

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

ITA No.1346/PUN/2023

Geriatric Wellness Foundation Lokmanya Hospital, Mitramandal 484/6, Mitramandal Colony, Parvati, Pune – 411009	Vs.	CIT (Exemption), Pune
PAN : AAFCG8051M		
(Appellant)		(Respondent)

Assessee by : Shri Rajendra Agiwal
Department by : Shri Keyur Patel, CIT-DR
Date of hearing : 24-04-2024
Date of pronouncement : 12-06-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 27.10.2023 of the CIT(Exemption), Pune rejecting the registration u/s 12AB r.w.s. 12A(1)(ac)(i) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Facts of the case, in brief, are that the assessee filed an application in Form 10AB on 24.04.2023 claiming registration u/s 12AA of the Act. The CIT(Exemption), in order to verify the genuineness of the activities of the assessee and compliance to the requirements of any other law for the time being in force by the trust / institution, issued a notice asking for various information / clarification. From the details furnished by the assessee, Ld. CIT(Exemption) noted various

discrepancies and therefore, he issued show a cause notice asking the assessee to clarify on the following points:

“(i) Assessee has received donations of Rs.50 Lakhs which has not been routed through I&E account. No clarification for the same and details of donations such as name/address/PAN of donor, mode and date of donation, receipt no. issued, specific direction letter of donor, copies of receipt and communication are not furnished.

(ii) Assessee has stated to have conducted various health camps, awareness programmes. However, details such as place and date of activity, names of participants/beneficiaries, experts who rendered their services, bills/invoices of expenditure on each activity, other documentary evidences are not furnished.

(iii) Assessee is stated to be charitable. However, as seen from the MoA, object 1 appears to be of commercial nature with an element of profits involved. Even the income of Rs.28.30 Lakhs received is by way of Emergency medical services contract receipts. Thus, the activities of the assessee appear to be of commercial nature rather than charitable nature.

(iv) As per the provisions of Rule 17A(2)(g) of the Income Tax Rules, 1962, the application in Form No.10AB shall be accompanied by the self certified copies of annual accounts relating to earlier three years or since inception, whichever is later. Thus, the annual accounts, at least for F.Y. 2019-20, 2020-21 and 2021-22 were required to be submitted along with the application itself. However, it is seen that you have furnished the annual accounts for F.Y. 2020-21 & 2021-22 only. Thus, you have failed to comply with the provisions of Rule 17A(2)(g) of the Income Tax Rules, 1962.

(v) Details of expenditure on objects of foundation shown in I&E account and supporting evidences are not furnished.”

3. In response to the above queries raised by the CIT(Exemption), the assessee furnished its reply. However, the CIT(Exemption) was not satisfied with the explanation given by the assessee and rejected the provisional registration granted on 27.05.2021 u/s 12AB r.w.s. 12A(1)(ac)(vi) of the Act by recording as under:

“5.1 The assessee received donations of Rs. 50 Lakhs which has not been routed through I&E account. In a query, the assessee submitted a letter dt 25/03/2023 signed by one Ms Prachi N Karnik. The signatory has stated that the letter was signed by her on behalf of her mother Smt. Anjali Telang as per her instructions. The assessee and the signatory, however has not furnished any document of her

identity like Aadhar/PAN card and proof regarding her relation with the donor. Also, no clarification for signing the letter by Ms Prachi N Karnik and not by the donor Smt. Telang herself, has been offered. There is not any document to show that Ms Prachi N Karnik was so authorized by Smt. Telang to sign letter on her behalf.

5.2 Regarding, various health camps, awareness programmes stated to have conducted, the assessee has furnished details of camps organized in a table format. However, except for the statistics, no other details of participants, supporting documents/evidences are furnished. Photographs submitted in this regard do not conclusively prove that the activities were conducted by the assessee or that the activities were of charitable nature. Supporting bills, invoices in respect of expenditure incurred on each activity has not been furnished.

5.3 On verification of the assessee's submission, object No. 1 appeared to be of commercial nature with an element of profits involved. Even the income of Rs. 28.30 Lakhs received was by way of Emergency medical services contract receipts. Therefore, the activities of the assessee appeared to be of commercial nature rather than charitable nature. In reply, the assessee contended that considering the amount of surplus each year, it was clear that there was no commercial element in its activities. After incurring expenditure, it left with minor/negligible surplus and that majority amount was spent on the object of the Foundation. The assessee further contended that unless its I&E itself disclosed surplus it was not correct to draw the inference that the activities are not charitable.

5.3.1 In FYs 2019-20, 2020-21 and 2021-22, against the income of Rs. 6.64 Lakhs, Rs. 3.40 Lakhs and Rs. 28.30 Lakhs, there is surplus of Rs 3.82 Lakhs Rs. 1.79 Lakhs and Rs. 1.64 Lakhs respectively. Surplus so generated works out to 57.53, 52.65 and 5.79 for FYs 2019-20, 2020-21 and 2021-22 respectively. Thus, the assessee has been making good surplus during these years. However, its not the quantum of surplus that has been taken note of to consider the activity as commercial. The very first object of the assessee foundation is as under:

"1. To undertake all the activities pertaining to Geriatric Healthcare Management by conducting care-planning assessments to identify needs, problems, eligibility for assistance, screening, arranging, monitoring in-home help and other services, treatment for degenerative diseases including osteoarthritis, reviewing financial, legal, or medical issues, offering referrals to specialists to avoid future geriatric problems, providing crisis intervention, acting as a liaison to families at a distance, assisted living facility, rehabilitation facility or nursing homes, providing client and family education and advocacy, offering counseling and support, providing health care services and its effective operation by tapping the expertise of the private sector while maintaining affordable tariffs, to mobilize private capital to speed up the delivery of infrastructure and services, providing comprehensive care to rapidly increasing elderly population of the India and abroad."

5.3.2 The objective clearly demonstrates a commercial nature rather than a charitable one. Several key elements in the stated objective highlight a focus on revenue generation, profitability, and the mobilization of private capital, all of

which are indicators of a commercial character. The objective emphasizes the importance of 'maintaining affordable tariffs.' which suggests that the assessee intends to charge fees for its services, which is a characteristic of a commercial enterprise. It implies an objective to generate revenue from the services offered to patients rather than providing them free of charge. The objective mentions "tapping the expertise of the private sector," which indicates intention to collaborate with private companies and entities. In a charitable organization, the emphasis is usually on community support and donations, not on engaging with private businesses for profit. Further, the objective explicitly states the intention to "mobilize private capital," which is a clear indication of the commercial nature of the assessee foundation. Charitable organizations typically rely on donations and grants, while commercial enterprises seek investments and capital from private sources with the expectation of returns. Furthermore, the objective mentions of "providing comprehensive care" to the elderly people which shows that the assessee aims at wider scope of services whereas in a charitable context, the focus is often on providing essential services for free or at a minimal cost, while this objective emphasizes a comprehensive approach that may involve higher costs. The objective's focus on "offering referrals to specialists" and "providing health care services" also points to a business model that involves coordinating and offering specialized medical services, which is typical of commercial healthcare providers. Thus, the objective of the assessee in question clearly tend to cater its activities in a commercial nature. The assessee has stated to provide services at discounted rates which shows that the assessee has been providing services for charges and not free-of cost. In support of its claim, the assessee has furnished comparative rates of services charged by other entities. However, no evidences to prove the genuineness of said comparison has been furnished by the assessee. Considering these facts and its emphasis on revenue generation, private sector collaboration, and mobilization of private capital, along with the comprehensive range of services, sets the assessee foundation apart from charitable organizations that primarily rely on donations and grants to provide free or low-cost services to those in need.

5.4 Moreover, the entire of the assessee's income is exclusively derived from receipts related to 'emergency medical services contracts.' The assessee has not provided any specific information pertaining to the nature of these emergency services or the recipients thereof. In its submission, the assessee has asserted engagement in various other activities, such as physiotherapy, nursing attendance, dietician, and equipment services. However, its Income and Expenditure account does not reflect any income generated from these supplementary activities. Furthermore, none of these activities can be categorized as emergency services. This clearly points to the assessee's primary engagement in providing medical services through contractual arrangements, for which it receive fees and charges. The assessee has not furnished any details, evidence to substantiate that it has been extending medical services, free of cost, to indigent and poor people.

5.5 In schedule 18 of I&E account, the assessee has shown expenditure of Rs. 22.90 Lakhs under the head 'expenses on objects of foundation'. The assessee was requested to furnish details of the same with supporting evidences. In compliance, the assessee has merely furnished a ledger extract of said account. It is seen that entire expenditure is on account of payment to 'Desing Media'. Nature and purpose of said expenditure and how the expenditure was incurred in achieving

the objects of the foundation has not been clarified by the assessee. Also, no supporting documents are furnished despite a specific request to that effect.

6. In view of the above, the undersigned is not satisfied about the charitable nature and the genuineness of activities of the assessee and compliance to requirements of any other law for the time being in force by the trust / institution as are material for the purpose of achieving its objects. Therefore, the application filed by the assessee is hereby rejected and the provisional registration granted on 27/05/2021 under section 12AB read with section 12A(1)(ac)(vi) of the Income Tax Act, 1961 is hereby cancelled.”

4. Aggrieved with such order of CIT(Exemption), the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and in the circumstances of the case and in law the Ld. CIT(E) erred in rejecting the appellant registration u/s 12AB of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case and in law the Ld. CIT(E) erred in rejecting the registration on the ground that Corpus donation received is not routed Income & Expenditure A/c and holding that documents about identity of the doner has not been submitted.*
 - 2.1. *The Ld. CIT(E) erred in not granting any opportunity to produce the document for identity of the doner.*
 - 2.2. *The Ld. CIT(E) erred in rejecting the registration on the ground that bills and invoices in respect of expenditure of health camps have not been furnished and statistics and photographs regarding holding of health camps are not conclusive.*
3. *On the facts and in the circumstances of the case and in law the Id. CIT(E) erred in not taking cognizance of the fact that the appellant trust is a section 8 Company registered under Companies Act, 2013 with a charitable object of providing medical relief to the geriatric population and registered u/s 7(2) of the Companies Act 2013.*
4. *On the facts and in the circumstances of the case and in law the Ld. CIT(E) grossly erred in alleging that the appellant trust is making substantial surplus when the surplus amount is nominal. Further the Ld. CIT(E) erred in not appreciating the fact that the objects of the appellant trust are to provide the best possible health care to the geriatric population at large at very reasonable charges.*
5. *The Ld. CIT(E) erred in holding that objects of the assessee are of commercial nature rather than charitable. He erred in holding that medical services are provided at discount and not free of charge.*

6. *The Ld. CIT(E) erred in holding that expenses on the objects of the foundation are incurred on payment to one party "Design Media". It is submitted that for granting registration purpose of payment and character of the payment is to be seen rather than irrelevant considerations as applied by the Ld. CIT(E).*
 7. *The Ld. CIT(E) erred in making the general observation in the concluding para that he is not satisfied about the charitable nature and genuineness of the activities of the assessee and compliance of any other law in general for the time being in force.*
 8. *The Ld. CIT(E) erred in rejecting the registration on various above grounds without appreciating that the appellant furnished maximum possible data to prove the genuineness of the activities of medical relief. If Ld. CIT(E) is not satisfied he would have been justified in calling the further information.*
 9. *The Ld. CIT(E) passed the rejection order at the end of the limitation period as prescribed of 6 months from the end of the month in which the application is received and so it appears that he has not issued any further notice to call for additional details. The Ld. CIT(E) would have been justified to give one more opportunity for submission of specific details which he wants.*
5. The Ld. Counsel for the assessee referring to the paper book filed containing 145 pages drew the attention of the Bench to the various details furnished by the assessee before the CIT(Exemption) explaining its case. He submitted that the Ld. CIT(Exemption) without asking for any further details from the assessee in a hurried manner and towards fag end of the limitation period of six months, passed the order cancelling registration already granted which is not justified. He submitted that the assessee trust is a section 8 company registered under the Companies Act, 2013 with a charitable object of providing medical relief to the geriatric population and registered u/s 7(2) of the Companies Act. However, the Ld. CIT(Exemption) has completely ignored the same. He submitted that although the assessee had furnished maximum possible data to prove the genuineness of the activities of medical relief, the CIT(Exemption) rejected the registration without

calling for any further information. He submitted that the fees charged by the assessee for treatment of the patients are much below the fees charged by other hospitals and these are only to meet the routine expenses for conducting the tests / camps and the activities of the trust are not commercial in nature. Finally, he submitted that given an opportunity, the assessee is in a position to substantiate its case before the CIT(Exemption) by clarifying whatever doubts he has for allowing the registration u/s 12AA of the Act.

6. The Ld. DR on the other hand, heavily relied on the order of CIT(Exemption) and also filed a paper book containing 31 pages, details of which are as under:

<i>Sr. No.</i>	<i>Document Details</i>	<i>Pages</i>
1	<i>Assessee's submission before CIT(E), Pune dated on 11/10/2023</i>	<i>1 to 3</i>
2	<i>Letter of Anjali P. Telang dated on 25/03/2022</i>	<i>4</i>
3	<i>Schedule of Charges for FY 2019-20, 2020-21, 2021-22</i>	<i>5</i>
4	<i>Financial Statement of assessee along with notes on accounts</i>	<i>6 to 15</i>
5	<i>Ledger Account of Expenses on the object of the foundation</i>	<i>16</i>
6	<i>Financial Statements and Statutory Audit Report of appellant for FY 2021-22</i>	<i>17 to 31</i>

7. We have heard the rival arguments made by both the sides, perused the order of the CIT(Exemption) and the paper book filed by both sides. We find the CIT(Exemption) rejected the claim of registration u/s 12A of the Act, reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the Ld. CIT(Exemption) without considering the fact that the assessee trust is a section 8 company registered under the

Companies Act, 2013 with a charitable object of providing medical relief to the geriatric population and registered u/s 7(2), rejected the claim of registration without affording proper opportunity to the assessee. It is his submission that if the CIT(Exemption) was not satisfied with the details furnished by the assessee, he could have asked for further clarification from the assessee, which he has failed to do and passed the order rejecting the registration u/s 12A of the Act towards the end of the limitation period of six months. We find some force in the arguments of the Ld. Counsel for the assessee. It is an admitted fact that the assessee has filed an application dt 24.04.2023 and the CIT(Exemption) issued first notice to the assessee through ITBA portal on 26.07.2023. After the assessee furnished the details, he issued a show cause notice to the assessee on 06.10.2023, to which the assessee furnished a detailed reply on 11.10.2023. However, we find the CIT(Exemption) without calling for any clarification from the side of the assessee, passed the order on 27.10.2023. Further, the claim of assessee that it is a section 8 company registered under the Companies Act, 2013 with charitable object of providing medical relief to the geriatric population and registration u/s 7(2) of the Companies Act, 2013 was not at all considered by the CIT(Exemption) before rejecting the claim of registration u/s 12AA of the Act. We find from the various details furnished by the assessee that the excess of income over expenditure for the year ending 31.03.2022 was Rs.160,562/- and 31.03.2021 was Rs.1,79,157/-. Therefore, we fail to understand as to how the CIT(Exemption) has contended that the assessee trust is making substantial surplus when such surplus appears to be nominal. In view of the above discussion and considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore

the issue to the file of Ld. CIT(Exemption) with a direction to grant one more opportunity to the assessee to substantiate its case by filing the requisite details. The CIT(Exemption) is directed to decide the issue afresh as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on this 12th June, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 12th June, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. DR, ITAT, 'A' Bench, Pune
4. गार्ड फाईल / Guard file.

// True Copy //

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	10.06.2024		Sr. PS/PS
2	Draft placed before author	11.06.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			