

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'A', CHANDIGARH**

BEFORE SHRI T.R. SOOD, ACCOUNTANT MEMBER
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER

ITA No.422/Chd/2010
(Under Section 12AA(b))

M/s Yodha Samarak Samiti,
2 Jain Nagar, Jagadhri.

Vs.

The C.I.T.,
Panchkula.

PAN: AAQPJ3506N
(Appellant)

(Respondent)

Appellant by : Shri Tej Mohan Singh
Respondent by : Smt.Jyoti Kumari, CIT DR

Date of hearing : 25.04.2012
Date of Pronouncement : 11.06.2012

ORDER

PER SUSHMA CHOWLA, J.M. :

The assessee has filed the present appeal against the order passed by the Commissioner of Income Tax, Panchkula dated 25.03.2010 under section 12AA (b) of the Income-tax Act (in short 'the Act').

2. The assessee has raised the following grounds of appeal:

- 1. That the Ld. Commissioner of Income Tax has erred in law as well as on facts in rejecting the application for registration filed under section 12A of the Act which is arbitrary & unjustified.*
- 2. That the assessee Society/Samiti fulfils all the conditions necessary for registration and the objectives for which the Samiti has been constituted is to undertake wholly charitable activities as is evident from the Bylaws of the Society which fact has not been appreciated by the Ld. Commissioner of Income Tax in the correct perspective.*
- 3. That the order of the Ld. Commissioner of Income Tax is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.*

3. The brief facts of the case are that the assessee society is registered with District Registrar of Societies, Yamuna Nagar on 27.3.2009. The primary object of the Samiti is to set-up suitable

memorials to perpetuate the memory of National War heroes, in general all over India including Sh. Prithvi Raj Chauhan, Sh. Hem Chand Vikramaditya & Sh. Sadashiv Bhau and also to set up museum, library and exhibition, display of weaponry and other antique items connected with defence activities. The assessee society applied for registration u/s 12A of the Income-tax Act, 1961 in Form No. 10A on 01.10.2009. The Commissioner of Income Tax called for a report from the Assessing Officer and JCIT, Yamuna Nagar about the activities of the society and also whether it fulfills the conditions laid down u/s 12AA of the Act. The report of the Assessing Officer is reproduced under para 2.1 at pages 1 and 2 of the order passed under section 12AA of the Act. The conclusion of the Assessing Officer and the DCIT, Yamuna Nagar was that the activities of the applicant society were not genuine towards achievement of its aims and objects and accordingly not recommended for grant of registration u/s 12AA of the Act. The reply of the assessee before the Commissioner of Income Tax is reproduced under para 3.1 at page 3 of the said order, in which it explained the activities carried on by the assessee. The CIT (Appeals) on perusal of the record was of the view that the primary purpose of the society is to build memorials in favour of the National Heroes who sacrificed their lives for the honour of their country. The Commissioner of Income Tax held as under:

“The applicant was asked to explain as to how erection of memorials came within the scope of definition of 'charitable purposes'. In this regard, a reference has been made to the clause regarding "preservation of wild life and preservation of monuments or places or objects of artistic and historic interest, as inserted by Finance (2) Act, 2009

w.e.f, 01.04.2009. I do not find the arguments acceptable as in the present case, society's objects do not refer to preservation of monuments but provide for creation of new monuments which does not fall within the definition. As the definition is clear and unambiguous, there is no scope for discussion that the preservation of monuments includes creation of monuments. The society's objects do not refer to the memorials which have already been built by the Government or the sites of national heritages. Moreover, it is a question of debate, discussion and may, also lead to political controversies about the persons in whose memory monuments are proposed to be erected.”

4. The Commissioner of Income Tax placing reliance on the ratio laid down in *Kedia Jatiya Sahayak Sabha & Fund Vs. CIT*, [49 ITR 74, 81(Cal)] and in the case of *Mahakaushal Shaheed Samark trust vs. CIT* [140 ITR 795] held that the assessee was not eligible for registration under section 12AA of the Act. The Commissioner of Income Tax further observed that on the receipts issued by the assessee society, the addresses of the donors from whom donation has been claimed to be received were missing and thus even the correctness of the accounts were not verifiable. Consequently the application moved by the assessee for registration under section 12AA of was rejected.

5. The assessee is in appeal against the order of the Commissioner of Income Tax.

6. The learned A.R. for the assessee referred to the aims and objects of the assessee society, placed at pages 2 to 11 of the Paper Book and pointed out that it had two fold objects for carrying on its charitable activities. Our attention was drawn to the reply filed by the

assessee on 22.2.2010 placed at pages 22 and 23 of the Paper Book in which the assessee explained that it wanted to set up suitable memorials in the memory of national war heroes and for the purpose was holding seminars, meetings, conference in this regard. The learned A.R. for the assessee further pointed out that in view of the amended definition of charitable purpose with retrospective effect the preservation of monuments or places or objects of artistic or historic interest were charitable in nature. The learned A.R. for the assessee submitted that reliance by the Commissioner of Income Tax on the ratio laid down in *Kedia Jatiya Sahayak Sabha & Fund Vs. CIT (supra)* was misplaced as the objects of the said trust were not for particular community. Reliance was placed on the ratio laid down by the Hon'ble Allahabad High Court in *Fifth Generation Education Society Vs. CIT [185 ITR 634(A11)]*

7. The learned D.R. for the Revenue in reply pointed out that the primary object of the assessee was construction of war memorials mainly in the memory of martyrs and such activities were not of general public utility. The learned D.R. for the Revenue further pointed out that the reliance on the Madhya Pradesh High Court by the Commissioner of Income Tax was directly applicable to the facts of the present case.

8. We have heard the rival contentions and perused the record. The assessee society was registered with District Registrar of Societies, Yamuna Nagar on 27.3.2009. The assessee had applied for registration u/s 12A of the Income-tax Act, 1961 in Form No. 10A on 01.10.2009. The memorandum of association of the assessee society is placed at pages 2 to 11 of the Paper Book. The primary aims and objects of the assessee society are as under:

3. Aims and Objects:

a) *To set up suitable memorials to perpetuate the memory of National War Heroes in general all over India including (i) Shri Prithviraj Chauhan (ii) Shri Hemchand Vikramaditya & Shri Sadashiv Bhau .*

b) *To set up a' museum, library and an exhibition for display of the weaponry and other antique items connected with defence activities.*

c) *To carry out research in the wars, to derive appropriate lessons from the successes/failures of the National War Heroes. To set up a centre for carrying out research in martial arts, warfare and history of the wars fought by our country in general and particularly in Panipat and Taraori areas.*

d) *To set up educational Institutions for preparing youth to devote themselves to the service of nation as to encourage for joining defence services.*

e) *To arrange seminars, to hold meetings and conferences and to organize lectures, discourses symposiums, exhibitions and fairs.*

f) *To promote interest in military activities amongst the public in general and the youth in particular.*

g) *To inculcate moral, spiritual, physical and patriotic spirit in the public in general and youth in particular, to make them responsible citizens of the country and to carry out activities to develop spirit of sacrifice, devotion and dedication to the country among the youth.*

h) *To acquire funds, to acquire property/land, to build suitable structures for achieving the above objects. To acquire, purchase, accept as gift or donations or contributions; sell or dispose of or otherwise transfer temporarily or permanently, any property both moveable and immovable to carry out the purposes of the Samiti and for the benefit of and in the best interest of the Samiti.*

9. In order to achieve its objects the assessee had held various gatherings in the advancement of its objects in relation to the war heroes which are referred to by the assessee in the communication sent to the Commissioner of Income Tax, placed at pages 18 to 22 of the Paper Book. The explanation of the assessee vis-à-vis activities was that presently it was holding seminars, meetings, conferences of general public with like minded persons to hold the society endeavor to establish martyrs memorials of the war heroes of the historic battles.

