

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

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1107/CHD/2018

निर्धारण वर्ष / Assessment Year : 2018-19

Markandashwar Shivji Education Trust, H.N.29, Village Kharkali, Bikali, Thanesar, Kurukshetra	Vs. बनाम	The CIT (Exemption), Central Revenue Building, 5 th Floor, Sector 17-E Chandigarh
स्थायी लेखा सं./PAN NO: AAETM3258L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Rohit Goel , CA

राजस्व की ओर से/ Revenue by : Shri J. K. Garg, CIT

सुनवाई की तारीख/Date of Hearing : 24.02.2020

उद्घोषणा की तारीख/Date of Pronouncement : 29.05.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the appellant society against the order dated 30.06.2018 of the Commissioner of Income Tax (Exemptions), Chandigarh [hereinafter referred to as 'CIT(E)'] agitating the denial of registration u/s 12A of the Income Tax Act, 1961 (in short 'the Act') as a 'charitable institution'.

2. The aims and objects of the appellant trust are as under:-

“The aims and objects of the trust are to establish, maintain, develop and run educational institutes to provide education in the different fields of learning like schools for providing kindergarten, primary, secondary and senior secondary level studies, degree, post graduate, under graduate level studies, medical education of all types, engineering & technology, ITI, CTI and industrial training institutes, skill development centers, computer training centers, IT enabled services, management, college of education, law college, arts & crafts college, sports and physical education and all types of learning by establishing and running a medical college and other institutions, school and center for imparting education in medical sciences viz. Allopathic, Dentistry, Physiotherapy, Nursing, Laboratory Technician, OT Technicians, Pharmacy etc., engineering and technological and IT enabled services education colleges, MBA/ MCA/ B.Ed /M.Ed/JBT/ LLB / Sports degree, diploma and certificate college/institutes/ industrial training institutes etc. and their branches and to generally promote education, sports activities, cultural knowledge and related activities in the public irrespective of their caste, colour and creed.”

3. The appellant trust for the purpose of advancement of its objects has been running a private Industrial Training Institute (‘ITI’) which has been imparting vocational training to the students. The said institute is affiliated with National Skill Development Corporation (‘NSDC’). The Ld. CIT(E) rejected the application of the appellant trust for registration u/s 12A of the Income Tax Act, on the ground that

the appellant trust had been transferring funds to another trust namely 'Sanjeevani Educational Society' out of the receipts received from 'NSDC'. The Ld. CIT(E) observed that such a transaction of funds was an attempt of manipulation of funds on the part of the appellant trust. Secondly, the appellant trust had failed to provide various entries and details relating to the cash withdrawals of Rs. 34.05 lacs from the bank account. Further, the appellant trust failed to provide the financial statements for the financial year 2017-18 . The appellant trust had also failed to prove that the funds were utilized for advancement of the objects of the trust. The Ld. CIT(E) also observed that the activities of the appellant trust of Skill Development did not qualify as 'Education'. The Ld. CIT(E) also observed that the appellant trust was merely an implementing agency of the government and was being reimbursed for the expenditure incurred on the activities as per the directions of the 'NSDC'. That the appellant trust was not involved in any charitable activities.

4. We have heard the rival contentions and have also gone through the record. So far as the question as to whether the activities of the appellant trust would fall under the definition of 'Education' is concerned, the Ld. Counsel for the assessee has placed reliance on the decision of the Coordinate Bench of the Tribunal in the case of 'Unique Educational Society, Yamunanagar vs CIT (Exemptions)' ITA No.

1052/Chd/2018 order dated 6.8.2019, wherein, in almost similar facts and circumstances, the similar activity of Vocational Education / Training programme through ITI has been held to fall within the purview and scope of term 'education'. It has been further held that the receipt from the said activity was in the course of carrying out of educational activity of the assessee. The relevant part of the order of the Tribunal in the case of 'Unique Education Society vs CIT(Exemption)' (supra) is reproduced as under:-

“3. We have heard the rival contentions and have also gone through the record. So far as the first and foremost observation of the Ld. CIT(E) that the activity of the assessee would not fall within the scope of term 'Education' as used in section 2(15) of the Act is concerned, the Ld. Counsel for the appellant in this respect has invited our attention to page Nos. 52 & 53 of the paper book. Page No.52 is the copy of the letter dated 27.7.2012 of the Govt. of India, Ministry of Labour and Employment, Directorate General of Employment & Training issued under the signatures of Director(T) addressed to the State Directors / U.T. Administrators dealing with Craftsmen Training Scheme, whereby, it has been conveyed that the case of the appellant along with others was examined by the Members of the Sub-Committee for NCVT and that the Committee after examination approved the affiliation of the cases for conforming to the NCVT norms. The list of such institution has been mentioned, wherein, the name of the institution namely 'Mahatma Gandhi Private ITI, Distt. Yamunanagar run by appellant society is mentioned at Sr. No.1. Further, page No. 54 is the copy of the letter dated 10.8.2007 of the Industrial Training & Vocational Education Department, Govt. of Haryana, whereby, the Government has given approval to the appellant society

for establishment of private Industrial Training Centre in the name and style of 'Mahatma Gandhi Industrial Training Centre' for running the trades with affiliation to State Council for Vocational Training (SCVT). The name of trade and the units approved are mentioned as under:-

S.No.	Name of Trade	Duration	No. of units already approved	Increase in units / units in new trade	Total units.
1	Computer operator Programming Assistant	1 year	1	1	2 (in two shifts)
2	Fitter	2 year	1	1	2 (in two shifts)
3	Painter General	2 year	1	1	2 (in two shifts)
4	Electrician	2 year	1	1	2 (in two shifts)

4. Further, as per letter dated 23.12.2016 of the Ministry of Skill Development & Entrepreneurship, New Delhi, the appellant has been empaneled as Assessing Body under Modular Employable Skills. The Ld. Counsel for the assessee, therefore, has submitted that the appellant has been running the vocational training course in a systematic manner and is affiliated and regulated by NCVT as well as SCVT, Haryana. That the examinations are conducted on national level and Diploma equivalent to 10+2 degree is awarded by the NCVT. That the courses run by the appellant being for promotion of skill development and training, class rooms teaching and trainings are designed for generation of employment opportunities for village youths and the same have been duly recognized by the state government as well as Central Government. We are convinced that the vocational educational / training programme run by the appellant society are systematic programme imparting class room as well training with focus on employment generation. The education given by the appellant, in our

view, can safely be said to be in the mode of systematic instructions / schooling or training given to the young in preparation for the work of life and, in our view, duly fall within the purview and scope of the term 'Education' as used in section 2(15) of the Act.

5. *So far as the observation of the CIT(E) that the income of the assessee is not from voluntary donation or that the same cannot be said to be income from property held under the trust is concerned, we are not convinced with the above observation of the Ld. CIT(E) for rejecting the claim of the appellant trust. The appellant trust is reimbursed the amount spent by the Government for carrying out its 'education / training programme as per the skill development programme of the Government. Thus, in our view, it can be safely said to be income generated from the activity of the appellant trust and the said activity as observed above, falls within the purview and scope of charitable purpose. It is not be case of the CIT(E) that the major or main activity of the appellant trust is towards commerce or business. The receipt of income, in our view, is in the course of carrying out of 'Educational activity' of the assessee.*

6. *The third objection raised by the Ld. CIT(E) is that the appellant could not corroborate the receipts towards the corpus funds from the members of the trust with bank entries. In our view, this cannot be ground for rejection of the application u/s 12A of the Act. The appellant has shown the receipts towards its corpus funds from the members of the trust and the same has been duly recorded in the books of account. It makes no difference if the receipts were received in cash or through banking channel. Moreover, whether the receipts are towards corpus funds or for application is to be seen at the time of assessment.*

8. *So far as the expenditure on two cars is concerned, the Ld. Counsel of the appellant has explained that the*

said cars are used by the society for its activities as the society members have to travel between Delhi and Chandigarh for meetings and review of its work done by the Central / State Government and further that the said expenditure is completely related to the activities and objects of the appellant society.

9. *The Ld. DR has made a further argument that the appellant is also indulging in skill development programme under Pradhan Mantri Kaushal Vikas Yogna (PMKVY) and that this programme is a short duration programme and cannot be said to be a systematic education programme. May it be so, apart from providing the long term course of one year or two years as mentioned above, since the appellant society has skilled instructors for providing vocational training to the students and if the appellant institution has also been imparting training under the Pradhan Mantri Kaushal Vikas Yogna, that itself, cannot be sufficient to hold that the appellant society has done any activity in violation of its objects.*

10. *In view of the observations made above, the impugned order of the CIT(E) is set aside and the Ld. CIT(E) is further directed to grant registration to the appellant society u/s 12A read with section 12AA of the Act in accordance with the relevant provisions of the Act. In the result, the appeal of appellant society stands allowed.”*

5. So far as the observation of the Ld. CIT(E) that the appellant trust had been transferring funds to another society namely Sanjeeni Educational Society is concerned, the Ld. Counsel for the assessee has invited our attention to the copy of the certificate of Registration in the case of ‘Sanjeevni Educational Society’ and has submitted that the said

society is separately registered and is not a part of the assessee trust. It has been further submitted that the Sanjeevni Educaitional Society was only a franchise of the assessee trust for implementation of the skill Development program under the 'Prasadhan Mantri Kaushal Vikas Yogna' (PMKVY). That the appellat trust has been providing training through its own institute as well as through Sanjeevni Educational Society for which payments were made to the Sanjeevani Educational Society solely for running the educational programme / skill development course. Since the funds were given to the Sanjeevni Educational Society for running of similar activities on behalf of the appellat trust, hence, in our view, the Ld. CIT(E) was not justified in rejecting the application of the appellat trust on this ground.

So far as the issue relating to the submission of the financial statement and application of funds was concerned, the Ld. Counsel for the assessee has submitted that no such queries were raised by the Ld. CIT (E) during the course of hearing. He, has further submitted that inquires relating to the application of the funds could not be raised at the registration stage. We do not agree with the above contention of the Ld. Counsel for the assessee that the Ld. CIT(E) can not raise the inquires about the application of the income / genuineness of the activities of the assessee trust at registration stage. Since the assessee trust has already commenced its activities and has applied funds for the advancement of its objects, hence, the Ld. CIT(E), in our view, would

be justified to examine the activities and application of funds so as to form a view and to ascertain about the genuineness of the activities of the assessee trust.

6. In view of the above discussion, the impugned order of the CIT(E) is set aside and the matter is restored to the file of the Ld. CIT(E) for the limited purpose of examination of financial statement and application of funds to ascertain about the genuineness of the activities of the appellant trust subject to our observations made above.

In the result, the appeal of the appellant trust is treated as allowed for statistical purposes.

This appeal could not be decided earlier due to non-functioning of the Bench on account of curfew / lockdown in the wake of Covid-19 Pandemic.

Order pronounced on 29.05.2020.

(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 29.05.2020
“आर.के.”

(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ 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