

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “H”: NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2052/DEL/2021
Assessment Year: 2021-22**

Yadav Kalyan Samiti, Sector 16 17 Divising Roa Yadav Dharamshala, Sector 16, Faridabad-122002 PAN- AAATY1625K	<u>Vs</u>	Commissioner of Income-tax (Exemptions), Chandigarh.
APPELLANT		RESPONDENT
Assessee represented by		Shri Baldev Raj, CA; Shri Manish Upneja, CA; & Ms. Sanju Kumar, Adv.
Department represented by		Ms. Sapna Bhatia, CIT(DR)
Date of hearing		30.08.2023
Date of pronouncement		30.08.2023

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order dated 08.03.2021, passed by the learned Commissioner of Income-tax (Exemptions), Chandigarh u/s 12AA(1)(b)(ii) of the Income-tax Act, 1961 (the “Act). The assessee has raised following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax was not justified in rejecting the grant of

registration u/s 12A of the Income Tax Act, 1961.

2. That the Learned Commissioner of Income Tax failed to appreciate that the objects of appellant society are charitable within the meaning of section 2(15) of the Act and the activities are genuine .

3. That the Learned Commissioner of Income Tax has rejected the application on vague, irrelevant and non existent grounds without considering the provisions of Section 12A and 12AA .

4. That in view of the material placed on record regarding genuineness of the activities of the trust and of its objects , the Learned Commissioner Ought to have granted registration u/s 12A r/w section 12 AA of the Act.

5. That the application has been rejected without calling for an explanation from the appellant society.

6. That the appellant craves for leave to add, alter, modify any of the grounds of appeal mentioned above at the time of hearing.”

2. Facts, in brief, are that an application in Form no. 10A was filed electronically by the applicant on 9.7.2020 seeking registration u/s 12A of the Act. Learned CIT(Exemptions) sought certain information from the assessee trust. The same were provided by the assessee. However, the learned CIT(Exemptions) declined to grant registration. Aggrieved against this the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that no meaningful opportunity was provided by the learned CIT(Exemptions). He submitted that the basis of rejection of application is erroneous. He further submitted that in the interest of

natural justice the assessee should be granted reasonable opportunity of being heard.

4. On the other hand, learned DR opposed the submissions and supported the order of learned CIT(Exemptions).

5. We have heard rival submissions and perused the material available on record. One of the grievance of the assessee is that learned CIT(Exemptions) did not provide adequate opportunity to explain its case despite the fact that requisite details were placed on record. We find that learned CIT(Exemptions) rejected the application, inter alia, by observing as under:

“6. After considering the submissions on record, it is observed that the applicant has shown an amount of Rs. 5,51,000/- as Corpus Fund in its Balance Sheet for F.Y. 2016-17 and Rs. 11,00,000/- for F.Y. 2017-18 in the name of specific donation. The society has diverted these receipts in the name of corpus to the Balance Sheet which, rather, should have been taken as income in the Income & Expenditure account for the respective previous year.

As per the provisions of the Income Tax Act, 1961, corpus donation/grants would be exempt only under Section 11(1)(d) and an assessee can claim benefit u/s 11 only when such assessee is registered u/s 12A or 12AA. This assertion is not only backed by the statute but also by the decision of Hon'ble Supreme Court in the case of CIT vs. U P Forest Corporation, 230 ITR 945 (SC) [1998] and decisions of various other Hon'ble High Courts like: (A) New Life in Christ Evangelist Association vs. CIT reported in 246 ITR 532 (Madras) [2001]; (B) CIT vs. Red Rose School reported in 212 CTR (All) 394; (C) M. Visvesvaraya Industrial Research & Development Centre vs. ITAT reported in 251 ITR 852 (Mumbai) [2001]; (D) CIT vs. Otacamund Gymkhana Club reported in 110 ITR 392 (Madras) [1977] and (E) Gouri Shankar Deity vs. Union of India 145 ITR 67 (MP) [1984],

*Before the period of grant of registration, all voluntary contributions (including the ones with specific direction that they shall form part of the corpus) are the income of a charitable, religious or charitable cum religious trust. **Therefore, in the present case, the corpus fund shown by the applicant on record during FY 2016-17 and 2017-18** (and for any other previous year) is the income of the applicant and, thus, the trust/society becomes liable to pay tax for that year. Further, the ITR for A.Y. 2017-18 and 2018-19 corresponding to F.Y. 2016-17 and 2017-18 filed by the applicant does not include the income shown as corpus during the year and, therefore, no tax against the said income has been **paid**. The applicant should have added the amount shown against corpus/restricted funds during the year into its income and then it should have filed the correct ITR and paid taxes. Unless the legitimate tax against the income, as discussed above, is paid, the application for registration u/s 12AA of the Act cannot be considered.*

The trust has illegally taken the benefit of provisions of the Income Tax Act for getting tax exemption benefits and has tried to subvert the Income Tax laws. This act of the applicant is unacceptable and the jurisdictional assessing officer will be intimated to take remedial action in the matter.

7. In light of the above discussion, I do not find the applicant trust eligible for getting registration u/s 12AA of the Act and, therefore, the present application for registration u/s 12AA of Income Tax Act, 1961 is hereby rejected.”

6. It is stated by the learned counsel for the assessee that if an opportunity is given he would explain as to the reason for treating the sum as corpus fund. Considering the totality of facts we are of the considered opinion that the assessee should have been provided reasonable opportunity to explain its case by the learned CIT (Exemptions). Therefore, we set aside the impugned order and restore the issue to the file of learned CIT(Exemptions) to decide the application afresh

after giving adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purpose.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 30th August, 2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI