

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1338/CHD/2019

The District Bar Association Jagadhri Through Advocate Shiv Kumar Gupta Near Mini Sectt. Judicial Complex, Jagadhari-135003	बनाम	The CIT Exemptions, Chandigarh
स्थायी लेखा सं./PAN NO: AACAT4076A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Sh. Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Sh. . Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 01.09.2022
उदघोषणा की तारीख/Date of Pronouncement : 07.09.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

This appeal is preferred by the assessee against order dated 31.07.2019 passed by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as 'CIT(E)'], wherein, the assessee's application for Registration u/s 12AA of the Income Tax Act, 1961 [in short 'the Act'] has been rejected.

2.0 The brief facts of the case are that the assessee had filed the Application for Registration in Form No. 10A on 16.01.2019 seeking Registration u/s 12A of the Act. As per

the Memorandum of Association (MOA) the assessee has been in operation since 19.12.2005 and is registered as a society. As per Article 5 of the MOA, the aims and objects of the Association are as under:

- i) *To promote and uphold the rule of law;*
- ii) *To protect the privileges, interest and prestige of the Association and promote union and co-operation among advocates;*
- iii) *To maintain a high standard of professional conduct among members of the Bar;*
- iv) *To establish and maintain an adequate library for the use of the members and to provide other facilities and amenities to the members;*
- v) *To express opinion on proposed legislation and other matters of legal public interest and make representation in respect thereof;*
- vi) *To take necessary steps to prevent and remedy any abuse of law or mal-administration of justice.*
- vii) *To make representations from time to time to the authorities on matters affecting the Bar and the rule of law.*
- viii) *To acquire and safeguard the rights and privileges necessary or convenient for the purpose of Association.*
- ix) *To participate in All India lawyers Association and activities connected therewith;*
- x) *To adopt all such measures as might be necessary or incidental to the carrying out the aforesaid objects;*
- xi) *To take measure, including funding and applying of funds for aid and deserving members of the Association*

- xii) To conduct and hold seminars, symposiums, conference on issues and topics of interest to the legal profession*
- xiii) To safeguard and promote the welfare of the members of the Association.*
- xiv) To associate itself with any work of humanitarian character and research;*
- xv) To take such steps as may be necessary to safeguard and to protect the civil liberties of the people.*
- xvi) To publish judgments and legal Journals etc;*
- xvii) To co-operate with any other Association or Associations connected with the legal profession;*
- xviii) To provide legal assistance to the public and to promote legal aid for helping those, who are unable to pay for such legal aid, other wholly or partly;*
- xix) To maintain dignified relations with Judiciary, The District Administration and State Functionaries of the State and Union.*

2.1 On the assessee society filing the application for Registration u/s 12A of the Act before the Ld. CIT(E), the Ld. CIT(E) observed that the provisions of the Act required that not only the objects of the Society required examination but even the genuineness of activities was to be inquired into at the time of grant of registration. Accordingly, the Ld. CIT(E) required the assessee to file comprehensive details along with supporting evidences in order to take a view on the assessee's application.

2.2 In response to the various queries raised by the Ld. CIT(E) [as contained in pages 2 to 5 of the impugned order], the assessee society submitted detailed replies as well as various documents like note on activities, audited Balance Sheets, copies of Bank accounts etc.

2.3 However, the Ld. CIT(E) observed that the main intent of the society was to work for the members of the assessee society rather than working for the general public at large. In this regard, the Ld. CIT(E) highlighted the following objects:-

(ii) To protect the privileges, interest and prestige of the Association and promote union and co-operation among the advocates.

(iv) To establish and maintain an adequate library for the use of the members and to provide other facilities and amenities to the members.

(xi) To take measure, including funding and applying of funds for aid to deserving members of the association.

(xiii) To safeguard and promote the welfare of the members of the association.

2.4 The Ld. CIT(E) observed that the highlighted objects were with the clear intent of benefitting only the members of the society and the presence of such clauses in the MOA would clearly lead one to conclude that the society would not benefit the general public at large. As per the Ld. CIT(E), the

provisions of Section 13 (1)(c) of the Act would come into play and, therefore, the assessee society was not eligible for the benefit of registration. The Ld. CIT(E) further noted that the society has been in existence for the last 13 years but had not undertaken any charitable activity in any of the previous years which was for the benefit of general public and, therefore, for this reason also, the assessee society was not eligible for benefit of registration u/s 12A of the Act. Apart from this, the Ld. CIT(E) also reproduced extracts from the Balance Sheet of the assessee society and gave a finding that during the last three financial years viz F.Ys. 2016-17, 2017-18 and 2018-19, the assessee had not incurred any expenditure with respect to general public.

2.5 The Ld. CIT(E) proceeded to reject the assessee's application for registration and now the assessee has approached this Tribunal challenging the rejection of its application by raising the following grounds (revised) of appeal:-

1. *That the Ld. Commissioner of Income Tax (Exemptions) has erred in law as well as on facts in rejecting application for registration under section 12AA of the Act which is arbitrary & unjustified.*
2. *That the registration has been refused only on the basis of suspicion, conjectures and surmises as is evident from the various unfounded*

findings as enumerated in the body of the order which is not permitted under the Law and as such the order refusing registration is illegal, arbitrary and unjustified.

3. *That the Ld Commissioner of Income Tax has further erred in passing the order refusing registration without considering the replies and evidence filed by the assessee in the correct perspective which is arbitrary and unjustified.*
4. *That the appellant craves leave to add or amend the aforesaid grounds of appeal before disposal of appeal.*

3.0 The Ld. AR submitted that the assessee society has been in existence from the year 2005 and he referred to the Memorandum of Association and the objects contained therein and submitted that the observation of the Ld. CIT(E) that the society was only for the benefit of its members was incorrect in as much as there were numerous objects in the Memorandum of Association which were for the benefit of the general public at large. He drew our attention to object No. (xviii) and submitted that as per this object, the society was to provide legal assistance to the public and to promote legal aid for helping those who were unable to pay for such legal aid either wholly or partly. He also referred to the detailed replies and submissions made before the Ld. CIT(E) in response to his queries and argued that the Ld. CIT(E) has rejected the assessee's application on an entirely wrong

appreciation of facts and objects in as much as the Ld. CIT(E) has himself mentioned on page 1 of the impugned order that as per the objects of the society, the society was to associate itself with any work of humanitarian character and research and to take such steps as may be necessary to safeguard and protect the civil liberties of people. It was submitted that, thus, the observations of the Ld. CIT(E), while rejecting the assessee's application, were factually incorrect and that the Ld. CIT(E) had rejected the assessee's application without any cogent reasoning.

3.1 The Ld. AR also relied on certain judicial precedents in support of his various contentions and prayed that the Ld. CIT(E) be directed to grant registration to the assessee society.

4.0 In response, the Ld. CIT DR supported the findings and observations of Ld. CIT(E) and submitted that, undisputedly, the assessee society had been formed to benefit only the advocates who were the members of the assessee society and not the public at large and, therefore, the Ld. CIT(E) had rightly rejected the assessee's application for registration.

5.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the various objects as enshrined in the Memorandum of

Association. We have also perused the impugned order. It is seen that the observations by the Ld. CIT(E), while dismissing the assessee's application for registration, do not confirm to the facts of the case. It is seen that the Ld. CIT(E), has, in the impugned order in para 6.1 only highlighted four objects out of a total of nineteen objects to reach a conclusion that the objects of the society were aimed at benefitting only the members of the assessee society. However, the Ld. CIT(E) ignored other objects stated in the Memorandum of Association viz. -

- i) To promote and uphold the rule of law:-*
- v) To express opinion on proposed legislation and other matters of legal public interest and make representation in respect thereof;*
- vi) To take necessary steps to prevent and remedy any abuse of law or mal-administration of justice.*
- xiv) To associate itself with any work of humanitarian character and research;*
- xv) To take such steps as may be necessary to safeguard and to protect the civil liberties of the people*
- xviii) To provide legal assistance to the public and to promote legal aid for helping those, who are unable to pay for such legal aid, other wholly or partly;*

5.1 A plain reading of the above mentioned objects would show that by no stretch of imagination can these objects be said to be aimed at benefitting only the members of the assessee society and not the public at large. Therefore, in our considered opinion, the Ld. CIT(E) has entirely misconstrued the provisions of the Act vis-à-vis grant of registration u/s 12A of the Act. In our considered view, the Ld. CIT(E) has handpicked certain objects only and ignored the rest while rejecting the assessee's application for registration. Thus, the Ld. CIT(E) has not taken an wholistic view in this case.

4.2 The Coordinate Bench of the ITAT Chandigarh in the case of Building Committee (Society), Barnala Vs. CIT in ITA No. 1295/Chd/2019, vide order dated 18.05.2021 was examining the legality of the rejection order passed u/s 12A by the Ld. CIT(E) wherein the objects of the assessee society were to work for construction of chambers for its members and their allotment besides environment protection, campaigning against drug addiction disorder, saving and educating the girl child and also spreading legal awareness among the general public. The Ld. CIT(E) rejected the assessee's application for registration on the ground that the society was formed for specific purpose and for the benefit of

specific group of professional people and, therefore, it could not be said that it carried out activities for the general public purpose. The Ld. CIT(E) also observed that no expenditure had been incurred on charitable activities and further the genuineness of the activities also could not be established. In this case, the Coordinate Bench of ITAT Chandigarh, after hearing both the parties and going through the records, directed the Ld. CIT(E) to grant registration to the assessee u/s 12AA of the Act. The relevant observations of the coordinate Bench are being reproduced herein under for a ready reference:-

7. We have considered rival submissions and gone through the record carefully. We also gone through various materials placed on record and also case laws cited. The issue for adjudication before us is, that whether the ld.CIT(E) is correct in rejecting the application of the assessee-society seeking registration under section 12AA of the Income Tax Act, 1961 ? Before embarking upon an inquiry on the facts and reasoning given by the ld.CIT(E) in order to find out whether the assessee society is entitled for registration within the meaning of section 12A(a) of the Act, we deem it appropriate to bear in mind the scheme of the Income Tax Act for assessments of charitable institution. Therefore, it is imperative upon us to take note of the relevant part of the provisions viz. sections 2(15). It reads as under:

“Section 2(15) "charitable purpose" includes relief of the poor, education, yoga, 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, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;*

8. Section 2(15) of the Income Tax Act provides definition of expression “charitable purpose”. A perusal of the above provision would indicate that it contained two parts. In the first part there are four main activities which are to be carried out by an institution/trust/society. These are –

- relief of the poor,*
- education, yoga,*
- medical relief,*
- preservation of environment ...*

These activities are being considered as per se charitable. In second part there is only one activity that embrace various types of work undertaken by the society/trust namely “advancement of any other objects of general public utility”. Since in the appeal in hand, this part is also involved, we need to take into consideration this aspect also. In brief, this activity can be treated uncharitable if hit by conditions provided in

the proviso to section i.e. an assessee should not carry out activities in the nature of trade, commerce or business for fees, cess or for any other consideration. In other words, it should not be carried out with a profit embedded intention or motive. If some incidental profit is there, then it is a secondary circumstance. Sub-clause (i) and (ii) further provides guidance and conditions to find out whether this fifth category of activity is being carried out on trade, commerce or business.

Section 12AA

12AA. (1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A, shall—

48[(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,—

(i) the genuineness of activities of the trust or institution; and

(ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects,

and may also make such inquiries as he may deem necessary in this behalf; and]

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities 49[as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause], he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or Commissioner and the Principal Commissioner or Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A.

(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996) and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.

9. Section 12AA of the Income Tax Act provides that on receipt of an application for registration by the Pr. Commissioner/Commissioner from a trust/institution under this section he will call for such documents or

information from the trust or institution as he thinks necessary in order to satisfy himself about; (i) genuineness of the activities of the trust/institution, (ii) compliance of such requirement of any other law for the time being in force by the trust or institution as material for the purpose of achieving its objects. The ld. Commissioner thereafter may make such inquiry as he may deem necessary in this behalf. Once he has satisfied with the genuineness of activities of the trust or institution, and also satisfied with the objects and compliance of any other laws, then he would pass an order in writing registering the trust or institution.

10. In the case on hand, the basis on which the ld. CIT(E) rejected the claim of the assessee is mainly that the purpose for which the society was formed is for the benefit of specific group of professionals and to cater their specific purpose, which do not come under the definition of section 2(15) of the Act. While going through the contents of bye-laws of the society filed by the assessee, it inter alia provide that the society was established for the welfare, construction and allotment of chambers in the District Court Complex, Barnala for the members District Bar Association, Barnala. It further provides that all the incomes, earnings whatsoever derived shall be solely utilized and applied towards the promotion of its aims and objectives only as set forth in the memorandum of association, and that the society will work on no profit and no loss basis. Bye-laws also provide social welfare activities such as growing of trees for environments, de-addiction drug campaign, welfare of girl child, and also provide legal awareness among the general public. The dominant purpose of assessee-society is to provide infrastructure facilities to its members, which are necessary to ensure quality service of lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the litigants. While considering the application of the assessee for grant of registration, it appears that the ld. CIT(E) has not appreciated these very vital objects. He simply carried by the assumption that since society

was formed for construction of building for its members, benefits of which only restricted to the members, and not to the general public at large. It is settled proposition of law that for the purpose of registration u/s 12AA of the Act, the threshold condition i.e. genuineness of the activities is to be decided with the object clause of institution. Hon'ble Apex Court in case of CIT vs. Andhra Chamber of Commerce - (1965) 55 ITR 722 (SC) held that an object beneficial to a section of the public was an object of general public utility, as in the case of assessee, which is working to control, supervise and regulate a profession for the benefit of lawyers community at large. Operative part of the judgment is as under:-

"That the expression "object of general public utility" was not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of the public was an object of general public utility. To serve a charitable purpose, it was not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province. It was sufficient if the intention was to benefit a section of the public as distinguished from specified individuals. The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature: where there is no common quality uniting the potential beneficiaries into a class, it might not be regarded as valid."

Hon'ble Kerala High Court in Sree Anjaneya Medical Trust vs. CIT 382 ITR 399 also held that the stage for consideration of the relevance of the object of the assessee and the application of its funds arises at the time of assessment. It is pertinent to observe that the ld.CIT(E) failed to comprehend the role of Bar Association in judicial dispensation. He construed the existence of the assessee-society in a very narrow manner, as if it is a group of some professionals who are working for their individual benefits. No doubt incidence of benefits rests

with individual lawyers while prosecuting any litigation in the Court, but one has to understand our judicial system before branding such society as a group of some professionals working for their benefits only. Attainment of justice for all the parties of the case and the society at large is the main object of our judicial system. Bar Associations are voices of voiceless. The Bench and Bar are the essential partners in judicial dispensation, and therefore, considering the importance of Bar Association in every adjudicating body, particular space is being earmarked and maintained for Bar Association and for litigants. Here at Income Tax Appellate Tribunal, we also provide rooms for Bar and for litigants. Thus, working space for the professional is an integral part of infrastructure for judicial dispensation. The ld.CIT(E) failed to comprehend this aspect in right perspective while rejecting the application of the appellant. In the present case, for consideration of application for registration under section 12AA of the Act, the ld.CIT(E) has to determine the case of the assessee on the basis of the bye-laws.

11. Having regard to over all facts of the case and also perusal of the bye-laws of the assessee-society, it is clear that the primary or dominant purpose of an institution like the assessee society is in the form of advancement of the object of general public utility within the meaning of s. 2(15) of the Act, and as such the assessee society would be entitled to registration under section 12AA of the Act. We direct the ld.CIT(E) to grant registration to the assessee under section 12AA of the Income Tax Act, 1961.

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

5.3 The facts in the present appeal before us are identical to the facts in the case of Building Committee (Society), Barnala Vs. CIT (E) (supra) as reproduced above. In the

present case also, the Ld. CIT(E) has rejected the application for registration by observing that the objects of the society were aimed at benefitting only the members of the assessee society and not the general public. The Ld. CIT(E) has also observed that the genuineness of the activities could not be verified as no expenditure had been incurred so far by the assessee society. All these issues have been discussed at length in the order of the Coordinate Bench in the case of Building Committee (Society), Barnala Vs. CIT(E) (supra) and respectfully following the same, on identical facts, we hold that the Ld. CIT(E) has misdirected himself in reaching the conclusion that the activities of the assessee society were not for the purpose of general public but were only directed and benefitting only the members of the assessee society. We have also perused the objects and it is clear that the primary objects are aimed at the advancement of the object of general public utility within the meaning of section 2(15) of the Act and as such, the assessee society would be entitled to registration u/s 12AA of the Act.

5.4 Accordingly, while allowing the appeal of the assessee, we direct the Ld. CIT(E) to grant registration to the assessee u/s 12AA of the Act.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 07.09.2022

Sd/-
(**VIKRAM SINGH YADAV**)
Accountant Member
Dated : 07.09.2022
“आर.के.”

Sd/-
(**SUDHANSHU SRIVASTAVA**)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar