

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER and
SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

ITA No. 1369/Hyd/2012
Assessment year 2012-13

M/s. Saivani Educational
Society, Hyderabad
PAN: AADTS6974Q
Appellant

Vs. The Director of Income-tax
(Exemptions),
Hyderabad
Respondent

Appellant by: Sri AV Raghuram
Respondent by: Sri Ramana Rao

Date of hearing: 01.01.2013
Date of pronouncement: 09.01.2013

ORDER

PER CHANDRA POOJARI, AM:

This appeal by the assessee is directed against the order of the Director of Income-tax (Exemptions), Hyderabad dated 30.7.2012.

2. The grievance of the assessee in this appeal is with regard to non-granting of registration u/s. 12AA of the Income-tax Act, 1961. The assessee applied for registration u/s. 12AA of the Act by filing application in Form No. 10A on 13.1.2012. The DIT(E) called for information regarding the activities carried on by the assessee and also directed to produce books of account, bills and vouchers for verification. The assessee filed income and expenditure account, Balance Sheet and depreciation statement for the years ending 31.3.2009, 31.3.2010 and 31.3.2011. However, the assessee not furnished receipts and payments account and break-up fees collection like admission fee, tuition fee, etc..

3. Further in the Income & Expenditure Account for the year ended 31.3.2010, the total fee collection is shown at Rs. 95,98,345. However, in the statement of fee structure furnished by the above society during the proceedings, while indicating the strength under each 'course B.Com (Reg.), B.Com (Comp) and B.Sc., for each year and the respective fee for such course, the total fee are shown at Rs. 94,66,000/-. Thus, there is discrepancy in the fee collection as per such statement furnished and the amount as shown in the said Income & Expenditure Account. Similarly, in the Income & Expenditure Account for the accounting year ended 31.3.2011, the total fee collections are shown at Rs. 97,42,901, whereas, in the statement of fee structure for the said year furnished during the proceedings, the total fee are shown at Rs. 96,78,000. Thus, there is discrepancy noticed in such statement. Further, in the Receipts & Payments Account for the year ended 31-3-2012 furnished during the proceedings, the fee collections are shown at Rs. 84,91,788.. However, the fee structure statement for the financial year 2011-12, showing strength of students for each course i.e., B.Com (Reg), B.Com (Comp) and B.Sc., during the three years (i.e., First Year, Second Year and Third Year) and the respective fee amount, the total fees are shown at Rs. 1,05,10,500/-. Thus, the actual fee collection as per the statement is more than the amount as shown from the said source in the Receipts & Payments Account furnished for the said year. Under these circumstances, the financial statements of the above society for different accounting years are thus not reliable.

4. Further, from the Income & Expenditure Account of the above society for the year ended 31-3-2011, it is seen that a sum of Rs. 4,99,549/- has been debited towards Loss on Chit. From such claim, it appears that the above society was also indulging in business activity, utilizing the funds of the society, and under that

circumstance, it cannot be allowed registration u/s. 12AA of the Act.

5. Further, during the proceedings, it was noticed that the above society was collecting more than the fee as prescribed for different courses by the concerned university authorities, It may be mentioned that in the letter dated 31-5-2012 issued by the Osmania University, Hyderabad to the Principals of colleges offering under-graduate courses under the jurisdiction of Osmania University while stipulating the fee structure for under graduate courses offered in colleges under their jurisdiction, it is clearly mentioned not to collect any extra amount other than the approved fee as prescribed by the university. On a query raised during the proceedings about such additional collection made from students by the above society, than the approved fee amount for different courses offered by their college, in the reply furnished on 12-7-2012, it was submitted by the AR that the society running the educational institution is collecting the fee from the students as prescribed by the university authorities. It was stated that educational institution does not have all the required facilities like laboratory, library etc. It was further stated that to provide better coaching facility, the institution hires services of senior lecturers and they used to be paid on hourly basis. It was submitted that to meet such expenditure, the society collects further amount from the students. It was further submitted that whatever amount was being collected over and above the prescribed fee was spent for the purpose of imparting education and proper facilities to the students. It was further stated that .the society utilized all the amounts collected in providing good education. Stating that the funds collected were applied for the purpose of objects of the society and it has complied with the provisions of the Income Tax Act, it was submitted that merely because there is a small difference in the

fee collected, the same should not divest the institution from getting registration u/s. 12AA of the Act.

6. Considering the plea of the assessee the DIT(E) observed that there is no merit in such submissions of the above society. The contention that the society collected further amount than the prescribed fee for meeting various expenditure, is not correct. The other contention that the society utilized all the amounts collected from students for their main object of providing education to the students is also not fully correct. As seen from the Income & Expenditure Account for the year ended on 31-3-2009, the excess of income over expenditure is shown at Rs. 27,67,655. Thus, during that year, the society has got surplus i.e., earned profit of Rs. 27,67,655/- from the collections made from students during that year. Similarly, the above society had earned profit of Rs. 7,68,612 and Rs. 3,33,393 during the accounting year ended on 31-3-2010 and 31-3-2011 respectively. In fact, such profit for the accounting year ended on 31-3-2011 after excluding Chit Loss claimed at Rs. 4,99,549/- would be more. From such statements furnished, thus, it shows that the above society was continuously earning profit from such fee collections made from students. Under these circumstances, it cannot be accepted that various fees collected by the above society, over and above the amount prescribed by the university authorities, was for meeting the expenditure of the society. Hence, it is not eligible for registration u/s. 12AA of the Act.

7. The learned AR submitted that the assessee is an educational institution. Its objects are fully charitable and registration u/s. 12AA of the Act is to be granted. According to the AR the DIT(E) shall confine his enquiry to the objects to be pursued by the assessee and not any other activity. According to the AR the assessee has not collected any capitation fee. The AR

relied on the judgement of Supreme Court in the case of American Hotel and Lodging Association Educational Institute v. Central Board of Direct Taxes and Others (301 ITR 86) (SC). He also submitted that the DIT(E) has not given opportunity to rebut the allegation made against the assessee that assessee had collected excess fee than what is fixed by the State authorities.

8. On the other hand, the learned DR submitted that there are discrepancies in the accounts of the assessee and the assessee collected excess fee than what is prescribed by the Stage authorities and the assessee cannot be said to be carrying on charitable activities and it is carrying on the activities of education in a commercial manner.

9. We have heard both the parties and perused the material on record. The first question arising for our consideration in this appeal relates to the scope of enquiry by the DIT(E) u/s. 12AA of the Act. We are in agreement with the DR that after insertion of section 12AA w.e.f. 1.4.1997, the DIT(E) is empowered to enquire about the activities of the assessee before passing the order. There may be cases where application is made after the commencement of activities by the assessee trust. In such cases the DIT(E) is justified to enquire about the activities. However, where no activity is commenced, the question of making any enquiry regarding any activity by the DIT(E) would not arise. The nature of enquiry would depend on the facts of each case. Hence the contention of the AR that scope of the DIT(E) is limited to ascertaining only whether the objects are charitable or not cannot be accepted.

10. The next question for our consideration is whether on the facts and in law, the registration u/s. 12AA of the Act can be refused to the assessee. For the purpose of sections 11 and 12,

the word "charitable purpose" has been defined in section 2(15) of the Act which reads as follows: .

"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:]*

*[**Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [twenty-five lakh rupees] or less in the previous year;]*"

11. So, the object of the education has been declared as of charitable purpose by the Legislature. It was held by the Supreme Court in the case of Surat Art Silk & Cloth Mfrs. Association (121 ITR 1) as under:

"It is now well settled as a result of the decision of this Court in Dharmadeepti vs. CIT 1978 CTR (SC) 120 : (1978) 114 ITR 454 (SC), that the words 'not involving the carrying on of any activity for profit' qualify or govern only the last head of charitable purpose and not the earlier three heads. Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of 'charitable purpose' would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution."

12. At this stage it is also pertinent to note that the clause "not involving carrying any activities of profit" were omitted from this definition by the Legislature by Finance Act, 1983 w.e.f. 1st April, 1983. Therefore, after such omission, the element of profit cannot be excluded from the definition "charitable purposes". u/s. 2(15) of the Act.

13. The above view is also supported by the Legislative intent disclosed in section 10(22) wherein it has been clearly provided that income of any educational institute cannot be exempted unconditionally if such institution also exists for deriving of profit.

According to this provision, if any educational institution is running on commercial basis then income of such educational institution cannot be exempted from taxation. However, such institution can claim exemption u/ss. 11 and 12 as element of profit is not excluded by the Legislature. The reason is obvious because of financial affairs of such institution are well controlled by the provisions of sections 11 and 13 of the Act. Section 11 clearly provides that in order to claim exemption such institution must apply 75% of its income for charitable purposes. The surplus if any has to be invested in specified bonds. Further, exemption can be denied if the provisions of section 13 are violated. Therefore, if there is any violation of either section 11 or section 13, then, the profits of such institution would be taxable. Further the fact that, only 75% of the income is to be applied for charitable purposes itself shows that element of profit is not excluded from the definition of charitable purpose for the purpose of sections 11 and 12. Because some profit has been earned by an educational institution registration u/s. 12AA cannot be denied so long as provisions of sections 11, 12 and 12AA are complied with. So long as it is established that income of the assessee society has been applied for the purpose of education in terms of section 11(2) and there is no violation of section 13, the assessee would be entitled to enjoy the benefit of registration u/s. 12AA of the Act.

14. Under both the categories mentioned above, the societies/trusts are created with the sole object to advance the cause of education but if such objects coupled with the motive to earn profits, then such institution will not be entitled to exemption under section 10(22), since in such cases cannot be said to exist solely for the purpose of education. Therefore, registration under section 12A/12AA would not be relevant by itself for claiming exemption under section 10(22) though the same would be

relevant for claiming exemption under sections 11 and 12. Therefore, where education is imparted by an institution with the purpose of profit i.e., by running the schools/colleges purely on commercial basis, the assessee would not be entitled to exemption under section 10(22) but such case may be considered for exemption under section 11 if the conditions imposed by the Legislature are satisfied since the profit element has been omitted from the definition of the words 'charitable purpose' with effect from 1-4-1984.

15. Even the private institutions should charge reasonable fees not involving the element of profit. Therefore, in order to discourage the institutions earning with profit motive, the Legislature can always provide disincentives. Considering the aspects of the matter, the Legislature has not allowed the income of private institutions to be exempt under section 10(22) where such institution being run purely on commercial basis. Therefore, the exemption u/s. 10(22) can be allowed only in the situations mentioned in the first category but such exemption cannot be allowed where education is imparted through running of schools and colleges on purely commercial basis. Being so, we direct the DIT(E) to re-consider the application filed by the assessee in the light of our above observations.

16. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 9th January, 2013.

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Hyderabad, dated 9th January, 2013

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Copy forwarded to:

1. M/s. Saivani Educational Society, c/o. M/s. B. Narsing Rao & Co., Chartered Accountants, plot No. 554, Road No. 92, Jubilee Hills, Hyderabad.
2. The Director of Income-tax (Exemptions), Hyderabad.
3. The ADIT(E) concerned, Hyderabad.
4. The DR - A Bench, ITAT, Hyderabad