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HAR NIHAL CHARITABLE TRUST vs. COMMISSIONER OF INCOME TAX (EXEMPTIONS)

IN THE ITAT CHANDIGARH BENCH 'A'

N. K. SAINI, VP & R.L NEGI, JM.

ITA No. 258/CHD/2020

Jul 23, 2021

(2021) 62 CCH 0365 ChdTrib

Legislation Referred to

Section 12AA

Case pertains to

Asst. Year-

Cases Referred to

CIT (exemptions) versus kids-R - kids international education Anand social welfare Trust (2017) 339 ITR 572

Saint Kabir educational Trust versus Commissioner of income tax 41 DTR 267 ASR - TRIB

Counsel appeared:

Sudhir Sehgal, Advocate for the Assessee.: C. Chandrakanta, CIT for the Revenue

R. L. NEGI, JM.

1. The appellant Trust has filed the present appeal against the order dated 12.3.2020 passed by Commissioner of Income Tax (Exemptions), Chandigarh [for short 'the CIT(E)'], vide which the Ld. CIT(E) has denied registration to the applicant Trust u/s 12AA(1)(b)(i) of the Income Tax Act, 1961 [for short 'the Act'].

2. Brief facts of the case are that the appellant Trust carrying on charitable activities applied for registration u/s 12AA of the Act, in Form 10A on 29.06.2016 before the CIT(E). The Ld. CIT(E) rejected the application and denied registration inter alia on the grounds that the applicant Trust has failed to establish that it has been carrying out charitable act as per the stated objects and that it had received huge donation amounting to Rs. 1.57 crore from M/s Mata Narayan Kaur Charitable Trust which appears to be a transfer of funds from a non-functional Trust. The appellant challenged the order

passed by the Ld. CIT(E) before the ITAT. The coordinate Bench vide order dated 26.07.2017 partly allowed the appeal of the assessee and restored the issue relating to charitable activities carried out by the Trust to the file of the Ld. CIT(E) to reconsider the submissions of the applicant/appellant and decide the same afresh. In compliance thereof, the Ld. CIT(E) heard the appellant Trust and examined the record called for. However, again denied registration u/s 12AA of the Act. The appellant has filed the present appeal against the said order passed by the Ld. CIT(E)

3. The assessee has challenged the impugned order on the following grounds: -

1. That the Worthy CIT (Exemptions), Chandigarh has erred in rejecting the application u/s 12AA of the Income Tax Act, 1961, vide order, dated 12.03.2020.

2. That the Worthy CIT (Exemptions) has failed to appreciate the fact that on similar ground, the Hon'ble ITAT in the case of assessee, itself in ITA No. 409/Chd/2017 had set aside the matter to the Ld. CIT (Exemptions) after considering all the objections as raised by the Ld. CIT(Exemptions) in the earlier order, dated 30.12.2016, and the Ld. CIT (Exemptions) has failed to consider such binding direction of the Hon'ble ITAT, Chandigarh Bench, Chandigarh in the case of appellant, while passing the present order.

3. That the refusal to grant the registration vide order, dated 12.03.2020 by the Worthy CIT (Exemptions) is on account of corpus donation, which issue has already been considered by the Hon'ble ITAT in para 8 and 9 of the order, dated 26.07.2017 and, thus, the specific directions of the Hon'ble ITAT, Chandigarh Bench, Chandigarh have not been followed, while rejecting the application u/s 12AA of the Income Tax Act.

4. That the order as passed by the Ld. CIT, (Exemptions) is against the facts and circumstances of the case.

5. That the appellant craves leave to add or amend the grounds of appeal before the appeal

4. Before us, the Ld. Counsel for the appellant submitted that the Ld. CIT(E) has passed the impugned order without taking into consideration the directions of the Tribunal. In the first round of appeal, the Tribunal vide order dated 26.07.2017 partly allowed the appeal of the appellant and set aside the findings of the Ld. CIT(E) except the issue regarding the activities of the assessee and remanded the said issue back to the file of the Ld. CIT(E) for reconsidering the submissions of the assessee vis-à-vis charitable activities and to adjudicate the issue afresh. During the second round of proceedings, the assessee requested the Ld. CIT(E) to take up the matter as per the observations recorded by the ITAT in its order. However, the Ld. CIT (E) vide order dated 12.03.2020 again decided the issue against the assessee and denied registration under section 12AA of the Act holding that the appellant has not paid the due taxes on Rs.1,57,00,000/-, wrongly treating the same as exempted corpus donation. The Ld. Counsel further pointed out that the Ld. CIT(E) has gone beyond the directions of the Tribunal as the appeal of the assessee was set aside for the limited purpose of examining the issue regarding charitable activities of the assessee Trust. The Ld. counsel invited our attention to relevant para of the order of the Tribunal. The Ld. counsel further submitted that during the second round of proceedings before the Ld. CIT(E), all the documents and details were again called for and the appellant Trust submitted the same and further explained the nature of activities being carried out and also quantified the amount of expenditure incurred on various charitable activities such as imparting education and providing medical aid etc. The Ld. counsel further pointed out that the Ld. CIT(E) has not given any adverse remarks in respect of activities carried out by the assessee Trust in its order dated 12.03.2020, which was the only issue for determination as per the order of the ITAT. To substantiate his contention, the Ld. counsel relied upon the order passed by the Hyderabad Bench of the Tribunal in the case of state bank of Hyderabad vs. DCIT ITA No. 449/HYD/2015, in which the Tribunal has held that the AO cannot travel beyond the limited directions of the ITAT. The Ld. counsel further submitted that as per

the settled law the application for registration under section 12AA cannot be rejected without pointing out defect in the activities of a charitable Trust or institution. To substantiate his contention, the learned counsel relied on the following cases.

1. *Cyber star education Society versus CIT (exemptions) ITA No. 795/ASR/2017 (ASR - TRIB)*
2. *CIT (exemptions) versus kids-R - kids international education Anand social welfare Trust (2017) 339 ITR 572 Punjab and Haryana High Court.*
3. *CIT exemption versus Shiridi Sai Darwar charitable Trust (2017) taxmann.com 49 (Punjab and Haryana).*
4. *CIT versus baba Kartar Singh Dukki educational Trust (2014) 42 taxmann.com 17 (Punjab and Haryana).*
5. *Saint Kabir educational Trust versus Commissioner of income tax 41 DTR 267 ASR - TRIB.*

5. In view of the aforesaid submissions made in the light of the facts of the case and the cases relied upon, the Ld. counsel submitted that the impugned order passed by the Ld. CIT(E) is bad in law, therefore liable to be set-aside.

6. On the other had the Ld. Department representative (DR) vehemently supporting the order passed by the Ld. CIT(E) submitted that there is no infirmity in the impugned order to interfere with as the Ld. CIT(E) has passed the order as per law and in accordance with the observations of the tribunal made wide order dated 26.07.2017.

7. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the Ld. counsel for the assessee. As pointed out by the Ld. counsel in the first round of the appeal, assessee challenged the order dated 30.12.2016 passed by the then CIT(A) rejecting the application of the Trust for registration under section 12AA of the Act. The coordinate Bench after hearing both the parties partly allowed the appeal and restored the issue regarding charitable activities of the Trust to the file of the Ld. CIT(E) holding as under: -

"15.we find that the Ld. Counsel for the assessee has demonstrated before us that it had filed adequate replies before the Ld. CIT (exemptions) demonstrating that it had carried out charitable activities in the impugned year which was the first year of coming into existence since it was formed only on 23.12.2015. Further we find that the assessee had adduced evidence of having carried out charitable activities thereafter also. Moreover, even before us the Ld. Counsel for the assessee has adduced voluminous evidences to demonstrate that it was involved continuously in carrying out charitable activities as per its stated objects. The Ld. CIT (Exemptions), we find, has not dealt with and considered the submissions of the assessee. We, therefore, consider it fit to restore the issue back to the file of CIT (Exemptions) to reconsider submissions of the assessee vis-a-vis charitable activities carried out by it and therefore adjudicate the issue of grant of registration under section 12AA of the act in accordance with law. "

8. Further as pointed out by the Ld. counsel in the second round of proceedings, the Ld. CIT(E) examined the charitable activities of the Appellant Trust in the light of the submissions made on behalf of the Trust and did not record any adverse observations in respect of activities carried out by the appellant Trust, which is apparent from the impugned order. We further notice that the Ld. CIT(E) has denied registration under section 12 AA of the Act holding that the Appellant has not paid the due taxes on the amount of Rs. 1,57,00,000/- received from M/s. Mata Narayan Kaur charitable Trust. As pointed out by the Ld. counsel the coordinate Bench has already dealt with the issue relating to

donation received by the Appellant Trust amounting to Rs. 1,57,00,000/- in the first round of appeal. The observations of the Bench are as under: -

"9. We find no merit in this argument or in this reason of the Ld. CIT (Exemptions) in holding that the assessee trust for the above reason was not entitled to registration u/s 12AA of the Act. The fact remains and which are not disputed by the Ld. CIT (exemptions), are that the assessee trust had received donation of Rs. 1.57 crore from M/s Mata Narayan Kaur Charitable trust. Whether the said donation was to preclude dissolution of the donor trust or that it was made from accumulated funds which had not been utilized in the specified time frame, have no effect nor do they affect the genuineness of the assessee trust. Whatever may have been done by the donor trust, may have an impact on the genuineness of the donor trust and there is no reason in holding the donee trust to be ingenuine on that account. Besides it is an uncontroverted fact that the donor trust was also enjoying exemption u/s 12AA of the act and any such donation made by a charitable trust are entitled to be treated as donation of the said trust. For the above reason, we reject the contention of Ld. CIT (Exemptions) that since the donations were received from M/s Mata Narayan Kaur Charitable Trust, they make the activities of the assessee trust in genuine. "

9. In the case of Commissioner of income tax versus Baba Kartar Singh Dukki Education Trust (supra), the Hon'ble Punjab and Haryana High Court has held that the object of section 12AA of the Act is to examine the genuineness of the objects of the Trust and though while examining genuineness, the income as well as resources of the Trust may be taken into consideration but any suspicion cannot be the sole criteria for rejecting an application for registration u/s 12AA of the Act. In the case of Saint Kabir Educational Trust versus Commissioner of income tax (supra), the Amritsar Bench of the Tribunal has held that the scope and nature of enquiries at the stage of grant of registration are prescribed under section 12AA of the Act, therefore the CIT has no jurisdiction to conduct inquiries which falls beyond the scope of the statutory provisions. While granting registration to a charitable Trust or institution, the CIT is supposed to examine whether or not the objects of the Trust are charitable. Further, when genuineness of the activities is not in doubt, the CIT has no jurisdiction to refuse registration u/s 12AA of the Act on any irrelevant ground.

10. As pointed out by the Ld. counsel, in the present case, after examining the issue as per the order of the ITAT, the Ld. CIT(E) has not recorded any adverse observations in the impugned order in respect of the charitable activities carried out by the appellant Trust. So far as the Tax liability in respect of the corpus donation is concerned the same was not the issue for determination before the Ld. CIT(E) as the same has already been dealt with by the coordinate Bench in the first round of appeal and no direction was issued to look into the said issue. Hence, we find merit in the contention of the Ld. counsel that that since the Ld. CIT(E) has not given any adverse finding in respect of the charitable activities carried out by the assessee Trust, the Ld. CIT(E) ought to have granted registration to the appellant Trust. Hence, in our considered view, the impugned order is erroneous and therefore liable to be set aside. We therefore, respectfully following the ratio laid down in the cases discussed above, allow the appeal of the assessee and set aside the impugned order dated 12.03.2020 and direct the CIT(E) to grant registration under section 12AA of the Act to the appellant Trust.

In the result, the appeal of the appellant Trust is allowed

Order pronounced on 23rd July, 2021.

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