

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "A" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.4147/Del/2011**

**Assessment Year : NIL**

M/s. Bhai Hospital Trust, 54, Janpath, Connaught Place, New Delhi-110001. PAN-AAATB0492M	Vs	DIT(Exemption), Plot No.15, 3 <sup>rd</sup> Floor, Aayakar Bhawan, Laxmi Nagar, District Centre, New Delhi-110092.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Sh. Tarandeep Singh, Adv. & Sh. Pulkit Verma, Adv.
<b>Respondent by</b>		Sh. Satpal Gulati, CIT DR
<b>Date of Hearing</b>		05.05.2021
<b>Date of Pronouncement</b>		18.06.2021

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year NIL is directed against the order of learned DIT(Exemptions), Delhi dated 19.07.2011. The assessee has raised following grounds of appeal:-

1. *“That on facts and in law, the Order dated 19th July, 2011 passed by the Director of Income Tax (Exemptions), New Delhi (Ld.DIT) cancelling the registration u/s 12A of the Act of the appellant trust, since inception, is bad and without properly considering and appreciating the facts and legal position and is also contrary to the position consistently accepted by the department over a long period of more than 25 years.*
2. *That on facts and in law, the Ld.DIT passed the impugned order by making wrong and legally incorrect observations and by wrongly holding*

*that the appellant trust had violated the provisions of section 2(15), 10(23C)(iiia), 11(5), 13(1)(c) & 13(1)(d) r.w.s. 13(3) of the Income Tax Act, 1961. He also failed to appreciate that the appellant had not violated any of the provisions and full explanations / submissions in this regard had been made in response to his show cause notice dated 28th March, 2011.*

3. *That on facts and in law, the Ld.DIT erred in not appreciating that the case of appellant was covered u/s 10(23C)(iiia) of the Act and the Registration u/s 12A could not mean that compulsorily, the provisions of section 11,12 & 13 particularly provisions of section 11(5) are applicable and more so when the department in the past, had always accepted that the case of the appellant was covered u/s 10(22A) upto Assessment Year 1998-99 and u/s 10(23C)(iiia) from Assessment Year 1999-2000 to 2006-07.*

4. *That on facts and in law, the Ld.DIT erred in taking a view that the appellant trust had not been carrying on charitable activities wherein it was duly accepted position in the past that charitable activities in the form of running an OPD facility for poor and needy persons was being continuously run since the year 1982.*

5. *Without prejudice to the grounds hereinabove and without accepting any violation of law, even if there was any violation of provisions of section 11 (5) and 13 of the Act, it would only result in taxability of income of the appellant and cannot be a basis for cancellation of registration u/s 12A of the Act and accordingly the whole basis of the Ld.DIT to cancel the registration, is illegal, unjustified and also against the provisions of law.*

6. *Without prejudice to the grounds hereinabove, the Ld.DIT also erred in cancelling the registration u/s 12A since inception, whereas the powers to cancel the registration were provided in provisions of section 12AA(3) of the Act w.e.f. 1st June, 2010 and the registration could be cancelled prospectively and not since inception i.e. 30th March, 1980.2. The facts*

*giving rise to the present appeal are that Ld.DIT(E) vide impugned order granted registration u/s 12A to the assessee's society vide this office's order 1574 dated 30.03.1980. On the basis that the assessee had given donation of Rs.13.65 crore to the Bhai Hospital Trust, the sister entity of the assessee trust. It was observed that the donation was given out of the borrowed funds on which the assessee trust had paid interest to the related parties. It was also observed that the assessee had not carried out any charitable activity except meager activity in the form of medical facilities."*

2. The facts giving rise to the present appeal are that the Ld. DIT(E) vide impugned order dated 19.07.2011 cancelled registration granted u/s 12A of the Income Tax Act, 1961 ("the Act") vide office Order 1574 dated 30.03.1980. On the basis that the assessee had given donation of Rs.13.65 crores to the Bhai Hospital Trust, the sister entity of the assessee trust. It was observed that the donation was given out of the borrowed fund on which the assessee trust had paid interest to the related parties. It was also observed that the assessee had not carried out any charitable activity except meager activity in the form of medical facilities.

3. Aggrieved against this, the assessee preferred present appeal before this Tribunal.

4. Ld. Counsel for the assessee submitted that Ld.DIT(E) was not justified in cancelling the registration u/s 12A of the Act. He further submitted that the basis for cancellation of the registration stated to be donation given by the assessee trust to another trust which was also authored by same person. He

submitted that undisputedly registration of that trust i.e. Dr. Bhai Mohan Singh Foundation has not been cancelled. He submitted that the donation given by charitable trust to another charitable trust is not prohibited by the law. He further submitted that the provision of section 11(5) of the Act could not be applicable as the assessee trust is also registered u/s 10(23C)(iii) of the Act. He submitted that authority below grossly erred in constraining the provision of law and appreciating the facts of the case.

5. Per contra, Ld. CIT DR opposed these submissions and supported the impugned order.

6. We have heard Ld. Authorized representatives of both the parties and perused the impugned order and the material placed before us. The assessee was granted registration u/s 12A of the Act in the year 1980 since then the assessee was having registration u/s 12A of the Act. We find that Ld. DIT(E) while cancelling the registration, observed that the main objective of the assessee trust was running of a hospital but as per the examination of books of account for the Assessment Years 2005-06 to 2009-10, a very meager receipt from OPD was disclosed. It was also observed that the assessee trust was carrying out its charitable activity from a small one room space. It was observed by Ld.DIT(E) that the trust had depleted its property to the tune of Rs.15.76 crores i.e. borrowed funds of Rs.13.65 crores and interest thereon. It was observed that the assessee trust borrowed funds from company name M/s. Oscar Pharmaceuticals Pvt. Ltd. of Rs.13,66,50,000/-. Ld.DIT(E) observed

that this borrowed fund was donated to another trust i.e. Dr. Bhai Mohan Singh Foundation. Ld.DIT(E) observed that the donee trust was also not doing any charitable work except donating substantial amount to others. It was observed that this foundation was in receipt of substantial amount under the head interest, dividend, profit on sale of Mutual Funds etc. Ld.DIT(E) was of the view that the entire transaction revealed that there was a reasonable and excessive benefit conferred to the related parties which was clearly hit by section 13(1)(c) of the Act and such violation clearly attracts the denial of exemption u/s 11 and 12 of the Act. Hence, Ld.DIT(E) rejected the explanation of the assessee and cancelled the registration as granted u/s 12A of the Act by observing as under:-

*10. "Keeping in view the facts narrated above, it is seen that Rs.13.65 Cr was paid by the assessee-Bhai Hospital Trust to another sister entity-Dr. Bhai Mohan Singh Foundation and the author/settler of both the trusts was the same person i.e. Dr. Bhai Mohan Singh. Such payment was not permissible as per the provisions of section 13(1)(c) read with section 13(3) of the IT Act. In light of above position, it is found that no genuine charitable activity were carried out, there was no proper and genuine application of trust's income/property, especially donation to other entity and interest liability and violation of section 13(1)(c)(ii) and 11(5) of the Act.*

*11. The entire transaction of taking huge loan from a company and donating the same to another trust is totally unbecoming for charitable institutions. The conduct of the charitable institution should be transparent and the books of account maintained by them to be reliable. There is no compulsion to obtain loan and donate the same to another organization in*

*such a hurried manner and to repay the loan alongwith interest by selling investments in Ranbaxy company is clearly an indication to benefit themselves rather than carrying on any charitable activity to the benefit of general public at all. After enjoying the tax benefit over the years, the charitable organizations are nothing but public entities and the fund thus hold belongs to the public and investment and application of income are to be made strictly as per the provisions of law. The trusts cannot invest and dispose off the funds as they like it. Instead they should follow the procedure prescribed in the provisions of law, Provisions of section 11 (5) mandates all charitable institutions registered u/s 12A to hold the investment as per the conditions prescribed therein. Any deviation of said condition will tantamount to violation of the law and not only the amount subject to tax but consistent failure to comply to the law would attract cancellation of the registration.*

*12. Besides the above violation of section 2(15) and 13(1)(c), the assessee also hit by activity which is non-charitable in nature by obtaining the loan for interest and diverting the same to another sister entity as donation and claiming the same as application of money towards charitable activity which is clearly violation of conferring the benefits to specified persons without any reason. Further, the activity carried by the assessee does not amount to any charity as it is claimed only for name sake and there is no real activity is being carried on by the assessee trust. Hence, the above fact confirms the non-charitable conduct of the assessee which makes it imperative to cancel the registration granted u/s 12A of the I.T. Act, 1961.*

*13. In view of provisions of section 2(15) of the Income Tax Act, 1961, the activity of the society does not fall within the meaning of Charitable activity, as the assessee trust has violated the provisions of section 13(l)(c)(ii) and 11(5) of the Act. Since, and the activity has been hit by the*

*provisions of section 2(15), thus the society is no longer is charitable society. It is established beyond reasonable doubt that the society has intention to carry out non-charitable activities and thus violated the provisions of section 2(15) and the activity by the society does not qualify for registration u/s 12A. Accordingly, registration granted u/s 12A to the assessee society is cancelled since inception as no charity and violating the provisions of section 11(5) of I.T. Act after providing opportunity to the assessee society.”*

7. In this background, the question which needs to be adjudicated whether Ld. DIT(E) was justified in cancelling the registration u/s 12A of the Act under the facts and circumstances of the present case. Ld. DIT(E) cancelled the registration u/s 12AA of the Act on the ground that the assessee violated the provision of section 13(3) of the Act for taking loan of Rs.13.65 crores and donating the same to the sister concern without carrying out any charitable activity. It is further observed by Ld. DIT(E) that the donation amount received from assessee trust to foundation has been shown as a corpus and directly credited to the balance sheet and not through Income & Expenditure Account. In the opinion of Ld. DIT(E), it is clearly violation of provision of law to divert the property of assessee trust to others for non-charitable activities. In the opinion of Ld. DIT(E), there was unreasonable and excessive benefit which was given to the related parties which is clearly hit by section 13(1)(c) r.w. section 13(3) of the Act, hence, attracts action for denial of exemption u/s 12A of the Act. Undisputedly, the words as obtained registration at any time was inserted in section 12AA(3) of the Act w.e.f 01.06.2010. However, Ld.DIT(E) has

cancelled the registration since inception. Therefore, it was contended by Ld. Counsel for the assessee that the cancellation could not have been made prior to the insertion of the provision thus, the Ld.DIT(E) clearly exceeded the jurisdiction. For the sake of clarity, section 12AA(3) of the Act is reproduced as under:-

*12AA(3). “Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)]] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*

*Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]”*

8. Another argument of the assessee is that since the assessee trust is also registered u/s 10(23C) of the Act, therefore, provision of section 13(5) of the Act is not applicable. The factum of registration u/s 10(23C) of the Act is not rebutted by the Revenue. The Ld.DIT(E) is empowered to cancel the registration u/s 12AA(3) of the Act if he is satisfied that the activities of such trust or institution are not genuine and are not being carried out in accordance with its objectives of the trust/institution as the case may be. However, in the present case, the sole ground of cancellation of registration is that the assessee



trust obtained a loan of Rs.13.65 crores, paid interest thereon and donated this sum to another trust. Admittedly, the other trust was also granted registration u/s 12A of the Act and its registration has not been cancelled and author of both the trusts is same person. We are unable to sustain the action of Ld.DIT(E) firstly, the registration has been cancelled from inception i.e. prior to even when the trust that had obtained registration were brought within the ambit of section 12AA (3) of the Act.

9. Secondly, the Ld.DIT(E) has proceeded purely on the basis that the assessee trust had donated the amount which it had borrowed to other charitable trust without pointing out as to under what provision of law, such action is prohibited. Moreover, it is settled position of law that at the time dissolution of trust, the property of trust would go to another charitable trust. The Ld. DIT(E)'s apprehension that undue benefit is given to sister concern is misplaced.

10. As the alleged sister concern is also a charitable trust, the donation from one charitable trust to another charitable trust is not prohibited under law. We find that Ld.DIT(E) himself has recorded that the assessee trust has carried out some medical OPD in accordance with the objects of the trust.

11. Under these facts, it cannot be construed that the activities of the assessee trust are not genuine. We, therefore, set aside the impugned order and restore the registration granted u/s 12A of the Act. Thus, grounds raised by the assessee in this appeal are allowed.

12. In the result, the appeal of the assessee is allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 18<sup>th</sup> June, 2021.

***Sd/-***

**(G.S. PANNU)  
VICE PRESIDENT**

***Sd/-***

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI