आयकर अपीलीय अधिकरण, **चंडीगढ़** न्यायपीठ - **चंडीगढ़।**

IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH - BENCH 'A'

BEFORE S/SHRI N.K. SAINI, VICE-PRESIDENT AND
RAJPAL YADAV, VICE-PRESIDENT

ITA No.1295/CHANDI/2019

Building Committee (Society) Barnala H.No.B-XI-1252 Mohanlal Colony Ward-19 Barnala, Punjab. PAN : AADTB 5259 K	Vs.	CIT (Exemption) Chandigarh.

(Applicant)		**(Responent)**

Revenue by	:	Smt. C Chandrakanta, CIT DR
Assessee by	:	Shri Sudhir Sehgal, AR

सुनवाई की तारीख/**Date of Hearing : 15/03/2021**
घोषणा की तारीख /**Date of Pronouncement: 18/05/2021**

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT: Assessee is in appeal before the Tribunal against order of the ld.CIT(Exemptions), Chandigarh passed under section 12AA(1)(b)(ii) of the Income Tax Act, 1961.

2. The only issue raised in this appeal is whether the CIT (Exemptions) is correct in rejecting the application filed by assessee seeking registration u/s 12A(a) of the Income Tax Act or not?

3. Brief facts necessary for adjudication of the issue on hand is that the assessee is a society was formed by lawyers of District Bar Association, Barnala and started its operation since 29.8.2018. As per the objects of the assessee-society, it has to work for construction of

chambers to its members, its allotment, besides environment protection viz. growing trees, and that of saving people from drug addictive disorder, to save and educate girl child and also to spread legal awareness among the general public. The assessee-society filed an application in Form No.10A on 12.1.2019 seeking registration under section 12AA of the Income Tax Act, 1961. The ld.CIT(Exemptions) sought various information from the assessee for compliance of relevant conditions contained in the provisions and for satisfaction of the competent authority in respect of genuineness of activities as per sections 12AA of the Act. They were listed by the ld.CIT(E) in his impugned order at page no.3 to 5. In response, the assessee filed objects and financial statement of the society. On perusal of these details submitted by the assessee-society, the CIT(E) of the view that the main activity of the assessee was to construct and allot the chambers to the members of District Bar Association, and these activities and benefits restricted only to the members of District Bar Association, who were professionals and not general public. In other words, in the opinion of the ld.CIT(E), the society was formed for specific purpose and for the benefit of specific group of professional people, and therefore, the same could not be said to be activities carried out for the general public purpose. He further observed that even for the year ending as on 31.3.2019 no expenditure has been done on charitable activities. On this premise, the ld.CIT(E) rejected the application of the assessee filed under section 12AA *interalia* holding that genuineness of the activities of the assessee could not be established; and that the assessee has not incurred any expenditure for activities of general public importance.

Aggrieved by order of the ld.CIT(E), the assessee-society is now in appeal before the Tribunal.

4. Before us, the ld.counsel for the assessee reiterated submissions made before the lower authority. He further submitted that the assessee-society is covered by the explanation given under section 2(15) of the Act "of advancement of any other general public utility"; that the object of construction of building for lawyers, better infrastructure facilities for lawyers at the courts viz. sitting arrangements for the litigants, maintenance of lifts and other basic amenities. Besides that the society also playing vital role for greening the environment by planting trees, gardens etc. Assessee also provides drug-de addiction campaign and also saves and educate needy girl child. It also spread legal awareness and literacy amongst the general public. To support this plea, the ld.counsel for the assessee relied upon the decision ITAT, Delhi Bench in the case of Advocate Weflare Fund trustee Committee Vs. CIT (Exemption) in ITA No.9334/Del/2019 wherein it has been held that safeguarding the rights, privileges and interest of the advocates were amounted to advancement of general public utility within the meaning of section 2(15) of the Income Tax Acts, and therefore, the assessee-committee is entitled for registration under section 12AA of the Act. He also relied upon the decision of Hon'ble Apex Court in the case of Ahmedabad Rana Caste Association Vs. CIT, 82 ITR 704 (SC) and also other case laws as mentioned in the written submissions at page nos.2 and 3. On merit, the ld.counsel for the assessee further submitted that the society is formed by lawyers i.e. members of the Bar Association who are engaged in professional services. The ld.CIT(E) has ignored the vital objects of

the society. The objects of the society would indicate that besides giving benefit to the lawyers or the members of the Bar, it also provide services to the general public at large. The receipts of the Society are in the form of donations from associations, members, well wishers or other bodies. Bye-laws further provide that the Society would work on no profit and no loss basis, and not an institution for profit. Considering all these, the ld.CIT(A) has erred in ignoring this very vital factor before considering the application of the assessee-society under section 12AA of the Act.

6. On the other hand, the ld.DR supported order of the ld.CIT(E). He further submitted that so-called committee was formed for a specific purpose for the benefit of specific group of professionals, and such activities do not fall within the scope of expression “advancement of any other objects of general public utility”, and therefore, assessee not entitle for registration under section 12AA of the Act.

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;*
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> ****
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> ****

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.

<u>Section 12AA</u>

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.

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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 carter 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 *interalia* 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 asseseee-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.

Order pronounced in the Court on 18th May, 2021 at Chandigarh.

Sd/-	**Sd/-**
N.K. SAINI	**(RAJPAL YADAV)**
(VICE-PRESIDENT)	**(VICE-PRESIDENT**

Chandigarh; Dated 18/05/2021

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण,/ ITAT, Chandigarh

Vk*