

\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 119/2020 & CM APPL. 6637/2020

COMMISSIONER OF INCOME TAX (EXEMPTIONS),
DELHI

..... Appellant

Through: Mr. Ajit Sharma, Senior Standing
Counsel for Revenue with Mr. A.
Renganath, Advocate.

versus

MATA PARVATI EDUCATIONAL &
INNOVATIVE SOCIETY

..... Respondent

Through: None.

%

Date of Decision: 03rd November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 6637/2020 (for condonation of delay)

Keeping in view the averments in the application, the delay of 130 days in re-filing the present appeal is condoned.

ITA 119/2020

1. The present appeal has been filed challenging the order dated 29th March, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2296/DEL/2018 and to restore the order passed by Commissioner of

Income Tax (Exemptions) ['CIT(E)'].

2. Learned senior standing counsel for Revenue, states that the ITAT erred in directing the CIT(E) to register the Assessee Society under Section 12AA of the Income Tax Act, 1961, ('Act') considering that, there were doubts with respect to the genuineness of the activities of the Respondent. He states that the ITAT failed to consider the fact that cash deposits to the tune of Rs. 17,00,000/- were made in the bank account of the Assessee during the Financial Year ('FY') 2016-17, which raises questions with respect to the genuineness of the objectives of the society.

3. He states that the ITAT failed to appreciate that the school run by the Assessee is not recognised by the Department of Education, Government of NCT of Delhi, and therefore, in the absence of formal recognition of the school by the competent authority, the claim of the Assessee that it was running the school cannot be accepted.

4. He states that the ITAT erred in holding that at the time of the registration of the trust, no enquiry with respect to the actual activities or application of funds of the Applicant, Assessee, is to be examined by the CIT(E). He lastly states, that the ITAT erred in holding that the CIT(E) was examining the 'application of income' of the Assessee whereas in fact, the CIT(E) was only limiting its exercise to call for documents/information to satisfy himself about the genuineness of the activities of the Respondent.

5. We have perused the paper book.

6. The ITAT has recorded that the Respondent society is engaged in the activity of imparting education by running a school, the Rainbow Kids Valley School, which fact is not in dispute. The Respondent filed an application on 23rd August, 2017 in Form No. 10A seeking registration

under Section 12AA of the Act. The Authorised Representative ('AR') of the Respondent appeared before the CIT(E) and filed certain documents. The CIT(E) observed that there were cash deposits in the bank account during the Financial Year (FY) 2016-17 which were not found supported by the corresponding documentations. He observed that the school run by the Petitioner is not recognised by the Department of Education, Government of NCT of Delhi (GNCTD) and in the absence of formal recognition the functioning of the school cannot be validly claimed. The CIT(E) concluded that the Assessee was not able to satisfactorily establish the genuineness of the conduct of the charitable activity as defined in Section 2 (15) of the Act and required under Section 12AA of the Act. In view of the said finding, the CIT(E) rejected the application of the Assessee under Section 12AA of the Act.

7. The ITAT allowed the appeal by holding that at the stage of considering an application under Section 12AA of the Act, the CIT(E) is not to examine the 'application of income' of the Applicant Assessee, which is an exercise to be undertaken by the Assessing Officer on a year-to-year basis at the time of assessment of income. The relevant findings of the ITAT are as under:-

"6. Undisputedly, the conjoint reading of the aims and objects of the assessee society goes to prove that it has been set up to open and run educational and vocational school or institutions in order to bring education within the reach of poor and backward children in the National Capital Region of Delhi by establishing libraries, providing hospital and residential accommodation, by establishing and maintaining institution for handicap or adult education, etc., which certainly falls in the definition of "charitable activities" as defined in the provisions contained under section 215 of the Act.

XXX

XXX

XXX

10. It is settled principle of law that at the stage of granting registration u/s 12AA of the Act, ld. CIT (E) is not to examine the application of income, which is to be done by the AO on year to year basis at the time of deciding the exemption u/s 11 of the Act; that the ld. CIT (E) is not (sic) to examine the genuineness of the Trust but not the income of the Trust for charitable or religious purpose which functions are assigned to AO and that the registration of the Trust does not involve inquiry into the actual activities or application of the funds etc., particularly when there is nothing on record to make out that the object of the Trust or activities of the were not genuine; and that non-production of books does not mean that the genuineness of the charitable activities of the assessee society is not established. Reliance in this regard may be placed on Vidyadayani Shiksha Samiti vs. CIT ITA No.309/Del/2016 order dated 14.12.2017; Bhartiya Kisan Sangh vs. CIT- (2017 59 ITR (Trib) 228 (ITAT-Del); Shanti Education and Welfare Society vs. CIT ITA No.5970/Del/2012; Fifth Generation Education Society -185 ITR 634; CIT vs. Babu Ram Education Society - (2018) 96 taxmann.com 606 (Allahabad); CIT vs. B.K.K. Memorial Trust- (2013) 256 CTR 424; and DIT (E) vs. PannaLalbhai Foundation -216 taxman 148.

XXX

XXX

XXX

12. In view of what has been discussed above, we are of the considered view that when aims and objects of the assessee society to open schools for imparting education and vocational training which is per se a charitable object under section 2(15) of the Act and the assessee society has been running a school in the name and style of Rainbow Kids Valley School, the ld. CIT (E) had no ground to decline the registration under section 12AA of the Act. Consequently, appeal filed by the assessee society is hereby allowed directing the ld. CIT (E) to grant the registration to the assessee society u/s 12AA of the Act.”

(Emphasis supplied)

8. There is no dispute raised in the appeal to the finding of ITAT that the Assessee is in fact running the Rainbow Kids Valley School. Further, the learned counsel for the Respondent confirmed on written instructions that no scrutiny assessment was made in the case of the Respondent, Assessee, for Assessment Year (AY) 2017-18 which is relevant for FY 2016-17 when the cash deposits of Rs. 17,00,000/- were made in the bank account of the Respondent, Assessee. There is, therefore, no adverse finding of the Assessing Officer against the Assessee with respect to the said cash deposits. The scope of the application was to examine the genuineness of the objects of the society and to ascertain if the said objects are charitable or not. Learned senior standing counsel for Revenue, has failed to show any infirmity in the findings of the ITAT which hold that the objects of the Assessee are charitable.

9. We are of the considered view that the facts have been correctly assessed by the ITAT and no substantial question of law arises in the present case. Thus, we see no merits in the present appeal and the same is accordingly dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 03, 2022

msh