

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.6728/Del/2018
(ASSESSMENT YEAR-NIL)**

Radha Madhav Nishkam Seva Samiti E-62, New Multan Nagar, New Delhi-110 056 PAN : AABAR5883N (Appellant)	Vs.	CIT(Exemption), New Delhi (Respondent)
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Assessee by	Ms. Rano Jain, Adv. and Ms. Mansi Jain, CA
Department by	Sh. Prakash Nath Baranwal, CIT-DR

Date of Hearing	11/01/2024
Date of Pronouncement	17/01/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Exemptions), ["CIT(E)", for short], New Delhi, dated 31/08/2018. The following grounds of appeal taken by the assessee:

“1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Exemption) erred in rejecting Appellant application filed u/s 12AA of the Income Tax Act.

2. On the facts and circumstances of the case, the learned Commissioner (Exemption) erred in his findings that the religious objects are not eligible for registration Income Tax u/s 12A of the Income Tax Act.

3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Exemption) erroneously concluded the following, while rejecting Appellant application filed u/s 12AA of the Income Tax Act:

a) The 70% of donation received in cash and alleged that it is violation of section 80G (5D) when the section provides, donation paid cash above Rs 2000 is not eligible for deduction.

b) Huge cash deposit and payment from bank does not give credence for charitable in nature. When medicine sales and donations deposited in bank.

c) Only 20% of total income applied, even after having sufficient fund did not undertake the sufficient charitable activity.

4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Exemption) erred in following observations:

a) The selling of medicine is not in accordance with objects and aim of society.

b) The activity of selling of medicine at low rate by the applicant society is not charitable in nature

c) The selling of medicine does not indicate genuineness of the activities of society

d) The purchase/ sales bills of medicine not provided

5. The Appellant craves to leave, add, amend, modify, delete and/or change all or any of the grounds on/or before the date of hearing.”

2. The assessee is aggrieved by the order of the Ld. CIT(E) in denying the registration u/s 12AA of the Income Tax Act, 1961 (“Act”, for short). The Ld. Counsel for the assessee submitted that the reason for rejecting the registration u/s 12AA of the Act is that

the 'assessee is carrying out the activity which is commercial in nature, there is a religious objects in the MOA, activity undertaken by the assessee is different from the objects and almost all transactions are in cash, the charitable and religious nature of the objectives and genuineness of the activities of the trust or institution cannot be established'. Ld. Counsel for the assessee has also filed numerous documents before the Tribunal for admission of additional evidence under Rules-29 of the Rules and submitted that the documents produced by the appellant will suffice the requirements in support of the assessee for grant of registration u/s 12AA of the Act, therefore, sought for remanding to the file of Ld. PCIT(E).

3. Per contra, the Ld. DR vehemently objected the submission made by the Ld. AR and contended that the order of the CIT(E) requires no interference as the assessee is conducting activities of selling the medicines and the assessee is not entitled to get the registration u/s 12AA of the Act. Further submitted that the Assessee is carrying out commercial activity and the receipt thereon exceeds the quantified limit, therefore, the Assessee is not entitled

for registration under 12AA of the Act as per the ratio laid down by the Supreme Court in the case of *ACIT(E) vs. Ahmedabad Urban Development Authority [2022] 449 ITR 1 (SC)*.

4. We have heard the parties and perused the materials available on record. While rejecting the registration u/s 12AA of the Act, the CIT(E) specifically observed that 'the appellant has claimed that the society is engaged in selling the medicine at subsidize rate, but no bills for purchase of medicines have been provided by the applicant and also no expenses and particulars of purchasing the medicine are reflected in the Income and Expenditure Account. The sales/purchases account of medicines is not provided and only Rs.2,50,880/- has been shown as net receipts. It was not denied by the appellant has shown some expenses towards group marriage and gift etc. apart from miscellaneous administration expenses, however, gross sales/purchase of medicine is not provided which is commercial activity having net profit of Rs.2,50,880/-. Therefore, the genuineness of the activity undertaken by the society i.e., selling of medicines or charity activities have not been proved, therefore, the Ld. CIT(E) rejected the registration.

5. The Ld. Counsel for the assessee has produced numerous documents under Rule-29 of Income Tax Appellate Tribunal Rules and also produced the financials for the period ending on 31/03/2019. The Hon'ble Supreme Court in the case of *ACIT(E) vs. Ahmedabad Urban Development Authority [2022] 449 ITR 1 (SC)* laid down the ratio as under:

"A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade commerce or business or provide service in relation thereto for any consideration (cess, or fee or any other consideration);

A.2 However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected (actual carrying out inserted wet. 01.04.2016) to the achievement of its objects of GPU and (ii) the receipt from such business or commercial activity or service in relation thereto does not exceed the quantified limit as amended over the years (Rs. 10 lakhs wet 01.04.2009, then Rs. 25 lakhs wet. 01.04.2012, and now 20% of total receipts of the previous year, w.e.f 01.04.2016);

A.3. Generally 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" In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4 Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the

nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus of gains must, therefore be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15) has not been breached. Similarly, the insertion of Section 13(8) seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.”

Considering the above facts and circumstances that the assessee has produced the documents in support of the claim for registration and also the copy of the financials for the period ended 31/03/2019, we deem it fit to remand the matter to the file of the AO with direction to consider the documents produced by the appellant including financial statement in terms of judgment of Hon'ble Supreme Court in the case of PCIT vs. Ahmedabad Urban Development Authority (supra).

6. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open Court on 17th January, 2024.

Sd/-

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 17/01/2024
PK/Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI