

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-292-2018

Date of decision: 08.02.2023

The Commissioner of Income Tax (Exemptions) Chandigarh

....Appellant

V/s.

M/s. Nanak Chand Jain Charitable Trust, Gharaunda, Karnal

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Varun Issar, Junior Standing Counsel
for the appellant(s).

Ms. Ambika, Advocate for
Mr. J.K.Goel, Advocate
for the respondent.

Ritu Bahri, J.

This order shall dispose of six income tax appeals i.e. ITA Nos. 292-2018, 312-2018, 81-2020, 74-2021, 4-2022 and 222-2022 as the issue involved in all the appeals is identical. For the sake of brevity, facts are being extracted from ITA-292-2018.

The revenue has come up in appeal against the order dated 09.02.2018 (Annexure A-2) passed by the Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') whereby the appeals filed by the assessee were allowed by setting aside orders passed under Section 12AA and under Section 80G(5)(vi) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961').

The brief facts of the case are that the respondent-assessee is a trust, registered vide Deed dated 27.03.2015. The trust was started by the settler M/s. Veers Overseas Ltd., a limited company, which, 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. He rejected the application for grant of registration under Section 12AA of the Act, 1961 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 vide order dated 27.09.2016 and also rejected application u/s 80G (v) holding that, the application is void ab initio in terms of provisions of Rule 11AA.

Heard learned counsel for the parties and perused the record.

The Tribunal has allowed the appeals of the respondent-Trust and has set aside the orders passed by the Commissioner of Income Tax (Exemption) Chandigarh dated 27.09.2016 under Section 12AA of the Act, 1961 and dated 28.09.2016 under Section 80G(5)(vi) Act, 1961 as per the detailed reasoning given in para No. 9 of the order dated 09.02.2018 (Annexure A-2) which is as under:-

“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.”

The Tribunal has rightly examined the case of the respondent- assessee for grant of registration under Section 12AA of the Act, 1961 as there were only two parameters which the Commissioner was required to examine for registration of trust:-

1. The object of the trust.
2. The genuineness of the activities of the trust/institution.

The Commissioner is not to examine eligibility and activities. All other activities would fall under the domain of the Assessing Officer at the time of the assessment for granting exemption under Section 11 of the Act, 2016. The Commissioner is also not to examine whether the activities of the trust are in sink with the Companies Act or not. The trust, after registration, for the purpose of seeking exemption under Section 11 of the Act, 1961 by giving funds to any other charitable society, is a question to be considered by the Assessing Officer and this aspect is not to be gone into by the Commissioner under Section 12AA of the Act, 1961.

Now the only substantial question of law arises is as to whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in directing the CIT(E) to grant registration u/s 12AA of the Act instead of reverting it back for re-examination in the light of judgment of The Hon'ble Allahabad High Court in ***Appeal No. 112 of 2013*** in the case of ***CIT, Meerut Vs. M/s. A.R.Trust, Meerut***, wherein it was held that the Tribunal could have ordered for setting aside the order of Registering Authority refusing registration but it could not have directed for registration straight away in as much as there has to be satisfaction recorded by the Registering Authority which was lacking?”

The Division Bench of the Allahabad High Court in ***ITA-112-2013 titled as Commissioner of Income Tax, Meerut vs. M/s. A.R.Trust, Meerut***, decided on 04.09.2017 had examined the provisions of Section 12AA of the Act, 1961 and held that the Tribunal had no jurisdiction to give a direction for registration of the trust without there being satisfaction recorded by the registering authority as complated under Section 12AA of the Act, 1961. Thereafter, the Full Bench of the Allahabad High Court had

examined this issue in *ITA-37-2017* titled as *Commissioner of Income Tax (Exemption) U.P.State Cons and Infra. vs. M/s. Reham Foundation Kandhari Lane Lal Bagh Lucknow*, decided on 26.09.2019. In paras No. 29 to 31, the Full Bench observed as under:-

“29. In view of the aforesaid discussion, it is clear that the power and jurisdiction of the Appellate Tribunal under Section 254(1) of the Act, 1961 is unfettered thereby enabling the Appellate Tribunal to direct registration of the Trust at its level itself but the same is not open as a matter of course and such power is to be exercised only in circumstances indicated herein above.

30. The said onus on the Appellate Tribunal to remand the matter in cases indicated herein above is also in view of the strict interpretation of the powers of the Commissioner under Section 12 (AA) of the Act, 1961 because if the Appellate Tribunal is given such wide powers to direct registration of Trust in all or any circumstances, it would render the provisions of Section 12(AA) otiose, which again can not be the intention of legislature.

31. In view of the above the answer to questions referred are answered as under:-

(i) The income tax Appellate Tribunal while hearing an Appeal under Section 254(1) in a matter where registration under Section 12(AA) has been denied by Commissioner income tax can itself pass an order directing commissioner to grant registration in case the income tax Appellate Tribunal disagrees

with the satisfaction of the Commissioner on the basis of material already on record before the Commissioner.

However the said power is not to be exercised as a matter of course and that remand to the Commissioner income tax is to be made where the income tax Appellate Tribunal records a divergent view on the basis of material which has been filed before the Appellate Tribunal for the first time.

Remand for determination of question regarding grant of registration to a Trust would also be necessitated in cases where the registration application has been rejected by the Commissioner income tax on technical grounds without recording his satisfaction as contemplated under Section 12 (AA) of the Act, 1961 and such decision is overturned by the income tax Appellate Tribunal.

(ii) The power of the Appellate Tribunal are co-extensive with the power of the Commissioner under Section 12 (AA) of the Act, 1961 subject to what has been indicated herein above. However order for registration can be issued only after recording satisfaction with regard to genuineness of activities of the Trust as provided under Section 12 (AA) of the Act, 1961.”

By applying the ratio of Full Bench judgment to the facts of the present case, application for grant of registration was dismissed by the Commissioner and the Tribunal has recorded its satisfaction as the trust fulfills following two basic conditions for grant of registration under Section 12AA of the Act, 1961:-

1. The object of the trust
2. the genuineness of the activities of the trust/institution.

The Commissioner was not to examine with respect to genuineness of the activities of the trust and whether the trust, if transfers fund to another charitable society, can be given exemption under Section 11 of the Act, 1961. This power is restricted only to the Assessing Officer. Hence, in the present case, no useful purpose would be served to remand the matter back to the Commissioner to pass appropriate orders of registration of the trust under Section 12AA of the Act, 1961. The Tribunal, thus, has rightly directed CIT to grant registration under Section 12AA of the Act, 1961 and also approval under Section 80 G(5)(vi) of the Act, 1961 to the assessee.

Appeals are dismissed.

(RITU BAHRI)
JUDGE

08.02.2023

Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No