

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI  
BEFORE SHRI R.P. TOLANI AND SHRI T.S. KAPOOR

ITA No. 386/Del/2012

U/s 12AA of the I.T. Act, 1961

Abul Kalam Azad Islamic  
Awakening Center,  
4, Joga Bai Jamia Nagar,  
New Delhi.

Vs. Director of Income-tax(E),  
New Delhi.

PAN/GIR No. AAATA2513N  
(Appellant)

( Respondent )

Appellant by: Sh. R.S. Singhvi

Respondent by : Mrs. Anusha Khurana Sr. DR

**ORDER**

**PER R.P. TOLANI, J.M :**

This is assessee's appeal against the order of Director of Income-tax (E) passed u/s 12AA(3) r.w.s. 12 of the I.T. Act, 1961, cancelling registration granted u/s 12A.

2. Following grounds are raised:

- “1(i) That on the facts and circumstances of the case and under the law, cancellation of registration u/s 12AA vide order u/s 12AA(3) is not justified.
- (ii) That aim and objects of the society are of charitable nature and their being no violation of provisions of sec. 2(15) of the Income Tax Act, 1961, the order passed by DIT(E) is not sustainable under the law.
- (iii) That the observation and finding of the DIT(E) are without proper appreciation of facts and whole basis of order u/s 12AA(3) is illegal, arbitrary and misconceived.”

3. Brief facts are: Assessee society was granted registration u/s 12A vide DIT(E)'s order dated 23-5-2001 and benefit of exemption u/s 80G till 31-3-2011. It is not disputed that the aims and objects of the society remained the same and there is no change therein. The society was formed mainly to promote the cause of education in general and cause of the education of the Indian Muslim and other minorities and backward sections of the country. During the course of assessment for A.Y. 2005-06, AO found that assessee had purchased a commercial property at Bangalore for Rs. 7,34,62,970/-. The purchase amount was claimed by the Society to be application of society's income in the assessment. AO, however, did not agree with the assessee and held that this amount was applied for not charitable purpose and did not amount to application of income of Society and made the addition.

3.1. On the basis of the assessment order, DIT(E) issued a show cause notice as to why Society's registration 12A also should not be withdrawn as the assessee had applied its income for non-charitable purposes.

3.2. In reply, assessee, inter alia, pleaded:

- (i) The bylaws of the Society permitted the activity of purchasing any immovable property and investment of surplus fund.
- (ii) The management of the Trust was eligible to invest in any immovable property including a commercial property which could be let out on rent; the rent would be recurring income and the investment and recurring income were for promotion of the objects of the Trust.
- (iii) The management was eligible to let out the property on rent and rental income received, has been offered to tax.

3.3. DIT(E), however, did not agree with the same and observed that:

- (i) The earning of rental income was not object of the Society. The property purchased was shopping Arcade cum-office complex, which indicated the intention of indulging in commercial activities.
- (ii) The commercial property has not at all been used for any of its objectives i.e. spreading education, as claimed to be the object of the assessee Society.
- (iii) The purchase of commercial property was not incidental to attainment of any objective. The property being commercial, without any use for its aims and objectives, the investment was for non-charitable purposes.

3.4. On these observations, DIT(E) withdrew the registration u/s 12A.

“7. In the instant case, the society is earning from two different heads i.e. rental income, from property and from sale of shop. The purchase of commercial property by the society is not incidental to the attainment of its aims and objects, but a well thought out action to earn rent at higher rate, property being commercial and to obtain higher appreciation of value of the property in the near future. The contention of the society that surplus funds of the society were invested in accordance with Section 11(5) of the Act, is not acceptable as the immovable property was commercial and not a property purchased for establishment of School/ college or any other educational institute, which is one of the main aims of the society for which it was created.

8. Keeping in view the above facts and nature of income, it is clear that the intention of the assessee society behind investment in commercial property is to earn rental income which is not an activity of “charitable purpose” specifically after the amendment in proviso to Section 2(15) from AY 2009-10 onwards. To sum up, though the aim of the trust is to impart education, one of the activities so far is centered around generating surplus buying properties and renting out the same to different parties. The properties purchased, namely, UB

Plaza, Bangalore and Sigma Softech Park, Ramagondanahalli Village, Bangalore are out rightly commercial properties located in a shopping Arcade cum-office Complex, and are not such properties where education is generally imparted. This would indicate that the assessee has no intention to utilize the properties purchased for using the same for imparting education. Investment properties to earn rental income and in shops so that income can be earned by selling those subsequent can by no stretch of imagination be construed as application of funds/ money for charitable purposes by the society. Moreover, the such investment cannot be treated as incidental to attainment of its aims and objects as per MOA.

9. In view of amended provisions of Section 2(15) of the Income tax Act, 1961, the activity of the society relating to investment in purchase of commercial property does not fall within the meaning of Charitable activity, as the investment in commercial property and earning rental income as well as income from sale of shop out of the property purchased are hit by the provisions of the amended provisions of section 2(15), Keeping in view, the above facts and that the assessee is carrying out activities which are not charitable as per provisions of Section 2(15) of the Act, the society is held to be not qualifying for registration u/s 12A. Accordingly, registration granted u/s 12A to the assessee society is cancelled from AY 2009-1- onwards.”

4. Aggrieved, assessee is before us.
5. Learned counsel for the assessee vehemently argues that:
  - (i) The DIT(E) got carried away by the assessment order for AY 2005-06 in which the investment in this property was held to be not the application of income of society.
  - (ii) In cases, a part of application of income is held not to be the application of society's income in terms of sec. 11 & 12, it can entail at the most in addition to income, it cannot be a basis for withdrawing the registration u/s 12A already granted to assessee.

(iii) The Bylaws of the Trust enabled the Management to invest the surplus funds in a manner to ensure safety of investment and its being viable investment.

6. Ld. DR on the other hand relied on DIT(E)'s order.

7. We have heard rival contentions and gone through the relevant material available on record. Relevant provisions of section 11, read as under:

**“Income from property held for charitable or religious purpose.**

11(2) Where eighty five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-

- (a) Such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;
- (b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5).

.....

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:-

.....

(x) Investment in immovable property.”

7.1. Plain reading of provisions of sec. 11 (2)(b) lay down that 85% of the income is to be applied to charitable purposes or set apart and the moneys accumulated or set apart can be invested or deposited in the forms or modes specified in sub-sec.(5).

7.2. Clause (x) of Sub sec. (5) to sec. 11 prescribes one of the modes of investment as “investment in immovable property”. Thus, the surplus income can be applied to investment in immovable property. The charitable purposes will include the educational activities and acquiring the income yielding assets to promote the educational objects of the Society. Consequently, combined reading of these provisions make it clear that the assessee can set apart or invest its income in an “immovable property”. The word “immovable property” by natural reading, will include any type of land, residential or commercial property or any other form of property, which can be termed as immovable property as defined in the Transfer of Property Act. Thus, the society/ management is allowed to invest its surplus in immovable property, including commercial property. Thus, there cannot be a bar on management of Society to invest its surplus funds in acquisition of a commercial property as the law does not mandate any extra bar.

7.3. Coming to the other aspect that because the assessee is not carrying out any educational activity in this commercial property, therefore, the investment becomes for non-charitable purposes and the assessee has endeavored to enter into business operations. In our view the assessee’s charitable objects include spreading education and opening of schools; investment even in commercial property assets remains charitable purposes so long as the income generated by it is applied to charitable objects. It has

not been demonstrated that the assessee applied rent received from these properties to any non-charitable purposes. Besides, it has not been demonstrated that the assessee's intention was to enter in business of purchase and sale of commercial property inasmuch as we are in year 2012, the property was purchased in FY 2004-05 and the Trust still retains this property. In these circumstances, we are unable to hold that the assessee's investment can be held non-charitable in nature.

7.4. Coming to the aspect of addition in withdrawal of registration because of assessment for AY 2005-06. In our view, that is a separate subject as in the case of any trust AO has a discretion to examine the nature of application of income in and in and particular facts to hold it as non-application, but every disallowance will not automatically lead to withdrawal of registration already granted u/s 12A.

7.5. In view of the foregoings, we hold that assessee's registration u/s 12A should not have been cancelled, the same is restored. Order of DIT(E) is reversed.

8. In the result, assessee's appeal is allowed.

Order pronounced in open court on 30-03-2012.

Sd/-  
( T.S. KAPOOR)  
ACCOUNTANT MEMBER  
Dated: 30-03-2012.

Sd/-  
( R.P. TOLANI)  
JUDICIAL MEMBER

**MP**

Copy to :

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR

