

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1203/CHD/2018
U/s 12AA (1)(b)(ii)

District Information Technology Society, C/o Garg & Garg Associates, Chartered Accountants, Kothi No. 35, Sector 7, Urban Estate, Kurukshetra, Haryana	Vs. बनाम	The CIT (Exemption), Chandigarh
स्थायी लेखा सं./PAN No. AABAD0001A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA

राजस्व की ओर से/ Revenue by : Shri J.S. Kahlon, CIT, DR

सुनवाई की तारीख/Date of Hearing : 07.02.2024

उद्घोषणा की तारीख/Date of Pronouncement : 13.03.2024

आदेश/Order

Per A.D. Jain, Vice President:

This is assessee's appeal against the order of the Id. CIT (Exemptions), Chandigarh, u/s 12AA(1)(b)(ii) of the I.T. Act dated 31.07.2018, rejecting Assessee's application for Registration u/s 12A of the Act.

2. This is a recalled matter, recalled vide order dated 25.10.2023 under M.A. No. 119/Chd/2019, whereby the ex-parte order passed against the Assessee was recalled and the appeal was ordered to be heard on merits.

3. The following Grounds have been raised by the Assessee: -

1. *The Learned CIT(E) has grossly erred in holding the activities of the Society as business activities and rejecting the application for registration u/s 12A.*
2. *The Ld. CIT (E) has further erred in law in holding that the activities of the Society do not fall in the definition of Section 2(15) when the Society was formed with the sole objective of advancement of objects of general public utility.*
- 3 *The Society is a Public Charitable institution formed by the State Govt, with the sole objective of welfare of the public at large and not for any income /profit and hence squarely falls in Section 2(15) eligible for registration u/s 12A of the IT. Act, 1961.*
- 4 *The appellant craves for permission to add, delete, add or modify any or all grounds of the Appeal.*

4. As observed by the ld. CIT(E) in the impugned order, the stated aims and objects of the applicant society are inter alia, to impart training to members of Below Poverty Line (BPL) families and to help them to adopt information technology as a source of their income, to impart training to members of Panchayati Raj Institutions to achieve this goal and to act as a bridge between BPL families and

their prospective employers, to share knowledge, experience and resources among participants and others in the area of information technology, to generate awareness about information technology in the common man, to promote information technology industry and information technology education, to discuss the latest trends and changes in I.T. industries, to make efforts to streamline the syllabi of various institutions, to cater to the advancement in information technology, to organize seminars, workshops, meetings and discussions at village, school, mohalla, town and district levels and to involve information technology professionals, institutions and industry for meeting the objectives of the district information society, i.e., the Applicant's District Information Technology Society. The Society is engaged in providing e-services to the citizens through e-disha centers, computerization of Government offices, digital library, e-learning in Government schools, establishment of Atal Seva Kendras for providing Government services to the public, for which, the Society charges fee as facilitation charges, which is the main source of income of the Society.

5. The Id. CIT(E) held that by charging the fee as facilitation charges for the services, the activity of the Assessee became an activity in the nature of business and that so, such activity was not a charitable activity, particularly when the fees were over and above the

fee prescribed statutorily for the facilities / certification, etc., being sought by the public, that the fee charged by the Society was in addition to the burden forced upon the common man for facilities that are to be provided by the Government in the normal course of their business.

6. The grievance of the Assessee is that the Id. CIT(E) has erred in holding that the activities of the Society do not fall within the provisions of section 2(15) of the Act, when the Society was formed with the sole objective of advancement of general public utility and that the Society is a Public Charitable Institution formed by the State Government with the sole objective of the welfare of the public at large and not for any income / profit and hence, it squarely falls within the provisions of section 2(15) and is eligible for registration u/s 12A of the Act.

7. The Id. DR, on the other hand, has placed strong reliance on the impugned order, contending that the Id. CIT(E) has rightly held that by charging fees which are over and above the fee prescribed statutorily for the facilities / certification, etc., being sought by the public, which fee is in addition to the burden forced upon the common man for facilities that are to be provided by the Government itself in the normal course of its business, the Society falls outside the

provisions of section 2(15) of the Act and that therefore, it is not entitled to registration u/s 12A of the Act.

8. We have heard the parties and have perused the material on record. At the outset, the factum of the Assessee Society having been engaged by the Government for providing services to the general public, which services are to be provided by the Government itself, is not disputed. Further, it is also not under challenge that the fees charged by the Assessee for the services provided is over and above the prescribed fees for such facilities to be provided to the general public. In this scenario, evidently, the activities carried out by the Assessee cannot be termed as charitable activities and that being so, the Assessee falls outside the ambit of section 2(15) of the Act, and, accordingly, not entitled to registration u/s 12A of the Act. This very issue stands dealt with in extenso by the Coordinate Bench of the Chandigarh Tribunal in 'M/s Sukhmani Society for Citizen Services, Barnala vs. CIT (Exemptions)', ITA No. 866/Chd/2015, vide order dated 13.4.2018, which order has been brought, very fairly, to our notice by the ld. Counsel for the Assessee. Therein, it has been held as under: -

“6. We have heard the rival contentions and have also gone through the record. A perusal of the objects of the society, reveals that it has been established to provide/ facilitate services of the Government Departments against receipt of fees. The fees for various items as has been listed in the

impugned order of CIT(E) shows that in some cases, it is very much excessive and seems to be unreasonable. Even the fees received by the appellant society are in addition to the nominal statutory/ Government fees payable by the citizens for availing the services. The Govt. Departments cannot charge more than the statutory/Government fees prescribed for such services/functions discharged by them on behalf of the Government. However, by way of, establishing the assessee society, the citizens are forced to apply for the requisite works / services through the appellant society and subject to the payment of fees/ processing charges fixed by the appellant society. It is a commonly and well known fact that there are unwritten instructions to every department that they should not directly accept the applications of the citizens for providing services rather it has been made mandatory for the citizens to avail/apply for certain type of services, as detailed in the chart above, through the service centers of the appellant society on payment of charges fixed by the society over and above the statutory/Government fees prescribed for such functions/services. The counsel for the appellant could not bring before us any data showing that the services as enumerated in the chart above are also offered / provided by the concerned departments directly to the citizens without intervention of the society. In our view, rather than rendering any services for charity, the appellant society is causing extra financial burden upon the citizens in respect of services to which they are otherwise statutorily entitled to at much lower nominal Government / statutory fees/charges. In relation to certain services, the additional charges collected by the society are exorbitant e.g. for processing applications for NOC building plan of local bodies, fee has been fixed at Rs.1,400/. Similarly a fee of Rs.1,400/- has been fixed the processing the application for issuance of NOC for petrol pump and for applications for sanction building plans/ revised plans. The fees for processing application of license for ticketing agent has been fixed at Rs. 1,000/- and that for marriage certificate at Rs. 700/-. The fees for sending application to the Department for issue new Arms license has been fixed at Rs. 700/-. There is

no explanation offered as to why such hefty fees has been fixed for merely processing the applications. Not only aforesaid fees but apart from that the assessee society has been receiving commission from various agencies. This clearly shows that the predominant object of the appellant society is to earn profit or income and not charity.

7. Further, a perusal of the memorandum of association of the appellant society further reveals that concerned Deputy Commissioner of the District/ has been made the Chairman (CEO) of the society and the concerned Additional Deputy Commissioner as Member Secretary of the society. In our view, to make available the requisite Government schemes and services to the citizen of the country is the statutory function of the Government and the concerned Deputy Commissioners/Additional Deputy Commissioners being Government servant are duty bound to arrange for / provide for the requisite services offered by the concerned Government departments under their jurisdiction. They are supposed to ensure that the Government Department under their jurisdiction should discharge their functions/duties to the public without any harassment to the public, but, surprisingly, they instead acting as officials of the appellant society are collecting charges through and in the name of the society for processing the applications of the citizens to the concerned departments. This, in our view, is in conflict to their statutory functions.

8. The contention of the Ld. counsel for the appellant that the appellant society has been brought into existence as one stop shop for all Government services to be provided in whole district in an integral manner and is tasked to act as agency of the state in public duties which cannot be discharged by private bodies, and therefore, the appellant society performs sovereign and regulatory function in its capacity as an instrumentality of the state government and its designated functions fall under the category of 'advancement of object of general public utility, in our view, is misconceived. In our view, in democratic country, there cannot be and should not be any shop for all Government Services from where the

people should be forced to purchase the Government Services on payment of price in addition to and other than the statutory Government fees prescribed for issuance of such services like issue of certificates etc. Even the appellant society, is not performing any sovereign functions of the State. Even sovereign functions are not supposed to be done by the State for a price or fees. Sovereign functions are those actions of the State for which it is not answerable before the Court of Law. Matters such as defence of the country, raising and maintaining armed forces, making peace in retaining territory, police functions including maintenance of law and order, legislative functions etc. are sovereign functions and are primarily inalienable functions, which the State only could exercise. The State is engaged with various functions, but all of them cannot be construed as primary inalienable functions. The sovereign functions of the state cannot be and should not be delegated to a third party or a society. The Deputy Commissioner and the other Govt. officers through whom the Govt. is supposed to carry out its functions including sovereign functions are supposed to provide the Govt. Services to the citizens and make the Government Department function in normal course without harassment to the public, rather than to delegate these functions to a society like appellant of which they themselves are the controlling officers and that too against charging of hefty fees. In our view, it is nothing but a modus operandi to charge citizens more than they are bound to pay. Even the amount collected does not go to the Govt. treasury so that it may be utilized for the welfare of the citizens of the country. This activity of charging of fees from the citizens of the country in the name of facilitation to avail of Govt. services, which the citizens otherwise are not supposed to pay, in our view, involves no charity. The Co-ordinate Amritsar Bench of the Tribunal in the cases of 'Sukhmani Society for Citizen Services Vs. CIT, Bathinda' vide order dated 26.09.2012 passed in in ITA No. 551/ASR/2011 has rightly held that the activity of the assessee society were not charitable in nature within the meaning of the provisions of section 2(15) of the Act. Similar observations have been made by the Amritsar

Bench in the case of ‘Sukhmani Society for Citizen Services Vs. CIT, Jalandhar’ in ITA No. 297/Amritsar/2012 vide order dated 22.04.2013, relevant part of the said order is reproduced as under:

"We have also thoroughly gone through the object of the assessee-society which clearly mentions that the assessee society is charging service fee or user chargers from the customers for the approval of the competent authority and the concerned departments/organizations over and above the prescribed bill amount / fee /statutory fee for providing the services through Sukhmani Centres/Financial Institutions or Franchisees. For the sake of convenience, one of the main objects of the society from the written submission dated 03.04.2013 i.e (e) is reproduced as under:

"(e) To work out and recommend the service fee or user charges that could be charted from the end customers for the approval of the competent authority / and concerned departments/organizations over and above the prescribed bill amount/fee/statutory fee for providing the services through Sukhmani Centres/Financial Institutions or Franchisees."

20) Keeping in view the aforesaid object of the society, we are of the view that this society has been established for maintaining the agencies and franchisees in the district to conduct business of the society, which clearly establishes that the present society is doing business with other agencies and franchisees in the district. We have not seen any object of the society which shows that the present society is doing any charitable activities for the general public utility. Even otherwise the assessee society has failed to establish before the CIT-I, Jalandhar, as well as before us that assessee-society is doing any charitable work keeping in view its object. Merely, mentioning about various objects in the

nature of charitable activities in the Memorandum of Association, does not mean that the society is doing any charitable activities for the 21 general public utility and is entitled for registration under Section 12A(a) of the Act.

21) Keeping in view of the aforesaid discussion, we are of the considered view that the activities of the assessee-society are not charitable in nature within the meaning of provisions of Section 2(15) of the Act it does not qualify to treat as charitable institution. Since the assessee has not established that its society is formed with objects of any charitable purpose, then the question of discussion of citation relied upon by the assessee's counsel does not arise, even otherwise these judgments are different from the facts of present case and are not helpful to the society. The present society is doing its business and charging huge fees from the public which is in addition to the prescribed fee of the Punjab government. Even otherwise, the fees charged by the present society are in addition to the burden forced upon the common man. Because of this, service has to be rendered by the Punjab Government free of cost to the public against the fee prescribed in the chart as reproduced in tire foregoing paragraphs. We are of the considered opinion that no interference is called for in the well-reasoned order passed by learned CIT-l, Jalandhar. Therefore, we uphold the impugned order dated 26.04.2012 by dismissing the present appeal filed by the assessee-society."

9. We agree with the above observations made by the Coordinate Benches of the Tribunal in the above mentioned cases (supra).

10. So far as the reliance of the Ld. Counsel for the assessee on the decision of the Tribunal in the case of 'Kapurthala Improvement Trust Vs. CIT' in ITA No. 732/Amritsar/2013 dated 11.06.2015 and in the case of 'Improvement Trust Bathinda Vs. CIT, Bathinda' in ITA No. 366/Amritsar/2012

dated 31.08.2015 is concerned, in our view, the said decisions are not applicable to the facts and circumstances of this case. In view of the discussion made above, the appellant society, in our view, is not carrying out any object of General Public Utility and its activities cannot be said to be charitable in nature. We, therefore, do not find any infirmity in the order of the CIT(E) in rejecting the application of the assessee for registration u/s 12(AA) of the Income Tax Act.”

9. In view of the above, respectfully following the decision of the Coordinate Bench in ‘M/s Sukhmani Society for Citizen Services, Barnala vs. CIT (Exemptions)’, ITA No. 866/Chd/2015, which decision has been rendered in facts and circumstances which are exactly similar to the ones present before us, we hereby uphold the order passed by the ld. CIT(E) and reject the Grounds raised by the Assessee, as shorn of merit. Ordered accordingly.

10. In the result, the appeal is dismissed.

Order pronounced on 13.03.2024.

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member

Sd/-
(A.D. JAIN)
Vice President

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File