

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, 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. 117/Ind/2023

Dhenu Samvardhan Foundation, 91, Dharam Raj Colony, Indore (Assessee/Appellant)	<u>बनाम/</u> Vs.	Commissioner of Income- tax (Exemption), Bhopal (Revenue/Respondent)
PAN: AAICD4471D		
Assessee by	Shri Pankaj Shah and Shri Soumya Bumb, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	26.07.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order dated 08.02.2023 passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] by which the assessee's application for grant of final registration u/s 12AA and final approval u/s 80G of Income-tax Act, 1961 has been rejected, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee is a company claiming to be engaged in charitable purpose. It was granted provisional registration u/s 12AA as well as provisional approval u/s 80G by Income-tax Department through two separate orders both dated 28.11.2021. Subsequently, the assessee applied for grant of final registration u/s 12AA and final approval u/s 80G. The CIT(E), vide a consolidated order dated 08.02.2023, rejected the final registration u/s 12AA as well as final approval u/s 80G. Aggrieved, the assessee has come in appeal before us.

3. Ld. AR for assessee carried us to Para 2-3 of impugned order to show that the CIT(E) show-caused the assessee to explain following three issues to which the assessee filed explanation but ultimately the CIT(A) rejected assessee's explanation and thereby dismissed assessee's applications:

- (i) That, as per Para 3rd Part A of Memorandum of Association (MOA), the main object of the assessee is "to carry on the *business* of social welfare, religion, charity, protection of animals including cow and provide an animal ambulance service, etc.". Therefore, the assessee cannot be treated as engaged in charitable purpose.
- (ii) That, as per Para 3rd Part B of the MOA, objects mentioned in S.No. 6, 8, 10, 14, 20, 27 and 28 are commercial in nature and allow the assessee to involve in commercial activities which cannot be treated for charitable purpose. Further, the assessee is carrying out

commercial activity of sale of cow milk & milk products which cannot be treated as charitable purpose. The CIT(E) has also noted that the assessee derived net profit of Rs. 3,54,000/- on sales-revenue of Rs. 9,91,900/- from sale of cow milk and milk products, thereby earned 35.68% net profit.

- (iii) That, as per Para 3rd Part B, the objects mentioned in S.No. 8, 13, 23, 25, 26 and 29 alongwith Para 4th of the MOA contain objects which allow the activity and application of income outside India which is not permissible as per provisions of section 11.

4. Ld. AR next submitted that the assessee is established for "charitable purpose" only. The assessee neither intended nor engaged in any 'business' or 'commercial' activity. Further, the assessee neither intended nor made any application of funds outside India. However, for the sake of satisfaction of CIT(E), the assessee has already amended its 'MOA' suitably and the copy of amended 'MOA' is filed in Paper-Book. So far as the activity of selling of cow milk and other milk products is concerned, Ld. AR submitted that when the assessee is engaged in charitable activity of animals predominantly cows, etc. the selling of cow milk and other milk products would be a necessary part of such charitable activity and the CIT(E) has wrongly understood the same as 'business' or 'commercial' activity. Then, Ld. AR also carried us to the audited accounts of assessee filed at Page 6 and 7 of Paper-Book to show that the assessee's receipts from donation was Rs. 11,07,24,000/- and the receipts from sale of cow-milk and milk products

was Rs. 99,19,000/-, thus the receipts from sale of cow milk and milk products were even less than 10% of total receipts and therefore the CIT(E) is not correct in treating the assessee as not carrying 'charitable purpose'. In Paper-Book, Ld. AR has also filed the copies of decisions of ***ITAT, Jaipur in ITA No. 748/JP/2015 - M/s Rajasthan Gau Seva Sangh, Jaipur Vs. CIT(Exemption), Jaipur dated 07.02.2020*** and ***ITAT, Ahmedabad in ITA No. 670/Ahd/2013 - Sabarmati Ashram Gaushala Trust Vs. ADIT(Exemption) order dated 07.06.2013***. With these submissions, Ld. AR prayed that the order passed by CIT(E) deserves to be set aside and the CIT(E) be directed to grant permanent registration/approval as applied by assessee.

5. Per contra, Ld. DR for revenue submitted that the activity of selling cow milk and milk products is in the nature of 'business'. He further submitted that the assessee has filed amended 'MOA' which was not before CIT(E).

6. We have considered submissions of both sides and also perused the documents filed in Paper-Book as well as the impugned order. After a careful consideration, we find that the CIT(E) has referred certain clauses of MOA and observed that the assessee's objects or activities are 'business' or 'commercial' in nature and the assessee had authority to apply funds outside India. But, as submitted by Ld. AR, the assessee has amended its MOA and the copy of revised MOA is filed in Paper-Book also. This revised MOA was not available before CIT(E) and the CIT(E) had no occasion to

verify the amendments made by assessee therein. Therefore, this case must go to CIT(E) for necessary verification. Accordingly, we are inclined to restore this matter to CIT(E). The CIT(E) shall, after verifying the amended MOA, also consider afresh the activities of assessee in the light of amended MOA and the decisions of ITAT cited by Ld. AR as narrated in foregoing paras. While doing so, the CIT(E) shall consider all submissions made by assessee without being influenced by his earlier order. Ordered accordingly.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 26.07.2027

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 26.07.2024
CPU/Sr. PS

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

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore