

INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)

ITA No. 160/AGR/2024

Omkar Memorial Charitable Society, Room No. 201, II Floor, REAC, Bhopal (Appellant) PAN: AAAA08054B	Vs. CIT(E), Bhopal
	(Respondent)

Assessee by :	Shri K. Sampath, Adv
Revenue by:	Shri Sukesh Kumar Jain, CIT DR

Date of Hearing	05/02/2025
Date of pronouncement	27/02/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.160/AGR/2024, arises out of the order of the Id Ld. Commissioner of Income Tax (Exemption), Bhopal [hereinafter referred to as 'Id. CIT(E)' in short] dated 28.02.2024.
2. The only issue to be decided in this appeal is as to whether the Id. Commissioner of Income Tax (Exemptions) (hereinafter referred as "Id CIT(E) in short) was justified in rejecting the application for grant of registration u/s 12AB of the Act in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the material available on record. The assessee is a charitable society and was granted provisional registration. The assessee made an application in the prescribed format seeking permanent registration u/s 12AB of the Act. The Id CIT(E) passed an order in Form 10AD rejecting the application seeking permanent registration of

the assessee on the ground that the assessee does not possess the registration for running charitable activities of hospital. The Id CIT(E) also relied on the decision of the Hon'ble Supreme Court in the case of New Noble Educational Society Vs. DCIT in Civil Appeal No. 3795/2014 in support of his contention. The assessee is a registered charitable society under the MP Society Registrkaran Adhinyam, 1973 w.e.f. 10.05.2022. The primary object of the assessee society is to promote healthcare. The assessee applied for provisional registration u/s 12A(1)(ac)(vi) of the Act on 11.03.2022 by filing Form 10A. Provisional registration was granted in Form 10AC for AYs 2022-23 to 2024-25 w.e.f. 18.03.2022. On 29.09.2023, the assessee filed Form 10AB for final registration u/s 12A(1)(ac)(iii) of the Act.

4. It is not in dispute that assessee had filed its return of income together with audit report in Form 10B and audited balance sheet. The assessee for the year ended on 31.03.2022 had stated that a sum of Rs. 66,51,422/- has been applied for charitable purposes during that year and had also set apart a sum of Rs. 96,87,641/- in terms of Section 11(2) of the Act to be applied in future. The various receipts derived by the assessee in the form of dialysis receipts, xray receipts, interest receipts etc were applied for meeting out the charitable activities and all these facts are evidenced from audited balance sheet as well as income and expenditure account for the years ended 31.03.2021, 31.03.2022 and 31.03.2023. On perusal of the detailed paperbook filed by the assessee from time to time, we find that the details of loans and advances given by the assessee were sought for and the same were duly furnished. From the balance sheet as on 31.03.2022, the Id CIT(E) observed that assessee had advanced loans to the members of the Governing Council of the assessee society and to The Central Park Hotel which was sought to be considered as amounts diverted for non charitable purposes. The assessee explained that the society had executed a formal agreement with The Central Park Hotel, Gwalior for acquisition of land for a consideration of Rs. 1.80 crores in order to

construct a new Hospital for which an advance payment was made. Due to less liquidity with the assessee, the assessee requested the office bearers of the society to make payment to The Central Park Hotel for remaining amounts. Accordingly, HUFs of the office bearers made payments to The Central Park Hotel on behalf of the assessee. Subsequently, during the FYs 2021-22 and 2022-23, the assessee paid back monies to HUF which were reflected in loans and advances. Hence, effectively loans were earlier borrowed by the assessee which were repaid and no fresh loans were given to these parties as alleged by the Id CIT(E). From the above, it could be seen that advance made to The Central Park Hotel is for acquisition of new hospital. Accordingly, we have no hesitation to hold that assessee had not diverted its funds for non-charitable activities by advancing to parties who are related either to the office bearers or to their concerns.

5. With regard to professional payments made by the assessee during the FY 2021-22, the assessee had given the details of the addresses to whom the payments were made and which were duly subjected to deduction of tax at source together with the concerned ledger account. The Id CIT(E) had disregarded this ledger account and observed that the assessee has not submitted the supporting documents. The assessee from its side before us had filed an affidavit from the doctors and income tax returns of the doctors for FY 2021-22 (AY 2022-23) together with TDS certificates issued by the assessee. In any case, non submission of supporting evidences, if any, for professional fees payment cannot be a ground for rejection of permanent registration u/s 12AB. If there is any infirmity in those professional fees payment, the same could be looked into at the time of assessment proceedings. In any event, the Id CIT(E) does not even whisper or even doubt that the said professional payments were made to the parties specified u/s 13(3) of the Act. Hence, drawing adverse inference on this account and rejecting the permanent registration u/s 12AB, in our considered opinion, is not in order.

6. With regard to other receipts shown in FY 2022-23 in the total sum of Rs. 4,46,24,430/- which was found to be excessive by the Id CIT(E) when compared to that in the earlier two years, it was explained that the hospital adopts cash basis of accounting and the receipts are accounted as and when they are actually received. Since, the receipts were actually received during the FY 2022-23 in respect of services rendered earlier, the same were accounted in FY 2022-23. There is absolutely no dispute to the fact that the assessee is following cash system of accounting. Hence, adverse inference drawn by the Id CIT(E) for rejecting registration on this count, in our considered opinion, cannot be upheld.

7. With regard to payment of incentives expenses of Rs. 10,80,000/- in FY 2022-23, it was explained that the same was paid to Dr Sandeep Saraf who is related person to the assessee society. Dr. Sandeep Saraf is a professional doctor and plays a crucial role in operating the hospital run by the assessee society and he was appointed as a full time doctor with a monthly salary of Rs. 1,40,000/- and an incentive based payment of Rs. 1000 per treatment. Depending upon the number of treatments completed by him, incentives would be paid to him. These facts are evident from the appointment letter of Dr. Sandeep Saraf itself. In any event, both salary as well as incentive paid to Dr. Sandeep Saraf had been duly subjected to deduction of tax at source by the assessee. The finding given by us with regard to payment of professional charges supra shall apply to payment of incentive expenditure also. Accordingly adverse inference drawn by the Id CIT(E) on this account for rejecting the registration, in our considered opinion, cannot be upheld.

8. With regard to next query of the Id CIT(E) that assessee society has shown income from college fees from FY 2021-22, it was explained that assessee has shown income from college fees of Rs. 14,60,000/- during FY 2021-22. The assessee started running the nursing college on 21.04.2022 and

its affiliation was cancelled on 16.06.2022. Hence, till this period, whatever college fee was received they are reflected in the financial statements. It was clarified that affiliation of college has been cancelled by MP Nurses Registration Council, Bhopal vide order dated 16.06.2022. The said cancellation order observed that the affiliation was originally obtained by the assessee by submitting wrong documents and providing wrong information thereby violating Rule 4 of MP Nursing Educational Institutions Recognition Rules, 2018. Based on this, the Id CIT(E) concluded that the activity of the assessee per se is not genuine. This observation was used by the Id CIT(E) to cancel the application of the assessee seeking permanent registration u/s 12AB of the Act. The Id AR before us duly clarified that assessee still runs the hospital and affiliation has been cancelled only for running the nursing college. Nowhere the activities of running hospital was construed to be non charitable by the Id CIT(E). We find force in the said arguments advanced by the Id AR and accordingly, we hold that cancellation of registration on this count cannot be held to be justified. The treatment of college fees received in the sum of Rs. 14,60,000/- had to be looked into at the time of assessment proceedings and that does not stand as a hindrance while considering the recognition for registration u/s 12AB of the Act.

9. With regard to the next query raised by the Id CIT(E) that seeking of details of salary paid during the last three financial years by the assessee, the entire details of the sum were duly furnished by the assessee before the Id CIT(E) by furnishing the ledger account and the name of the persons to whom payments were made. The assessee had also submitted comprehensive details of doctors and employees employed with the society during the FYs 2020-23 together with their designation in separate annexures before the Id CIT(E). Despite this, the Id CIT(E) states that no details of the employees and doctors were furnished by the assessee thereby doubting the genuineness of the

expenses per se. We are unable to comprehend ourselves to accept to this observation of the Id CIT(E) for more than one reason:-

- a. The assessee had indeed furnished the complete details of employees and doctors together with their designations in a separate annexure before the Id CIT(E).
- b. In any event, this can never be a relevant consideration for the purpose of grant of registration u/s 12AB of the Act.
- c. The activities of running a hospital is certainly charitable in nature and during the course of such charitable activity, payment to doctors and employees had to be made.

Hence, adverse inference drawn by the Id CIT(E) on this count is hereby dismissed.

10. Next query raised by the Id CIT(E) is with regard to calling for details of facilities available in the hospital together with rate charged thereon, which were duly provided by the assessee. The Id CIT(E) had stated in page 9 of his order that no comments are required in this regard, which shows he was duly satisfied with the fact that assessee indeed is running a charitable hospital.

11. With regard to next query raised by the Id CIT(E) seeking for details of profit percentage in the last three years in a tabular form. The assessee furnished the details of gross income, expenditure without depreciation, depreciation, net income, profit with depreciation and profit without depreciation in a tabular form in the FYs 2020-21 to 2022-23 which are reproduced at page 9 of the order of the Id CIT(E). The Id CIT(E) on perusal of the said table observed that assessee has accumulated huge profit hence, working for profit motive and not for charitable purpose. This has been used by the Id CIT(E) as one of the ground for rejecting registration u/s 12AB of the Act

to the assessee. In our considered opinion, this can never be a ground of rejection. What has to be seen at the time of granting the registration u/s 12AB of the Act is that whether the objects of the trust are charitable and whether the activities of the trust are genuine in nature. Hence, deriving surplus in every year becomes a irrelevant consideration for the purpose of grant of registration u/s 12AB of the Act. Further, in our considered opinion, earning surplus year on year is not a sinful or prohibited activity as long as such surplus is not distributed to the private individuals or persons connected with the assessee society. There is always a huge difference between the concept of 'public profit' and 'private profit' and grant of exemption u/s 11 of the Act would be in jeopardy only when there is 'private profit' i.e. profit being distributed to the trustees as dividend or in any other form. Once there is 'public profit' i.e. profit/ surplus earned by a trust which are being ploughed back into coffers of the trust for future charitable activities are certainly permitted. Even the provisions of section 11 to 13 permit earning of profit of 15% and in the event of any trust deriving profit in excess of 15%, then the Income Tax Act itself permits for accumulation in terms of section 11(2) of the Act to be utilized in future. Hence, in our considered opinion, surplus earning is not a sinful activity and in any manner does not hinder the concept of charity or charitable activities. Accordingly, the observations made by the Id CIT(E) in this regard are hereby dismissed as devoid of merit.

12. With regard to next query raised by the Id CIT(E) seeking copy of latest permission of running the hospital from the Government, the same was duly furnished by the assessee. The Id CIT(E) simply brushed aside the same and observed that affiliation of nursing college has been cancelled and accordingly genuineness of the activity of the assessee is not established. The assessee had duly clarified that the hospital has been operational over 20 years and nursing college was established in FY 2021-22. The assessee society has been running the hospital with proper approvals from the competent authorities and

cancellation of affiliation of nursing college would not in any way hamper the continuation of charitable activities of the assessee society in running the hospital. Hence, the genuineness of the activities cannot be doubted at all qua the hospital. This issue has already been addressed by us while giving out findings with regard to yet another query raised by the Id CIT(E) supra.

13. Yet another query raised by the Id CIT(E) is that assessee had paid monthly rent of Rs. 1,25,000/- to Kantialal Saraf HUF who happened to be related person u/s 13(3) of the Act. Based on this, the Id CIT(E) concluded that assessee society is working for the benefit of the related persons by giving huge amount of rent. This was clarified by the assessee by stating that assessee society had entered into rental agreement with Kantilal Saraf HUF wherein, the fully operational hospital including the building, machinery and equipment necessary for hospital operations were taken on rent by the assessee society at a monthly rent of Rs. 1,25,000/- for carrying out this charitable activity. Assessee even placed the rent agreement on record before the Id CIT(E). The assessee also placed on record the fact that the landlord happens to be a related person u/s 13(3) of the Act. The assessee also submitted that the market rent for the very same infrastructure is in the range of Rs. 2 lakhs per month and since, the assessee has paid lesser amount to the related parties, it is assessee society who had been benefitted through the person specified in section 13(3) of the Act. Accordingly, there is no diversion of fund by the assessee society for the benefit of person specified in section 13(3) of the Act. We find lot of force in this submission of the assessee. In any event, the Id CIT(A) had not even bothered to bring comparable instances to drive home the point that the monthly rent of Rs. 1,25,000/- paid by the assessee to Kantilal Saraf HUF is excessive or unreasonable. The Id CIT(E) had not brought any evidence on record to even state that the fair market value of the rent for the infrastructure taken on rent by the assessee was less than the amount paid by the assessee to the related person. Without this finding being

brought on record, there cannot be any allegation that could be leveled on the assessee. In any event, this issue has got absolutely no relevance in any manner whatsoever for the purpose of grant of registration u/s 12AB of the Act. Hence, the observation made by the Id CIT(E) is hereby dismissed as devoid of merit.

14. In view of the aforesaid detailed observations on every query raised by the Id CIT(E) in his order, we have no hesitation to conclude that the assessee should be granted registration u/s 12AB of the Act. Accordingly, we direct the Id CIT(E) to grant registration to the assessee u/s 12AB. The grant of exemption u/s 80G of the Act would be consequential to the grant of registration. Accordingly grounds raised by the assessee are allowed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27/02/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 27/02/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi