

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.69/Ind/2023
Section 12AB

Indore Development Authority, IDA Building, 7, Race Course Road, Indore (Appellant / Assessee)	vs.	CIT-(Exemption) Bhopal (Respondent/ Revenue)
PAN: AAAJI 0103 J		
Assessee by	S/Sh. Anil Kamal Garg & Arpit Gaur, CAs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	13.12.2023	
Date of Pronouncement	24.01.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 19.1.2023 passed by the Ld. CIT(Exemption), Bhopal u/s 12AB of the I.T. Act whereby the application for registration u/s 12AA of the Act was rejected. The assessee has raised the following grounds of the appeal: -

“1a). That, on the facts and in the circumstances of the case, the impugned order dated 19.01.2023 passed by the learned Commissioner of Income tax, Exemption,

Bhopal [in short, CIT (E)] under section 12 AB of Income Tax Act, 1961, rejecting the application of the Appellant Authority, filed in the prescribed Form 10AB on 30.09.2022, for grant of permanent registration to it under section 12A(1)(ac) of the Income Tax Act, 1961, is erroneous, unjustified, unwarranted and bad in law.

1b). That, on the facts and in the circumstances of the case, the learned Commissioner of Income Tax, Exemption, Bhopal grossly erred, both on facts and in law, in cancelling the provisional registration/approval granted to the Appellant Authority under section 12(AC)(vi) of the Act, on an earlier occasion.

2. That, the learned CIT(E) grossly erred, both on facts and I law, in rejecting the application of the Appellant Authority without assigning any cogent reason for such rejection and without passing a Speaking Order.

3a).That, on the facts and in the circumstances of the case, the learned CIT(E) grossly erred in rejecting the application of the Appellant Authority for grant fo permanent registration and as also, in cancelling the provisional registration earlier granted to it without considering and appreciating the material fact that the Appellant Authority, having been constituted under an enactment of the Government of Madhya Pradesh, for pursuing the charitable object of general public utility and having duly complied with al the conditions for grant fo permanent registration, as enjoined under section 12AB of the Act, was fully eligible for grant of permanent registration under section 12A read with section 12AB of the Income Tax Act, 1961.

3b). That, the learned CIT(E) grossly erred, both on facts and in law, in rejecting the application of the Appellant Authority and as also, in cancelling the provisional registration earlier granted to it without forming any adverse satisfactions as regard to the charitable nature of the objects of the Appellant Authority as well as genuineness of its activities.

4. That, without prejudice to the above, the learned CIT(E) grossly erred, both on facts and in law, in rejecting the application of the Appellate Authority and as also, in cancelling the provisional registration, on he sole basis of an earlier order of rejection, dated 27.06.2008, passed u/s 12AA of the Act in the case of the Appellant Authority by the then learned CIT-I, Indore, an appeal in respect whereof is presently pending of adjudication before the Hon'ble High Court of Madhya Pradesh, Indore Jurisdiction.

5. That, the Appellant Authority further craves leave to add, alter, omit and/or amend any of the above stated grounds of appeal as and when considered necessary.”

2. The Ld. AR of the assessee has submitted that Ld. CIT(Exemption) has rejected the application of the assessee on the ground that on identical facts, the application for registration u/s 12AA was rejected by the ld. CIT(E) vide order dated 27.6.2008, which was also upheld by this Tribunal and matter is pending adjudication before Hon'ble MP High Court. He has submitted that after the rejection of earlier application, a considerable time has elapsed and during this period, various Courts have granted the exemption to other development authorities. He has relied upon the judgment of Hon'ble Supreme Court in case of ACIT(Exemption) vs. Ahmedabad Development Authority, 449 ITR 1 (SC) wherein Hon'ble Supreme Court has held that statutory corporations, boards, authorities etc. in housing development, town planning, industrial development sectors, involved in advancement of objects of general public utility therefore, are entitled to be considered as charities in the general public utility categories and may be involved in promoting public objects and also in activity in the nature of trade, business or commerce but, the determinating test to consider whether such statutory authorities of general public utility categories are charging significantly

higher than the cost, such income would attract mischief of proviso to sec. 2(15) of the Act otherwise if the fees or other charges are reasonable just to recover the cost and the quantum from these receipts are within the limit prescribed in Proviso to section 2(15) then it will be considered as charity. Therefore, Ld. AR has submitted that the application of the assessee ought have been considered by the Ld. CIT(E) independently without being effected by the earlier order of the rejection.

3. On the other hand, Ld. Sr. DR has submitted that this is second application of the assessee filed for registration u/s 12AA of the I.T. Act despite the fact that the earlier application was rejected by the Ld. CIT(E) and the order of the Ld. CIT(E) was upheld by this Tribunal vide order dated 06.7.2010. The assessee filed an appeal before the Hon'ble MP High Court which is pending adjudication. Therefore, the second application of the assessee is not maintainable and rather the misuse of process of law. He has relied upon the impugned order of the Ld. CIT(E).

4. We have heard rival submissions and considered the material available on record. There is no dispute that this is second attempt by the assessee for registration/s 12AA. The earlier application of the assessee for registration was rejected by the Ld. CIT(E) vide order dated 27.6.2008 which was challenged by the assessee before this Tribunal

and this Tribunal vide order dated 06.7.2010 in ITA No.366/Ind/2008 confirmed the order of the Ld. CIT(E) rejecting the application of registration u/s 12AA of the I.T. Act. The concluding part of the order of the Tribunal in para 52 is as under: -

“52. To sum up, if the totality of facts/case-laws as narrated above and the arguments advanced by the ld. respective counsel are kept in juxta-position and analysed, in our humble opinion, the assessee is not engaged in activities of relief to poor, education, medical relief and/or advancement of any other objects of general public utility as defined in sec. 2(15) of the Act. Rather the assessee is actually not carrying out any activity of advancement of objects of general public utility which can be considered to be “charitable” rather the primary object of the assessee is to earn profit only. In other words, the purpose of the assessee is not an advancement of object of general public utility rather the activities involve activity of profit, therefore, these cannot fall within the purview of sec. 2(15) rather the assessee is engaged in active business and there is no restriction in its objects of making profit. There is a possibility that at the time of creation of these authorities like the present assessee i.e. Indore Development Authority, Punjab Urban Development Authority, Jalandhar Urban Development Authority or like any other may be pious but ultimately, these authorities turned into a commercial organization with the sole intention to earn maximum profit even at the cost of poor farmers whose lands are acquired, for namesake considered to be backbone of this great country, are paid negligible amount as compensation and after incurring development cost, the same land is sold at commercial rates. The helpless farmers sometimes have no means of even livelihood. Further, the profit motive of the assessee is not incidental to the objects of the assessee authority rather there is a systematic commercial activity with the intention to earn maximum profit. It is not the case that the assessee, after earning huge profit from such commercial activities, is spending such profit on charitable activities rather there is no obligation on the assessee to spend its earnings for charitable purposes. These authorities have become a great source of earning income in itself and the assessee authority is no exception to it. It is common knowledge/fact that the assessee authority is selling the developed plots on auction to the highest bidder and one such example is sale to Reliance near Sayaji Hotel as asserted by the learned CCIT DR which was not controverted by the assessee. Now a days because of this trend of auction, it has become very difficult for a common man to purchase a plot for shelter from the assessee authority. As far as the contention of the ld. Counsel for the assessee that the IDA is providing roads, schools, parks, clubs, etc., these facilities are provided by private builders rather these have

*become a source of attraction for getting maximum application that too on a high premium. Even when applications are invited by the assessee authority, lacs of people are applying and the cost of the application form which may be in thousand/thousands, is never returned to the applicants who do not get the plots. Even the security/advance money taken with the application forms is returned after a long time without interest to the persons not getting plots, resulting into huge profit to the assessee authority and loss the public at large. In such a situation, what charity the assessee is doing is not known/beyond imagination. If registration is granted to the assessee, it will open a pandora box wherein every colonizer/builder will ask for registration under section 12AA of the Act, which would be very much indifference to the intention of the legislature. In fact, the assessee authority is working on commercial pattern like a big businessman. Even otherwise, if some plots are reserved for economically weaker sections of the society, firstly, there is no parameter that these are actually allotted to such poor persons and secondly, the hidden cost is already added to such plots. It is pertinent to mention here that the legislature in their wisdom amended sec. 2(15) through the Finance Act, 2008 in the case of Trade Association claiming both to be charitable institution and mutual organization by adding a proviso which states that “advancement of any other object of general public utility” shall not be a charitable purposes if it involves the carrying on of (a) any activity in the nature of trade, commerce or business or (b) 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 huge or application or retention or the income from such activity. By circular no.11 of 2008 dated 19.12.2008, it has been further clarified whether the assessee has for its object, “the advancement of any other objects of general public utility” is a question of fact. If such assessee engages in any activity in the nature of trade, commerce or business or render any service in relation to trade, commerce or business, it would not be entitled to claim that its objects are of charitable purposes. In such a case, the objects of “general public utility” will only be a “mask” or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to such trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible, therefore, any misuse was intended to be removed by this circular. **The very concept of “charity” denotes altruistic thought and action. It objects must necessarily be to benefit others rather than one’s self. The action which follows from charitable thinking is always directed as benefit to others. It is this direction of thought and efforts and not the result what is done in term of financially measurable gain which determines that it is charitable** [quoted from Sole Trustee Lok Shikshan Trust vs. CIT(101 ITR 234) (SC)]. Since the main predominant object of the assessee is profit making, therefore, we find no infirmity in the impugned order in denying registration u/s 12A/12AA of the Act to the assessee. Thus, on this issue, we affirm the stand taken by the ld. first appellate authority.”*

5. On consideration of above, we find that the Tribunal has given the finding of fact regarding the nature of activities of the assessee and confirmed the order of the Ld. CIT(E). It is undisputed fact that the assessee challenged the order of this Tribunal before the Hon'ble MP High Court and the appeal of the assessee is pending adjudication before the Hon'ble Jurisdictional High Court. Now, the Ld. Counsel for the assessee has contended that in view of the judgment of the Hon'ble Supreme Court in case of ACIT(Exemption) vs. Ahmedabad Development Authority (supra), the application of the assessee ought to have been considered independently. We do not find any merit or substance in the contention of the Ld. Counsel for the assessee when there is no change in the activities of the assessee and therefore, neither the assessee is permitted to file a fresh application on the same facts when the earlier application was rejected and matter is pending before the Hon'ble High Court, nor this Tribunal can re-appreciate or re-analyze the facts already considered by this Tribunal while passing earlier order. Therefore, we do not find any error or illegality in the impugned order of the Ld. CIT(E) in rejecting the application of the assessee in view of the matter pending adjudication before the Hon'ble High Court. Accordingly, we uphold the impugned order.

6. In result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 24.01.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 24.01.2024

v..s

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore