

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3979/Del/2016		
A.Y. : -----		
VAMIKA EDUCATIONAL AND SOCIAL WELFARE SOCIETY, C/O AKHILESH KUMAR ADVOCATE, 206-207, ANSAL SATYAM RDC, RAJNAGAR, GHAZIABAD (PAN: AAABV0417G)	VS.	Commissioner of Income Tax (Exemptions), AAYAKAR BHAWAN, 5, ASHOK MARG, LUCKNOW-226001
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Akhilesh Kumar, Adv.
Advocate
Department by : Sh. N.K. Bansal, Sr. DR

ORDER

PER H.S. SIDHU, JM

The Assessee has filed this appeal against the impugned order dated 11/2/2016 passed by the Ld. Commissioner of Income Tax(Exemptions), Lucknow.

2. The grounds raised in the Appeal read as under:-

1. That Ld. CIT grossly erred in law as well as on facts in refusing to grant registration u/s. 12AA of the I.T. Act, 1961 even after satisfying with the objects/ activities of the society merely on the basis that assessee has not challenged the earlier rejection order dated 17.3.2015.

2. That Ld. CIT failed to appreciate the fact that assessee is running educational institution in terms of objects, whose cases of earlier years are also accepted u/s. 143(3) only after considering activities as charitable in terms of section 10(23C)(iiiad) hence order is inherently illegal.
3. That Ld. CIT even failed to appreciate the fact that registration in earlier year was refused merely for non-compliance without any adverse finding and assessee has chosen to file fresh application instead of going in appeal as case was covered u/s. 10(23C)(iiiad) till that year. Order is without any evidence or material against the assessee and is perverse.

It is, therefore, prayed that the Ld. CIT may kindly be directed to grant the registration u/s. 12AA of the Income Tax Act, 1961.

3. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. During the hearing, Ld. Counsel of the assessee has stated that Ld. CIT grossly erred in law as well as on facts in refusing to grant registration u/s. 12AA of the I.T. Act, 1961 even after satisfying with the objects/ activities of the society merely on the basis that assessee has not challenged the earlier rejection order dated 17.3.2015. He further stated that assessee is running educational institution in terms of objects, whose cases of earlier years are also accepted u/s. 143(3) only after considering activities as charitable in terms of section 10(23C)(iiiad) hence order is inherently illegal. It was the further contention of the Ld. Counsel of the assessee that Ld. CIT even failed to appreciate the fact that registration in earlier year was refused merely for non-compliance without any adverse

finding and assessee has chosen to file fresh application instead of going in appeal as case was covered u/s. 10(23C)(iiiad) till that year. In view of the above, he requested the Bench to kindly direct the Ld. CIT to grant the registration to the assessee.

5. On the other hand, Ld. DR relied upon the order of the Ld. CIT(E), Lucknow and stated that he has passed a well reasoned order which does not need any interference on our part. Hence, he requested that appeal of the assessee may be dismissed.

6. We have heard both the parties and perused the records. We have gone through the order passed by the revenue authorities especially the impugned order dated 11.2.2016 as well as the previous Ld. CIT(E)'s order dated 17.3.2015. We find that Ld.CIT(E) has passed the following impugned order dated 11.2.2016:- -

- "1. The above named Society has filed an Application for registration u/s. 12A(a) of the Income Tax Act, 1961 on 21.8.2015 with the Commissioner of Income Tax (Exemptions), Lucknow.
2. Subsequently, the applicant Society was accorded an opportunity of being heard vide this office letter F.No. CIT(Exemp.)/LKO/12A/2015-16 dated 27.1.2016 sent to the application on address provided in Form 10A by Speed Post (EU4847861961N), calling for specific queries regarding its application for registration u/s. 12A for compliance on 11.2.2016. However on that date i.e. 11.2.2016 Shri Vipin Kumar, FCA attended and the case was discussed with him. It is also observed that the application for registration u/s. 12AA vide order F.No. CIT(Exemptions)/LKO/12AA/2014-15/1686 dated

17.03.2015 was already rejected by the Commissioner of Income tax (Exemptions), Lucknow. The Applicant has not challenged this order before the Hon'ble ITAT.

3. I have considered the material available on records. There is no change in facts of the case since it was rejected on 17.03.2015.

4. Accordingly, the registration sought by the applicant u/s. 12A(1) of the Income Tax Act, 1961 is hereby rejected."

6. After perusing the aforesaid impugned order, we are of the view that Ld.CIT(E) has passed the impugned order by refusing to grant registration u/s. 12AA of the I.T. Act, 1961 merely on the basis that assessee has not challenged the earlier rejection order dated 17.3.2015, which is contrary in the eyes of law. We further note that Ld. CIT(E) has also not taken into consideration the fact that assessee is running educational institution in terms of objects, whose cases of earlier years are also accepted u/s. 143(3) of the I.T. Act only after considering activities as charitable in terms of section 10(23C)(iiiad). We further find that Ld.CIT(E) while rejecting the registration to the applicant has wrongly adopted the view that registration in earlier year was refused due to non-compliance without any adverse finding and passed the non-speaking order which is not sustainable in the eyes of law. Keeping in view of the facts and circumstances of the case as explained above, we are of the considered view that the matter needs to be remitted back to the file of the Ld. CIT(E) for fresh consideration for passing a speaking order. Accordingly, we set aside the issues in dispute to the file of the Ld. CIT(E) for fresh consideration, after giving adequate opportunity of being heard to the assessee/applicant. The applicant/assessee is also

directed to fully cooperate with the Ld. CIT(E) and file all the requisite details/documents before the Ld. CIT(E) to substantiate its case.

7. In the result, the Assessee's Appeal stands allowed for statistical purposes.

Order pronounced in the Open Court on 09/05/2017.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 09/05/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches