or rather the lack thereof arrived at on the basis of the evidence filed and arguments addressed stand uncontroverted. This is fatal to the claim of the applicant.

7. It is clear that applicant has failed to provide sufficient material to corroborate the charitable nature of the objects and genuineness of the activities. Despite being provided timely opportunity the applicant has not been able to substantiate its claim.

8. In view of the facts and above decisions, I am unable to accept the applicants claim in absence of sufficient material required for formation of satisfaction. Therefore, I do not find

the case fit for grant of registration u/s 12A(1) of the Income-tax Act, 1961.

9. *Accordingly, the registration sought by the applicant u/s 12A(1) of the Income-tax Act, 1961 is hereby rejected."*

4. Since, there was no compliance after filing of the appeal on 06.10.2017 on the part of the assessee, it was decided to adjudicate the matter based on merits, taking into consideration the material on record. Having gone through the entire order, we find no infraction in the order of the Id. CIT(E) and hence the appeal of the assessee is liable to be dismissed.

5. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 16.12.2022.

Sd/-

Sd/-

(Yogesh Kumar US)
Judicial Member

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 16/12/2022

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR