IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.5796/Del./2017
Assessment Year: 2017-18

Mariam Education Society, DC-17, East End of Ansal Tronica City, Loni, Ghaziabad	**Vs.**	CIT(Exemption), Gomti Nagar, Lucknow
PAN :AAAETM8554F		
(Appellant)		**(Respondent)**

Appellant by	Shri J.P. Jain, CA
Respondent by	Ms. Rakhi Vimal Sr.DR Shri Manoj Kumar, CIT(DR)

Date of hearing	20.01.2020
Date of pronouncement	01.05.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 22/08/2017 passed by the learned Commissioner of Income-tax (Exemption), Lucknow [in short 'the CIT'] rejecting the registration of the assessee under section 12AA of the Income-tax Act, 1961 (in short 'the Act'). The assessee has raised following grounds in the appeal:

1. *The Ld. CIT (Exemption) is unjustified, illegal and wrong for passing the order u/s 12AA(1)(b)(ii) of the Income Tax Act for rejection of Application to grant registration of Society u/s 12AA of Income tax Act, 1961.*
2. *The findings of Ld. CIT (Exemption) that the Society is not carrying out any Charitable activities is not correct since exemption u/s 12AA can be granted on future activities.*

3. *The findings of Ld. CIT (Exemption) that members are pooling their professional receipts so as to get exemption and manipulate their income is not correct.*
4. *The claim of Ld. CIT (Exemption) that assessee has failed to answer how it actually provide charity to people is not correct since the written action plan was submitted during hearing.*
5. *The finding of Ld. CIT (Exemption) regarding earning of profit from the medical services is not correct.*
6. *The assessee craves leave to add, alter, modify or change any ground of appeal, at the time of hearing in the interest of natural justice.*

2. Briefly stated facts of the case are that the assessee society is registered under society of the Registrar, Uttar Pradesh and said Registration was renewed for a period of five years from 25-04-2009 to 25/04/2014 by way of renewal Certificate issued dated 27/01/2016. As per the information filed before the registrar of firms and societies, Meerut, Uttar Pradesh, the society constituted of following office bearers:

क्र. सं.	नाम	पिता/पति का नाम	पूरा पता	पद	व्यवसाय
1.	लूकमान अली	श्री शैर मोहम्मद	डी/सी 17 इस्ट एण्ड असंल ट्रोनिका सिटी लोनी (गा.बाद)	अध्यक्ष	व्यपार
2.	डा. एस एम टंडन	बी.एस. टंडन	49 एच आई जी ब्रिज विहार (गा. बाद)	उपाध्यक्ष	डॉक्टर
3.	डा. निशा चौधरी	लूकमान अली	डी/सी 17 इस्ट एण्ड असंल ट्रोनिका सिटी लोनी (गा.बाद)	मन्त्री	डॉक्टर
4.	डा. अनिल सक्सेना	एस पी सक्सेना	लव कुश अस्पताल करावल नगर दिल्ली	कोषाध्यक्ष	डॉक्टर
5.	सुनिल सक्सेना	एस पी सक्सेना	ए–14 सुर्य नगर गाजियाबाद	सदस्य	व्यापार
6.	संतोष सक्सेना	एस के सक्सेना	298 एल आई जी फ्लेट दिलशाद गार्डन दिल्ली	सदस्य	व्यापार
7.	आमिर खान	शेर मौहम्मद	डी सी 17 सन्सल ट्रानिका सिटी लोनी गाजियाबाद	सदस्य	व्यापार
8.	शमीम	शोकत अली	जवाहर नगर दिल्ली	सदस्य	व्यापार

3. The society claimed its objects which include opening of paramedical management, computer engineering, medicine and Ayurvedic science educational institution etc for expansion of education.

4. The society, filed an application on 29/03/2017 before the CIT for registration under section 12AA of the Act and was asked to file necessary documents before him. The Learned CIT after examining the documents filed by the society and after carrying out necessary inquiries, rejected the application of the assessee for registration under section 12A(1) of the Act vide impugned order dated 22/08/2017. The Learned CIT has rejected the registration mainly on following grounds:

1. The applicant has shown opening capital balance of ₹42,50,375 as on 01/04/2016 and thereafter introduced huge capital investment of ₹ 52,00,000/- in cash. The capital has been mainly contributed by DR Luqumn Ali (President of the society) and Dr. Nisha Choudhary (Secretary of the society), who are having share of profit in the society at 50% and 20% respectively. The Learned CIT is of the view that these both individuals have pooled their individual professional receipt for their own benefit by way of the profit sharing ratio in the society.
2. The society is a commercial entity engaged in providing medical services on commercial lines and levying huge fee for the same, without any act of charity.
3. The profit motive of the society is evident from the very basis of the formation of the society where division of the profit amounts various members has been prescribed i.e. Luquman Ali (50%), Nisha Chaudhary (20%), SS Tondon (5%), Anil Saxena (5%), Sunil Saxena (5%), Santosh Saxsena (5%), Amir Khan (5%) and samim (5%).

4. The assessee failed to provide list of various services offered along with the respective charges.

5. According to the Learned CIT, the documents on record do not suffice to establish the genuineness of the activities of the society and provide sufficient material to corroborate the charitable nature of the objects.

6. Before us, the learned Consul of the assessee has filed paper-book containing pages 1 to 120. He referred to renewal certificate issued by the society of the Registrar, dated 27/01/2016 available on page 25 of the paper-book. He submitted that the assessee society was in the process of buying land and constructing medical College to achieve subject of providing education and medical facility for people of the society. In the process money contributed by the members of the society was applied for purchase of the land and further term loan of ₹ 317.5 lakhs was taken from bank of India. The Learned Consul of the assessee referred to various pages of the income and expenditure account and the statement of affairs as on 31/03/2016 and 31/03/2017. The contention of the Learned Consul of the society that for granting registration only objects of the society has to be seen and activities being future event, the Learned CIT is not required to examine that. In support of the contention he relied on the decision of the Hon'ble allowable High Court in the case of Hardyal charitable and educational trust vs Commissioner of income-II, (2013) 353 ITR 534 (All).

7. On the contrary, the learned DR submitted that the assessee society was constituted prior to 2009 and no activity thereafter has been shown by the assessee society in furtherance of its objects. He submitted that only activity have been shown in financial year 2015-16 and 2016-17, during which the assessee society had purchased land by way of the money contributed by the members of the society and thereafter construction by way of the loan funds from banks. According to him, the society was formed purely with the motive of distributing share of profit amount of members, which was also pre-decided amount the members. He submitted that funds contributed by the members were also not appear to be from explained sources. According to the learned DR, the assessee is in existence for a very long period and no charitable activity has been shown and thus assessee failed to establish genuineness of the activities and therefore the Learned CIT is justified in rejecting the registration granted under section 12A of the Act.

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that on the issue of granting registration under section 12AA, the Hon'ble allowable High Court in the case of Hardyal Charitable and Educational trust (supra) after analyzing various judicial precedents on the issue in dispute held that registration under section 12AA cannot be refused on the ground that trust has not commenced the charitable or religious activity. The relevant observation of the Hon'ble High Court is reproduced as under:

> *"21. The preponderance of the judicial opinion of all the High Court including this Court is that at the time of registration under Section 12AA of the Income Tax Act, which is necessary for claiming exemption under Section 11 and 12 of the Act, the Commissioner of Income Tax is not required to look into the activities, where such activities have not or are in the process of its initiation. Where a*

> *trust, set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration under Section 12AA cannot be refused, on the ground that the Trust has not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage only the genuineness of the objects has to be tasted and not the activities, which have not commenced. The enquiry of the Commissioner of Income Tax at such preliminary stage should be restricted to genuineness of the objects and not the activities unless such activities have commenced. The Trust or society cannot claim exemption, unless it is registered under Section 12AA of the Act and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused."*

9. The Hon'ble High Court further held that question of exemption of the application of the income received by way of the donation being a separate issue might be examined in assessment proceeding of relevant years. The relevant finding of the Hon'ble High Court is reproduced as under:

> *"23. The question of the exemption of the application of income received by way of donation, is a arate issue and which may be required to be considered, when the return is filed by the Trust and is examined by the Income Tax Officer. The question as to whether the donations by the societies was the expenditure of the Trust for charitable and religious purposes will be examined at the time of examining the return."*

10. We find that in the instant case the assessee is claiming that it was in the process of establishing educational institution for commencing its charitable activity and thus activity not being commenced, and therefore, the Learned CIT was not required to examine the said activities and reject the registration. But the registration of the assessee society before the register of society shows that the society was resisted prior to financial year 2009.

The assessee has not provided any detail of the activities for the period from its establishment till the date for applying registration. In our opinion, the assessee is required to provide all details regarding Constitution of its members, funds received and utilized towards charitable activities et cetera detail since inception of the society. Since all the details have not been examined by the Learned CIT, we set aside the order of the Learned CIT with the direction to decide a fresh on verification of the objects and genuineness of the activities in accordance with the law in the light of the documents which the assessee is required to submit before him as mentioned above. The assessee shall be afforded adequate opportunity of being heard . The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 01.05. 2020.

Sd/-	***Sd/-***
(BHAVNESH SAINI)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 01/05/2020
RK/-(D.T.D.S.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi