

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 47/JP/2021

ICG- IISU Alumnae Association- Bandhan, C/o International College for Girls, Gurukul Marg S.F.S Mansarovar, Jaipur	बनाम Vs.	CIT (Exemption), Jaipur
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCI8365L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Sh. Rajeev Sogani (CA) &
Sh. Rohan Sogani (CA)
राजस्व की ओर से / Revenue by : Sh. B. K. Gupta (PCIT)

सुनवाई की तारीख / Date of Hearing : 05/08/2021
उदघोषणा की तारीख / Date of Pronouncement : 02/11/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(E), Jaipur dated 30.03.2021 wherein the assessee has challenged the rejection of application seeking registration u/s 12AA of the Act.

2. At the outset, the Id. AR submitted that there has been a delay in filing the present appeal by 27 days. It was submitted that the impugned order was passed by the Id. CIT(E) on 30.03.2021 and the same was received by the assessee on 30.03.2021 and ordinarily, the

appeal should have been filed before the Tribunal on or before 28.05.2021. However, the same was filed on 24.06.2021. It was submitted that the delay so happened in filing the present appeal was on account of the 2nd outburst of COVID-19 Pandemic and consequent lockdown announced by the State Government. It was accordingly submitted that due to lockdown, the assessee was prevented from filing the present appeal and the delay so happened was not deliberate. In support, the reliance was also placed on the decision of Hon'ble Supreme Court dated 27.04.2021 wherein the period of limitation in filing of appeal, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended with effect from 14th March, 2021 till further orders. It was accordingly submitted that the delay so happened in filing the present appeal was beyond the control of the assessee and the same may be condoned and appeal of the assessee be heard on merits.

3. Per contra, Id. Pr.CIT/DR did not raise any specific objection and fairly accepted that the explanation so furnished by the Id. AR regarding delay in filing the present appeal on account of COVID-19 pandemic may be considered by the Bench as it deems fit and appropriate.

4. After hearing both the parties and considering the material on record, we find that there was a reasonable cause for delay in filing the present appeal due to COVID-19 pandemic and lockdown imposed in the state of Rajasthan which was beyond the control of the assessee. Therefore, the delay so happened is hereby condoned and the appeal so filed by the assessee is hereby admitted for adjudication on merits.

5. On merits, the Id. AR submitted that the appellant is a company incorporated under the provisions of Section 8 of the Companies Act, 2013 and promoted by IIS (Deemed to be University) Trust which is also solely engaged in imparting education having necessary approvals u/s 12AA of the Act. It was submitted that the main object of the appellant company is to foster the spirit of comradeship and to promote co-operation and mutual help amongst the students passing out from the International College for Girls (ICG) as well as from the IIS (Deemed to be University) (IISU), Jaipur. The Memorandum of Association and Articles of Association are placed at APB 18-43.

6. It was submitted that an application seeking approval u/s 12AA in Form 10A was filed with the office of Id CIT(E) on 16.10.2020 which was however rejected by Id. CIT(E) vide his order dated 30.03.2021 for the sole reason that the object no. (a) 6, 8 & (b) 2, 8, 26 as stated in the memorandum of association are having element of commercial/business nature. It was submitted that every reputed educational institution runs an Alumni Association for its past students. This is to maintain the contact for ensuring continuity for education. The activities are extension of education and, therefore, allegation of business/commercial nature is unfounded. Proviso to Section 2(15) is not applicable on educational activities. It was submitted that the Id. CIT(E) has accepted the objects being charitable in nature and after having found the objects being charitable in nature, has rejected the application for the reason of "elements of Commercial/Business nature". It was submitted that Id. CIT(E) has totally ignored the fact that the applicant before him was a company incorporated u/s 8 of the

Companies Act, 2013 and attention is drawn towards following clauses contained in the memorandum of association of the appellant company:

"No Objects of the Company shall be carried out without the permission of the competent authorities whomsoever and no objects of the company shall be carried out on commercial basis.

The profits, if any, or other income and property of the company, whenever derived, shall be applied, solely for the promotion of its objects as set forth in this memorandum.

No portion of the profits, other income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to person who, at any time are, or have been members of the Company or to any one or more of them or to any person claiming through any one or more of them.

No remuneration or other benefit in money or monies worth shall be given by the Company to any of its members, whether officers or members of the Company or not, except payment of out of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the Company.

No alteration shall be made to this Memorandum of Association or to the Articles of Association of the Company which are for the

time being in force, unless the alteration has been previously submitted to and approved by the Registrar.

If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 224 of the Act.

The Company can be amalgamated only with another Company registered under section 8 of the Companies Act, 2013 and having similar object.

Dividends and Reserves

The Company in general meeting shall not declare any dividend, and shall utilize the profits of the Company only for the promotion of its Objects and thus no portion of the profits, other income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profits, to persons who, at any time are, or have been, members of the company or to any one or more of them or to any persons claiming through any one or more of them.

The Boards may also carry forward any profits which it may consider necessary motto divide, without setting them aside as a reserve.

Winding Up

If upon a winding up or dissolution of the Company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the Company but shall be given or transferred to such other Company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 224 of the Act.”

In view of the above, it was submitted that no commercial/business nature is possible while undertaking the activities by the appellant company.

7. Without prejudice to above, it was submitted that alleged commercial/business nature of activities cannot be a reason for rejection of the application u/s 12AA and in support, reliance was placed on the following judicial precedents:

- CIT vs Gujarat Maritime Board [2021] 123 taxmann.com 35 (Guj)
- Rajasthan Housing Board vs CIT [2012] 21 taxmann.com 77 (Jp)
- Mahatma Gandhi Charitable Society vs CIT [2013] 142 ITD 565 (Cochin)

- Madras Motor Sports Club vs DIT [2013] 90 DTR 197 (Chennai)
- Gujarat Cricket Association vs DIT [2012] 19 ITR 520 (Ahd)

8. It was further submitted that the provision of section 13(8) introduced in the Finance Act, 2012 w.r.e.f. 01.04.2009 may be considered where it has been provided that nothing contained in section 11 and 12 shall operate where provisions of first proviso to section 2(15) become applicable in any previous year. This makes it clear that allegation of commercial/business nature cannot be a reason for rejection of application u/s 12AA. It was submitted that activities of commercial/business nature whether actually carried out or not and allowability of benefit u/s 11 and 12 can be examined by the Assessing Officer at the time of regular assessment for the relevant previous years. In view of the above, it was submitted that the order of CIT(E) denying approval u/s 12AA deserves to be quashed and he may be directed to grant approval to the appellant company.

9. Per contra, the Id. Pr. CIT/DR in his submission taken us through the application filed by the appellant company in Form No. 10A wherein the object of the appellant company has been specified as education and advancement of other objects of General Public Utility. It was further submitted that the assessee has also submitted the description of its other objects as promoting co-operation and mutual help among the students. It was submitted that the assessee company is basically incorporated to foster co-operation and mutual help among the students who have passed out from International College Girls as well as from IIS (Deemed to be University), Jaipur. It was submitted that the

assessee company is therefore for the benefit of ex-students who have passed out from these educational institutions and therefore, the benefit of the activities of the assessee company are restricted to the ex-students only and cannot be held as benefiting the public at large. Therefore, the objects of the assessee company cannot be held as objects advancing General Public Utility. It was further submitted that given the objects of the assessee company, it is nowhere comprehended that assessee company is involved in any activity of formal education rather it is in form and substance an alumni association formed by the promoters of the IIS University. It was further submitted that nothing has been brought on record that the activities of the assessee company are charitable in nature. It was submitted that on perusal of its memorandum of association, it is seen that certain objects as highlighted by the PCIT are having elements of commercial/business nature and the appellant company failed to furnish valid explanation on why these activities should not be considered as commercial in light of section 2(15) of the Act. Given that it was a limitation matter and in spite of giving sufficient opportunities, the appellant company failed to produce details and furnish explanation, therefore, the Id CIT(E) rejected the application based on material available on record.

10. It was further submitted that merely because the assessee company has been registered u/s 8 of the Companies Act, the same by default does not necessarily mean that it shall be eligible for registration u/s 12AA of the Act. It was submitted that both are separate legislation operating in respective domain and in absence of anything mentioned in

the Income Tax Act, the companies registered u/s 8 of the Companies Act does not necessarily qualify for registration u/s 12AA of the Act. The company, where it seeks registration u/s 12AA, has to independently apply seeking registration and file requisite documentation in support of its application, and the Commissioner has to consider its objects and genuineness of activities and then take appropriate action in terms of either accepting or rejecting its application seeking registration u/s 12AA of the Act. It was accordingly submitted that there is no infirmity in the findings of the Id. CIT(E) in rejecting application of the assessee company seeking registration u/s 12AA of the Act. In support, the reliance was placed on the following decisions:

- CIT(E), Jaipur vs. Dali Bai Sewa Sansthan [2018] 99 taxmann.com 290 (SC)
- CIT(E), Chandigarh vs. Goenka Charitable Trust [2018] 89 taxmann.com 311 (Amritsar-Tribunal)
- CIT-1, Kochi vs. Indian Nutritional Medical Association [2013] 35 taxmann.com 505 (Cochin-Tribunal)
- CIT vs. Norka Roots [2018] 89 taxmann.com 181 (Kerala)
- Income Tax Officer (Tech.), Kochi vs. State Forum of Bankers Club (Kerala) [2015] 56 taxmann.com 172 (Cochin-Tribunal)

11. We have heard the rival contentions and perused the material available on record. It is noted that the assessee company had filed an application on 16.10.2020 seeking registration u/s 12AA of the Act. Thereafter, the assessee company was issued a letter dated 30.12.2020 asking them to submit certain documents/ explanation and to submit original registration certificate and Memorandum of Association for

verification. However, only part information/documentation was submitted by the assessee company. Thereafter, a show cause notice dated 11.03.2021 was issued asking for certain specific details/information and matter was fixed for hearing on 15.03.2021. In response to the show cause, the Id PCIT stated that the assessee company furnished part details and failed to furnish clarification regarding certain objects having elements of commercial/ business nature and clarification on the objects benefiting particular community or class in terms of ICG-IISU Alumnae Association and not for general public utility, ownership proof of the assessee premises. The Id. Pr.CIT therefore stated that the assessee company has failed to furnish valid explanation inspite of giving sufficient opportunity and being a limitation matter, he decided basis material available on record and application seeking registration u/s 12AA was rejected.

12. During the course of hearing, the Id. AR submitted that in response to the show cause dated 11.03.2021, the assessee company did submit its response vide letter dated 19th of March, 2021 and it is therefore, factually not correct that the assessee company has not submitted the requisite information and explanation as sought by the Id. Pr. CIT rather he has failed to correct appreciate the submissions so filed by the assessee company.

13. We therefore find that while examining the assessee's application seeking registration u/s 12AA, the Id. Pr. CIT has raised broadly two issues which require deeper examination. Firstly, certain objects of the assessee company have been stated to be having elements of

commercial/ business nature and secondly, whether the objects sought to be achieved were for the benefit of Alumnae ICG-IISU and whether the same qualify as benefiting the public at large and can therefore be classified as object of general public utility. Though the assessee claims to have submitted the requisite explanation, however, in absence of findings by the Id. Pr. CIT, we deem it appropriate that the matter is set aside to the file of Id. Pr. CIT to examine the same afresh as per law after taking into consideration the submissions so filed by the assessee company and calling for any further information/ clarification as may be desired and after providing reasonable opportunity to the assessee company. Both the parties are, at liberty, to raise the contentions so advanced before us and the same are thus left upon and have not been examined by us.

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

Order pronounced in the open Court on 02/11/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/11/2021.

Ganesh Kumar

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

1. अपीलार्थी / The Appellant- ICG-IISU Alumnae Association-Bandhan, Jaipur
2. प्रत्यर्थी / The Respondent- CIT (Exemption), Jaipur

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 47/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar