

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 90/Ind/2023
(Assessment Year: 2021-22)

Aarambh Foundation 220 Saket Nagar Saket Nagar Indore (Appellant / Assessee)	vs.	CIT-(Exemption) Bhopal (Respondent/ Revenue)
PAN: AABAA 0609F		
Assessee by	Shri Kunal Agrawal AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.12.2023	
Date of Pronouncement	04.01.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Assessee is directed against the order dated 20.10.2022 of Commissioner of Income Tax (Exemption), passed u/s 12AB of the Act whereby the application of the assessee for registration u/s 12AB was rejected.

2. There is a delay of 93 days in filing the present appeal. The assessee has filed an application for condonation of delay which is supported by the affidavit of the assessee. Ld.AR of the assessee has

submitted that due to inadvertence the assessee after receiving impugned order kept the same in almirah and forgot to discuss the same with the counsel for filing the appeal. Later on when the assessee has again checked the E-mail and noticed the same order it was realized that the appeal against the impugned order is yet to be filed and accordingly the assessee took immediate steps for filing the appeal. Thus, Ld. AR has submitted that it is bona fide mistake on the part of the assessee for not taking steps within the period of limitation for filing the appeal. He has contended that the assessee has not got any benefit or achieved any purpose due to the delay in filing the present appeal. Hence Ld. AR has submitted that in the interest of justice the delay in filing the appeal may be condoned and appeal of the assessee be heard and adjudicated on merits.

3. On the other hand, ld. DR has raised no serious objection against the contention of delay and left the matter to the wisdom of the bench.

4. Having considered rival submissions and careful perusal of the contents of the application for condonation of delay as well as affidavit filed by the assessee we find that the assessee has explained the cause of delay as inadvertence and bonafide mistake for not filing the appeal in time and therefore, the conduct of the assessee is found to be honest in explaining the cause of delay. Further this is an appeal against rejection of application for registration u/s 12AB of the Act and there is no possibility of taking

any advantage or achieving any hidden purpose by filing the appeal belatedly. Thus, the explanation of the assessee for delay is found to be bona fide and not to cover any ulterior purpose or an attempt to save the limitation in under head way. The assessee has fairly explained the reasons and has not acted in malafide therefore a liberal construction of sufficient cause is required to be made. It is settled proposition on the point that whenever substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred by taking a justice oriented approach while deciding the matter of condonation of delay. Accordingly in the facts and circumstances of the case we are satisfied that the assessee has explained a reasonable and sufficient cause for not filing the appeal within the period of limitation and hence, the delay of 93 days in filing the appeal is condoned. The assessee has raised following grounds of appeal:

“1. The Ld. CIT grossly erred in issuing order rejecting application for registration under section 12AB of the Act.

2. The Ld. CIT grossly erred on facts and also in law by considering charitable activities as commercial activities and rejecting application for registration under section 12AB of the Act.

3. The Ld. CIT grossly erred on facts and also in law for not considering submission filed, law and information/ documents already on record and rejecting application for registration under section 12AB of the Act.”

5. Ld. AR of the assessee has submitted that the assessee society has been constituted to carry on the charitable objects like Animal Welfare including medical treatment, feeding to poor, Annadaan,

Old age home, medical checkup for needy, spreading education and faith for all Gods and Gooddes Environmental awareness etc. He has referred to the memorandum of association at page no. 42 & 43 of the paper book and submitted that objects of the assessee society are charitable in nature which includes various charitable activities for Animal, poor and destitute, spreading of education, awareness for environment, plantation, help to the differently ables persons and various cultural activities etc. The assessee filed the application for registration u/s 12AA of the Act and also produced require details and documentary evidences being part of the paper book and specifically ledger accounts along with income and expenditure account for the assessment year 2019-20 to 2021-22. The CIT(E) also got spot verification of the assessee wherein no adverse or incriminating fact was found or gathered but the activities carried on by the assessee society were acknowledged. The CIT(E) has committed an error and concluded that most of the activities carried out by the assessee society are commercial in nature because of the reason that the assessee is taking some charges against the services. He has pointed out that the assessee has charged very nominal amounts in order to recover to its cost and the same is evident from the income and expenditure account for A.Y.2019-20 to 2021-22. He has referred to the details at page no.117 to 120 of the paper book and submitted that it shows the net surplus for these three years is very normal and then less than the 15% exemption provided u/s 11 of the Act for utilization of the income for charitable purpose whereas the assessee has even

applied this surplus amount for achieving the objects of the assessee and therefore, it is not a profit but the surplus generated was again applied for charitable activities and objects of the assessee society. Ld. AR has thus submitted that the CIT(E) applied proviso to section 2(15) by considering the activities of the assessee society as other objects of the Public Utility falling in the last limb of section 2(15) whereas the activities and objects of the assessee society are specifically described and falling in the charitable activities/purpose which includes relief to the poor, education, medical relief preservation of environment, objects of artistic or historic interest etc. Thus the proviso to section 2(15) is not applicable in the case of the assessee. Even otherwise the proviso can be invoked only when the activities of the assessee are in the nature of advancing general public utility and that itself would not lead to the conclusion that the assessee is engaged in any trade commerce or business or provide services in relation thereto for any consideration.

5.1 He has relied upon the judgment of Hon'ble Supreme Court in caw of ACIT(E) vs. Ahmedabad Urban Development Authority 143 taxmann 278 and submitted that the Hon'ble Supreme Court in para 253 while summarizing the conclusion has observed that in course of achieving object of general public utility, the concerned trust or society can carry out trade, business or provide services in relation thereto for consideration provided the activities of trade commerce or business are connected/actually carried out to the

achievement of its objects of general public utility and the receipt of such business or commerce activity or service in relation thereto does not exceed the quantified limit as prescribed from time to time and presently 20% of the total receipts of the previous year. He has the referred to para 172 & 173 of the judgment and submitted that the Hon'ble Supreme Court has specifically observed that for achieving general public utility object if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted if the quantum of such profits do not exceed 20% of its overall receipts. Thus, Ld. AR has submitted that small charging fee to cover costs of the charitable activities and services provided by the assessee do not amount to carrying an activity of trade and commerce. He has then relied upon the decision of Coordinate Bench of this Tribunal dated 20.12.2021 in case of CRISP Society vs. DCIT in ITANo.297 & 298/Ind/2020 wherein the Tribunal has held that the trust or education institute is running with a nominal fee to cover cost on account of its activities that cannot be held to be a commercial activity. Ld. AR has submitted that the CIT(E) while rejected application of the assessee as relied upon judgment of Hon'ble Supreme Court in case of M/s New Noble Education Society vs. CCIT 143 taxmann.com 276 however the said judgment is on the scope of inquiry and examination by the CIT(E) and not on the point of trade and commerce activities. Thus, Ld. AR has submitted that the impugned order of the CIT(E) is not sustainable

in law and liable to set aside and the assessee be granted registration u/s 12AB of the Act.

6. On the other hand, Ld. DR has submitted that the CIT(E) has conducted physical verification report to verify the objects and activities of the assessee. In report of the spot verification of Ld. CIT(E) vide letter dated 17.10.2022 has pointed out that assessee is engaged in the consultancy services, sale of training material, various training seminars & workshops on payment basis, running computer classes and women stitching classes Orbit Mall, A.B. Road Indore. The amounts received by the assessee on various heads also clear from the audit report as well as ledger account submitted by the assessee therefore, it was held that activities carried out by the assessee are commercial in nature. He has relied upon impugned order of the CIT(A).

7. We have considered rival submissions as well as relevant material on record. The Assesse society is registered under M.P. Society Registration Act, 1973 vide dated 04.08.2003. As per Momorandum of Association of the assessee society the objects of the society are given in para 3 as under:

“3.1 To work in the field of society service, adult education women & child and services for the benefit of elderly people of the society.

3.2 To work in the Field of animal care and welfare, providing medical facilities to mainly stray animals

3.3 To work in the field of education, literature, photography, and all forms of fine arts.

3.4 To work in the field of science including Medical, Engineering, and Environmental research, Education and Training etc.

3.5 To work in the field of environmental protection and up gradation, development and conservation of water and rain-water Harvesting and recharging works in rural and urban areas and other rural development works.

3.6 To work in the field of agro based activities and solar energy.

3.7 To run all types of awareness, IE.C. activities, to organize trainings, camps etc related to various programmes in Rural, Semi Urban and Urban areas.

3.8 To run activities for upliftment of Social & Economic status and Health & hygiene status of people including Women & Child.

3.9 To run activities related to protection and upgradation of Environment, Ecological balance and Soil and Water Conservation.

3:10 To work in the field of Handicrafts, Handlooms, Fabric printing of all types e.g. Batik, Hand block Printing. Vegetable dyes printing, Chemical printing, all types of Paintings Embroide & Stitching works Including R&D and Training etc.”

7.1 The above objects of the assessee society are clearly falling in the specific charitable purpose provided in section 2(15) of the Act such as the relief to poor, education, medical relief, preservation of environment, objects of artistic or historic interest etc. Therefore, the main objects of the assessee are in the nature of providing relief to the poor, needy persons and particularly adult education to women and children. The next object of the assessee is to work in the field of animal care and welfare, providing medical facilities to mainly stray animals. And then work in the field of science including medical, engineering and environmental research,

education and training etc. Therefore, providing medical relief and education as well as help to the poor are in the category of charitable activities falling in the first part/limb of section 2(15) and not in the last limb being advancement of any other object of General Public Utility. The spot verification got done by the CIT(E) has confirmed the activities carried out by the assessee and it is not the finding of the CIT(E) that these activities are not carried out for achieving objects of the assessee. It is settled proposition that at the time of considering application for registration u/s 12AB the Commissioner has to satisfy himself from the record/documents as well as information provided by the applicant about the genuineness of the activities of trust or institution as well as about the objects of the trust or institutions being charitable in nature. The CIT(E) has not disputed the genuineness of the activities of the assessee and also not doubted the activity and evidence which was produced by the assessee comparison of details as well as audited accounts for preceding three assessment years. Even the objects of the assessee society are not held as not charitable therefore, the twin conditions as required u/s 12AB are satisfied that the assessee's activities are genuine and the objects of the assessee society are charitable in nature.

7.2 The CIT(E) has rejected the application on the ground that activities of the assessee society are commercial in nature because the assessee is charging against the services provided by it. The assessee has produced the details of the revenue by way of charging

against services and extract of the income and expenditure account specifically total receipts, net surplus and percentage which are as under:

A.Y.	Total receipts	Net surplus	Percentage
2019-20	6,04,925/-	38,700/-	6.40%
2020-21	7,34,898/-	66,472/-	9.05%
2021-22	10,10,225/-	1,33,300/-	13.02%

Therefore, if the assessee is charging amount only to recover the cost incurred for the charitable activities and for providing the training to the poor against normal charge and the said receipts are again applied by the assessee for achieving its overall objects of providing medical relief to the poor and stray animals then this nominal charges recovered by the assessee will not lead to the conclusion that activities of the assessee society are in the nature of trade and commerce. Further when the objects of the assessee society itself are charitable in nature then generating income from the activities and application of the same are all subject matter of the assessment. The Hon'ble Supreme Court in case of ACIT(E) vs. Ahmedabad Urban Development Authority (supra) has observed in para no.172 & 173 as under:

"172. Yet another manner of looking at the definition together with Sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts.

173. It may be useful to conclude this section on interpretation with some illustrations. The example of Gandhi Peace Foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through museums and exhibitions and publishing his works, for nominal cost, ipso facto is not business. Likewise, providing access to low-cost hostels to weaker segments of society, where the fee or charges recovered cover the costs (including administrative expenditure) plus nominal mark up; or renting marriage halls for low amounts, again with a fee meant to cover costs; or blood bank services, again with fee to cover costs, are not activities in the nature of business. Yet, when the entity concerned charges substantial amounts- over and above the cost it incurs for doing the same work, or work which is part of its object (i.e., publishing an expensive coffee table book on Gandhi, or in the case of the marriage hall, charging significant amounts from those who can afford to pay, by providing extra services, far above the cost-plus nominal markup) such activities are in the nature of trade, commerce, business or service in relation to them. In such case, the receipts from such latter kind of activities where higher amounts are charged, should not exceed the limit indicated by proviso (ii) to Section 2(15)."

7.3. Therefore, in cases for advancement of any other object of general public utility if the institution involves itself in the activities that entail charging amounts only at normal cost or marginal mark up over cost and the quantum of such profits do not exceed 20% of its overall receipts then it will not be treated as the activities are in the nature of trade and commerce attracting the proviso to section 2(15) of the Act. The Hon'ble Supreme Court while summarising the conclusion in para 253 has again reiterated this view in sub para (A) as under:

"A. General test under Section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration");

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected (“actual carrying out...” inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be “trade, commerce, or business” or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of “cess, or fee, or any other consideration” towards “trade, commerce or business”. In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4. Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.”

7.4 Thus, if the services or goods provided on cost or nominal mark-up basis the same would normally be excluded from the mischief of trade, commerce, or business and therefore, this itself

cannot be a ground to treat the activities of the assessee in the nature of trade, commerce or business when the objects of the assessee are charitable in nature and these activities are carried out for achieving objects of the assessee society. The CIT(E) has given the reasons for rejecting application in para 4 of impugned order as under:

“4.To verify the objects and activities of the assessee, a physical verification report was also called for by way of spot verification from ITO (Exemption), Indore vide this office letter dated 07.10.2022. The ITO (Exemption), Indore vide its letter dated 17.10.2022 has submitted Verification Report alongwith Inspector's Report on requisition points.

In verification report, it is mentioned that the assessee is engaged in Consultancy services, Sales of Training material, various types of workshops and seminars on payment basis, running computer classes & women stitching classes in Orbit Mall A B Road Indore.

The amount received by the assessee on various heads are also clear from the audit report and copy of ledgers submitted by the assessee. The total receipts/income have been generated by the assessee out of these activities.

It is also clear that most of the activities carried out by the assessee are commercial in nature which cannot be treated as charitable. Hence, the assessee is found to be engaged in commercial activities.

Further, notwithstanding to the above, if the activities of the assessee are treated as incidental commercial activities to the main charitable activities, then also there is violation of proviso to Section 2(15) of the Act, which is as under;

"2(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless-

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year,"

In view of the above proviso it is clear that the commercial receipts of the assessee are far more than 20% of total receipts during the years and the assessee does not come under the purview of section 2(15) of the Act for charitable purposes.

Recently THE SUPREME COURT OF INDIA in CIVIL APPEAL NO. 3795 OF 2014 M/S NEW NOBLE EDUCATIONAL SOCIETY APPELLANT(S) VERSUS THE CHIEF COMMISSIONER OF INCOME TAX 1 AND ANR. RESPONDENT(S), held that-

"While considering applications for approval, the Commissioner or the concerned authority as the case may be is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure."

7.5 Therefore, the entire thrust of the CIT(E) is regarding services provided by the assessee against charges without even considering the fact whether the charges are nominal or reasonable mark up over cost that too is also applied for charitable purpose or achieving charitable objects of the assessee. Further the conclusion of CIT(E) that the commercial receipts for assessee are more than 20% of the total receipt is contrary to the fact that the assessee is not doing any trade or business but is providing the services for achievement of charitable objects and in that process nominal fee is charged which is also not more than 20% of the total receipts of the assessee as manifest from the details given in the forgoing part of this order. The Co-ordinate Bench of this Tribunal in case of Crisp

Society vs. DCIT-Exemption (supra) has considered this aspect of nature of the activities of the assessee and decided this issue in para 3 to 5.1 as under:

“3. The assessee is registered under S.12AA of the Act and assessee has claimed exemption in the return under S.11 of the Act. The assessee is a trust carrying out to develop availability of skilled manpower in the state, running of short term courses in technical field for enhancement of technical competencies of students etc. From the memorandum of association of the assessee that its aims would be as under:

“a) Enhancing the technical competencies of the intended target groups i.e. polytechnic students and staff, job seeking diploma holders and other technical personnel.

b) Providing consultancy and information resources to promote and encourage performance of technical personnel.”

3.1 From the Income and Expenditure account of the assessee that the major receipts/income of the assessee is from the following:

“a) Consultancy receipts from different govt./semi govt. departments/institutions such as MANIT, NHDC Limited, Bhaskar foundation etc.

b) Consultancy receipts from Department of Technical Education for development of MIS Software application

c) TCPC Job Work receipts from different organizations

d) Registration and Annual subscription fees

e) Consultancy receipts from CRISP online services”

3.2 It is seen from the activities of the assessee and the income and expenditure account itself that most of the receipts are from providing consultancy services to various government, semi-government and private organizations. Apart from the consultancy services, the assessee has also carried out job work for different institutions which is reflected from the income and expenditure account itself. The society has entered into agreements/contracts with institutions such as Rajiv Gandhi Technical University for providing them different services related to admission/registration of students, issuance of their ID Cards etc. The assessee society is charging a fix sum per student/percentage of fees for its services. It is found that the several activities carried out by the assessee society that it is not at all established for imparting education. The activities of the society itself show in no uncertain terms that the same

are not in the nature of imparting education. The various activities discussed above such as design and development of website or MIS software application, different other consultancy services, job work and the services charging registration and annual subscription fees can never be termed as education u/s 2(15) of the Act. The learned AO did not agree with the activities which can fall under section 2(15) of the Act and held that the assessee is also charging handsome registration and subscription fees for providing its services. All these activities of the assessee are undoubtedly in the nature of commercial activities. In the assessee's case, the advancement of any other object of general public utility is not a charitable purpose as per the proviso to Section 2(15) of the Act and held that assessee is not entitled for exemption under S.11 of the Act for the year under consideration as per provision of Section 13(8) of the Act. The AO made an addition of Rs.1,50,21,153/-.

4. Thereafter, the assessee preferred first statutory appeal before the CIT(A) who dismissed the appeal of the assessee.

5. We have gone through the relevant records and impugned order. The learned AR argued that its activities are non-commercial and wrongly denied benefit of Section 11 of the Act. The learned AR relied upon on following cases:

- i. *DIT(E) vs. National Safety Council* 305 ITR 257 (Bom),
- ii. *Saurashtra Education Foundation vs. CIT* 273 ITR 139,
- iii. *Harnam Singh Harbans Kaur vs. Director of Income Tax (Exemption), Delhi* [2012] 17 taxmann.com 103 (Delhi Tribunal),
- iv. *CIT(A) vs. Gujarat Maritime Board*: 2007 14 SCC 704,
- v. *CIT vs. Ahmedabad Rana Caste Assn.* (1982) 2 SCC 542,
- vi. *CIT vs. Andhra Chamber of Commerce* (1965) 55 ITR 722 (SC),
- vii. *Radhasoami Satsang vs. CIT* 193 ITR 321,
- viii. *Gujarat State Co-operative Union* 195 ITR 279 (1992)
- ix. *Ecumenical Christian Centre* 139 ITR 226 (1983).

5.1 In these matters, lower authorities held that assessee's activities are commercial in nature. The trust or education institute is running with a nominal fee to cover cost on account of its activities that cannot be held to be a commercial activity. Sometime trust or the other institution does not get complete donations either from public or from the government. In that case, if those trusts or education institutes charging nominal amount of fee in order to carrying out its activities in a smoother way, this cannot be called a part of commercial activities. Therefore, respectfully following the aforesaid judgments and as assessee is imparting education and training to students and public, its activities have not been doubted by the lower authorities. Therefore, in such circumstances, benefit of Section 11 of the Act cannot be denied."

Accordingly in the facts and circumstances of the case as discussed above we set aside the impugned order of the CIT(E) and direct the CIT(E) to grant registration u/s 12AB of the Act to the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 04.01.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 04 .01.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore