IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)

(THROUGH VIDEO CONFERENE)

SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.9334/Del./2019

Advocate Welfare Fund Trustee Committee, 1 – F, Lawyers Chambers, Delhi High Court, New Delhi – 110 003.	vs.	CIT (Exemption), New Delhi.

(PAN : AAGTA7153C)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri C.S. Agarwal, Senior Advocate
Mrs. Prem Lata Bansal, Senior Advocate
Shri R.P. Mall, Advocate
Shri Madhur Agarwal, Advocate
Shri Divyanshu Agarwal, Advocate
REVENUE BY : Shri Sanjay Goel, CIT DR

Date of Hearing : 24.06.2020
Date of Order : 08.07.2020

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Advocate Welfare Fund Trustee Committee (hereinafter referred to as the 'appellant') by filing the present appeal sought to set aside the impugned order dated 30.09.2019 passed by the Commissioner of Income - tax (Exemption), New Delhi on the grounds inter alia that :-

"1. That the Ld. CIT has erred in rejecting the application filed by the Welfare Fund u/s 12A (a) of the Income Tax Act.

2. That the Ld. CIT has erred in holding that the applicant has not established genuineness of the activities of the fund when the memorandum and other documents clearly established the same.

3. That the Ld. CIT has erred in denying the approval u/s 80G of the Act holding that the charitable activities of the Fund could not be substantiated when the activities of the fund were apparent form the memorandum."

2. Assessee by filing separate application sought to condone the delay of 1 day in filing the appeal before the Tribunal. Keeping in view the fact that due to sudden sickness of Shri Ram Avtar Bansal, Advocate, engaged as counsel in this case, who remained admitted in the hospital, which is a reasonable cause, the delay of 1 day in filing the present appeal is hereby condoned.

3. Briefly stated the facts necessary for adjudication of the issue at hand are : Appellant, being an Advocate Welfare Fund Trustee Committee, constituted under section 4 of the Advocates Welfare Act, 2001, by the Central Government of India as provided in Chapter-III of Advocates Welfare Fund Act, 2001, filed applications on 30.03.2019 in Form No.10A and 10G seeking registration under section 12AA of the Income-tax Act, 1961 (for short 'the Act') and exemption u/s 80G of the Act which were rejected by the ld. CIT (E) vide impugned order on the ground that since the appellant has failed to furnish balance sheet and income & expenditure account for the FY 2018-19 despite called for, the

conditions laid down u/s 12AA are not satisfied as the genuineness of the activities of the appellant could not be established.

4. Feeling aggrieved, the appellant has come up before the Tribunal by way of filing the present appeal.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, section 23 of the Advocates Welfare Fund Act, 2001 provides that notwithstanding anything contained in the Income Tax Act, 1961 (43 of 1961) or any other enactment for the time being in force relating to tax on income, profits and gains, the income accrued to the fund constituted under sub-section (1) of section 3 shall be exempt from income-tax.

7. The ld. AR for the appellant contended inter alia that the appellant, being a charitable institution, is entitled for registration u/s 12AA as well as exemption u/s 80G of the Act but the ld. CIT(E) has erred in rejecting the application illegally on the ground that balance sheet and income & expenditure account for AY 2018-19 were not furnished; that the ld. CIT (E) is only to satisfy the objects of the trust/institution and genuineness of its activities; that the appellant is a trustee committee called as the Advocates

Welfare Fund Trustee Committee established under Bar Council of Delhi vide Notification in the official Gazette dated 25.10.2011 by the Government of India and such is a charitable institution; and relied upon the decisions rendered by ***Hon'ble Supreme Court in the cases of CIT vs. Bar Council of Maharashtra cited as 130 ITR 28 & American Hotel and Lodging Association Educational Institute vs. CBDT & Ors. 301 ITR 86, Hon'ble Bombay High court in Bar Council of Maharashtra vs. CIT reported in 126 ITR 27, Hon'ble Kerala High Court in Sree Anjaneya Medical Trust vs. CIT 382 ITR 399 and Hon'ble Punjab & Haryana High Court in CIT vs. Baba Kartar Singh Dukki Educational trust (2014) 221 taxman 493 (P&H)***.

8. Ld. DR for the Revenue supported the order passed by the ld. CIT (E) by contending inter alia that in order to find out real purpose of the trust/institution, the basic financial statements of FY 2018-19 was required which the appellant has not furnished; that one more opportunity be given to the appellant to furnish all the necessary documents to be examined by ld. CIT (E) and relied upon the judgments rendered by Hon'ble Apex Court as well as various High Courts viz. ***CIT vs. Wilsonia College Society (2017-TIOL-1051-HC-ALL-IT), Jammu Development Authority vs. UOI (2014-TIOL-115-SC-IT), CIT vs. National Institute of***

Aeronautical Engineering Educational Society 315 ITR 428 (Uttaranchal), CIT vs. A.R. Trust 402 ITR 161 (Allahabad), Shri Nathji Education Foundation vs. CIT ITA No.809/LKW/2014, Self Employers Service Society vs. CIT 247 ITR 18 (Kerala) and Kirti Chand Tarawati Ch. Trust vs. DIT 232 ITR 11 (Delhi).

9. Ld. CIT (E) vide impugned order has rejected the registration sought for by the appellant u/s 12AA and section 80G of the Act on the sole ground that financials for FY 2018-19 have not been furnished despite called for. It is the case of the ld. AR for the appellant that it is not a valid ground to reject the application moved by the appellant. So, now the question arises for determination in this case is :-

> ***"as to whether appellant, Advocate Welfare Fund Trustee Committee, a statutory body, established under the Bar Council of Delhi vide Notification dated 25.10.2001 has failed to establish the genuineness of its activities for want of financials of FY 2018-19 as has been held by the ld. CIT (E)?"***

10. Appellant has come up with specific contention that all the documents called for by the ld. CIT (E) were duly furnished except financials of FY 2018-19 which were under preparation and as such could not be furnished. When undisputedly appellant trustee committee is established under Bar Council of Delhi which is proved to have been held as a charitable institution eligible for registration u/s 12AA of the Act vide ***order dated 02.07.2020***

passed by the coordinate Bench of the Tribunal in ITA No.9333/Del/2019 tilted as Bar Council of Delhi vs. CIT (E), it cannot be denied registration merely on the ground that financials of FY 2018-19 have not been furnished. Operative part of the order dated 02.07.2020 (supra) are extracted for ready perusal as under :-

> ***"11. Hon'ble Apex Court in case of CIT vs. Bar Council of Maharashtra cited as 130 ITR 28, affirming the judgment of Hon'ble Bombay High Court in case of Bar Council of Maharashtra vs. CIT reported in 126 ITR 27, held that primary and dominant purpose of an institution like the appellant is the advancement of the object of general public utility within the meaning of section 2(15) of the Act and as such, the income from securities held by the appellant would be exempt from any tax liability u/s 11 of the Act. Operative part of the judgment (supra) is extracted for ready perusal as under :-***
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>> ***" In other words, the dominant purpose of a State Bar Council as reflected by the various obligatory functions is to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the poor while the benefit accruing to the lawyer members is incidental. It is true that sub s. (2) provides that a State Bar Council may constitute one or more funds for the purpose of giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates ; but it is an optional or discretionary function to be undertaken by the council. Apart from that, admittedly, the assessee council has not so far constituted any such fund for the purpose specified in the instant case. As and when such a fund is constituted, a question may arise for consideration and the court may have to decide whether the function so undertaken by a State Bar Council has become the dominant purpose for which that council is operating. Having regard to the preamble of the Act and the nature of the various obligatory functions including the one under cl. (d) enjoined upon every State Bar Council under s. 6(1) of the Act, it is clear that the primary or dominant purpose of an institution like the assessee council is the advancement of the object of general public utility within the meaning of s. 2(15) of the Act, and as such the income from securities held by the assessee council would be exempt from any tax liability under s. 11 of the Act."***

12. Now, the next question arises for determination in this case is :-

> ***"as to whether the ld. CIT (E) is empowered to reject the registration and consequent exemption u/s 12AA and 80G of the Act due to non-furnishing of financials of FY 2018-19?"***

13. 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. In other words, when the object of the institution, the appellant in this case, is proved to be charitable within the meaning of section 2(15) of the Act as has been held by Hon'ble Apex Court in the identical facts and circumstances in a case of Bar Council of Maharashtra (supra), further scrutiny of the financials of the appellant are not required because it is otherwise within the purview of AO to examine at the time of assessment if the appellant is entitled to exemption u/s 11 of the Act.

14. Hon'ble Kerala High Court in Sree Anjaneya Medical Trust vs. CIT 382 ITR 399 held that, "no examination of modus of the application of the funds of the trustee committee or an examination of the ethical background of its settler is called for while considering an application for registration. 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."

15. 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 appellant, 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."***

16. Hon'ble Delhi High Court in case of DIT vs. Foundation of Ophthalmic & Optometry Research Education Centre 355 ITR 361

> ***(Del.) has held to the extent that even if there is no commencement of charitable activities, registration u/s 12AA of the Act cannot be denied because the statute does not prohibit or enjoin the Commissioner from registering a trust solely based upon its objects without any activity in case of a newly registered trust.***
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> ***17. In view of the matter, we are of the considered view that the ld. CIT(E) has erred in declining the registration u/s 12AA of the Act on the ground that financials of FY 2018-19 have not been furnished by the appellant."***

11. Furthermore, the appellant had furnished financials of FYs 2016-17 & 2017-18 but the ld. CIT (E), without making any adverse findings on the same, proceeded to reject the registration on the ground that financials of FY 2018-19 have not been furnished. Though it is not a requirement of law to furnish the financials as required by the ld. CIT (E) the appellant has come up with the argument that now the financials of FY 2018-19 are available and they are ready to furnish the same.

12. In view of what has been discussed in the preceding paras and following the order passed by the coordinate Bench of the Tribunal in the case of ***Bar Council of Delhi vs. CIT (E)*** (supra), we are of the considered view that the appellant trustee committee being established under the Bar Council of Delhi being engaged in safeguarding the rights, privileges and interest of the advocates, its dominant purpose is the advancement of general public utility within the meaning of section 2(15) of the Act, as such, genuineness of its activities and object of charitable purpose is

proved, thus entitled for registration u/s 12AA and consequent exemption u/s 80G, shall be exempt from the income-tax as provided u/s 23 of the Advocates Welfare Fund Act, 2001, hence entitled for registration u/s 12AA of the Act and subsequent exemption u/s 80G of the Act. The ld. CIT (E) is to provide the registration / exemption to the appellant accordingly. Consequently, appeal filed by the appellant is allowed.

Order pronounced in open court on this 10th day of July, 2020.

Sd/-	**sd/-**
(R.K. PANDA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 10th day of July, 2019
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Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(E), New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.