10. The amended definition of charitable purpose within the meaning of section 2(15) of the Act reads as under:

2(15) “charitable purpose” includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;]

11. The Finance No.2 Act, 2009 with retrospective effect from 1.4.2009 had inserted ‘the preservation of environment or preservation of monuments or places of objects of artistic or historic interest’ as part of the definition of ‘charitable purpose’ within the meaning of section 2(15) of the Act. The above said objects are in addition to the object of the advancement of any other object of general public utility, which as per section 2(15) of the Act is for charitable purpose.

12. Admittedly, the assessee before us is desirous of constructing monuments in the memory of war heroes and once such monument is constructed, the preservation of the said monument would be charitable purpose entitling the assessee to fall within the amended definition enshrined in section 2(15) of the Act. The assessee has not constructed any such war memorials till date.

13. The second activity carried on by the assessee as per its explanation filed before the Commissioner of Income Tax is making suitable environment in the society by holding seminars, meeting, conferences of general public and like minded helpful persons so that it may with the help of society endeavourer to establish martyr memorials in the absence of befitting monuments commemorating the war heroes of the historical battles. Looking at the aims and objects of the assessee society we find that in addition to setting up suitable memorials in the

memory of national war heroes, other objects of assessee society are as under:

3.d) *To set up educational Institutions for preparing youth to devote themselves to the service of nation as to encourage for joining defence services.*

e) *To arrange seminars, to hold meetings and conferences and to organize lectures, discourses symposiums, exhibitions and fairs.*

f) *To promote interest in military activities amongst the public in general and the youth in particular.*

g) *To inculcate moral, spiritual, physical and patriotic spirit in the public in general and youth in particular, to make them responsible citizens of the country and to carry out activities to develop spirit of sacrifice, devotion and dedication to the country among the youth.*

h) *To acquire funds, to acquire property/land, to build suitable structures for achieving the above objects. To acquire, purchase, accept as gift or donations or contributions; sell or dispose of or otherwise transfer temporarily or permanently, any property both moveable and immovable to carry out the purposes of the Samiti and for the benefit of and in the best interest of the Samiti.*

i) *To support and render financial assistance for charitable and educational causes to deserving persons and institutions. Samitis or societies for any purpose or purposes which will carry out all or any objects of the society which are recognized under section 80-G of the Income Tax Act, 1961.*

14. The list of activities carried on by the assessee is placed at pages 18 to 21 of the Paper Book. The perusal of the above said list reflects that one of the objects of the assessee society though is for the construction of suitable memorials in the memory of war heroes but the other objects to be taken up by the assessee society by way of setting up educational institutions, arranging seminars, holding meetings/conferences and to organize lecture exhibition etc., and further to inculcate moral, spiritual, physical and patriotic spirit in the public in general and youth in particular. The list of other aims and objects of assessee society reflect the nature of advancement of other objects of general public utility. Where the assessee society was carrying on the activities in the advancement of any other object of general public utility, the same being charitable in nature, falls within the definition of

section 2(15) of the Act. In view thereof, where the assessee is carrying on the charitable activities, the activities of the assessee are to be held as charitable in nature. Consequently, the assessee is entitled to the benefit of registration under section 12AA of the Act. Accordingly, we direct the Commissioner of Income Tax to pass consequential order granting registration to assessee society under section 12A of the Act. The reliance of the learned D.R. for the Revenue on the ratio laid down in Kedia Jatiya Sahayak Sabha & Fund (supra) is misplaced.

15. Second plea of Commissioner of Income Tax vis-à-vis in relation to the receipts issued to the donors cannot be formed the basis for rejection of registration to assessee society under section 12AA of the Act. The said issue is to be seen by the Assessing Officer while computing income in the hands of the assessee. In view thereof, we reverse the order of the Commissioner of Income Tax on this account and direct him to pass the consequential order granting registration to the assessee under section 12AA of the Act. The grounds of appeal raised by the assessee are allowed.

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

Order Pronounced in the Open Court on 11th day of June, 2012.

Sd/-
(T.R. SOOD)
ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
JUDICIAL MEMBER

Dated : 11th June, 2012

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh

