

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

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 180/Chd/ 2021

निर्धारण वर्ष / Assessment Year :

Shyama Sharma Charitable Trust, Gassour, Jukhala, Sadar, Bailaspur, H.P	बनाम	The CIT, Exemptions Chandigarh
स्थायी लेखा सं./PAN NO: AAXTS7472B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vishal Mohan, Advocate

राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 26/09/2022

उद्घोषणा की तारीख/Date of Pronouncement : 28/09/2022

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Exemptions), Chandigarh [in short the 'Ld. CIT(E)'] passed u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 (in short 'the Act') dated 12/03/2021, wherein the assessee has challenged the denial of registration under section 12AA(1)(b)(ii) of the Act.

2. At the outset it is noticed that there is a delay of 73 days in filing the present appeal as pointed out by the Registry.

3. During the course of hearing the Ld. AR submitted that due to COVID-19 pandemic the appeal could not be filed in time and the matter is squarely covered by the decision of Hon'ble Supreme Court wherein the limitation period has been extended.

4. The Ld. DR did not raise any specific objection. Hence in view of the fact the appeal could not be filed within the stipulated time frame due to COVID-19 pandemic and in view of the limitation period extended by the Hon'ble

Supreme Court, the delay so happened in filing the present appeal is hereby condoned and the appeal is admitted for adjudication.

5. Briefly the facts of the case are that an application in requisite form was filed by the assessee for seeking approval under section 12AA on 25/07/2020. Thereafter in order to examining the activity and whether the same were in consonance with the said objective of the assessee society, a questionnaire was issued by the Ld CIT(E) on 28/08/2020 and thereafter considering the submissions of the assessee but not finding the same acceptable, the application filed by the assessee seeking registration under section 12AA was rejected by the Ld CIT(E). Against the said order and the findings of the Ld. CIT(E), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the objective of the assessee society are to assist in the construction of religious institutions, help the economically weaker sections of the society, give financial assistance to the educational institutions, granting scholarships to the meritorious and economically weaker students studying in the Government schools etc. It was further submitted that the necessary information and documents so called for by the Ld. CIT(E) were duly filed. Further drawing our attention to the findings of the Ld. CIT(E) at para 6 of the impugned order, it was submitted that the Ld. CIT(E) referring to the assessee society balance sheet for the F.Y. 2019-20 has held that the assessee society has diverted certain receipts in the name of corpus to the balance sheet which should have been taken as income in the Income & Expenditure account and it was held that the corpus fund shown by the assessee society during the F.Y. 2019-20 and for any other previous years is the income of the applicant and same become liable to pay tax. It was held by the Ld CIT(E) that before the grant of registration, all voluntary contributions including the ones with specific direction that they shall form part of the corpus are the income of the trust. In this regard, it was submitted by the Id AR that it is

not a case where the receipts of the assessee society were found unaccounted by the Ld CIT(E) and how certain receipts are accounted for in the financial statement and whether there is any tax liability thereon is a matter of examination during the assessment proceedings, however for the purpose of grant of registration of the assessee trust u/s 12AA, the same is not the relevant criteria. It was accordingly submitted that in absence of any findings recorded by the Ld. CIT(E) doubting the objective of the assessee society not being charitable in nature or questioning the genuineness of the activity of the assessee society, the Ld. CIT(E) has wrongly denied the exemption and he may accordingly be directed to grant the registration under section 12AA of the Act as so requested by the assessee society.

7. Per contra, the Ld. CIT DR drawn our reference to the findings of the Ld. CIT(E) at para 7 of the impugned order wherein it has been stated that the applicant trust was formed way back in year 2018 and it has not filed its return of income for the F.Y. 2018-19 relevant to A.Y. 2019-20 and in absence of books of accounts, it was submitted that the Ld CIT(E) had raised doubt regarding the genuineness of the activities being undertaken by the assessee trust since its inception on 10/10/2018 till 31/03/2019. It was accordingly submitted that the contention of the Ld. AR that there is no findings recorded by the Ld. CIT(E) regarding the genuineness of the activities is not correct. It was further submitted that there is no specific finding recorded by the Ld. CIT(E) regarding the objective of the assessee trust and therefore in absence of specific findings, the presumption cannot be drawn that the objective of the assessee society being charitable in nature have been duly examined by the Ld. CIT(E).

8. We have heard the rival contentions and perused the material available on record. The provisions of section 12AA provides that the CIT(E) after receipt of application and calling for such documents and information as he thinks necessary and after making such enquiries as he may deem necessary and

after satisfying himself about the objects of the assessee society and the genuineness of its activities shall pass an order in writing registering such society and where he is not so satisfied, shall again pass an order in writing refusing to register the assessee society. In light of the same, we find that there is a clear mandate of the legislation to pass an order in writing accepting or rejecting the application seeking registration by the assessee society. The Ld CIT(E) therefore has to speak through his order reflecting his satisfaction or otherwise about the objects and the activities of the assessee society and basis of arriving at such a satisfaction which in turn will allow the assessee to claim and the AO to examine the claim of exemption u/s 11 and 12 in the respective assessment years and in an event of an adverse order, allow the assessee to challenge such an order before the higher appellate authority. Therefore, we are unable to accede to the contention of the Ld AR and agree with the contention of the Ld CIT DR that in absence of any specific finding recorded by the Ld CIT(E), there cannot be any presumption regarding the findings of the Ld CIT(E) regarding the objects and activities of the assessee society.

9. Further, regarding non-filing of return of income for the financial year F.Y. 2018-19 relevant to A.Y. 2019-20, the Ld AR has stated at the Bar that it is a fact that the assessee has not filed the return of income for the said assessment year but at the same time, it was submitted that merely non-filing of the return of income cannot be a basis to challenge the genuineness of the activities actually been undertaken by the assessee society in that year and extrapolating that to all subsequent years. It was submitted that even where the return of income was not filed, the assessee society is maintaining its regular books of accounts accounting for its receipts and expenditure relating to various charitable activities which were carried out by the assessee society and given that the Ld CIT(E) has not called for the books of accounts, there was no occasion for the assessee society to furnish the same and where so permitted,

the assessee society shall produce its books of accounts for necessary examination by the Ld CIT(E).

10. Taking into consideration the entirety of facts and circumstances of the case, we deem it appropriate that the matter be set-aside to the file of the Ld CIT(E) to examine the matter a fresh after calling for books of accounts and other documents as so desired and pass a speaking order recording his satisfaction or otherwise regarding the objects and genuineness of the activities of the assessee society after providing reasonable opportunity to the assessee society.

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

Order pronounced in the open Court on 28/09/2022.

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 28 /09/2022

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar