

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

(THROUGH VIDEO CONFERENCE)

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

ITA No.9333/Del./2019

Bar Council of Delhi,
2/6, Siri Fort Institutional Area,
Andrews Ganj, S.O. Shahpur Jat,
New Delhi – 110 049.

vs. CIT (Exemption),
New Delhi.

(PAN : AAGFB5063Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri C.S. Agarwal, Senior Advocate
Mrs. Prem Lata Bansal, Senior Advocate
Shri R.P. Mall, Advocate
Shri Madhur Agarwal, Advocate
Shri Divyanshu Agarwal, Advocate

REVENUE BY : Shri Sanjay Goel, CIT DR

Date of Hearing : 24.06.2020

Date of Order : 02.07.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Bar Council of Delhi (hereinafter referred to as the 'appellant') by filing the present appeal sought to set aside the impugned order dated 27.09.2019 passed by the Commissioner of Income - tax (Exemption), New Delhi on the grounds inter alia that :-

“1. That the Ld. CIT has erred in rejecting the application filed by Bar Council of Delhi seeking registration u/s 12A (a) of the Income Tax Act.

2. That the Ld. CIT has erred in holding that the provisions of section 12AA are not applicable to Bar Council of Delhi.

3. That the Ld. CIT has erred in holding that the genuineness of the activities of the Council could not be ascertained when the accounts of the Council were very much before the Ld. Commissioner.

4. That the Ld. CIT has erred in denying the approval u/s 80G of the Act holding that the charitable activities of the Council could not be substantiated, however activities of the Council were apparent from the memorandum and accounts of the Council.”

2. Assessee by filing separate application sought to condone the delay of 2 days in filing the appeal before the Tribunal. Keeping in view the fact that due to sudden sickness of Shri Ram Avtar, Advocate, engaged as counsel in this case, who remained admitted in the hospital, which is a reasonable cause, the delay of 2 days in filing the present appeal is hereby condoned.

3. Briefly stated the facts necessary for adjudication of the issue at hand are : Application dated 15.03.2019 in Form No.10A and 10G moved by the appellant seeking registration under section 12AA of the Income-tax Act, 1961 (for short ‘the Act’) were rejected by the Id. CIT (E) on the grounds inter alia that since the appellant has failed to furnish balance sheet and income & expenditure account for the FY 2018-19 despite called for, the

conditions laid down u/s 12AA are not satisfied and that the name of the Bar Council of Delhi does not appear in approved association/institution notified by the Government thus not a charitable institution within the meaning of section 2(15) of the Act.

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

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. Undisputedly, appellant has been established with object to control, supervise, regulate or encouragement of the profession of law for which there is a separate provision in the Act as contained u/s 10(23A) of the Act for exempting its income which shall not be included in its total income. Ld. CIT (E) proceeded to reject the application u/s 12AA and consequent exemption u/s 80G of the Act on two grounds inter alia that (i) in the absence of financials of FY 2018-19, the genuineness of the activities of the appellant could not be established; and (ii) that the appellant is not a notified institution by the Government of India.

7. Ld. AR for the appellant challenging the impugned order contended inter alia that at the time of grant of registration, the Id. CIT (E) is only to satisfy himself about the object of the trust/ institution and genuineness of its activities that the appellant is a statutory institution having been established u/s 3(1)(f) of the Finance Act, 1961 and is duly notified by the Government and relied upon the decisions rendered by *Hon'ble Supreme Court in the cases of CIT vs. Bar Council of Maharashtra cited as 130 ITR 28 & American Hotel and Lodging Association Educational Institute vs. CBDT & Ors. 301 ITR 86, Hon'ble Bombay High court in Bar Council of Maharashtra vs. CIT reported in 126 ITR 27, Hon'ble Kerala High Court in Sree Anjaneya Medical Trust vs. CIT 382 ITR 399 and Hon'ble Punjab & Haryana High Court in CIT vs. Baba Kartar Singh Dukki Educational trust (2014) 221 taxman 493 (P&H).*

8. Ld. DR for the Revenue supported the order passed by the Id. CIT (E) by contending inter alia that in order to find out real purpose of the trust/institution, the basic financial statements of FY 2018-19 was required which the appellant has not furnished; that one more opportunity be given to the appellant to furnish all the necessary documents to be examined by Id. CIT (E) and relied upon the judgments rendered by Hon'ble Apex Court as well as

various High Courts viz. *CIT vs. Wilsonia College Society (2017-TIOL-1051-HC-ALL-IT)*, *Jammu Development Authority vs. UOI (2014-TIOL-115-SC-IT)*, *CIT vs. National Institute of Aeronautical Engineering Educational Society 315 ITR 428 (Uttaranchal)*, *CIT vs. A.R. Trust 402 ITR 161 (Allahabad)*, *Shri Nathji Education Foundation vs. CIT ITA No.809/LKW/2014*, *Self Employers Service Society vs. CIT 247 ITR 18 (Kerala)* and *Kirti Chand Tarawati Ch. Trust vs. DIT 232 ITR 11 (Delhi)*.

9. First of all, ld. AR for the appellant drew our attention towards Notification dated 09.08.1966 available at page 109 of the paper book 2, issued by Ministry of Finance, Government of India, granting approval to the appellant w.e.f 22.01.1962 in terms of clause (ii) of Proviso to section 10(23A) of the Act. The appellant also brought on record copy of Notification (supra) granting approval to the appellant vide communication dated 24.12.2019 issued by Ministry of Finance, Government of India, available at pages 176 to 187 of the paper book. Bare perusal of the Notification (supra) goes to prove that ld. CIT (E) has failed to take note of the fact that vide Notification (supra), the appellant has been duly approved/notified institution for the purpose of section 10(23) of the Act.

10. Now, the next question arises for determination in this case is :-

“as to whether activities of the appellant – Bar Council/ professional body which is to control, supervise and regulate profession is not a charitable within the meaning of definition contained u/s 2(15) of the Act as has been held by the ld. CIT(E)?

11. Hon’ble Apex Court in case of *CIT vs. Bar Council of Maharashtra cited as 130 ITR 28*, affirming the judgment of Hon’ble Bombay High Court in case of *Bar Council of Maharashtra vs. CIT reported in 126 ITR 27*, held that primary and dominant purpose of an institution like the appellant is the advancement of the object of general public utility within the meaning of section 2(15) of the Act and as such, the income from securities held by the appellant would be exempt from any tax liability u/s 11 of the Act. Operative part of the judgment (supra) is extracted for ready perusal as under :-

“ In other words, the dominant purpose of a State Bar Council as reflected by the various obligatory functions is to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the poor while the benefit accruing to the lawyer members is incidental. It is true that sub s. (2) provides that a State Bar Council may constitute one or more funds for the purpose of giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates ; but it is an optional or discretionary function to be undertaken by the council. Apart from that, admittedly, the assessee council has not so far constituted any such fund for the purpose specified in the instant case. As and when such a fund is constituted, a question may arise for consideration and the court may have to decide whether the function so undertaken by a State Bar Council has become the dominant purpose for which that council is operating. Having regard to the preamble of the Act and the

nature of the various obligatory functions including the one under cl. (d) enjoined upon every State Bar Council under s. 6(1) of the Act, it is clear that the primary or dominant purpose of an institution like the assessee council is the advancement of the object of general public utility within the meaning of s. 2(15) of the Act, and as such the income from securities held by the assessee council would be exempt from any tax liability under s. 11 of the Act.”

12. Now, the next question arises for determination in this case is :-

“as to whether the ld. CIT (E) is empowered to reject the registration and consequent exemption u/s 12AA and 80G of the Act due to non-furnishing of financials of FY 2018-19?”

13. It is settled proposition of law that for the purpose of registration u/s 12AA of the Act, the threshold condition i.e. genuineness of the activities is to be decided with the object clause of institution. In other words, when the object of the institution, the appellant in this case, is proved to be charitable within the meaning of section 2(15) of the Act as has been held by Hon’ble Apex Court in the identical facts and circumstances in a case of *Bar Council of Maharashtra* (supra), further scrutiny of the financials of the appellant are not required because it is otherwise within the purview of AO to examine at the time of assessment if the appellant is entitled to exemption u/s 11 of the Act.

14. Hon’ble Kerala High Court in *Sree Anjaneya Medical Trust vs. CIT 382 ITR 399* held that, “no examination of modus of the

application of the funds of the trustee committee or an examination of the ethical background of its settler is called for while considering an application for registration. The stage for consideration of the relevance of the object of the assessee and the application of its funds arises at the time of assessment.”

15. Hon’ble Apex Court in case of ***CIT vs. Andhra Chamber of Commerce – (1965) 55 ITR 722 (SC)*** held that an object beneficial to a section of the public was an object of general public utility, as in the case of appellant, which is working to control, supervise and regulate a profession for the benefit of lawyers community at large.

Operative part of the judgment is as under :-

“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.”

16. Hon’ble Delhi High Court in case of ***DIT vs. Foundation of Ophthalmic & Optometry Research Education Centre 355 ITR 361 (Del.)*** has held to the extent that even if there is no commencement of charitable activities, registration u/s 12AA of the Act cannot be denied because the statute does not prohibit or

enjoin the Commissioner from registering a trust solely based upon its objects without any activity in case of a newly registered trust.

17. In view of the matter, we are of the considered view that the Id. CIT(E) has erred in declining the registration u/s 12AA of the Act on the ground that financials of FY 2018-19 have not been furnished by the appellant.

18. Furthermore, cursory findings returned by the Id. CIT (E) in the impugned order that, “*the provisions of section 11 to 13 specifically section 12AA are not applicable to such organisation or institution*”, is not correct interpretation of law as Hon’ble Apex Court in the judgment cited as *CIT vs. Bar Council of Maharashtra* (supra) held that two provisions viz. section 11 & section 10(23A) are not mutually exclusive but operated under different circumstances. So, merely on the basis of the fact that income of the appellant exempted u/s 10(23A) is not a bar to claim deduction in assessment u/s 11 of the Act, as such income is to be excluded u/s 11 of the Act.

19. Furthermore, the appellant had furnished financials of FYs 2016-17 & 2017-18 but the Id. CIT (E), without making any adverse findings on the same, proceeded to reject the registration on the ground that financials of FY 2018-19 have not been furnished. Thought it is not a requirement of law to furnish the

