

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "E" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 978/DEL/2022

<p>Nanda Devi Outdoor Leadership School India, DDA Commercial Complex, 14-Nanakpura, Moti Bagh, New Delhi – 110 021. PAN No. AADCN4574G</p>	Vs.	<p>Income Tax Officer, Ward Exemption-2(4), New Delhi.</p>
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AND

I.T.A. No. 979/DEL/2022

<p>Nanda Devi Outdoor Leadership School India, DDA Commercial Complex, 14-Nanakpura, Moti Bagh, New Delhi – 110 021. PAN No. AADCN4574G (APPELLANT)</p>	Vs.	<p>Income Tax Officer, Ward Exemption-2(4), New Delhi. (RESPONDENT)</p>
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Assessee by	Shri P. C. Yadav, Advocate;
Department by	Ms. Sarita Kumari, [CIT] - D. R.;

Date of Hearing	08.12.2022
Date of Pronouncement	31.01.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These two appeals are filed by the same assessee against two separate orders of the ld. Commissioner of Income Tax (Exemption) [hereinafter referred to CIT (E) New Delhi, both dated 30.03.2022.

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

“1. The Order of Ld. CIT (E), passed u/s 12AA read with 80G, is void ab initio, as the same has been passed in utter disregard of the findings of ITAT in the first round of litigation.

2. That order of CIT (E) is perverse and hence not sustainable in law.

3. That the CIT (E) has erred in denying the registration of 80G to the assessee, ignoring that activities of the assessee are educational.

4. The CIT (E) has erred in observing that assessee is providing services to its parent company and not imparting education in India.

5. The CIT (E) has erred in discarding the strict compliance to section 25 Companies, monitored by RBI from time to time.

6. The CIT (E) has failed to appreciate that at the time of registration of 12AA and 80G only nature of objects and genuineness of the activities are to be considered.

11. The CIT (E) has failed to appreciate that for granting the registration of 80G it is application of income which is relevant not receipt of the same.

12. That on the facts and under the circumstances of the case the order of CIT (E) is perverse as the same has been passed overlooking the directions of the Hon'ble ITAT, submissions of the assessee and documentary evidences produced by appellant.”

3. The assessee filed applications on dated 27/09/2012 in Forms No. 10A & 10G seeking registration u/s 12AA and also exemption u/s 80G of the Income Tax Act, 1961 ('Act' for short). During the course of proceedings, the Ld. CIT(E) of the opinion that the activities of the assessee falls under the residual category of 'general public utility' and not under the category of 'education' and the assessee had received consultancy charges of Rs.97,89,567/- from NOLS USA during year 2011-12, therefore, held that the assessee is involved in rendering services outside India, which is not permissible. Accordingly, applications of the assessee were rejected on 26/03/2013. Aggrieved by the order the CIT(E) dated 26/03/2013, the assessee filed an appeal before this Tribunal. This Tribunal vide its order in ITA No. 6616/Del/2013 dated 15.11.2017, directed the Id. CIT(E) to examine the object of the trust whether they are falling within the meaning of 'education' or not as per section 2(15) of the Act and also to examine the grants and other income received by the trust to verify the genuineness of the activities of the trust after giving opportunity of being heard to the assessee and thereafter decide the issue afresh on merits.

4. After the remand, the Ld. CIT(Exemption) passed order dated 30/03/2022 by denying the Registration u/s 12AA of the Act and also rejected the exemption u/s 80G of the Act.

5. Aggrieved by the orders dated 30/03/2022, the assessee has preferred the two separate appeals on the grounds mentioned above.

6. The Ld. Counsel for the assessee vehemently submitted that the Ld.CIT (Exemption) has erred in denying the certificate of registration u/s 12AA of the Act and also committed error in denying the exemption u/s 80G of the Act to the assessee ignoring the fact that the assessee is a company comes under Section 25 of the Companies Act and engaged in dissemination of education in the field of mountaineering and while passing the orders impugned failed to appreciate that at the time of registration only the nature of objects and genuineness of activities to be seen. The Ld. Counsel has also submitted that on 31/05/2022 the Income Tax Department has granted provisional registration for Assessment Year 2023-24 onwards. Further submitted that, the Ld.CIT (E) has failed to bring any material on record to show that the assessee has failed to utilize the funds for the purpose of charitable objects, the entire observation made by the Tribunal in the earlier round has been over turned by the CIT(E), therefore, prayed for allowing the appeal.

7. Per contra, the Ld. DR has relied on the orders of the CIT (Exemption).

8. We have heard the parties perused the material available on record and gave our thoughtful consideration.

9. During the first round of litigation the Co-ordinate Bench of the Tribunal while remanding the matter to the file of CIT(Exemption) has observed as under:-

“The limited issue here is whether the activity of the assessee falls under the category of "education" and not general public utility”. The Id CIT(E) has heavily relied on the decision of the Hon'ble Supreme Court in Lok Shikshana Trust 101 ITR 234. He was of the view that there is no class room teaching as formal schooling and not the activity as 'education" as envisaged by the assessee. The Hon'ble Delhi High Court had an occasion to consider in 357 ITR 265 that whether a society teaching and promoting form of music and dance, western, Indian or any other which runs like school or educational institute in a systematic manner in regular classes, vacations, attendance and enforcement of discipline is in "education" or not. Though it did not conduct its own examination or award degrees the Hon'ble High Court held that it meets the requirement of educational institute. Similarly, in DIT(E) Vs. Samudra Institute Of Maritime Studies Trust 369 ITR 645 the Hon'ble Bombay High Court had an occasion to consider whether the above assessee set up to administer and maintain technical training institute for pre sea and post sea training for the ships and maritime industry is an "education ' activity or not. Hon'ble High Court held that though courses are not approved it is an educational institute. Further the Hon'ble Kolkata High Court in Swar Sangam and other Vs. CIT [368 ITR 395] held that teaching in fine arts, Indian music and dance is

also educational activities. The activities of the assessee before us are no different than the activities decided by the various High Courts as above. In all the above decisions the decision of the Hon'ble Supreme Court relied up on by the id CIT (E) was considered and held that such a restricted meaning of education cannot be given. In the present case the assessee s activities are prima facie 'educational activities further if is for the authority granting registration to give prima facie opinion with reasoning that the activities carried on by the assessee is eligible for registration u/s 12A of the Income Tax Act or not. Furthermore, while granting registration u/s 12A of the Act the registration authority is further required to look into the fact that whether the activities of the' trust are genuine or not. Merely because assesses received some donation and grants from other entities its activities does not become ingenuine. As these aspects are required to be dealt with about the objects whether it is education or not and activities whether they are genuine or not,, the Id CIT(E) has merely relied upon the decision of the Hon'ble Supreme Court without considering the several decisions wherein, the above decision of the Hon'ble Supreme Court has been considered. Therefore, we direct the Id CIT(E) to consider the application of the assessee by considering the above decisions and in the light of them needs to examine the object of the trust whether

they are falling within the meaning of "education" or not as per section 2(15) of the Act. Further the Id CIT(E) may also examine the grant and other income received by the trust to verify the genuineness of the activities of the trust. Needless to say that proper opportunity of hearing may be granted to the assessee and thereafter the issue may be decided afresh and on merits."

Thus, the Tribunal has remanded the matter to Ld.CIT(E) by observing that 'the Assessee's activities are prima facie educational' and directed the Ld.CIT (Exemption) to consider the case of the assessee afresh.

10. After the remand by the Tribunal, the CIT(Exemption) while passing the order impugned and rejecting the registration u/s 12AA and also the exemption u/s 80G, observed as under:-

8. *"The reply of the assessee has been considered but is not found acceptable due to the following reasons:*

8.1 *The activities of the assessee does not qualify under the limb 'Education' as discussed in detail in para 4 above. Further, in the case of CIT(E) vs. Fertilizers Association of India, the activities of rendering service were incidental to the objects of the assessee, whereas in the present case it is not an incidental activity but the main activity of the assessee. When the main activity of the assessee itself is in the nature of providing services to NOLS USA, the ratio of said decision of Hon'ble High Court would not apply. The applicant submitted various accreditation and accomplishments of Mr. Ravi Kumar, Director of company but the same does not have prove that the activities of the applicant are in the nature of 'Education'.*

8.2 *The applicant has submitted a copy of the affiliation with “Indian Mountaineering Federation”. The same is dated 19.12.2020 and was valid upto 31.03.2021. The said affiliation only proves that the applicant is in the field of Mountaineering or providing land based adventure activities which can only be considered as leisure activities or at-most sport for adventure seekers but the same does not prove that it is in the field of Education.*

8.3 *The applicant has submitted that for the training courses it has hired the professional experts and the courses are seasonal therefore, it cannot hire trainers permanently. The contention of the applicant is considered but again it does not prove that Education activity is being carried out by it.*

8.4 *The applicant has submitted that it is section 25 company incorporated u/s companies Act, 1956 which proves that its objects are for promoting commerce, art, science, religion, charity or any other useful object. The status which is granted by the government is the recognition of the fact that the petitioner is essentially established for the purpose of education and/or for advancement of any other project of general public utility. The contention of the assessee is not found acceptable as the requirements of the Companies Act and the Income Tax Act are different. To obtain registration u/s 12AA, the applicant is required to satisfy the condition of the Income Tax Act and Income Tax Rules. Mere registration u/s 25 of the Companies Act does not automatically confers right to get registered u/s 12AA of the I. T. Act. The CIT(E) is bound to verify the charitable nature of the objects and genuineness of the, activities of the applicant then only pass an order granting or refusing registration.*

9. *In view of the discussions above, it is held that the activities of the assessee does not fall under the limb 'Education' but are in the nature of providing consultancy services to NOLS USA. Therefore, the conditions for grant of registration u/s 12AA are not satisfied. Accordingly, the application filed for registration u/s 12AA is hereby rejected.*

11. We have gone through the objects of the assessee mentioned in the memorandum of Association. As per Clause A to the Memorandum of Association the object of the assessee are mentioned as under:-

A. THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON IS INCORPORATION ARE:

1. *To be the lending source and teacher of wilderness skills and leadership that serve people and the environment.*
2. *To instruct students in wilderness related educational topics*
3. *To conduct research and product publications on environmental conservation, wilderness skills, risk management and leadership*
4. *To collaborate with local entities including researchers, educators, governmental and non-governmental organizations to achieve the main objects.*
5. *No objects of the Company will be carried out without obtaining prior approval no objection certificate from the concerned authorities wherever required.*
6. *None of the objects of the company will be carried out on commercial basis.*

12. A plain reading of the object of the Company reveals that the assessee is having the object to carry out the activities of 'education' and there is a specific bar/Clause that 'none of the object of the Company will be carried out on commercial basis'. It is also found that the assessee Company is engaging in imparting education in the field of mountaineering, rafting high attitude trekking, wilderness medicines and wilderness first aid. The assessee has produced the materials to show that the assessee company since from its existence from the year 2010 trained so many students including para military forces, BSF Officers.

13. While disposing the application u/s 12AA of the Act the Commissioner is required to see whether the objects of the assessee are charitable in nature or not and also should verify whether the activities are genuine or not. The genuineness of the activities would mean to see that activities are not camouflage, bogus, artificial and should verify whether the activities are in accordance with the object of the institution. The Commissioner (exemption) cannot extend the scope of the enquiry beyond that point. In the case of Fateh Chand Trust and College Committee Vs. Commissioner of Income Tax (Exemption), Lucknow (2019) 101 Taxman.com 364 (Agra-Trib.) fortified our view as under:-

"19. We find that learned CIT, while passing impugned order seems to be under gross misconception that it is his satisfaction and definition of 'charitable activities' dehors requirement of law would only enable an institution to be granted registration under section 12AA of the Act as once registration is granted, the entire income of the institution would become exempt. The said view, in the light of precedents referred above is wholly opposed to law.

Under section 12AA of the Act, the Commissioner is/entitled to see that whether the objects are, charitable in nature, which term has been well defined the Act and also to see whether the activities are genuine or not. The genuineness of activities would mean to see that activities are not camouflage, bogus, artificial and whether these are in accordance with the objects of the institution. The scope of enquiry does not extend beyond that point...."

14. In the case of Commissioner of Income-tax, (Exemption) vs. Association of Third Party Administrators [2020] 114 taxmann.com 534 (Delhi), the Hon'ble Delhi High Court observed as under:-

"4. We have carefully examined the record and given due consideration to the contentions urged by Mr. Maratha. At the initial stage of registration, we have to examine whether the proposed activities of the assessee can be considered charitable within the meaning of section 2(15) of the Act. On an application for registration of a trust or institution made under section 12AA, the Principal Commissioner or Commissioner shall call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution; and the compliance of such requirements of any other law for the time being in force by the trust or institution, as are materials for the purpose of achieving its objects, and he may also make such inquiries as he may deem necessary in this behalf. Once he is satisfied about the objects of the trust or institution, and genuineness of its activities, he shall pass an order under the said provision..."

15. Further, the Hon'ble Allahabad High Court in the case of CIT v Red Rose School [2007] 163 Taxman 19 (Allahabad) held that:

"Section 12AA, which lays down the procedure for registration, does not speak anywhere that the Commissioner, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. The language used in this section only requires that activities of the trust or the institution must be genuine, which accordingly would mean that they are in consonance with the objects of the trust/institution, and are not mere camouflage but are real, pure and sincere and not against the proposed objects. The profit earning or misuse of the income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution. [Para 34]"

16. Similarly the Hon'ble Allahabad High Court in the case of CIT v. Babu Ram Education Society [2018] 96 taxmann.com 606 (All.), held as under:

" 7. having heard counsel for the parties, we find that registration of the trust does not involve enquiry into the actual activities or application of funds, etc. The Tribunal has committed no error in following the earlier order. At that stage, the only enquiry required to be conducted was with respect to the object of the trust alone. The objection raised by the Commissioner pertain to matters that may be examined at the stage of assessment. At that stage, if the assessee were to be found to have actually engaged in any non-charitable activity, the benefit of exemption may be denied at that state in the manner provided by the Act."

17. In the case of CIT v. Spring Dale Educational Society [2011] 16 taxmann.com 282/[2012] 204 Taxman 11 (Mag.) the Hon'ble Punjab & Haryana High Court held as under:

The Revenue has raised the following substantial questions of law:

(i) Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in holding that the manner of application of funds of trust do not fall within the purview of the Commissioner of Income Tax while examining application seeking registration u/s 12 AA of the Act, whereas such examination would allow Commissioner to satisfy himself about the genuineness of the aims and objects of the trust/institution and genuineness of its activities as enumerated in sub-clause (b) of Clause (1) of Section 12 AA?

(ii) Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in holding that the activities of the assessee-society were 'charitable' when after examining the facts the Commissioner of Income Tax has concluded that the applicant institution had not been applying funds for the purpose of society but for the benefits of the secretary and her relatives who have substantial interest in the society?

(iii) Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing registration u/s 12A to the assessee, when the Applicant Institution was carrying out the activities for the benefits of persons having substantial interest in the garb of 'charitable activity'?

The above-said substantial questions of law were also raised in ITA No.701 of 2010 decided on 05.10.2011 wherein it has been held that while granting registration under Section 12 AA of the Income

Tax Act, 1961, the genuineness of the Trust are relating to income and expenses to be examined and questions are required to be examined while filing assessment.

18. In view of the above discussion and by following the principal laid down by the various decisions (supra), we are of the opinion that, the Ld. CIT(E) has committed an error in not granting registration in the u/s 12AA read with Section 80G of the Act. Therefore, we allow the Grounds of Appeal in ITA No. 978 & 979/Del/2022 and further direct the Ld. CIT(E) to grant registration to the assessee u/s 12AA of the Act and also grant approval of registration u/s 80G of the Act afresh and grant approval subject to fulfillment of conditions mentioned in the said provision.

19. In the result, appeal in ITA No. 978/Del/2022 and ITA No. 979/Del/2022 are allowed.

Order pronounced in the Open Court on : 31.01.2023.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 31/01/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

MEHTA/R. N, SR. PS

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ASSISTANT REGISTRAR
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