

Sec. 12AA registration couldn't be rejected just because society didn't carry out charitable activities

Summary – The Amritsar ITAT in a recent case of Anand Isher Amar Charitable Cancer & Multi-Speciality Hospital Society, (the Assessee) held that where aim and object of assessee-society was to set up, run and maintain dispensaries and hospitals for general public, same would fall within term 'medical relief' under section 2(15)

Facts

- The assessee-society was established on 10-1-2017. The aims and objects of the assessee-society were to set up, run and maintain dispensaries and hospitals for the general public irrespective of caste or creed, and to do all such ancillary activities in order to facilitate furtherance of said object. The assessee filed an application seeking registration under section 12A on 17-4-2017.
- The Commissioner (Exemptions) observed that the society had neither conducted activities as per its aims and object nor its financial statements were in conformity with the claims so raised by it; hence, he concluded that the genuineness of the activities of the assessee-society were at present stage unverifiable and, thus, could not be brought within the realm of activities which could be held to be of charitable purpose. The Commissioner (Exemptions) was of the view that the envisaged activities of society could be purely in the nature of a commercial activity with no element of 'medical relief'. Hence, the Commissioner (Exemptions) declined to grant registration to the assessee-society.
- On the assessee's appeal before the Tribunal:

Held

- The aims and objects of the assessee-society were to set up, run and maintain dispensaries and hospitals for the general public irrespective of caste or creed, and to do all such ancillary activities in order to facilitate furtherance of the said object. The Commissioner (Exemptions) had declined the grant of registration to the assessee-society for the reason that no charitable activity was found to have been carried out by it. Rather, the fact that the financial statements also did not reveal incurring of any such expenditure by the assessee-society towards the aforesaid charitable purpose had also weighed in the mind of the Commissioner (Exemptions). In fact, the Commissioner (Exemptions) had observed that there was also no evidence whatsoever of the preparatory steps that would have been taken by the assessee in furtherance of its aforesaid objects viz. obtaining of necessary permissions/licenses for opening the hospital etc. In sum and substance, the application seeking registration under section 12A did not find favour with the registering authority for the reason that the assessee-society had neither conducted activities as per its aims and objects nor its financial statements supported the same. Apart therefrom, the Commissioner (Exemptions) had also expressed his doubts as to how setting up a multi-speciality hospital would qualify for 'medical

relief' as envisaged in section 2(15), as he held a conviction that the same maybe in the nature of a commercial activity with no element of 'medical relief' whatsoever.

- The aforesaid provisions mandates examination of two basic conditions for grant of registration to an assessee under section 12AA, viz., (i) examination of objects of the society or institution; and (ii) satisfaction of the registering authority about the genuineness of the activities of the society or institution on the basis of inquiries. In so far, the observation of the Commissioner (Exemptions) that none of the objects specifically mentioned the term 'medical relief' as envisaged under section 2(15) is concerned. The aim and object of the assessee-society to set up, run and maintain dispensaries and hospitals for the general public, irrespective of caste or creed, clearly brings the same within the realm of the term 'medical relief' as envisaged under section 2(15). As far as the observations of the Commissioner (Exemptions) that the assessee-society had not carried out any charitable activities in furtherance of its stated aims and objects are concerned, the same was not relevant at the stage of considering of the application of the assessee-society for grant of registration under section 12AA, specifically when the latter having been established on 10-1-2017 was in its nascent stage.
- Admittedly, the assessee-society had in its reply dated 16-10-2017 filed with the Commissioner (Exemptions) accepted that no activity had yet been carried out towards its aims and objects.
- The view taken by the Commissioner (Exemptions) that the envisaged activities of setting up a multi-speciality hospital by the assessee-society may turn out to be a commercial activity with no element of 'medical relief' whatsoever, is an aspect which has to be looked into by the Assessing Officer at the stage when the assessee filed its return of income and also by the commissioner for cancelling the registration in exercise of his powers under sub-section (3) to section 12AA, in case if the activities of the assessee-society are at any stage found by him as not being carried out in accordance with its aims and objects. Be that as it may, the Commissioner (Exemptions) as per the mandate of law, at the stage of considering the application of the assessee-society for grant of registration under section 12AA was supposed to confine himself to two aspects viz. (i) examination of objects of the society or institution; and (ii) satisfaction of the registering authority about the genuineness of the activities of the society or institution on the basis of inquiries. Therefore, it was not correct on the part of the Commissioner (Exemptions) to have rejected the application filed by the assessee-society for grant of registration under section 12AA for the reason that the activities envisaged in the aims and objects had not been carried out by the assessee-society, which as observed hereinabove was in its nascent stage.
- Thus, in all fairness, the matter is to be restored to the file of the Commissioner (Exemptions), who shall dispose off the application filed by the assessee by confining himself to two aspects viz. (i) examination of objects of the society or institution; and (ii) satisfaction about the genuineness of the activities of the society or institution on the basis of inquiries as he may deem fit.