

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A Nos.1801 to 1805/Del/2021
निर्धारणवर्ष/Assessment Years:2009-10 to 2013-14

Gian Sagar Educational & Charitable Trust, H-35, 1 st Floor, Jangpura Extension, New Delhi.	बनाम Vs.	ACIT CC-27, New Delhi.
PAN No. AAATG5827B		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Ravi Pratap Mall, Adv.
Revenue by	Ms. Sapna Bhatia, CIT DR & Shri B.S. Anand, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	13.04.2023
उद्घोषणाकीतारीख/Pronouncement on	21.04.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

All these appeals are filed by the assessee against different orders of the Ld. Commissioner of Income Tax (Appeals)-26, New Delhi for the assessment years 2009-10 to 2013-14 in sustaining the action of the Assessing Officer in denying the exemption claimed by the assessee u/s 11/12 of the Act.

2. The Ld. Counsel for the assessee, at the outset, submits that section 11/12 was denied to the assessee on the ground that the Pr.CIT (Central)-3, New Delhi by order dated 01/03/2016 has cancelled the registration granted u/s 12AA of the Act. The Ld. Counsel submits that the Tribunal in ITA No.6054/Del/2018 dated 03/09/2020 held that the order of the PCIT cancelling the registration since inception u/s 12AA(3) of the Act is illegal and not valid. Therefore, the Ld. Counsel submits that as the order passed by the PCIT cancelling the registration was held to be illegal and not valid, the order granting registration u/s 12AA to the assessee got restored and, therefore, the reassessments made by the Assessing Officer u/s 143 r.w.s. 147 denying exemption u/s 11/12 will not survive.

3. Ld. DR supported the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below and the decision of the Tribunal in ITA No. 6054/Del/2018 dated 03/09/2020. The assessee is a charitable trust and was established in the year 2003. The assessee was granted registration u/s 12AA on 02/04/2005. The Ld. PCIT vide order dated 01/03/2016 withdrew the registration granted to the assessee u/s 12AA of the Act on 01/03/2016. Assessee challenged the order of the Ld. PCIT in withdrawing registration u/s 12AA of the Act and the Tribunal by order dated 03/01/2017 set aside the order of the Ld. PCIT passed on 01/03/2016 and restored the

proceedings to the Ld. PCIT to decide afresh. The Ld. PCIT thereafter passed order on 27.10.2017 cancelling the registration granted u/s 12AA of the Act to the assessee since inception on the ground that the assessee trust is allegedly involving in nefarious activities for inducting fresh batch of students for academic session without requisite infrastructure. This order of the Ld. PCIT dated 27/10/2017 was also challenged by the assessee before the Tribunal and the Tribunal by order dated 03/09/2020 in ITA No. 6054/Del/2018 held that the order of the Ld. PCIT dated 27/10/2017 cancelling the registration u/s 12AA(3) since inception is legally not valid. While holding so the Tribunal observed as under:

“37. We observe that, the Id. PCIT has revoked the approval u/s 12AA(3) holding that the assessee trust was engaged in the nefarious activities for inducting of fresh batch of students for the academic session without the requisite infrastructure. It was held that it is a clear violation of (ii) of para 4 of the trust deed, simultaneously, violating the provision of Section 2(15) of the Act while carrying out of its activity. The Id. PCIT also held that the society was established for a charitable purpose and since there was criminal misconduct by the assessee trust, registration of the trust was cancelled since inspection. For the sake of ready reference, the operative portion of the order of the Id. PCIT cancelling the registration u/s 12AA(3) is reproduced hereunder:

“7. After considering the submission of AR, material available on record, it is noticed that CBI team had arrested Sh. Kamaljit Singh, CEO of M/s Gian Sagar Medical College & Hospital while on his official duty on 22.04.2010 on the allegations that he has delivered an amount of Rs.2 crore to Sh. Ketan Desai, President of Executive Committee of MCI through a middleman Mr. J.P. Singh. And also on the same date, Dr. Sukhwinder Singh, Vice Chairmna of M/s Gian Sagar Medical College & Hospital was chargesheeted and arrested by CBI team. The assessee trust was engaged in the nefarious activities for inducting of fresh batch of students for academic session without

the requisite infrastructure. It is clearly violation of (ii) of para 4 of trust deed, simultaneously/ violating the provision of Section 2(15) of the I.T. Act while earring out of its activity.

The society was established with the sole intention of helping charitable and philanthropic venture of running of medical college and thereby seeking to claim exemption on the income so generated under section 11 and 12 of the I.T. Act. It is further noted that due to nexus of corruption by way of bribe and criminal misconduct by the assessee trust, registration of the trust was cancelled since inception u/s 12AA(3) of the Income Tax Act; 1961.

*A Charitable trust conduct must be at par with its provision of trust deed and as, per existing law. Its misconduct and desire * to defy rules and norms have been exposed by virtue of the bribe activities. Such incidents cannot be classified as charitable by any reckoning. Such organizations which do not carry any charitable activity cannot be granted registration. In these facts & circumstances, I am satisfied that the activities of the trust are not genuine and not being carried out in accordance with the objects of the trust. Accordingly, after affording reasonable opportunity to the trust, registration granted u/s 12A vide order dated 02.04.2005 to the assessee trust is cancelled since inception."*

38. *In the background of all these developments, the case of the assessee is being examined.*

39. *The aims & objects of the trust are as under:*

- "i) To, establish, maintain, run, develop, improve, extend, undertake, promote, assist in all kind of research & development work to promote; assist or engage in setting up Educational institutions. Hospitals, Dispensaries, Clinics, laboratories, Medical Colleges for the welfare and uplift of the general public, particularly the socially backward group and award scholarship In India for study, research, training, apprenticeship for all or any of the above said.*
- ii) To arrange promotion of general health including sanitation and environment.*

- iii) *To organize School health programs in coordination with local doctors including government doctors.*
- iv) *To organize seminars or various education & health topics in schools, educational institutions.*
- v) *To set up and run or assist the setting up and running of Adult education centers and coaching centers.*
- vi) *To educate and train medical students, engineering students, nurses, midwives and hospital administrators and to grant such diplomas/degrees or recognition as the Trust may prescribe or deem fit from time to time.*
- vii) *To grant stipend, scholarship or any other assistance or otherwise to deserving students or scholars in the field of education with special emphasis on the following specialties with an undertaking from them that they would support a similar scholarship when able, after their settlement in life:*
 - Medicine, Dentistry, Pharmacy, Computer, Science, Engineering, Agriculture and banking. The trustees reserve the right to grant stipends or scholarships in any field of education that they deem fit in any part of India.*
- viii) *To provide relief to poor students and poor patients free of cost or at minimum possible charges to others, without any profit motive whatsoever.*
- ix) *To provide nutrition and education, specially, in cases like-*
 - a) *Anemia in girl child and*
 - b) *during pregnancy of women.*
- x) *To promote small family norms through:*
 - a) *Population education*
 - b) *MCH (Maternal and Child Health) including immunization, safe delivery, identification of high risk pregnancies.*
- xi) *To organize and promote literacy programmes particularly in Urban, slums and backward rural areas.*

- xii) *To set up Counseling Centres for providing counseling and guidance to the educated youth for career and job opportunities and seek coordination and cooperation of educational institutions for the purpose.*
 - xiii) *To set up and run or assist the setting up and running of Adult education centres and coaching centers for moral upliftment, educational skills towards self reliance.*
 - xiv) *To grant stipend, scholarships or any other assistance or otherwise to deserving students or scholars in the field of education with special emphasis on the following specialties Medicine, Pharmacy, Computer Science, Engineering, Agriculture Environmental sciences and banking. The trustees reserve the right to grant stipends or scholarships in any field of Education that they deem fit in any part of India.*
 - xv) *To lift the poor from the curses of poverty, hunger, illiteracy and diseases by starting and carrying out concentrated and intensive programmes.*
4. i) *To borrow, raise loans from any person, bank or financial institution in such a manner as the Trustees shall think proper or convenient for the furtherance of objects of the Trust and for this purpose the Trustees may secure repayment of these loans. To reach this objective Trustees will always try to have a balanced budget, so that revenues and expenses balance and not produce losses. The objective of the operations of the Trust is not to create a losing operations, but to operate the minimum charges for the services rendered, so as not be forced to borrow from financial institutions.*
- ii) *Trust shall not be involved in any activity which promotes violence, terrorism, fanaticism or political favouritism between the political party verses another. Trust's objective is strictly humanitarian with no political agenda of any sort whatsoever.*
- iii) *To receive grants, or aid in the form of money or material for the fulfillment of the objects of the Trust from the Central Government, State Government, Social services organizations and individuals.*

iv) *To do all necessary things for and incidental or conducive for the attainment of the above objectives of the Trust.*

v) *The above objects shall be independent of each other."*

40. *We have also examined the provisions of Section 12AA, reads as under:*

"[Procedure for registration.

*12AA. (1) The [***] [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of section 12A. shall—*

(a) 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 may also make such inquiries as he may deem necessary in this behalf; and

(b) 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, and a copy of such order shall be sent to the applicant:

Provided that no order 'under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

[(1A) All applications, pending before the [Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) of sub-section (1)] of section 12A.1

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)]] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

[(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13. then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.]"

41. The Ld. PCIT cancelled the registration basically on two premises,

1) *There has been a violation of clause (ii) of the para 4 of the trust deed and*

2) *Violation of provision of Section 2(15) of the Act while carrying out the activity.*

The two reasons given by the Id, PCIT are also being examined.

42. *The clause (ii) of the para 4 of the trust deed reads "Trust shall not be involved in any activity which promotes violence, terrorism, fanaticism or political favouritism between the political party verses another. Trust's objective is strictly humanitarian with no political agenda of any sort whatsoever."*

On going through the above clause, and on going through the record before us, it cannot be said that the trust has involved in any activity which promoted violence, terrorism, fanaticism or political favouritism. Hence, the observation of the Id. PCIT can be said to be based on wrong facts.

43. *Regarding the applicability of provisions of Section 2(15) as per the provisions charitable purpose includes education and since the assessee is in the activity of imparting education, the observation of the Id. PCIT is also cannot be held to be valid based on the provisions of the Act. For the sake of brevity and ready reference, the provisions of Section 2(15) of the Act are reproduced as under:*

"Section 2...

(15) "charitable purpose" includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other 69object of general public utility;

[Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous yearf do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]"

44. The Ld. PCIT, did not have record of activities which are not in accordance with the objects of the trust. The entire order of the Id. POT is based on the appraisal report of DDIT(Inv.) only. We do not find mention of any material being referred by the Id. PCIT and its applicability to any of the provisions of Section 2(15) and/or Section 12AA(3) while revoking the registration. The Act envisages where a trust or an institution has been granted registration u/s 12AA(1)(b) or has been obtained registration at any time u/s 12A. The Id. PCIT can cancel the registration if the conditions mentioned therein are not satisfied or the activities of the trust are not genuine or the activities are not carried out in accordance with the objects of the trust. We do not find that the Id. PCIT has brought out any of the conditions laid down as above.

Hence, keeping in view the entire facts of the case, that there have been deficiencies in the infrastructure as found by the first report which were found to have been rectified by the second committee comprising of Addl. Secretary, Gol Dean AIIMS, Addl. DG, DGHS, and keeping in view the fact that MCI has granted due permission for the academic session 2010-11, keeping in view the fact of non-sanction of prosecution of Sh. Ketan Desai, keeping in view the order of the Hon'ble High Court of Delhi, dropping the proceedings till sanction is received, keeping in view the submission of the revenue that no prosecution is pending against the assessee as on now, keeping in view the aims & objects of the trust are in consonance with the provisions of Section 2(15) of the Act, keeping in view that there has been no violation of clause (ii) para 4 of the trust deed as alleged by the Id. PCIT, we hereby hold that the order of the Id. PCIT dated 27.10.2017 cancelling the registration since inception, u/s 12AA(3) of the Act is legally not valid. Before departing, we hereby clarify that,

1) The order of the id. PCIT cancelling the registration since inception is hereby revoked.

2) The order has been passed in accordance with the provisions of the Income Tax Act, 1961 and shall not impact

the outcome of any proceeding under any other Acts promulgated under Constitution of India.

3) The revenue shall be at liberty to approach the Tribunal for re-institution of the appeal on re-commencement of trial against Sh. Ketan Desai which has been since dropped.

5. On perusal of the reassessment order and the appellate order, we observe that the lower authorities have denied claim for exemption u/s 11/12 of the Act to the assessee for the reason that the Ld. PCIT (Central)-3, New Delhi cancelled the registration granted u/s 12AA of the Act by order dated 01/03/2016. However, since the Tribunal by order dated 03/09/2020 cancelled the order of the Ld. PCIT passed on 01/03/2016 and 27/10/2017 withdrawing the registration u/s 12AA of the Act, the reassessments made by the Assessing Officer u/s 147/143 on the ground that the PCIT had withdraw the registration u/s 12AA of the Act will not stand and there has to be a fresh assessment in the light of the order of the Tribunal restoring the registration u/s 12AA of the Act. Thus, we set aside the order of the Ld.CIT(Appeals) and restore all these assessments to the file of the Assessing Officer for *denovo* assessments in the light of the decision of the Tribunal in restoring the registration granted to the assessee u/s 12AA of the Act. The Assessing Officer is directed to complete the *denovo* assessments for the assessment years 2009-10 to 2013-14 after providing adequate opportunity of being heard to the assessee.

6. We make it clear that the Ld. Counsel for the assessee has only argued and submitted that the Tribunal had restored registration u/s 12AA and, therefore, the reassessments made denying exemption u/s 11/12 will not stand. No other argument has been advanced by the Ld. Counsel and the appeals are decided only on this point.

7. In the result, all the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21.04.2023

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 21.04.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi