

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.K.CHOUDHRY, JUDICIAL MEMBER AND
DR. A.L.SAINI, ACCOUNTANT MEMBER

I.T.A. No. 372/Asr/2019

Assessment Year: 2019-20

Sanjhi Sikhiya Foundation,
11-12-13 E Top Floor,
Dilkusha Market, Jalandhar,
Punjab
[PAN: ABACS 7907E]

(Appellant)

Commissioner of Income Tax,
Exemptions, Chandigarh

Vs.

(Respondent)

Appellant by : Sh. Parikshit Aggarwal (Ld. C.A.)
Respondent by: Smt. Prabhjot Kaur (Ld. CIT-D.R.)

Date of hearing: 27.11.2019
Date of pronouncement: 18.02.2020

ORDER

PER N. K. CHOUDHRY, JM:

This appeal has been preferred by the Assessee against the impugned order dated 26.04.2019 passed by the Ld. CIT(E) Chandigarh u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 (hereinafter called as 'the Act') whereby the Ld. CIT(E) rejected the application of the assessee by holding as under:

"7. In response to the queries raised the counsel of the applicant company submitted the reply stating that Sanjhi Sikhiya Foundation is a charitable educational Entity working towards improvement of the educational paraphernalia of the Government Schools. The applicant has claimed that the activities qualify under the "Education" limb. The contention of the applicant is not amenable as such activities are not covered under section 2(15) of the Income Tax Act. For the purposes of claims of education the definition propounded by the Apex Court is the

*guiding factor. This contention of the applicant is not acceptable as mere gaining of knowledge or skill does not qualify for the label education in the sense of the term explained by the **Apex Court in the case of Sole Trustee Lok Sikshan Sansthan**. The sense in which the word “education” has been used in section 2(15) as interpreted by the Apex Court in the case of Sole trustee, Loka Sikshan Sansthan (101 ITR 234) is systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word “education” has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education.*

8. *With regards to the query related to furnishing of provisional; Balance Sheet, Income & expenditure A/c and Receipt & Payment A/c the counsel of the applicant company stated that the operations of the foundation have started from the month of April 2019 only. In the absence of the financial accounts and bank statement there is no way the genuineness of activities of the society can be corroborated with the stated aims and objects.*

9. *In view of all the above, it is safe to conclude that the objects of the society do not fail under the term **“Education”** as envisaged under the limbs of section 2(15) of the Income Tax Act, 1961 and in the absence of financial accounts and bank statement there is no way the genuineness of activities of the society can be corroborated with the stated aims and objects. Accordingly the present application for grant of registration u/s 12AA is hereby rejected.”*

2. On being aggrieved, the assessee is in appeal before us.
3. The Ld. AR argued in support of its case and submitted that order under challenge is unsustainable because the same is based on conjectures and surmises.
4. On the other hand, the Ld. CIT-DR relied on the impugned order and submitted that the same is well reasoned order and therefore does not require any interference by this Court.
5. Having heard the parties and perused the material available on record. The Ld. CIT(E) has held *that the contention of the assessee is not amenable as such activities are not covered u/s 2(15) of the Income*

Tax Act. Further the contention of the assessee is not acceptable as mere gaining of knowledge of skill does not qualify for the label education in the sense of the term explained by the Apex Court in the case of Sole Trustee Lok Sikshan Sansthan. Further the Ld. CIT(E) also held :

“8. With regards to the query related to furnishing of provisional; Balance Sheet, Income & expenditure A/c and Receipt & Payment A/c the counsel of the applicant company stated that the operations of the foundation have started from the month of April 2019 only. In the absence of the financial accounts and bank statement there is no way the genuineness of activities of the society can be corroborated with the stated aims and objects.”

Ultimately the Ld. CIT(E) has held *that it is safe to conclude that the objects of the society do not fall under the term “Education” as envisaged under the limbs of section 2(15) of the Income Tax Act, 1961 and in the absence of financial accounts and bank statement there is no way the genuineness of activities of the society can be corroborated with the stated aims and objects.*

5.1 In the instant case, the Ld. CIT(E) rejected the applicant's application mainly on two grounds, first relates to the objects of the society and second relates to the non-filing of financial account and bank statement which resulted into non-corroboration of genuineness of the activities of the society with the stated aims and objects.

5.2 Coming to the first ground of rejection, which relates to the objects of the society, the Ld. CIT(E) has raised the issue that the activities of the assessee are not covered u/s 2(15) of the Income Tax Act. The stated aims and objects of the company (assessee) are as under:

To provide professional development of young people to enable them to lead change initiatives and solve local problems in all types of education but not limited to primary education, adult education, continuing education, health related education, education/athletics

/sports, vocational and technical educational, all education that is critical to the economic, intellectual, physical, spiritual development of an individual, family, community and the nation by initiating, undertaking and supporting relevant projects and programs.”

As per amendment in section 2(15) of the Act, Yoga has also been included as a part of education which is also one of the object of the assessee in the instant case. If we see minutely the aims and objects of the assessee-company, then it can be inferred that the basic aims and objects of the assessee company are to provide educational, intellectual, physical and spiritual development of an individual, family, community and the nation by initiating, undertaking and supporting various projects and programs, which in our considered view, falls within the definition of education as prescribed u/s 2(15) of the Act, hence this ground of rejection is not tenable.

5.3 Now coming to the second of rejection, we observe that the assessee company has been formed and registered with the Registrar of Company on dated 11th September, 2018 and as per claim of the assessee/applicant, it has started its operation from the month of April, 2019 only, therefore it is a fact that the assessee-society is at the initial stage and hence the activities of the society cannot be expected to be at high pedestal at the initial stage.

5.4 The jurisdictional bench in the case of Care & Share Welfare Society Vs CIT(Exemptions), ITA No.404(Asr)/2019 decided on 03-09-2019, has held that where the assessee is at initial stage, then the question of genuineness did not arise. Relevant part of the order is reproduced herein below:

Although, in the open Court we had shown our inclination to remand the case with direction to the assessee to approach the Ld. CIT(E) with the documents as submitted before this forum because

*the documents were not available before the CIT(E), **however, considering the principles laid down by the various Courts as it is not in controversy that till the adjudication of application u/s 12AA of the Act, the trust was at nascent stage and all the activities which are reflecting from the documents submitted herein are of the later stage, however, in our considered opinion at the time of disposal of application, the Ld. CIT(E) in order to satisfy himself about the genuineness of the activities of the trust or institution can call for such documents or information from the trust or institution as he thinks necessary and also empowered to make such enquiry as he may deem fit necessary in this behalf , secondly that after satisfying himself about the object of the trust or institution and the genuineness of the activities, he shall pass order in writing either register or refusing to register the trust or institutions. In the instant case no activity was carried out therefore question of genuineness did not arise.***

The assessee-company has filed various documents with regard to the carrying out many activities before us and the certification of the said document depicts that the assessee did not submit the details of the activities and works done by the assessee-company before the Ld. CIT(E). Hence in our considered view the activities of the assessee-company are required to be examined by the Ld. CIT(E) in its right perspective therefore respectively following the aforesaid judgment of the jurisdictional bench, we are inclined to set aside the instant ground of rejection and remit back to the file of the Ld. CIT(E) for decision afresh .

5.5 While perusing the Memorandum of Association of the assessee company, we realize that in clause no. 10 and 11, the following parameters have been prescribed, in case of winding up or dissolution of the company.

“10. If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, subject to such conditions as the Tribunal may impose, or may be sold and proceeds

thereof credited to the Rehabilitation and Insolvency Fund formed under section 269 of the Act.

11. The Company can be amalgamated only with another company registered under section 8 of the Act and having similar objects.”

From clause 10 of the aforesaid provisions, it reflects that in case of winding up or dissolution of the company, the property of the company shall be given or transferred to such other company having objects similar to the objects of this company, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed u/s 269 of the Act. Further clause 11 prescribes that the Company can be amalgamated only with another company registered under section 8 of the Act and having similar objects. In our considered view, the said clauses are restrictive in nature because in case of happening on the contingent event, the same would be beneficial to the company only but not to the society, trust or other institutions having the same objects as of the instant company. Hence, in our considered view, because the said restrictions have wide amplitude therefore required to be replaced by making appropriate amendment of clause nos. 10 and 11 of the Memorandum of Association of the assessee company and to submit the copy of the same before Ld. CIT(E) in due course of time during the adjudication of the application of the Assessee company. The Assessee shall also submit all relevant and desirable financial account and bank statements if any, and other documents as placed before us, relating to the carrying out the activities, before the Ld. CIT(E).

In the result, the instant case is remitted back to the Ld. CIT(E) for decision afresh, considering the observation made above by us in this order.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 18/02/2020.

Sd/-

(DR. A.L.SAINI)
ACCOUNTANT MEMBER

Sd/-

(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 18/02/2020.

/GP/Sr.PS.

Copy forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. Then CIT(Appeals)
5. SR DR, I.T.A.T. Amritsar
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By Order