

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

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

**ITA No. 9397/DEL/2019
Assessment Year: 2019-20**

Movement Against Diabetes and Endocrine Disorders, 22/2, Ground Floor, Shakti Nagar, New Delhi. PAN- AAGAM5453L	<u>Vs</u>	CIT(Exemption), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Rohit Tiwari, Adv.; Ms. Tanya, Adv.; Ms. Shivani, Adv.; and Sh. Jaing Kumar Jaiswal, Adv.	
Department represented by	Shri Subhra Jyoti Chakraborty, CIT(DR)	
Date of hearing	14.02.2024	
Date of pronouncement	16.02.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Exemption), New Delhi, dated 30.09.2019, rejecting assessee's application for registration u/s 12A of the Income-tax Act, 1961

(hereinafter referred to as the “Act”), pertaining to the assessment year 2019-20. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Order passed u/s 12AA(1)(b) r.w.s 12A of the Act by the CIT Exemption is bad in law, without jurisdiction and illegal and therefore the notice along with the assessment order passed on the foundation of such notice is liable to be quashed.

2. On the facts and circumstances of the case and in law, the CIT Exemption erred in not correctly appreciating the nature of activities that were carried on by the Appellant Institution which were not found to be not genuine.

3. On the facts and circumstances of the case and in law the learned CIT(Exemptions) has failed to carry out the mandatory requirement of satisfying himself about the objects and genuineness of the activities of the appellant institution but instead going beyond his mandate by looking into the purposes of creation of the appellant institution and declining the registration primarily for same reason.

4. On the facts and circumstances of the case and in law the learned CIT(Exemptions) erred in rejecting the application u / s 12A on the ground that the appellant institution has been formed specifically to educate and spread awareness about endocrine Disorder. He failed to appreciate that the 'Medical Relief to Medical Professionals' is a part of objective to upgrade their Clinical skills, so as to be used for the benefit of the society.

5. On the facts and circumstances of the case and in law the learned CIT(Exemptions) erred in rejecting the application for registration u / s 12A of the Income-tax Act, 1961 merely on assumptions, presumptions and apprehensions, without appreciating the factual, legal and statutory position for grant of registration.”

2. The only effective ground in this appeal is against rejection of application filed by the assessee in form no. 10A seeking registration u/s 12AA of the Act.

3. Apropos to the grounds of appeal, learned counsel for the assessee vehemently argued that the learned CIT(Exemption) was not justified in rejecting the application at the registration stage itself. The reason of rejection is purely

based on suspicion without any credible material. Moreover, at the stage of registration it is to be seen whether the objectives of the assessee are charitable or not.

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

5. We have heard rival submissions and perused the material available on record. We find that learned CIT(Exemption) rejected the application by observing as under:

“2. The applicant Society has been created on 16.08.2017. The main objectives as per the MOA are:-

3.1.1 To screen general population for the prevalence of endocrine disorders(diabetes, thyroid and other hormonal diseases) and make general population aware of the diseases.

3.1.2 To impart education to patients

3.1.3 patient To create awareness among patients to know their rights and responsibilities towards fellow

3.1.4 To organise freshers and Continuous Medical Education (CME) Programmes for the doctors in order to update their knowledge and increase their interest in the field of endocrine disease management. The Society will provide financial aid and all other assistance to Medical Professionals for attending national and international meetings to upgrade their clinical skills, so as to be used for the benefit of the society.

3. The applicant's main receipts are by way of sponsorship receipts from major Pharmaceutical Companies such as Mix Lupin Ltd, M/s Abott India Ltd, M/s Boehringer Ingelheim etc. The applicant has shown to have conducted conferences in different cities. The assessee has claimed received grant of Rs. 85,00,000/- from "ERIS LIFESCIENCES LIMITED" during the F.Y.2019-20 and has entered an MOU with the applicant assessee to conduct the clinical research and academic studies in the segment of Vitamin B12 deficiency. The ERIS LIFESCIENCES LIMITED as per Deed of Research Gant dated 12.04.2019 agrees to disburse upto Rs. 1,00,000,000/-

(Rupees One Crore Only) for the Research activity to be supported by the assessee. As per Deed the amounts disbursed shall always be treated as grants for educational activity

4. it is pertinent to note that the applicant has submitted a list of 312 doctors to whom a fees has been paid alter deducting TDS us 1940 & 1941. The applicant has shown payment of uniform amount of Rs. 25,000/- cach to the doctors Payees. 40 payments have been made on 29.05.2019 and balance 272 payments have been made in June 2019 In respect of the payments the applicant has stated that "During the course of deficiency a wunber of medical professionals were engaged The copies of the documents of work undertaken by them are enclosed herewith" Sample case studies furnished by the applicant can at best we consider as Clinical Research, which is not a charitable activity. Further, the Clause 3.1.4 of the Society for providing of financials assistance to doctors cannot be considered to be a charitable activity, It cannot be considered to be part of relief of poor or medical relief, and can only be construed as routing of funds received from pharmaceutical companies to doctors, which is prohibited under the relevant laws.

5. The applicant assessee has filed it application for seeking registration u/s 12A in the category of "Medical Relief". The research projects undertaken by the assessee is not providing any medical relief. The grant received by the assessee are for Educational Activity and not for the Medical Relief. Moreover, The ERIS LIFESCIENCES LIMITED is engaged in the business of manufacturing and marketing of pharmaceutical drugs. The engagement in marketing and promoting of drugs manufactured by ERIS LIFESCIENCES LIMITED by the doctor to whom fee has been paid cannot be denied.

6. The provisions of section 12AA stipulate the following conditions for registration u/s 12A of the I. T. Act, 1961:-

- (i) The objects of the society should be of charitable in nature;*
- (ii) The activities of the society should be genuine*

7. In light of above facts the genuineness of the activities cannot be established and therefore, the conditions for granting registration u/s 12AA are not satisfied. Accordingly, the application filed by the applicant for grant of registration u/s 12A is hereby rejected."

5.1 From the above it is clear that the learned CIT(Exemption) has not doubted about the charitable nature of the objectives, but rejected the application primarily on the basis that the assessee would be promoting business of manufacturing and marketing of pharmaceutical drugs of the entities who had sponsored the research work. There cannot be any doubt that imparting awareness amongst the patients in respect of diseases which badly affected the health of the individual, is certainly a charitable activity. In our considered view at the stage of registration the learned CIT(Exemption) is required to examine the objectives of the assessee, whether such objectives would fall under the category of charitable or not. Whether the assessee incurred expenses on such activity or not can be verified by the assessing authority and if it is found that the assessee is not carrying any charitable activity and the expenditure is incurred for promotion of business of other entity, the AO is empowered to disallow the expenditure and request for cancellation of registration. We also draw support from the judgment of the Hon'ble Allahabad High Court rendered in the case of Fifth Generation Education Society v. CIT (1990) 185 ITR 634 (All.), wherein the Hon'ble High Court has held as under:

“It is evident that, at this stage, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of section 12A read with rule 17A and whether Form No. 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this stage, it is not proper to examine the application of income.

The order impugned does not say that the objects of the society are not charitable in nature; it merely says that they are general in nature. Just because they are general, they do not cease to be charitable. The Commissioner has also observed that no activity has been carried on by the society. It is also not the requirement of section 12A of the Act. Nor has section 80G any relevance at this stage. The impugned order cannot, therefore, be sustained and it is quashed.”

5.2 Therefore, we hereby set aside the impugned order and restore the application to the file of learned CIT(Exemption) to grant registration in accordance with law.

6. Appeal of the assessee stands allowed accordingly.

Order pronounced in open court on 16th February, 2024.

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