

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'DB': AGRA
(Through Virtual hearing)**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.186/AGR/2022
(ASSESSMENT YEAR -00)**

Samarpan Annam Danam Charitable Society, 263, Jiwaji Nagar Opposite of Optomus College, thatipur, Gwalior 474011, Madhya Pradesh India PAN-ABRAS2531D (Appellant)	Vs.	Commissioner of Income Tax Exemptions, Bhopal, Madhya Pradesh India (Respondent)
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Appellant by	Sh. K. Sampath
Respondent by	Sh. Surendra Pal, CIT-DR

Date of Hearing	17/07/2023
Date of Pronouncement	11/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax Exemptions, Bhopal, Agra ["Ld. CIT ('E'), for short], dated 03/11/2022.

2. The grounds of appeal are as under:-

“1. That the Order dated 03.11.2022 of Ld CIT(E), Bhopal rejecting the registration of the Society U/s 12AB is arbitrary, unjust, illegal, based on extraneous considerations and is liable to be set aside.

2. That the Ld CIT(E), Bhopal is wrong to held that activity, by the Society, of providing concessional food packets to the needy people is in the nature of Trade, Commerce or business and is hit by the Proviso to Sec. 2(15) of the Income Tax Act, 1961. She has grossly failed to appreciate that providing food packets at concessional rates of Rs.5/-, 10/- and 12/- does not meet even the cost of such packets and thus the activity is devoid of any profit motive essential to cast it as an activity of Trade, Commerce or business.

3. That, while invoking the proviso to Sec. 2(15), the Ld CIT(E), Bhopal totally failed to appreciate that the alleged activity of the Society does not qualify as “advancement of an object of general public utility (GPU Charity)” but qualify as “Relief to Poor” to which said proviso is not applicable; rendering the impugned order both incorrect and illegal.

4. That reliance of the Ld CIT(E), Bhopal on the Hon’ble Appex Court order as referred in her order is totally misplaced, in as much as, she has chosen only certain parts of the order without properly appreciating the judgment in its entirety. On the contrary various examples given by the Hon’ble Appex Court, in Para 173 fully support the case of the appellant Society that it is not engaged in any activity of Trade, Commerce or business.

5. *That the appellant Society deserves to be granted registration u/s 12AB of the Act which may please be directed to be allowed.*

6. *That impugned order of the Ld CIT(E), Bhopal is also against the principals of natural justice in as much as the Ld CIT (E) has neither responded nor taken into cognizance the adjournment application dated 20.10.2022 of the appellant. Thus, the Order is passed without providing proper opportunity to the appellant to submit adequate response to her notice dated 12.10.2022.*

7. *That the appellant craves your honour's permission to add, delete or amend any of the ground at the time of hearing."*

3. Brief facts of the case are that, the assessee applied in Form No. 10AB for registration u/s 12AB of the Act vide application dated 12/05/2022 under the New Provision of Income Tax Act, 1961. The application of the assessee has been rejected and cancelled the provisional registration/approval granted by the CPC vide order dated 03/11/2022. On the ground that the assessee is found to be engaged primary in business activities in violation of proviso to Section 2(15) of the Act and also in violation of any other law as mentioned in Section 12 AB(1)(b) (i)(B) of the Act. Aggrieved by the order of the CIT(E) dated 03/11/2022 the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the order of the CIT(E) in rejecting the registration of Society u/s 12AB is arbitrary, unjust and illegal, the CIT(E) has committed error in finding the fact and the order of the CIT(E) is contrary to order of the Hon'ble Apex Court in the case of Assistant Commissioner

of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority and ors but the Ld. CIT(E) has erred by referring to the selective paragraphs without considering the ratio laid down in the said judgment. The Ld. Counsel further submitted that the CIT(E) failed to appreciate that the assessee is providing food packages at concessional rate of Rs. 51,012/- which does not meet the cost of packets and there is no profit moto essential to cast it as activities of trade, commerce or business and submitted that The CIT(E) ought to have granted registration under 12AB of the Act.

5. Per contra, the Ld. Departmental Representative submitted that the assessee society has installed three different types of automatic machines for kneading dough rolling of puri and peeling potatoes but no machine has been shown as fixed asset in the balance sheet of Financial Year 2021-22, during the physical verification it is found that a temporary counter for selling small packets of puri sabzi was found and also the society is running food counter at 262, Jawali nagar providing concessional food and the income from the sale of food packages in various rate were shown in income and expenditure account. Therefore, the said activity is purely commercial in nature, thus it is rightly found that the assessee is engaged in commercial activities rather charitable activities. Therefore submitted that the order of the CIT(E) requires no interference.

6. We have heard both the parties and perused the material available on record.

6.1. The Id. CIT(E) while rejecting the application filed by the assessee u/s 12AB observed that, as per physical verification report submitted by ITO(E). Gwalior on 03.10.2022, the society has installed three different types of automatic machines used for kneading dough, rolling of Puris and peeling of potato's respectively. However, in the Balance Sheet for F.Y. 2021-22, no machine has been shown as fixed assets only one car has been shown in fixed assets. But as per the copy of the agreement produced by the applicant all the three machines were acquired after 01.04.2022 i.e. in the financial year 2022-23 on rent and its rental charges would appear in the accounts of next year and in the preceding year all the operations were manual.

6.2. Further, the CIT(E) found that out of total 01 to 27 objects the society has started activity only on the object mentioned at point 27 which is providing food for poor at free of cost or at concessional rates. Further. During physical verification at the given address, one temporary counter was set up near the entrance gate of building and one person was distributing small packets of Puri Sabji. The applicant society has been established with various charitable objects which inter alia included an object for providing free/subsidized food to patients in hospital, to aged, poor, deprived and other needy section of the Society and also to create awareness of eradication of hunger and malnutrition. The assessee has submitted a submission on 23/08/2020 by narrating the activities currently undertaken and future plans

which have not been considered by the CIT(E). In our opinion, starting only one activity out of many may not be or a bar for registration so long that activity is charitable. Reliance placed on S.C decision in 426 ITR 340 at 355 wherein it is held as under:-

“The above section provides for registration of a trust. Such registration can be applied for by a trust which has been in existence for some time and also by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration.

In brief, section 12AA of the Act empowers the Principal Commissioner or the Commissioner of the Income Tax on receipt of an application for registration of a trust to call for such documents as may be necessary to satisfy himself about the genuineness of activities of the trust or institution and make inquiries in that behalf; it empowers the Commissioner to thereupon register the trust if he is satisfied about the objects of the trust or institution and genuineness of its activities.

In the present case, the trust was formed as a society on 30.05.2008 and it applied for registration on 10.07.2008 i.e. within a period of about two months.

No activities had been undertaken by the respondent Trust before the application was made. The Commissioner rejected the application on the sole ground that since no activities have been undertaken by the trust, it was not possible to register it, presumably because it was not possible to be satisfied about

whether the activities of the trust are genuine. The Income Tax Appellate Tribunal, Delhi (for short, the 'Tribunal') reversed the orders of the Commissioner. The Revenue Department approached the High Court by way of filing an appeal. The High Court upheld the order of the Tribunal and came to the conclusion that in case of a newly registered trust even though there was no activities, it was possible to consider whether the trust can be registered under section 12AA of the Act. This judgment is assailed before us.

Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

It was argued before us that the Commissioner is required to be satisfied about two things – firstly that the objects of the trust and secondly, its activities are genuine. If there have been no activities undertaken by the trust then the Commissioner cannot assess whether such activities are genuine and therefore, the Commissioner is bound to refuse the registration of such a trust.

We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant – Director of Income Tax and find that it is not possible to agree with the same. The purpose of section 12AA of

the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.

We therefore find that the view of the Delhi High Court in the impugned judgment is correct and liable to be upheld.

Ms. Bhati, learned Senior Counsel for the appellant, fairly drew our attention to a judgment of the Allahabad High Court in IT Appeal No.36 of 2013 titled as "Commissioner of Income Tax-II vs. R.S. Bajaj Society" which has taken the same view as that of the Delhi High Court in the impugned judgment. The Allahabad High Court

has also referred to a similar view taken by the High Courts of Karnataka and Punjab & Haryana.

Apparently, a contrary view has been taken by the Kerala High Court in the case of Self Employers Service Society vs. Commissioner of Income Tax – (2001) Vol.247 ITR 18. That view however does not commend itself. However, the facts in Self Employers Service Society (Supra) suggest that the Commissioner of Income Tax had observed that the applicant for registration as a Trust had undertaken activities which were contrary to the objects of the Trust.

In the result, we find that there is no reason to interfere with the impugned judgment of the High Court of Delhi. The appeal is, accordingly, dismissed.”

As regards allegation of a temporary counter and selling of food packets, it is the specific case of the assessee that there was neither any counter nor food packets were being sold as such. The food was “distributed” though a small window at the site.

6.3. The CIT(E) while rejecting the registration observed that during physical verification the society was found using domestic LPG cylinder for cooking of foods. This is clearly violation of any other law as mentioned in Section 12AB(1)(b)(1)(8) of the Act. The activity attracts violation of clause 7(1)(c) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000, and thereby committing an offence under Section 7 of the Essential Commodities Act. 1955: It is found that clause 7(1)(c) of the

Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000 mandates that “No person shall possess filled or empty cylinder, gas cylinder valve or pressure regulator unless he is a distributor or a consumer.” Since the assessee is not using unauthorized cylinders but was using them as a customer in our opinion, the above observation of the CIT(E) is completely misplaced.

6.4. The CIT(A) further observed that the assessee in his reply dated 10/10/2022 also stated that he is providing food some times on free of cost also out of the income from sales of “Poori sabji.” As per the proviso to Section 2(15) of the Act and clarification of the Hon’ble Supreme court has made it clear that the proviso is applicable irrespective of application of income; and further observed that the assessee is found to be engaged primarily in business activities and in violation of proviso to Section 2(15) of the Act and also in violation of any other law as mentioned in Section 12AB(1)(b)(i)(B) of the Act. It is the specific case of the assessee that at no point of time the assessee has claimed that the assessee was using the proceeds from the sale of food for ‘providing food some times on free of cost’. On the other hand, it is found that the assessee was regularly providing free food Tiffin to all the patients of the cancer hospital, which can be corroborated from the submission made by the Assessee dated 10/10/2022. Thus, the above findings of the CIT(E) contrary to factual matrix.

7. Further, the observation of the CIT(E) also cannot be upheld on following reasons:-

(a) The finding that "the is found to be engaged primarily in business activities and in violation of proviso to Section 2(15) of the Act" is incorrect as it is without appreciation of the nature of activities, intent of the society admittedly, appellant is not into trade, business commerce.

(b) Providing food grains and food, free or of subsidized rates, to the victimised, harassed poor, helpless, sick and elderly people in hospitals and other places is one of the main object of the Society which can be corroborated Clause No. 27 of the Bye Laws. The aforesaid activities if considered in true perspective and in totality, falls under the "Relief to the poor category and not under the "GPU" category.

(c) The proviso to Sec. 2(15) of the Act is applicable only to "GPU charity and not to "Relief to poor is supported by the CBDT Circular No 11/2008 dated 19/12/2008. Thus, the proviso to Section 2(15) of the Act would have no application to the appellant's activities as the same covers only the residual class of charity falling under the "GPU" category. To attract the proviso to Sec. 2(15) of the Act activities should be motivated by profit earning.

8. It is to be noted that the charging of any amount towards consideration for such an activity (advancing general public utility) which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or

any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business".

9. On considering the above facts and circumstances of the present case, we are of the opinion that the CIT(E) has not justified in not granting the approval u/s 12AB of the Act, accordingly in view of the above discussions, we set aside the impugned order of the CIT(E) and direct the CIT(E) to grant approval u/s 12AB of the Act. Ordered accordingly.

10. In the result, the Appeal of the assessee is allowed.

Order pronounced in open Court on 11th July, 2023

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 11/07/2023

Pk/R.N, Sr ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, AGRA