

## Society imparting education in systematic manner in field of nursing is entitled to sec. 12AA registration

**Summary – The Agra ITAT in a recent case of Trisha Welfare Society., (the Assessee) held that where assessee-society set up a college to impart education in a systematic manner in field of B.Sc (Nursing) and G.N.M. (General nursing and Midwifery), activities of society were covered within meaning of section 2(15) and it was eligible for section 12A registration as a 'Charitable Society'**

### Facts

- Assessee filed application for registration under section 12AA. The Commissioner (E) rejected the application on ground that letter sent to the assessee calling for specific queries was not responded by the society, and thereafter in order to provide another opportunity another letter was sent which was returned by the postal authorities with the remark that 'No one stays on the given address.
- Commissioner (E), on the basis of material available on record, held that society was not carrying on any charitable activity as per provisions of section 12AA(i)(b) and that it failed to prove two factors, namely, the object of charitable purpose and the genuineness of the activities. Hence, Commissioner (E) held that the assessee-society had not made out a case for granting registration under section 12AA(1)(b).
- The assessee filed an application under section 154 contending that notice fixing the date was never received by the society neither it was issued nor served upon the society as neither any Speed Post number was mentioned through which it was dispatched, nor the name of the person upon whom it was served was mentioned in the impugned order.

### Held

- The first objection of the assessee was that enough material was brought on record by the assessee before the Commissioner (Exemption) to arrive at conclusion that the society qualifies for grant of registration by meeting both the factors as required by the Commissioner (Exemption) *i.e.* 'object of charitable purpose' and 'genuineness of activities', namely, PAN Card of Trisha Welfare Society, Copy of 'Consent of Affiliation' from Chhatrapati Shahu Ji Maharaj University, Kanpur for running B.Sc (Nursing) course by the Society, Copy of Society Registration Certificate, Copy of Article of Society, Memorandum, and List of Management Committee, Copies of I.T. Returns, Audit Reports, Income & Expenditure Account and Balance Sheets for the earlier, assessment year.
- The assessee rightly contended that from these documents, both the factors, namely, object of charitable purpose and genuineness of activities, as prescribed by the Commissioner (Exemption) are *prima facie* fulfilled. The Memorandum specifying the objects of the society, showed the objects which are charitable in nature. In the impugned order, also there is no challenge to the objects being not charitable in nature. Though the Commissioner (Exemption) has mentioned that assessee has to prove that its objects are charitable in nature but even after having objects of the society on record,

filed along with the application itself the Commissioner (Exemption) has not commented much less adversely commented upon the objects as mentioned in the Memorandum.

- The assessee-society further objected to Commissioner (Exemption) observation as regards its non-satisfaction about 'genuineness of activities'. The audit report for assessment years 2012-13, 2013-14 and 2014-15 as was filed before the Commissioner (Exemption) shows that society is deriving receipts from the activity of running its educational institution in the name of Nursing Home. The society is having its own building, buses for the transportation, and other infrastructure of its own, as evident from the audited balance sheets on records, and necessary for running of educational institution of such a nature. Thus, on the face of these evidences it can certainly be concluded that society is genuinely pursuing activities in fulfillment of its object.
- The assessee pointed out that letter dated 29-5-2015 as was issued by the Commissioner (Exemption) was duly responded by the assessee and the reply was sent through Speed Post. The assessee, *vide* aforesaid reply has complied on all 10 points out of 11 points contained in the said Notice. On point No. (ii) strangely the Commissioner (Exemption) has required the assessee to produce original document regarding registration certificate issued under section 12AA ignoring the fact that assessee is seeking registration under section 12AA and cannot be expected to have registration certificate in its hand under section 12AA at the application stage. It is worth to note here that in its application dated 21-8-2015 filed under section 154 before Commissioner (Exemption), the assessee *vide* has stated that due compliance was made with Notice dated 29-5-2015 by sending reply on 18-6-2015 by speed post again similar assertion was made in where speed post delivery certificate was also referred by the assessee. Upon this application Commissioner (Exemption) fixed personal hearing, intimated to the assessee. In its letter the Commissioner (Exemption) has acknowledged receipt of above application dated 21-8-2015. During the course of personal hearing assessee again drew attention of the Commissioner (Exemption) to the report of ITO (E) who as stated by the assessee, upon reference made by the Commissioner (Exemption) got spot enquiry conducted. But while passing order under section 154 none of the fact, as mentioned above has been disputed by the Commissioner (Exemption). In these circumstances, in absence of any denial on part of the Commissioner (Exemption) in respect of various assertions challenging the claim made in the impugned order rejecting application under section 12AA, it cannot be assumed that assessee made no compliance with any of the notice issued by the office of Commissioner (Exemption).
- Over and above, as pointed out by the assessee that in the meantime when enquiry was underway before the Commissioner (Exemption), the ITO (E), working under the administrative control of Commissioner (Exemption), Lucknow also initiated enquiry and in pursuance thereof *vide* letter dated 30-6-2015 requiring the assessee to furnish various evidences including Cash Book of the Society. It was shown that the queries as were raised by the ITO (E) were identical to the queries as were raised by the Commissioner (Exemption). Except to the extent that letter by ITO (E) is on 10

points and letter by Commissioner (Exemption) is on 11 points, which a reply on point No. (ii) was a premature requirement at the stage of notice.

- It is noticed that letter dated 30-6-2015 was sufficiently complied with by the assessee by furnishing reply on all 10 points given in the letter. In this letter it was also stated by the assessee before the ITO (E), Agra that original Trust Deed/Memorandum of Association has been sent to Commissioner (Exemption) by speed post on 18-6-2015 and therefore, filed photocopies of such documents. Various other evidences filed in the shape of Ledger Account of Building, Bills of Contractor, Ledger of Library/Laboratory item purchased along with bill, ledger account of furniture/fittings along with bills, certificate from U.P. state medical faculty, Lucknow, Letter from Indian Nursing Counsel, New Delhi certifying that after inspection conducted by them University/Board, Office Memorandum from the Office of The Registrar, Chatrapati Shahuji Maharaj Medical University, Lucknow provisional affiliation to the Institute run by the Society is granted for B. Sc (Nursing) degree course as recommended by the inspection committee. (APB-55 to 69).
- It is noted that the ITO (E) got spot enquiry conducted through Inspector of Income tax, which report has been obtained under the RTI Act by the assessee by making application dated 8-11-2016 (APB-81) seeking copies of order-sheet of ITO (E) and report of inspector. This was allowed to the assessee by the ITO (E).
- Further, the Inspector had prepared a detailed spot enquiry report, submitted to the ITO (E) in which the Inspector had mentioned that the : Institute has 8 class rooms, 6 labs of (Anatomy & physiology, Nutrition Lab, Computer Lab, Community Lab, MCH Lab and Nursing Foundation Lab); that the classes are running for two courses of B.Sc. in Nursing and G.N.M. (General nursing and Midwifery); that during the courses, clinical training is also given to the students in various hospitals at S.N. Medical College, Rainbow Hospital, Ram Raghu Hospitals, Mental Hospitals, Agra & also community experience is given at C.M.O.H. - P.H.C. Bah; and that on enquiry from Rainbow Hospitals, it is found that the above clinical training is being given to the students of Dr. Tandon Nursing College, Agra, Photocopies of school records were taken. The Inspector thus reported that the society was working for its object in the field of education.
- From the facts, as noted above, it is self evident that the observation of the Commissioner (Exemption) that assessee failed to meet the two factor test is certainly contrary to the facts and evidences on records. Assessee had sufficiently proved with evidence on record that the object of Society were charitable in nature and in pursuance of the said objects it had set up a College where the society was imparting education in a systematic manner in the field of B.Sc. (Nursing) and G.N.M. (General nursing and Midwifery).
- It is also noticed that assessment of the society was framed under section 143(3). In the said order, the Assessing Officer has observed that 'though the Society is not registered under section 12AA. However, the activities of the society are covered within meaning of section 2(15) and accordingly the assessment was completed on Nil Income taking the status of Society to a 'Charitable Society'.

- In the light of above, the view adopted by the Commissioner (Exemption) that assessee has not been able to prove the charitable nature of its objects and genuineness of activities could not be approved.