

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.7475/Del./2017

ITA NO.8/DEL/2021

Artemis Education & Research Foundation, Artemis Health Institute, Sector 51, Gurgaon (Haryana).	vs.	CIT (Exemptions), Chandigarh.
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(PAN : AAETA1188P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Ahuja, CA
REVENUE BY : Shri Satpal Gulati, CIT DR

Date of Hearing : 27.10.2021
Date of Order : 24.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the inter-connected appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, Artemis Education & Research Foundation, (hereinafter referred to as 'the applicant') by filing the present appeals being ITA Nos.7425/Del/2017 & 8/Del/2021 sought to set aside the impugned orders dated 20.09.2017 & 29.09.2017

respectively passed by the Commissioner of Income-tax (Exemptions), Chandigarh on the grounds inter alia that :-

“ITA No.7425/Del/2017

1. The learned CIT went wrong in rejecting the application filed for registration u/s 12AA of the Income Tax Act.
2. The learned CIT erred in not granting the registration for the reason that the appellant is pursuing only Medical Research. Medical Research is a charitable activity as defined u/s.2(15) of the Income Tax Act and hence the registration ought to have been granted.
3. The learned CIT erred that the object clause of the appellant contains many clauses which are commercial in nature. The object of the appellant is only to undertake charitable activities without any profit motive.
4. The learned CIT erred in rejecting the application for registration u/s.12AA of the Income Tax Act for the reason that the area of operation is in contravention to sec. 11(1)(a) of the Income Tax Act.”

“ITA NO.8/Del/2021

1. That order under section 80G(5)(vi) dt. 29.09.2017 is passed without any notice of hearing to the assessee which against the principles of natural justice hence liable to be set aside/quashed.
2. That order under section 80G(5)(vi) dt. 29.09.2017 rejecting Form No.10G read with section 80G of Income tax Act, 1961 is bad in law and void ab-initio.
3. That since section 12A and section 80G of the Income tax Act, 1961 operates separately hence section 12A approval rejection can not ipso facto apply to rejection for section 80G approval.
4. That the CITY (E) is wrong in holding that an application under Form No.10G in absence of any registration u/s 12A does not meet the requirement for approval as mandated by section 80G(5)(vi) of Income tax Act, 1961 and Rule 11AA of the Income tax Rules, 1962.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Application in Form No.10A seeking registration u/s 12A of the Income-tax Act, 1961 (for short 'the Act') and for approval u/s 80G of the Act respectively moved by the Appellant/Applicant being a Trust registered under Societies Registration Act has been rejected by Id. CIT(E) on the ground that the prime intent of the applicant is to pursue only medical research which is not covered under the term 'education'.

4. Feeling aggrieved, the applicant has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Applicant registered as a Trust known as 'Artemis Education & Research Foundation' has following aims and objects to pursue its alleged charitable activities :-

- (i) to coordinate and support clinical & medical research and development for pharmaceuticals, drugs and medical equipments within and outside India in order to continuously improve the standards of medical relief;
- (ii) to acquire and establish or maintain one or more professional colleges as Engineering Colleges,

Medical Colleges, Dental Colleges, Pharmacy Colleges, Management Colleges, etc.;

- (iii) to promote, assist and adopt the development of advanced training/study courses in the arena of medicine, nursing, pharmacology, paramedical and medical administrative courses across the globe;
- (iv) to generate advanced knowledge through research related education and training, social, communication, medical, biological, genetic, population education, demography, etc.;
- (v) to publish, print and circulate books, papers research journals, periodicals and other materials in reference with motto of the trust.

7. Ld. CIT (E) put detailed queries to call upon the applicant to furnish details/clarifications, which applicant has filed. After examining the details/documents furnished by the applicant, Id. CIT(E) proceeded to hold inter alia that firstly, all medical research does not qualify for the label 'education' in the sense of the term explained by the **Hon'ble Apex Court in the case of Sole Trustee, Loka Sikshan Sansthan 101 ITR 234**; secondly, that the intention to create global infrastructure is in contravention of section 11(1)(a) of the Act and even after 4 years of incorporation, applicant has not carried out any research/outcase; thirdly, that the applicant has failed to bring on record how its activities are meant to percolate down to the public at large; and fourthly, that there is

possibility that researches which would be carried out in future within the premises of settler company would in turn further enhance commercial potential of the hospital; and thereby rejected the application u/s 12A of the Act.

8. So far as first ground of rejections of application moved by the applicant/assessee u/s 12A of the Act by the Id. CIT(E) that all medical research does not qualify for the label 'education' in the sense of the term explained by **the Hon'ble Apex Court in the case of Sole Trustee, Loka Sikshan Sansthan 101 ITR 234** is concerned, when we examine the aims and objects of the applicant trust it is not only established for medical research rather for various other charitable aims and objects viz. establishing professional colleges, hospitals, health promotion facilities like health club, nature club facilities, yoga and meditation facilities, entertaining facilities and community centre/religious centers.

9. At this stage, aims and objects having charitable nature need to be seen for the purpose of according approval u/s 12A of the Act. So, we are of the considered view that application moved u/s 12A of the Act cannot be throttled merely by relying upon selective aims and objects by making observation that there is a possibility that researches being carried out by the applicant within the premises of the settler company would in turn further enhance

the commercial potential of the hospital. These are mere perceptions entirely based upon surmises, particularly in view of the undisputed fact that applicant research foundation is inextricably linked with the Artemis Hospital to carry out its research. When it is a harsh reality that medical research being one of the aims and objects of the applicant is to be carried out in the hospital/settler company merely declining the registration u/s 12A of the Act on the ground only does not augur well with the intent and purpose of the Act. Because of all these factors, if applicant is being used for accelerating its commercial activities of the Hospital, the same are to be separately and independently examined by the AO at the time of assessment in the light of the provisions contained u/s 11 & 12 of the Act.

10. While examining the scope of sections 11 & 12 of the Act ***Hon'ble Allahabad High Court in case cited as CIT (E) vs. Yamuna Expressway Industrial Development Authority – (2017) 395 ITR 18 (All.)*** has held that, “*it is not within the purview of Commissioner to examine whether the assessee was entitled to exemption u/s 11 or 12 since that was within the jurisdiction of AO and not the Commissioner (E).*” Hon'ble High Court further held that, “*A body or institution which is functioning for advancement of objects of general public utility and whose activities are not in the*

nature of trade, business or commerce or sheer profit making, is entitled to claim itself to be constituted for "charitable purposes" and seek registration under section 12A(1) of the Income-tax Act, 1961. Charitable purpose primarily means that the predominant object must be to promote welfare of general public. An ancillary activity, if any, to that general one performed by the institution would not render such institution "non-charitable".

11. Moreover, section 12AA of the Act provides for procedure for registration as to how Id. CIT (E) will provide registration after getting satisfaction with the aims and objects of the society and not to sit on the chair of AO as all these facts ought to be taken care by the AO at the time of assessment. Declining the registration on the ground that medical research to be carried out in the hospital of settler company would convert the charitable activities into commercial activities is mere surmises, hence not sustainable in the eyes of law.

12. Not only this, sub-section (3) of section 12AA empowers the Id. CIT(E) to cancel the registration of the Trust if activities of Trust are not in consonance with its charitable aims and objects enshrined in the constitution. So, at the stage of according registration u/s 12AA of the Act examining the aims and objects like AO is not permissible.

13. So far as second reason of rejections u/s 12A of the Act by the Id. CIT (E) that the intention to create global infrastructure is in contravention of section 11(1)(a) of the Act and even after 4 years of incorporation, applicant has not carried out any research/outcase is concerned, when applicant has come up with specific aims and objects to carry out medical research as one of the aims and objects which can only be carried out within the premises of the hospital, creating infrastructure is a *sine qua non* to carry out the research in the medical field. Medical research can always be carried out in the infrastructure created within or near to the hospital which cannot always lead to the conclusion that it is for the purpose of pursue the commercial activities. Because there are numerous aims and objects sought to be pursued by the applicant in order to carry out its charitable activities.

14. So far as question of carrying out any activities within four years of its incorporation as put forth by the Id. CIT(E) is concerned, applicant has brought on record details of funds in and out since its inception showing that the applicant is at the initial stage and carrying out research activities might not have taken place at full swing because of rejection of the application by the Id. CIT (E) u/s 12A of the Act. Details of funds given by the applicant for FYs 2013-14 to 2020-21 are as under :-

Particulars	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Initial contribution by the settler of Trust	500000	-	-	-	-	-	-	-
Income Donation*	650	-	5000000	5100000	4000000	4000000	4150000	1800000
Education Training Income	-	-	55130	-	-	-	-	-
Total income from all sources	650	-	5055130	5100000	4000000	4000000	4150000	1800000
EXPENDITURE								
Audit Fees	5618	5618	5700	29482	-	29800	42400	34000
Consumption of re-agents for testing	-	-	-	-	4703	99554	138271	106701
Salary expenses	650	-	4976995	5080154	4231253	3799600	3938470	1743450
Building rent	-	-	11	12	12	12	12	12
Registration charges	-	-	-	-	-	-	-	-
Rates & Taxes	-	-	-	12200	860	3987	-	-
Legal & professional	-	-	-	5000	45000	70000	-	5900
Bank Charges	-	-	-	230	-	-	-	-
Travelling & Conveyance Expenses	-	-	-	-	7565	2250	-	3354
Total Expenditure	6268	5618	4982706	5127078	4289393	4005203	4119153	1893417
Net	(5618)	(5618)	(72424)	(27078)	(289393)	(5203)	(30847)	(93417)
*All the donations are from Artemis Medicare Services Limited (PAN AAFCA0130M)								

15. Receipt of donations and appropriation of funds show that the applicant Trust is not merely on the paper but keeping its activities alive for further carrying out the charitable activities enshrined in its aims and objects. So, the reason recorded by the Id. CIT (E) is not sustainable to reject the application moved by the applicant.

16. So far as third ground taken by the Id. CIT (E) for rejection of application u/s 12A of the Act that the applicant has failed to bring on record how its activities are meant to percolate down to the public at large is concerned, again it is a matter of common knowledge that medical research carried out in any corner of the world is in the larger interest of the general public one way or the other. But, in the instant case, applicant Trust is not pursuing one activity rather many of charitable aims and objects are there on its Board as enshrined in its constitution. Again, all these facts and queries raised by the Id. CIT(E) are to be taken care of at the time of examining Income-tax return filed by the applicant in due course in the light of sections 11 & 12 of the Act.

17. So far as fourth ground taken by the Id. CIT (E) to reject applicant u/s 12A that there is possibility that researches which would be carried out in future within the premises of settler company would in turn further enhance commercial potential of the hospital is concerned, again we are of the considered view that all these findings are based on surmises because at this stage commercial angle of any activities can only be assumed but can only be decided during the assessment proceedings. It is a matter of fact that medical research has to be carried out in the premises of Artemis Hospital/settler company and any such medical research

would otherwise facilitate the general public to have a specialized treatment in the hospital of their choice. We would like to record that medical research cannot be branded as a mode of advertisement to enhance the profitability of the hospital because both are existing in entirely separate domain.

18. Hon'ble Apex Court in case cited as *CIT vs. Andhra Chamber of Commerce – (1965) 55 ITR 722 (SC)* has enhanced the scope of charitable purpose for a Trust under the Income-tax by holding that it was not necessary that the object should be to benefit the whole of the 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 by returning following findings :-

“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.”

19. Applicant by moving an application u/s 151 of Code of Civil Procedure sought to condone the delay of 1462 days on the ground that the delay is attributed to bonafide mistake under the bonafide belief that challenge of rejection of section 12A of the Act would suffice to cover the rejection of section 8G approval. Ld. DR for the Revenue has opposed the application that when the matter is being pursued by trained tax practitioner it is not a ground to condone the delay.

20. We are of the considered view that when we examine the issue of delay in the light of the fact that the appeal challenging the order passed by the Id. CIT (E) u/s 12AA of the Act has been filed well within time it can be taken as a bonafide mistake that challenging the rejection of approval u/s 80G is automatic. Even otherwise negligence or indolence on the part of a trained practitioner who has been hired to protect the interest of the applicant, cannot be attributed to the litigant by declining the relief in the interest of justice. So, we find it a reasonable ground to condone the delay and appeal against the order passed u/s 80G is ordered to be registered to be put up for hearing.

20. In view of what has been discussed above, we are of the considered view that Id. CIT (E) has erred in rejecting the

application for registration u/s 12AA of the Act and consequent approval u/s 80G of the Act filed by the applicant, hence Id. CIT(E) is directed to grant registration u/s 12AA of the Act to the assessee/applicant forthwith with approval u/s 80G of the Act. Consequently, both the appeals filed by the assessee/applicant are allowed.

Order pronounced in open court on this 24th day of November, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of November, 2021.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(E).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**