IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI SHAILENDRA KUMAR YADAV,
JUDICIAL MEMBER, AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.655/PN/2012

Arunachal Seva Nyas
Datta Nagar, Kudal,
Dist. Sindhudurg.

PAN: AACTA0882G — Appellant

Vs.

CIT-II, Kolhapur — Respondent

ITA Nos.1261 & 1262/PN/2014

Arunachal Seva Nyas
Datta Nagar, Kudal,
Dist. Sindhudurg.

PAN: AACTA0882G — Appellant

Vs.

CIT-II, Kolhapur — Respondent

Assessee by	:	Shri Ashok Chandrakant Sarang
Department by	:	Smt. M.S. Verma, CIT
Date of Hearing	:	12.06.2014
Date of order	:	20.06.2014

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

All these appeals pertain to the same assessee on similar issues, so for the sake of convenience, they are being disposed of by this common order.

2. In ITA No.655/PN/2012, the assessee has raised various grounds. In this regard, it was pointed out by the learned Departmental Representative that this appeal has been filed against the order u/s.12AA(3) and u/s.11AA(5) of the I.T. Act, which is not permissible. Agreeing to the objections of learned Departmental Representative, the learned Authorized Representative filed separate appeals. So this appeal is being dismissed as infructuous as two separate appeals have been filed by the assessee.

3. In ITA No.1261/PN/2014, the assessee has filed the appeal on the following grounds.

> As per above referred Order of Commissioner of Income Tax II Kop. on the basis of judgment of Patna High Court in case of Bihar Institute of Mining and Mine Surveying Vs. CIT (208 ITR 608) have questioned about our charitable objects and asked us to submit our say in this regard by 10th February 2012 by letter no. KOP/CIT-II/Tech. II/12AA/2011-12/2152 dt. 27.01.2012 and for rejection of application of 80G by letter no. KOP/CIT-II/Tech. II/80G/2011-12/2161 dt. 27.01.2012 (Received on 03/02/2012)
>
> We object for the decision of Commissioner Income Tax II Kolhapur and we have sent our say by register post dt. 24.02.2012 which was late as per his given date but before that he passed the order the delay was due to following reason -
>
> 1) Time gap given for our say from date 03.02.2012 (date of Receipt of Letter) to 10.02.2012 It was a short notice to us being a Trust to call a meeting and have discussion with our consultant.
>
> 2) After discussion with our Trustee Member we have decided to draft letter regarding our say and we sent it on date 24.02.2012 (posted on dt. 27.02.2012) to Commissioner Income Tax II Kolhapur.
>
> Carrying of nursery activity is one of the object of our trust and so our Trust is carrying the nursery activity since last three years. As per section 2(15) of income tax act the definition of charitable purpose is 'relief to the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monument or place or

objects of artistic or historic interest and the advancement of any other object of general public utility'.

From the above definition it is very much clear that there are five limbs which comes under the charitable object-

1) Relief to the poor,
2) Education,
3) Medical relief,
4) Preservation of environment,
5) Advancement of any other object of general public utility

Now we are concern about the educational objects. It include advancement and propagation of educational and learning in all its branches, for the establishment, maintenance, admission and support of colleges, schools or other educational institutions, professorship, scholarship, prizes and fellowship, specially in medical science and / or in any other branch of science, commerce, arts, etc. Or in assisting students to study abroad, either by way of lump-sum or by payment of periodical sums.

The nursery run by our Trust is not a profit making. We have started this nursery in village area to provide a English medium nursery in a village area at no profit no loss basis. We are charging only Rs. 200/- per month and there are only 28 children in all three classes. Per month our receipts is Rs. 5600/- and out of that we are paying to three teachers and one helper. Total monthly expenditure is Rs. 5400/-, So surplus is Rs. 2007- per month and out of this surplus we are purchasing stationery material like paper, chocks, etc. This is the nursery which provide the children the knowledge of how to learn, how to mix up with each other, how to behave in school, how to share the knowledge with each other, how to play, how to understand which is very important to children in the present competitive era. It means it is the pre training to children before entering into school. Our total object is to giving the pre education which are giving in a school starting from first standard. At present our object is not to earn any profit but to motivating the children towards the education. For this we are not doing any advertisement nor pursuing the people. This nursery is run in rent free place which is offer by one of the trustee. Also educational chart is offered by some of our trustees. Main and main object of our trust behind carrying this nursery to make avail the facilities of nursery which are so far not in near by village.

For our opinion please refer the case of Delhi Music Society v. DGIT, 17. In this case the prescribed authority rejected the claim for exemption on ground that it deed not satisfy criteria of being an 'educational institution'. As per prescribed authority the petitioner was not awarding any degree or certificate and was merely imparting coaching training in India as per norms of foreign colleges; that it was not an institution recognized by the UGC or by any board constituted by government for imparting formal education in the field of western music. The prescribed authority observed that the petitioner could not be distinguished from any coaching or training institute preparing the students for appearing in any examination for obtaining a formal degree by a formally recognized institution. The prescribed authority, therefore held that the petitioner was not entitled to be characterized as an 'educational institution' within the meaning of section 10(23 C)(iv).

The Delhi High Court allowed the writ petition filed by the assessee-society and held as under:

“(i) The Supreme Court in the case of Sole Trustee, Loka Sikshana Trust V. CIT, (1975) 101 ITR 234 interpreted the word ‘education’ in section 2(15) and held training given to the young in preparation for the work of life and it also connotes that the word has been used to donate systematic instruction, schooling or the whole course of scholastic institution which a person has received. It has further been observed that the word also connotes the process of training and development of knowledge, skill mind and character of students by normal schooling.

(ii) It is seen that the petitioner is being run like any school or educational institution in a systematic manner with regular classes, vacations, attendance requirements, enforcement of discipline and so on. These provisions in the rules and regulations satisfy the condition laid down in the judgment of the Supreme Court in Sole Trustee, Loka Shishana Trust (supra). It cannot be doubted that having regard to the manner in which the petitioner run the music school,, that there is imparting of systematic institution, schooling or training given to the students so that they attain proficiency in the field of their choice - vocal or instrumental in western classical music.

(iii) The Calcutta High Court in CIT v Boon Foundation, (1985) 154 ITR 208/22 Taxman 9 has observed that section 10(22) does not impose a condition that an educational institution to be eligible for exemption thereunder should be affiliated to any university or any board. As per High Court, so long as the income is derived from an educational institution existing solely for educational purposes and not for purposes of profit, such income is entitled to exemption u/s 10 (22). This judgment takes care of the objection of the prescribed authority that the petitioner is not affiliated to, or recognized by any university or board in India and that it merely awards certificates or grades which are issued by the Trinity College and Royal School of Music, London. Since section 10(23C) (vi) also uses the same language as section 10(22), the same principle should govern the interpretation of that provision also.

(iv) The Supreme Court in S. Azeez Basha v. Union of India, AIR 1968 SC 662 has considered the nature of an educational institution. It was held by the Supreme Court that there is a good deal in common between educational institutions which are not universities and those which are universities in the sense that both teach students and both have teachers for the purpose. It was further observed by the Supreme Court that what distinguishes a university from any other educational institution is that a university grants degrees of its own, whereas other educational institutions cannot. These observations of the Supreme Court support the stand of the petitioner that the fact that it does not conduct its own examination or awards degrees of its own is not decisive of the questions whether it is an educational institution or not. It also lends support to the petitioner's stand before the prescribed authority that it is not a mere coaching centre preparing students for competitive examinations,

(v) For the above reasons, it is held that the petitioner meets the requirements of an educational institution within the meaning of section 10(23) (c)(iv).

Also refer another case of Baba Amarnath Education Society v. CIT and ACE Educational & Charitable Society v. CIT IT AT 'B' Bench, Chandigarh. Decided on 29.12.2011.

Facts:

In the present two appeals, since the facts of the cases as well as the grounds of were identical, the Tribunal decided to dispose of the same by a consolidated order. The assessee-trusts were established primarily to promote education. The assessees' application for registration u/s 12A was rejected by the CIT on the ground that their one of the object clauses provided for promotion of export of computers hardware/software, telecommunication, internet, e-commerce and allied services. For the purpose the CIT relied on the decisions of the Supreme Court in the cases of Yogi Raj Charities Trust v. CIT, (103 ITR 777) and of East India Industries (Madras) Pvt. Ltd. (65 ITR 611).

Held:

From the detailed list of activities carried out by the two assessees, the Tribunal noted that they have carried out activities pertaining to achieving their charitable objects viz,, imparting education. The object clause, which was objected to by the CIT and the ground on which the registration was rejected was never acted upon and it remained on paper. According to it, single inoperative object cannot eclipse the whole range of other charitable objects and actual conduct of charitable activities. According to it, it was not the letter or language of one single object clause which is conclusive, but it was the activity of the appellants, which was more relevant. Further, it observed that the first proviso to section 2 (15) was not applicable to the first three objects enumerated in the definition. The said proviso only restricts the scope of the expression 'advancement of any other object of general public utility'. The proposition was also supported by the Board Circular No. 11/2008, dated 19.12.2008 which inter alia states where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose, even if it incidentally involves the carrying on of commercial activities".

Our trust have maintained separate books of accounts for activities also we have carried out the audit till 31.03.2011. The activity which we are carrying i.e. education is come under definition given for charitable purpose as per section 2(15) of income tax act, 1961. So the decision of Commissioner Income Tax II Kolhapur about cancellation of registration under section 12AA granted on 15.09.2011 and rejection of application for grant of exemption under section 80G(5)(vi) is not a good in law. As we are carrying the educational object which is one of the object of our trust. Though our activity of carrying nursery school is not registered with education department (there is no system in the Maharashtra Education Department to registered the Nursery School) it does not mean that we are not acting towards a charitable purpose. It is not necessary that every charitable object has to be registered with the institution incorporated by government for regularising activities. The five limbs which are given in definition of charitable purpose u/s 2(15) of income tax act, 1961 may have a system of registration. There may be some of the objects which can be registered and there may be some of the objects which cannot be registered with the government authority due to non availability of system / procedure for registering that objects. So objection raised by Commissioner of Income II Kolhapur for cancelling registration granted u/s 12A to our trust is not a standing on any foundation of law, which will be realized to you if you could refer the above mentioned case and definitions u/s 2(15) of income tax act, 1961.

This is being a trust, the decisions are taken in a meeting which has to be called as per procedure of trust act and issue has to be decided by giving opportunity to the member to be discuss well in advance by issuing notice of 7 days. So we the chairmen and secretary humbly request you with the honor a law and consider our application for appeal towards reactivation of registration under 12AA granted to our trust on 15.09.2011 and our application for grant of exemption u/s 80G(5)(vi).

4. This appeal is against the cancellation of registration u/s.12AA. The CIT found that the society filed the proposal to start semi English school for 1 to 4th standard but the assessee neither received any approval from the concerned CIT nor started school. According to CIT, there was no normal schooling as held by Hon'ble Patna High Court in the case of Bihar Institute of Mining and Mine Surveying Vs. CIT (208) ITR 608). According to CIT, there was no charitable activity within the meaning of section 2(15) of the Act, so, proceeded to cancel the registration granted u/s.12AA of the Act. An opportunity was granted to the assessee and asked to file submission to substantiate his claim against the cancellation of registration granted u/s.12AA of the Act. In this regard, the assessee has submitted that the assessee was not provided due opportunity of being heard as there was no sufficient time provided to the assessee for defending cancellation of registration granted u/s.12AA of the Act.

5. We find that the assessee was hardly given seven days of time for filing the reply to defend its registration u/s.12AA which was not sufficient under the facts and circumstances. It amounts to violation of principles of natural justice. So in the interest of justice, we set aside the order of CIT and restore the issue to him with a direction to decide the issue as per fact and law after providing due opportunity of being heard to the assessee. The assessee is also directed to cooperate in the proceedings before concerned CIT.

6. Similar is the position in ITA No.1262/PN/2014 which is with regard to application u/s.80G(5)(vi) of the Act. Again the learned Authorized Representative has raised the issue of absence of due opportunity of being heard in this regard. Following the same reasoning, we are of the view that the assessee was not provided the opportunity of being heard before rejecting the application u/s.80G(5)(vi) of the Act which is not justified, so in the interest of justice, we set aside the order of CIT and restore the issue to him with a similar direction to decide the issue as per fact and law after providing due opportunity of being heard to the assessee. Since we are restoring the issue to CIT on preliminary issue, we are refraining from commenting on the merit of the issue at hand in both the appeals i.e. ITA No.1261 and 1262/PN/2014.

7. In the result, the appeal ITA No.655/PN/2012 is dismissed and ITA Nos.1261 & 1262/PN/2014 are allowed for statistical purposes as indicated above.

Pronounced in the open Court on this the 20th day of June, 2014.

Sd/-	Sd/-
(R.K. PANDA)	(SHAILENDRA KUMAR YADAV)
Accountant Member	Judicial Member

Pune, Dated: 20th June, 2014
GCVSR

Copy to:-

1. Assessee
2. Department
3. The CIT-II, Kolhapur
4. The CIT-II, Kolhapur
5. The DR, “A” Bench, I.T.A.T., Pune.
6. Guard File

By Order

//True Copy//

Senior Private Secretary,
I.T.A.T., Pune