

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

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 6527/DEL/2016 (A.Y.2016-17) &
I.T.A .No. 6528/DEL/2016 (A.Y.2016-17)**

Nanak Chand Jain Charitable Trust Shop No. 161, New Anaj Mandi, Gharaunda Karnal AACTN1456D (APPELLANT)	Vs	CIT(E) Chandigarh (RESPONDENT)
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Appellant by	Sh. Ved Jain, Adv & Ms. Rano Jain, Adv
Respondent by	Ms. Shefali Swroop, CIT DR

Date of Hearing	23.11.2017
Date of Pronouncement	09.02.2018

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the orders dated 27/9/2016 u/s 12AA of the Income Tax Act, 1961 & order dated 28/9/2016 u/s 80 G(5) (vi) of the Income Tax Act, 1961 passed by the Commissioner of Income Tax (Exemptions), Chandigarh.

2. The Ld. AR submitted that there is a delay of 21 days for which the application for condonation of delay is filed for the reasons stated which is supported by the affidavit. The reasons given by the assessee for not filing the appeal in time appears to be genuine. Therefore, the delay of 21 days for filing appeal is condoned.

3. The grounds of appeal are as under:-

ITA No. 6527/Del/2016

1. *“That the order of Commissioner of Income Tax (Exemptions), Chandigarh is against law and facts.*
2. *That on the facts and circumstances of the case of the Appellant, the order of the Commissioner of Income Tax (Exemptions) is not justified in denying registration of the trust u/s 12AA of the Act stating that the trust is formed merely for complying the CSR requirements of the settler company ignoring the fact that the Appellant is engaged in carrying out the charitable activity as per the object of the trust.”*

ITA No. 6528/Del/2016

1. *“That the order of Commissioner of Income Tax (Exemptions), Chandigarh is against law and facts.*
2. *That on the facts and circumstances of the case of the Appellant, the order of the Commissioner of Income Tax (Exemptions) is not justified in denying registration of the trust u/s 12AA of the Act stating that the trust is formed merely for complying the CSR requirements of the settler company ignoring the fact that the Appellant is engaged in carrying out the charitable activity as per the object of the trust.”*

4. The assessee is a trust, registered vide Deed dated 27/03/15. The trust was started by the settler M/s. Veer Overseas Ltd. a limited company who in order to carry out its duties under the Corporate Social Responsibility (CSR), as provided under Section 135 of the Companies Act, 2013 created this trust. The objects of the assessee trust are in the nature of eradicating hunger and poverty, promotion of education, promoting gender equality etc. Apart from this it is also provided that the trust may carry on other activities as prescribed by the government in exercise of the powers conferred under clause (o) and (q) of

Sub-Section 3 of Section 134 read with Section 135 and sub section (1) or (2) of Section 469 of the Companies Act 2013 shall also be perused. An application for grant of registration u/s 12AA was filed before the CIT (exemption) Chandigarh, as on 28/03/2016. An order rejecting the application for grant of registration under Section 12AA was passed on 27/09/2016. The registration under Section 12AA was rejected on the ground that the assessee trust has been formed by the settler M/s Veer Overseas Ltd. for the purpose of carrying out its CSR activities. The Commissioner of Income Tax (Exemptions) rejected the application for registration u/s 12AA on the ground that Para 10 of this application are held as under:-

“10. Considering all of the above it is safe to conclude (i) that the main aim appears to be forming a trust merely for complying to C.S.R requirements (ii) that the trust has been stated to be formed to implement the CSR activities of the settler company (iii) that the composition of the trust is restrictive and to that extent not amenable to public charity (iv) that no activity in sync with the requirements of the Companies Act has taken place in the trust so far (v) that the activities so far further show that the trust has relinquished its function, as the primary implementation agency and undertaking its own programmes to impact targeted beneficiaries, by transferring its funds to other societies (vi) it also militates against the legal principle that social enterprises cannot be a direct recipient of money from a corporate as it is a profit making company.”

5. Besides the Commissioner of Income Tax (Exemptions) also rejected application u/s 80G (v) which is holding that, the application void ab initio in terms of provisions of Rule 11AA.

6. Being aggrieved by the said orders, the assessee is before us by filing two appeals.

7. The Ld. AR submitted that as per the Companies Act, 2013 wherein u/s 135 of the Companies Act, 2013, the Companies are allowed to settle a trust to carry out Corporate Social Responsibility (CSR) and for that the trust is formed

by the assessee company and Income Tax Act also recognize the said Section of the Companies Act. The Ld. AR submits that the objects of the trust are public charity only. Therefore, the Commissioner should have allowed the registration u/s 12AA and application u/s 80G(5)(vi) of the Income Tax Act. The Ld. AR submitted once the CIT has not doubted about the genuineness of the activities of the assessee nor doubted its charitable object, his/her powers under Section 12AA does not empower to reject the registration of the assessee trust. The Ld. AR also relied upon the following case laws on this issue:

- i. Shri Sain Ji Dharmarth Trust Versus Commissioner of Income- tax [2006] 8 SOT 446 (DELHI)
- ii. Commissioner of Income-tax-II, Chandigarh Versus Surya Educational & Charitable Trust [2013] 355 ITR 280 (P& H -HC)
- iii. St. Don Bosco Educational Society v. CIT [2004] 90 ITD 477 (Luck.);
- iv. Baba Gandha Singh Education Trust vs. CIT', (2011) 138 TTJ (Chd) (UO) 1;
- v. Reliable Educational Alliance Society v. CIT' [2009] 126 TTJ 407 (Delhi); and
- vi. Dream Land Educational Trust vs. CIT', (2007) 109 TTJ (Asr) 850.

The Ld. AR further submitted that on the issue of donation given to other charitable societies and other activities are the matter to be taken into consideration by the Assessing Officer in assessment proceedings while granting exemption u/s 11 of the Act and not that by Commissioner in capacity of Section 12AA of the Act. The Ld. AR relied upon the following case laws:

- i. CIT vs Hindustan Charity Trust reported in (1983) 139 ITR 913 (Cal)
- ii. CIT vs Trustees of the Jadi Trust reported in (1982) 133 ITR 494 (Bom)

- iii. CIT vs Sarladevi Sarabhai Trust No. 2 reported in (1988) 172 ITR 698 (Guj)
- iv. Shri Sain Ji Dharmarth Trust Vs. CIT (2006) 8 SOT 446 (Del)
- v. CIT vs. Surya Educational & Charitable Trust (2013) 355 ITR 280 (P&H)
- vi. St. Don Bosco Educational Society vs. CIT (2004) 90 ITD 477 (Luck.)
- vii. Baba Gandha Singh Education Trust vs. CIT (2011) 138 TTJ 1 (Chd)
- viii. Reliable Educational Alliance Society vs. CIT (2009) 126 TTJ 407 (Del)
- ix. Dream Land Educational Trust vs. CIT (2007) 109 TTJ 850 (Asr)

8. The Ld. DR submits that the Commissioner of Income Tax (Exemptions) rightly rejected the application of the assessee company as the object of the trust were not charitable in nature. The Ld. DR relied upon the Kerala High Court decision in case of Self Employer Service Society Vs. CIT(A) 247 ITR 18 as well as ITAT Agra Bench Decision in case of Shri Agrawal Sabha Vs. CIT 40 Taxman.com 117.

9. We have heard both the parties and perused the material available on record. It is pertinent to note that the reasons (i) and (ii) given by the CIT (exemption) is that the main aim appears to be forming a trust merely for complying to CSR requirements. When a trust is created for the purpose of carrying out CSR activities, the registration under section 12AA of the Income Tax Act, 1961 cannot be denied. Vide notifications dated 27/02/2014 the ministry of Corporate affairs in the rules framed for the purpose of CSR has implicitly provided for forming the dedicated trust under sub rule 2 to rule 4. It has been stated as under:

“(2) The board of a company may decide to undertake it is CSR activities provide by the CSR committee, through the registered trust or a registered society or a company established by the company or its holding or subsidiary or associate under section 8 of the Act or otherwise.”

Even Companies Act provide for compliance of CSR provision through a dedicated trust or society. Just because the trust has been formed for complying CSR requirements it cannot per se be the reasons for denying registration under Section 12AA of the Income Tax Act. As regards the reasons (iii) given by the CIT (exemption) that the object of trust are to be noted whereby apart from the CSR activities, the Activities in the nature of eradicating hunger and poverty, promotion of education, promoting gender equality etc. are also provided. These activities are in the nature of public charity. Further, the CSR Activities itself are in the nature of public charitable activities. As regards the reasons (iv) given by the CIT (exemption), no activities in sync with the requirement of the Companies Act has taken place in the trust so far. For the purpose of granting registration under Section 12AA only two factors are to be seen by the CIT (E) which are the objects of the trust being charitable in nature and the genuineness of activities. There is no requirement to see where the activities are in sync with Companies Act or not. Reasons (v) given by the CIT (exemption) that the activities so far further show that the trust is relinquished its function as the primary implementation agency and undertaking its own programs to impact direct beneficiary by the transferring its funds to other society. Even the funds given to another charitable society for the purpose of charity are considered as application of income for the purpose of exemption under Section 11 of the Income Tax Act, 1961. At the time of granting the registration under Section 12AA of the Income Tax Act, 1961, the CIT (exemption) need not go beyond two parameters that the object being charitable in nature and activities being genuine. All other activities are the matters to be taken care of by the Assessing Officer at the time of assessment for granted exemption under section 11 of the Act. Reasons (vi) given by the CIT (exemption) that it also militates against the legal principal that social enterprises cannot be a direct recipients of money from corporate as it is a profit making Company. This reasons by the CIT (exemption) is not in conformity with any of the provisions of the Income Tax Act. A profit making Company can grant certain donation to the charitable trust, how can the

activities of the trust become not charitable with this act. The fact that the CSR expenditure are not allowable expenditure under section 37 of the Act is relevant only for the taxability of the company incurring such expenditure. From the perception of the assessee trust the amount received as donation whether will be eligible for exemption under section 11 depends on the application of such fund for the charitable activities by the trust only. The CIT is empowered to satisfy himself only about two factors i.e. the objects of the trust and the genuineness of the activities of the trust or institution and such powers does not extend to the eligibility of the trust/ institution for exemption u/s 11 r.w.s 13 of the Income Tax Act, 1961 which falls in the domain of the AO. Once the CIT has not doubted about the genuineness of the activities of the assessee nor doubted its charitable object, his powers under section 12AA end. The case laws relied by the Ld. AR are applicable in the present case. The case laws relied by the Ld. DR are not applicable as the factual matrix in those cases are totally different. Thus, the order passed u/s 12AA and u/s 80G(5)(vi) of the Income Tax Act, 1961 are set aside. We direct the CIT to grant the registration u/s 12AA of the Act and also the approval u/s 80G(5)(vi) of the Act to the assessee.

10. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 09th February, 2018.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 09/02/2018
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	27/11/2017	PS
2.	Draft placed before author	28/11/2017	PS
3.	Draft proposed & placed before the second member	.2018	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	09.02.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	12.02.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

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