

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC-3", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 3006/DEL/2016	
	A.Y. : 2012-13	
SHRI DEVLOK TIRATH YATRA SAMITI, 233, SUBHASH NAGAR, BANKHANDI, RISHIKESH, UTTARAKHAND (PAN: AAHTS4866P)	VS.	INCOME TAX OFFICER (EXEMPTIONS), AAYAKAR BHAWAN, DEHRADUN,
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Somil Agarwal, Adv.
Department by : Sh. Anil Kumar Sharma, Sr. DR

ORDER

Assessee has filed this Appeal against the impugned Order dated 24.2.2016 passed by the Ld. CIT(A), Dehradun on the following grounds:-

1. That in facts and circumstances of the case, the return of income was filed on 28.9.2012 declaring NIL income as the exemption u/s. 12AA was allowed to the appellant society vide order dated 10.10.2008, the said exemption was withdrawn vide order dated 26.3.2014 to disallow the claim with retrospective effect is unjustified and bad at law.
2. That in facts and circumstances of the case, withdrawal of exemption after expiry of two years of the accounting period is unwarranted and uncalled for.

3. That in facts and circumstances of the case, the ITO and CIT(A) has not brought on record any new fresh finding for not accepting the exemption u/s. 11 of the I.T. Act.
4. That in facts and circumstances of the case, the addition of Rs. 6,34,440/- is unfair and erroneous.
5. That in facts and circumstances of the case, the society be granted exemption u/s. 11 of the I.T. Act.
6. The due relief in law may please be granted and returned income may please be accepted.
7. That in fact and circumstance of the case, appellant be permitted to add or delete any grounds of appeal.

2. The brief facts of the case are that the assessee society registered under the Society Registration Act with the Registrar of Societies, Uttarakhand vide Registration No. 11/2008-2009 dated 11.3.2008 for a period upto 3.4.2013. The assessee was registered u/s. 12AA with the CIT, Dehradun vide order dated 10.10.2008 which has since been withdrawn by the Ld. CIT, Dehradun vide her order dated 26.3.2013. The return of income for assessment year 2012-13 was filed by the assessee on 28.9.2012 declaring NIL income. During the course of assessment proceedings, from perusal of the Smritipatra filed by the assessee, the AO observed that assessee does not have a remotest semblance of a charitable society, there is no scope of such activities. Therefore, he asked the assessee to justify his claim. In reponse to the same, assessee submitted his reply, which was considered by the AO, but AO did not find

the same satisfactory and convincing, hence, he held that the society is not working as per aims and objects as mentioned in Smriti Patra and not covered as exemption u/s. 11 of the I.T. Act and was squarely hit by the amended provisions of section 2(15) of the I.T. Act, 1961. Accordingly, AO vide his order dated 13.11.2014 passed u/s. 143(3) of the I.T. Act, 1961 assessed the income of the assessee at Rs. 6,34,440/-

3. Against the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 24.2.2016 has dismissed the appeal of the assessee by observing that there is a material change in the situation since the passing of the appeal order in AY 2009-10 by his predecessor which has subsequently being affirmed by the ITAT vide its order dated 29.10.2014. This material difference is that the CIT, Dehradun vide her order dated 26.3.2013 has withdrawn the registration granted to the assessee u/s. 12AA of the I.T. Act, 1961. While withdrawing the registration, the CIT has recorded a finding that the assessee is operating like a commercial tour operator and there is no element of charitable activity involved in the assessee activities. Accordingly, since the registration u/s. 12AA issued vide C.No. 40/12(1)/Registration/Haridwar/2008-09 / Tech. 11321-324 dated 8.10.2008 stands withdrawn by the CIT, the assessee cannot be granted the benefits of exemption u/s. 11 of the I.T. Act, 1961. In the circumstances, the surplus in its accounts has to be taxed as business profits. The addition of Rs. 6,01,755/- made on this account was therefore, confirmed vide Ld. CIT(A)'s order dated 24.2.2016 and on the

issue of disallowance of expenses on account of valuation of section 40A(3) amounting to Rs. 32,685/-, Id. CIT(A) has observed that the assessee has not filed any submission either before the AO or before the undersigned to explain the reasons for the infringement of section 40A(3), hence, Id. CIT(A) has confirmed this addition of Rs. 32685/- and dismiss the ground.

4. At the time of hearing Id. Counsel of the assessee has stated that the ITAT, Delhi Bench vide its order dated 25.10.2016 in assessee's own in ITA No. 2425/Del/2013 has restored the registration u/s. 12AA of the I.T. Act, 1961, hence, the assessee is eligible for benefit of exemption u/s. 11 of the I.T. Act, 1961 and addition made on this account of Rs. 6,01,755/- needs to be deleted. For ready reference he filed the copy of the Tribunal's order dated 25.10.2016.

5. On the other hand, Id. DR relied upon the orders of the authorities below.

6. I have heard both the parties and perused the records especially. From the records, I find that there Registry has issued Defect Notice pointing out that the appeal is prima facie time barred by 12 days. In this behalf the assessee has filed the Application dated 23.5.2016 for condonation of delay which is placed on record. I have perused the Application for condonation of delay and of the view that the reasons mentioned in the application for condonation of delay is quite genuine, hence, the delay is condoned. On merits, I find that addition of Rs.

6,01,755/- is confirmed by the Ld. CIT(A) solely on the basis of withdrawal of registration u/s. 12AA vide order dated 8.10.2008 passed by the CIT, Dehradun, as a result the assessee cannot be granted the benefits of exemption u/s. 11 of the I.T. Act and addition in dispute was confirmed. However, on going through the copy of the order of the Tribunal dated 25.10.2016 in assessee's own case passed in ITA No. 2425/Del/2013 wherein, the Tribunal has set aside the order of the Ld. CIT and restored the registration u/s. 12AA of the I.T. Act. The relevant para no. 7 to 8 at page no. 7 to 10 of the Tribunal's order dated 25.10.2016 are reproduced hereunder:-

"7. We have heard both the parties and perused the records. We find that only effective issue in the present appeal is against the cancellation of registration by the CIT by invoking the powers u/s. 12AA(3) on the ground that assessee's activity of organizing tours to various religious places was on commercial lines. We note that the registration u/s. 12AA was granted by CIT on 10.10.2008 on the basis of the objects reproduced at page no. 1 of the impugned order according to which assessee was to conduct pilgrimage tours to elderly people for spread of religious and charitable feelings and teachings, running medical hospital etc. However, the assessee was carrying out the activities as per the terms of the charitable objects. It was further noted

that when registration was granted u/s. 12AA to the assessee on the basis of objects and activities as mentioned at page no. 1 of the impugned order and these very objects and activities are being carried out by the assessee, therefore, registration cannot be cancelled. We further note that the AO in his assessment order dated 22.1.2016 relevant for the AY 2013-14 passed u/s. 143(3) of the I.T. Act, 1961 vide para no. 1 has observed that the assessee is engaged in the activity of organizing tours to religious and historical places in India for senior citizens. The society is purely religious and works for the charitable purposes. He further observed that if the society would have been carrying on the business activity for the motive of profit then it would have conducted a tour not to the religious place but to the places of fun and enjoyment not the religious temples but to the club and pubs, not in a second class third sleeper but luxury AC coaches would have been hired and instead of giving the knowledge of incredible India it would have given the lectures regarding dances and beaches. We find that it is a settled law when the registration was granted u/s. 12AA on the basis of objects and activities (mentioned at page no. 1 of the impugned order) and

these very objects and activities are being carried out by the assessee, registration cannot be cancelled as held by the Coordinate Bench decision in the case of Sharda Educational Trust vs. CIT (Central) 147 ITD 271, 107 DTR 201 (Agra Trib) dated 24.5.2013.

7.1 We further find that registration cannot be cancelled by re-examination of the objects on the basis of which registration was originally granted and CIT does not have power of review as held in Chaturvedi Har Prasad Educational Society vs. CIT 134 TTJ 781 (Lucknow) dated 30.8.2010.

7.2 We also note that under section 12AA(3), the registration can be cancelled only on two grounds i.e. if the activities are not genuine or are not being carried out in accordance with the objects. However, in assessee's case activity of conducting pilgrimage tours is in accordance with the objects and activities are not in-genuine and therefore how could the registration be cancelled and more so when there is no such finding at all in the impugned order to the above effect and only objection of the Ld. CIT was that the assessee was pursuing the said objects on commercial line – a ground which is not permissible ground u/s. 12AA(3) as

held in CIT vs. Sarvodaya Ilakkiya Pannai 343 ITR 300 (Madras High Court).

7.3 We further find that Ld. CIT observed that the assessee is charging a fee for the tour and hence came to conclusion that the assessee basically a tour operator. However, in August, 2008 when the journey was organized out of 294 people who undertook the journey, 243 people paid and the remaining 51 were taken free of cost. Hence, there is no profit motive.

7.4. We further find that second objection of the Ld. CIT was relating to charging of fee from the passengers of Tirth Yatra's. However, on receiving of a token amount of Rs. 1000/- any person from general public can enroll for the Yatra. The said person becomes a temporary member of the society for the period of the Yatra. The total money charged from the individuals for the yatra is Rs. 21,500/- for a period of 31 days, which comes to less than Rs. 700/- daily. This includes provision of train tickets, bus hire, lodging charges, refreshments and three freshly cooked meals daily. Hence, it is established that charging such minimal amount could never be compared to an activity run with profit motive.

7.5 We further note that the Ld. CIT cancelled the registration without giving the date from which cancellation of registration would take place and therefore in the absence of any date which registration would be cancelled, thus, the CIT's impugned order cannot be sustained, as held in the case of *Sharda Educational Trust vs. CIT (Central) 147 ITD 271 (Agra Trib)* dated 24.5.2013.

8. In the background of the aforesaid discussions and respectfully following the precedent, we are of the considered view that the order of the Ld. CIT in cancelling the registration is not in accordance with law. We therefore, set aside the impugned order of the Ld. CIT and restore the registration u/s. 12AA of the I.T. Act."

7. After perusing the Tribunal's order dated 25.10.2016, as aforesaid, I am of the considered view that since the Tribunal has set aside the order dated 26.3.2013 of the Ld. CIT and restored the registration u/s. 12AA of the I.T. Act, 1961, hence, the addition in dispute is not sustainable in the eyes of law, therefore, the addition confirmed by the Ld. CIT(A) of Rs. 6,01,755/- stands deleted.

8. With regard to disallowance of expenses on account of valuation of section 40A(3) amounting to Rs. 32,685/- is concerned, I find that Ld. CIT(A) has observed that the assessee has not filed any submission either before the AO or before the Ld. CIT(A) to explain the reasons for the infringement of section 40A(3), hence, the appeal on this ground was dismissed. In my considered opinion, this ground needs to be examined by the AO afresh, because no document was filed before him. Accordingly, the AO is directed to decide the issue in dispute afresh under the law, after giving adequate opportunity of being heard to the assessee. The Assessee is also directed to produce its submissions, evidences/ documents in support of its claim before the AO.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04/01/2017.

SD/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 04/01/2017

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches

