

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 103/Asr/2014 A.Y.: 2003-04

I.T.A. No. 275/Asr/2014 A.Y.: 2006-07

I.T.A. No. 230/Asr/2015 A.Y.: 2005-06

I.T.A. No. 27/Asr/2017 A.Y.: 2007-08

I.T.A. Nos. 161 to 163/Asr/2020 A.Ys.: 2011-12 to 2013-14

Ram Saran Dass Kishorei Lal Charitable Trust, 48, Gandhi Bazar, Amritsar. [PAN: AAATR0783P] (Appellant)	Vs.	Joint Commissioner of Income Tax, Range-1, Amritsar. (Respondent)
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Appellant by	Sh. Sanjiv Mehra, CA
Respondent by	Smt. Ratinder Kaur, Sr.D. R.

Date of Hearing	31.08.2023
Date of Pronouncement	20.09.2023

ORDER

Per: Bench:

A batch of appeals of the same assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals), Amritsar [in brevity the Id.CIT(A)]the order passed u/s 250(6) of the IT Act 1961, [in brevity the Act] for A.Ys.2003-04,

2005-06 to 2007-08, 2010-11 to 2013-14. The impugned order was emanated from the order of the Joint Commissioner of Income Tax, Range 1, Amritsar (in brevity 'the AO') order passed u/s 143(3) of the Act.

2. At the outset all the appeals of the assessee are under a common issue and have the same factual backdrop. Therefore, all the appeals are taken together, heard together and adjudicated together. With the consent of the parties, we taken **ITA No. 103/Asr/2014 is a lead case.**

3. The assessee has taken the following grounds:

“1. That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) has grievously erred in holding that the appellant is not carrying on charitable activities during the year under appeal.

2. That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in holding that the AO has rightly assessed the Appellant in the status of AOP.

3. That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in upholding the action of AO in rejecting Appellant's claim of exemption under section 11 of the Income Tax Act, 1961.

4. That in deciding the above three issues, the worthy CIT(A) has erred in relying on the order of the Id. ITAT

Amritsar dated 26-6-2009 confirming the order of worthy CIT-I, Amritsar passed under section 12AA(3) on_ 31-12-2008 cancelling the registration u/s 12A(a) of the Appellant Trust as a charitable institution with retrospective effect from 1-4-2002, when the said ITAT order has not attained finality and the Appellant's appeal against the said order in the honourable Punjab and Haryana High Court has been admitted and is pending for adjudication.

5. *That the Id. CIT(A) has erred in confirming the action of the AO in charging interest under section 234B of the Income tax Act, 1961 when there is no default on the part of the assessee for payment of advance tax during the financial year, which has not even been alleged by the AO. On the facts and circumstances of the case, the Appellant acted bona fide and could not visualize positive income for the year when no proceedings were pending at the relevant time and the cancellation of registration by the worthy CIT was done retrospectively much after the end of the financial year on 31-12-2008. The judgment of honourable Punjab and Haryana High Court in the case of CIT V. Haryana Warehousing Corporation (IT Appeal No. 242 of 2006, order dated 20-4-2007) which has been followed by the said jurisdictional high court in CIT v. SAB Industries reported at (2013) 40 Taxmann.com 175 (P&H) is quite clearly applicable in this case.*

6. That the Appellant craves leave to add, alter, amend or delete any of the above grounds at any time before the appeal is heard and disposed off.”

4. Briefly, we stated the fact that the assessee is trust and registered u/s 12A of the Act. The registration of the assessee trust was cancelled u/s 12A(a) on dated 31.12.2008 with retrospective effect from 01.04.2002. Aggrieved assessee filed the appeal before the ITAT, Amritsar Bench. But the assessee remained unsuccessful. The assessee trust being aggrieved of the order of ITAT Amritsar Bench has filed appeal before the Hon'ble Punjab & Haryana High Court by challenging the jurisdiction of the ld. Commissioner of Income Tax-1, Amritsar (in short CIT-1) for rejection of registration of Trust. The assessee-trust challenged the power of the ld. CIT-1 u/s 12AA(3) of the Act and the order passed by the Hon'ble Jurisdictional High Court in favour of the assessee. The assessee mostly challenged that the ld. CIT-1 has no power for rejection of registration u/s 12AA (3) as per provision of the Act on or before dated 01.10.2004. In other side, the assessee trust was assessed u/s 143(3) and treated the status as AOP (Association of Person) as the registration was cancelled by the ld. CIT-1, Amritsar. The exemption claimed u/s 11 of the Act was duly rejected and added with total income. Being aggrieved on the order of the ld. AO the assessee filed the appeal before the ld. CIT(A). The

ld. CIT(A) partly allowed the appeal. The relief was granted related to addition of depreciation amount to Rs.44,10,065/- and amount to Rs.10,000/- for personal use of car and telephone. But the ld. CIT(A) upheld the observation of the ld. AO that the status of the assessee is a AOP due to not registered u/s 12AA of the Act. The status of the assessee was changed from registered to unregistered trust as per section 12AA(3) of the Act by the order of revenue. Aggrieved assessee filed the appeal before us. By challenging the status of the assessee and prayed for allowing the exemption u/s 11 of the Act.

5. The ld. AR vehemently argued and submitted the written submission and paper book which are kept in the record. The ld. AR first invited our attention in the order of the Hon'ble **High Court of Punjab & Haryana, Chandigarh** in the assessee's own case bearing **ITA No. 709/2009 (OM) date of order 23.01.2023**. The assessee was awarded for restoring the registration u/s 12A and ordered tht the ld. CIT-1 had acted beyond the jurisdiction. But the ld. AR was not able to show any plausible order of the ld. CIT-1 about the restoration of registration which was cancelled on dated 31.12.2008 u/s 12AA(3) of the Act.

5.1 The ld. AR further submitted written submission with details fact which are reproduced as below:

*“In the matter of : M/s. Ram Saran Pass Kishori Lai Charitable Trust. Formerly 48. Gandhi Bazar. Amritsar. Now A-27. Friends Colony East. New Delhi (PAN: AAATR0783P)
ITA 103/ASR/2014 FOR ASSTT. YEAR 2003-04: ITA 230/ASR/2015 FOR ASSTT. YEAR 2005-06: ITA 275/ASR/2014 FOR ASSTT. YEAR 2006-07: ITA 27/ASR/2017 FOR ASSTT. YEAR 2007-08 & For A.Y. 2011-12, 12-13 & 13-14.*

Implementation of the judgement of Hon'ble Punjab and Haryana High Court in the case of the Appellant titled 'Ram Saran Das Kishorilal Charitable Trust Vs. Commissioner of Income Tax-I and others' [ITA No. 709 of 2009]

1. *The main ground of appeal before the Ld. ITAT which is common to all the Assessment Years 2003-04, 2005-06, 2006-07 and 2007-08 is that the CIT(A) has erred in upholding the action of AO in rejecting Appellant's claim of exemption under section 11 of the Income Tax Act, 1961 (and assessing it as an AOP by relying on the order of the Id. ITAT Amritsar dated 26-6-2009 confirming the order of worthy CIT-I, Amritsar passed under section 12AA(3) on 31-12-2008 cancelling the registration u/s 12A(a) of the Appellant Trust as a charitable institution with retrospective effect from 1-4-2002, when the said ITAT order has not attained finality and the Appellant's appeal against the said order in the hon'ble Punjab and*

Haryana High Court has been admitted and is pending for adjudication.

2. *The Appellant's appeal before the hon'ble Punjab and Haryana High Court revolved inter-alia on the issue that the Ld. CIT had no power under section 12AA(3) of the Income Tax Act, 1961 till before 1st June 2010 to cancel the registration once granted under section 12A.*

3. *On 23-1-2023, the Hon'ble Punjab and Haryana High Court delivered the judgement in favour of the appellant-assessee. The copy of the Order dated 23-1-2023 of the hon'ble High Court in the case titled as 'Ram Saran Das Kishorilal Charitable Trust Vs. Commissioner of Income Tax-I and others' [ITA No. 709 of 2009] and the correction order dated 13-3-2023 are attached.*

The Hon'ble Punjab and Haryana High Court has held:

"The prayer in the present application by the appellant is to dispose of the appeal. The reference in the application is made to the order of 8-8-2012 whereby the appeal has been admitted and it was observed that after the decision in SLP No. CC 16992 of 2011 (Director of IT Exemptions Vs. M/s. Mool Chand Khairati Ram Trust), the parties can seek out of turn disposal in view of the decision in the said SLP.

The application is allowed, and the main cases taken up today on the board.

Main Case

Now, the question involved in the present appeal is whether the trust which is registered prior to 01.04.1997, whether section 12AA(3) of the Income Tax Act, 1961 would apply or not. This question has been answered in favour of the appellant by the Hon'ble Supreme Court vide judgement (Annexure A-3) in CA No. 6262 of 2010 "Industrial Infrastructure Development Corporation (Gwalior) M. P. Ltd. Vs. Commissioner of Income Tax, Gwalior.

Learned counsel for the respondent is not disputing the above said fact.

This appeal is being disposed of that the case of the appellant can be considered as per the judgement as at Annexure A-3."

4. The judgement of hon'ble Supreme Court dated 16-2-2018 in Civil Appeal No. 6262 of 2010 relied upon by the hon'ble Punjab and Haryana Court in the abovesaid assessee's appeal in the case of Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. CIT, Gwalior [reported at (2018) 403 ITR 1 (SC)] is also attached.

Operative part of the order is reproduced below

"27. It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting

subsection (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004, i.e., (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.

28. The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the case of Director of Income Tax (Exemptions) vs. Mool Chand Kairati Ram Trust , (2011) 243 CTR(Del) 245, Uttaranchal High Court in the case of Welham Boys' School Society vs. CBDT, (2006) 285 ITR 74(Uttaranchal) and Allahabad High Court in the case of Oxford Academy for Career Development vs. Chief Commissioner of Income Tax & Ors. (2009) 315 ITR 382 (All).

29. All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi-judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, Section 21 of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once

granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004.

30. We are of the considered view that the view taken by the abovementioned three High Courts in the respective cases is in conformity with law and we accordingly approve the said view taken by these High Courts in three aforementioned decisions.”

6. The ld. DR vehemently argued and mentioned that the order of Hon’ble Jurisdictional High Court is related to the restoration of registration u/s 12AA of the Act. But the assessee challenged for claiming the exemption u/s 11 of the Act related to the income in the impugned assessment year. The ld. DR invited our attention in appeal order page 27 which is reproduced as below:

“Further, Hon’ble CIT-I, Amritsar has cancelled registration of the assessee u/s 12AA (3) of the Income Tax Act w.e.f. 01.04.2002. The CIT-I, Amritsar has given detailed reason for cancelling registration after being satisfied that activities of trust have ceased to be for charitable purposes and are also not in accordance with the object of the trust. This order of the Hon’ble CIT has been confirmed by the Hon’ble ITAT, Amritsar Bench, Amritsar vide order dated 26.06.2009. In view of above it is clear that AO has rightly assessed the assessee in the status of AOP as assessee trust was not carrying out any

charitable activities. In view of above ground number 1 is decided against the assessee.”

7. We heard the rival submission and considered the documents available in the record. The ld. AR in argument mentioned that the assessee's case is covered by the Hon'ble Jurisdictional High Court and the assessee is eligible and be treated as registered trust. We respectfully observed the order of the Hon'ble Jurisdictional High Court which is fully related to the jurisdictional of the ld. CIT-1 about the cancellation of registration of the assessee-trust u/s 12AA (3) of the Act. But the assessment u/s 143(3) is related to the claim of exemption u/s 11 which is read with section 12A of the Act. The exemption is allowable for the registered trust not for the unregistered trust. With due respect, the order of the Hon'ble Jurisdictional High Court is binding on section 12AA for restoration of registration.

Section 12A provides for the conditions for applicability of sections 11 and 12 of the Act. Section 11 deals with income from property held for charitable or religious purposes, while Section 12 deals with income of trusts or institutions from voluntary contributions¹.

To be eligible for registration under Section 12A, a trust or institution must meet certain conditions and requirements. The above-mentioned order of Hon'ble jurisdictional High Court is applicable for the Id. CIT-1 and for Section 12AA of the. The issuance the certificate of registration by the Id. CIT-1is the proof of acceptance that the assessee had performed the conditions mentioned in statute which forms the eligibility of assessee to get benefit U/s 11 & 12 of the Act.

But during the hearing, the Id. AR was unable to produce the copy of registration u/s 12AA of the Act which is the pillar for claiming exemption u/s 11 and 12 of the Act.

7.1 In our considered view, the observation of the Id. CIT(A) is fully acceptable. We do not interfere in the orders passed u/s 143(3) and u/s 250 (6) by the revenue authorities. Accordingly, the appeal of the assessee with **ground no. 1 to 4** are dismissed.

Ground No.5

8. Ground No. 5 is consequential in nature.

Ground No. 6

9. Ground No. 6 is general in nature.

10. As noted at the beginning of this order, the facts and issue in all these appeals are common. So,our observations qua in **ITA No.103/Asr/2014**is, *mutatis*

mutandis, equally applicable to ITA No.275/Asr/2014, ITA No. 230/Asr/2015, ITA No.27/Asr/2017 and ITA Nos.161 to 163/Asr/2020 are also.

11. In the result, all the appeals of the assessee bearing **ITA No. 103/Asr/2014, ITA No.275/Asr/2014, ITA No. 230/Asr/2015, ITA No.27/Asr/2017 and ITA Nos.161 to 163/Asr/2020** are dismissed.

Order pronounced in the open court on 20.09.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order