

**INCOME TAX APPELLATE TRIBUNAL  
[DELHI BENCH "C": NEW DELHI ]  
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 9036/Del/2019

[Assessment Year: N/A.]

HCL Foundation, 806 – Siddharth, 96 – Nehru Place, New Delhi – 110 019. <b>PAN: AAATH9728C</b>	Vs.	The Commissioner of Income Tax (Exemptions) New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Ajay Vohra, Sr. Adv.; Shri Neeraj Jain, Adv.; Shri Aditya Vohra, Adv., & Shri Arpit Goyal, C.A.
Department by :	Ms. Sunita Singh [CIT] – D.R.;
Date of Hearing	<b>14/07/2020</b>
Date of pronouncement	<b>20/07/2020</b>

**ORDER**

**PER PRASHANT MAHARISHI, A. M. :**

1. HCL Foundation [Assessee/ Appellant/ Trust] filed this appeal against the order of the Id. Commissioner of Income Tax (Exemptions), New Delhi, [ The Ld. CIT (E) ] dated 30.09.2019, where in application in Form no 10A, filed by assessee incorporating amendment to the object of the trust made on 13/12/2017 , was rejected , holding that provision of section 12A (1) (ab) of the act is applicable from 1/4/2018, amendment in case of assessee is prior to that date.
2. Assessee appellant raised following three effective grounds of appeal:-
  - “1. That on the facts and circumstances of the case and in law, the order dated 30.09.2019 passed by the Commissioner of Income-tax (Exemptions) [**“CIT(E)”**] under section 12AA(l)(b) read with section 12A of the Income-tax Act, 1961 (“the Act”) is bad in law and deserves to be set aside.
  2. That on the facts and circumstances of the case and in law, the CIT (E) erred in not approving the amendment in the objects clause in the Trust Deed and in mechanically rejecting the application filed in Form No. 10A.
  3. That on the facts and circumstances of the case and in law, the CIT(E) contradicted himself in rejecting the application filed in Form No. 10A, on the one hand and in observing in the impugned order that the Appellant's case does not fall under the provisions of section 12A(l)(ab) of the Act. on the other. “

3. Brief facts of the case shows that assessee is a charitable trust created on 01.07.2012 and registered u/s 12A read with section 12AA of the Act as per registration certificate dated 23.01.2012. On 16.09.2014, name of assessee/appellant trust was changed from 'HCL Technologies Foundation' to 'HCL Foundation'. Assessee wanted to make certain changes in its object clause by adding further five clauses in commensuration with CSR provisions in corporate laws. Assessee sought prior approval of Id CIT (E) on 07.11.2017 attaching there with Audited financial statements, copy of return of income, trust deed, approval u/s 80G and registration certificate u/s 12AA of the Act. The letter submitted showed that it wanted to add certain corporate social responsibility objects in its trust deed. Assessee made such request to CIT (E) for the reason that as per registration certificate u/s 12AA there were certain conditions and as per conditions No. VI any change in the trust deed shall be effected only with the approval of appropriate authority and it shall continue to serve the main object of the trust in future without any change. Assessee did not receive any response. There after assessee amended objects of the trust on 13.12.2017. On 30.01.2018, assessee further filed the identical letter to the letter filed on 07.11.2017 intimating that objects of the trust has been amended. As according to the assessee there were no response to this letter too, and further section 12A (1) (ab) was introduced with effect from 1/4/2018, assessee filed Form No. 10A on 30.03.2019 specifying therein the date of modification in the object of the trust as on 31.11.2017 and also attaching thereto the details of modification of the objects. The Id CIT(E) passed an order u/s 12A(1)(b) read with section 12A of the Act on 30.09.2019 holding that modification of any object to the trust which do not conform to the conditions of the registration is required to be filed in form No. 10A within 30 days from the date of certain additions or modification. However, as held by him in para No. 4 of the order that requirement of intimating the modification of object has come into effect only w.e.f. 01.04.2018 and as in case of the assessee the modification has been made from 03.11.2017 executed by deed dated 13.12.2017, application filed by the assessee does not fall into the provision of section 12A (1)(ab) of the Act which has come into effect from 01.04.2018. Therefore, he rejected the application filed by the assessee. Assessee aggrieved with this order has come up in appeal before us as per the above grounds.
4. The Id Sr. Advocate referred to the paper book filed by the assessee starting from creation of the trust till correspondence entered into with the Id CIT(E) regarding modification of the object clause. He submitted that the modification should have been taken on record by the Id CIT (E) and should not have rejected the application of the assessee. He specifically referred to the provisions of the Act and its

amendment by The Finance Act, 2017. Therefore, he pressed that the order passed by the ld CIT (E) is not correct.

5. The ld DR vehemently supported that order and submitted that there is no infirmity in his order. She submitted that as the amendment made by the assessee to the object clause is prior to 01.04.2018, assessee is not entitled to file Form No. 10A in accordance with the provisions of section 12A(1)(ab) of the Act. Therefore, according to her, the ld CIT (E) has correctly dismissed the application filed by the assessee.
6. We have carefully considered the rival contentions and have set out the facts of the case above. The Finance Act 2017 has inserted section 12A (1) (ab) which provided that if a trust registered under the provision of section 12A of the Act, and if it undertakes any modification of the object, which do not conform to the conditions of the registration, then it shall apply in Form No. 10A within 30 days from the date of amendment. This amendment has come in to effect from 1/04/2018. The above amendment has been explained as per circular No. 2/2018 dated 15.02.2018. In para No. 15 of that Circular it has been specifically stated that earlier there were no explicit provisions in the Income Tax Act, 1961 that mandates the trust to inform amendment to the objects, if the registration has already been granted. Therefore, there were no occasion of satisfaction of the ld CIT(E) that whether the activities of the trust are genuine or are not being carried out in accordance with the object, subsequent to grant of registration. Therefore above provision was brought in with effect from 01.04.2018 and consequently made applicable to Assessment Year 2018-19 onwards. As stated above the amendment in the object of the trust in case of the appellant was carried out by amending object clause as per trust deed on 13.12.2017. Assessee, on 07.11.2017, before making any amendment to objects, sought approval of LD CIT (E) for modification/ addition. The assessee subsequently modified the trust deed on 13.12.2017 and once again intimated on 30.01.2018 to LD CIT (E). However, it seems that in absence of any communication from the office of the ld CIT(E), assessee filed form No. 10A on 31.03.2019 seeking to amend the registration u/s 12AA of the Act in terms of provisions of section 12A(1)(ab) of the Act. This was rejected. The reasons given by ld CIT (E) clearly demonstrates that as amendment made by the assessee is prior to 01.04.2018, provision of section 12(1)(ab) does not apply. We do not find any infirmity in the order of the ld CIT (E) as the reasons given by him are correct and in accordance with the provisions of the Act.
7. However, that does not solve the purpose, unless ld CIT (E) examines the amended object with respect to their genuineness. Provisions of section 12A(1)(ab) are inserted only for the reason that earlier there were no requirement

by which the revenue authorities could have examined, in case of trust already registered u/s 12A of the Act, if they amend their object with respect to the genuineness of the activities. The circular also says that the provisions are clarifactory in nature. The two letters submitted by the assessee are clearly requests to the Id CIT (E) to take the amended objects on records after proper verification. There were no communication from the office of Id CIT (E) and therefore, this appeal was filed. In view of the above facts, we direct the Id CIT(E) to take into account the amended object which were amended prior to 01.04.2018, examine its genuineness and its compliance with respect to section 2(15) of the Act. In fact assessee has gone a step ahead and requested revenue to examine its amended objects wrt provision of section 2(15) and 12 A of the act. Assessee was not obliged to do so as per provision of the Act.

8. Accordingly, appeal by the assessee is dismissed with above direction to Id CIT (E).
9. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on : **20/07/2020**.

**-Sd/-**  
**( AMIT SHUKLA )**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**Dated:20/07/2020.**

\*AK KEOT \*

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi