

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
SHRI A.L. GEHLOT, ACCOUNTANT MEMBER**

ITA No. 133/Agra/2013

Samagra Vikas Mahila Samiti, Siddh Ganesh Marg, Near Mission Hospital, Chhatarpur. (PAN: AACAS 6379 P) (Appellant)	vs.	Commissioner of of Income-tax, Gwalior (Respondent)
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Appellant by	:	Shri S.M. Sinha, Adv. with B.D. Giri, ITP
Respondent by	:	Shri Waseem Arshad, Sr. D.R.

Date of hearing	:	02.07.2013
Date of pronouncement of order	:	09.07.2013

ORDER

Per Bhavnesh Saini, J.M.:

This appeal by the assessee is directed against the order of Id. CIT, Gwalior dated 18.03.2013 rejecting the application for registration u/s. 12AA of the Act.

2. Briefly, the facts of the case are that the assessee society filed application in prescribed form for grant of registration u/s. 12AA of the IT Act. The report was called for from the AO in order to verify the genuineness of the activities of the society. The JCIT, Range-I, Gwalior has forwarded the report in the matter. On going through the report and the application filed by the Society, the Id. CIT

observed that the Society was found to have received Rs.5,60,549/- on account of Jan Sahyog Rashi, therefore, the society was required to justify the same and also to justify the activities as well as genuineness of the activities carried on by the assessee society. The case was fixed for compliance before the Id. CIT on 13.03.2013. The assessee was also directed to produce the books of account, audit report, bills and vouchers to justify the claim of the assessee society. It is noted in the impugned order that on the date of hearing, Shri S.M. Sinha, advocate appeared before the Id. CIT with whom case was discussed. However, no written submissions, books of account, bills and vouchers and other relevant documents justifying the claim of society was furnished. In the absence of documentary evidences, the genuineness of the activities of the assessee could not be established. The Id. CIT, accordingly rejected the registration application.

3. Initially, the arguments were advanced by Shri S.M. Sinha, Advocate, but later on Shri B.D. Giri, ITP also joined the arguments. Both of them argued that on the date of hearing before the Id. CIT, Gwalior, the books of account, bills and vouchers, audit report and evidences of activities of the assessee were furnished. However, to their surprise and agony, the Id. CIT held that no books of account etc. have been produced before him. The affidavit of Shri S.M. Sinha, Advocate is filed in support of the above contention, in which he has confirmed to have produced the

books of account and all other supporting documents before the Id. CIT on 13.03.2013. It is also stated in the affidavit that ITO (Technical) asked him to sign the blank order-sheet and he has signed the blank order-sheet before him in the matter. The written submission is also filed on record by Shri B.D. Giri, ITP (Retd. Addl. CIT), in which also, the same facts have been explained. In the statement of facts also the assessee explained that the books of account and other documents were produced before the Id. CIT who have also examined the same but to their surprise, the Commissioner noted in the impugned order that no books of account or other material have been produced before him. During the course of arguments, the Id. counsel for the assessee were required to explain that when wrong facts have been recorded by the Id. CIT, Gwalior in the impugned order, why they have not taken recourse as per law in moving application u/s. 154 with the affidavit of the counsel before the Id. CIT, Gwalior. Shri B.D. Giri, ITP stated that he would file a complaint before the Chairman, CBDT against the CIT, Gwalior for recording wrong facts in the impugned order. When he was asked to explain that instead of taking recourse as per law in moving application u/s. 154 before the Id. CIT, Gwalior, whether it would be proper to make a complaint before the Chairman, CBDT in the matter being the matter is judicial in nature and ITP certificate is granted to him by the CIT, Gwalior, Shri B.D. Giri, ITP submitted that he does not have any certificate of practice as ITP from CIT, Gwalior. These

facts would clarify that Shri B.D. Giri, ITP has no certificate of registration in his favour as ITP. He was, therefore, asked as to how he can appear before the Tribunal. Shri B.D. Giri, ITP referred to section 288(2)(v) & (vi) of the IT Act and submitted that since he is the retired departmental officer, therefore, without any certificate of registration as ITP, he can practice and also submitted that he is not required to get himself registered as ITP with CIT, Gwalior. We would take up this matter at the later stage.

4. The Id. DR on the other hand relied upon the impugned order and submitted that when nothing was produced before the Id. CIT, the registration has been rightly cancelled in the matter. The Id. DR also referred to Rule 49 to 58 of the IT Rules to say that for ITP, there should be registration and certificate issued by the concerned CIT/CCIT, otherwise Shri B.D. Giri, ITP has no right to practice before the Income-tax Authorities or before the Tribunal.

5. We have considered the rival submissions and the material on record. The Id. CIT rejected the application of registration because on the date fixed for hearing, the counsel for assessee Shri S.M. Sinha did not produce any books of account, bills, vouchers and other relevant documents to justify its claim. The counsel for the assessee Shri S.M. Sinha filed his personal affidavit, in which he

has affirmed to have produced the books of account and all supporting documents before the Id. CIT on the date of hearing. The same facts are mentioned in the written submission filed by Shri B.D. Giri, ITP as well as in the statement of facts filed in the appeal papers. Considering the submissions of the Id. counsel for the assessee supported by his personal affidavit, we are of the view that the matter requires reconsideration at the level of the Id. CIT. The Id. CIT also apart from the above facts mentioned in the impugned order, has not discussed anything in the order to justify his findings of rejection of application for registration. He has also not discussed the report of JCIT, Range-I, Gwalior in the impugned order whether he has recommended for grant or refusal of registration in the matter. In the absence of detailed reasoned order and the fact that the counsel for assessee has filed personal affidavit to say that all the books of account and relevant documents were produced before the Id. CIT, would clearly establish that the matter requires reconsideration at the level of Id. CIT. In view of the facts and circumstances noted above, we set aside the impugned order and restore the matter in issue to the file of Id. CIT, Gwalior with direction to re-decide the registration application of the assessee as per law giving reasons for decision in the impugned order and also discussing the report of JCIT, Range-I, Gwalior in the order, by giving reasonable and sufficient opportunity of being heard to the assessee. The assessee is directed

to co-operate with the Id. CIT and shall produce all the books of account and other required documents before the Id. CIT for finalization of the order as per law.

6. Now, we take up the issue whether Shri B.D. Giri has right to appear before the Income-tax Authorities or the Tribunal. During the course of arguments, Shri B.D. Giri, ITP has specifically admitted that he does not have any certificate of registration / recommendation as ITP by the Id. CIT, Gwalior. He is practicing mainly in Gwalior and claimed that since he is retired departmental officer, therefore, he has right to practice as ITP. The record also reveals that he has filed his power of attorney along with Shri S.M. Sinha, Advocate and signed the power of attorney as ITP. This is a wrong practice in filing the combined power of attorney as advocate as well as ITP. Shri S.M. Sinha has correctly filed the power of attorney as provided in the High Court Rules. Shri B.D. Giri, ITP is not advocate registered with the State Bar Council. Therefore, he should not have signed the power of attorney executed in favour of Shri S.M. Sinha, Advocate. We hope, Shri S.M. Sinha would take care of such facts in future. It may also be noted here that Shri S.M. Sinha, Advocate in his affidavit has mentioned that he has signed the blank order-sheet as directed by ITO (Tech.). The advocates /members of bar are recognized as officers of the court, therefore, they are expected to maintain their status and decorum in the court. They are not expected to sign blank

order-sheet as was admitted by Sri S.M. Sinha, Advocate, before ITO (Tech.). Shri S.M. Sinha, Advocate is, therefore, directed not to indulge in any type of malpractice in future otherwise his conduct would have been reported to State Bar Council for taking disciplinary action against him as per law.

7. Section 288 of the IT Act provides appearance by authorized representative and reads as under :

Appearance by authorised representative.

288. (1) *Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.*

(2) *For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—*

- (i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or*
- (ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or*
- (iii) any legal practitioner who is entitled to practise in any civil court in India;
or*
- (iv) an accountant; or*
- (v) any person who has passed any accountancy examination recognised in this behalf by the Board; or*

(vi) any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or

(via) any person who, before the coming into force of this Act in the Union territory of Dadra and Nagar Haveli, Goa[†], Daman and Diu, or Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or]

(vii) any other person who, immediately before the commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practising as such.

Explanation.—In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.

(3) [***]

(4) No person—

(a) who has been dismissed or removed from Government service after the 1st day of April, 1938; or

(b) who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act, other than a penalty imposed on him under clause (ii) of sub-section (1) of section 271; or

(c) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in sub-clause (a)*, for such time as the Chief Commissioner or Commissioner] may by order determine in the case of a person referred to in sub-clause (b)*, and for the period during which the insolvency continues in the case of a person referred to in sub-clause (c)*.

(5) If any person—

- (a) *who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practise as a legal practitioner or accountant, as the case may be;*
- (b) *who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent an assessee under sub-section (1).*

(6) *Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :—*

- (a) *no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;*
- (b) *any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and*
- (c) *no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.*

(7) *A person disqualified to represent an assessee by virtue of the provisions of sub-section (3) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), shall be disqualified to represent an assessee under sub-section (1).*

8. Rule 49 to 57 of the IT Rules provide the definition of authorized Income-tax Practitioner, prescribed authority, registration and procedure for grant of certificate of registration in favour of ITP. Same read as under :

49. In this Part—

- (a) *"authorised income-tax practitioner" means any authorised representative as defined in clause (v) or clause (vi) or clause (vii) of sub-section (2) of section 288;*
- (b) *"prescribed authority" means the prescribed authority referred to in rule 52;*
- (c) *"register" means the register of income-tax practitioners referred to in rule 53.*

Accountancy examinations recognised.

50. *The following accountancy examinations are recognised for the purpose of clause (v) of sub-section (2) of section 288, namely :—*

- (1) *The National Diploma in Commerce awarded by the All-India Council for Technical Education under the Ministry of Education, New Delhi, provided the diploma-holder has taken Advanced Accountancy and Auditing as an elective subject for the Diploma Examination.*
- (2) *Government Diploma in Company Secretaryship awarded by the Department of Company Affairs, under the Ministry of Industrial Development and Company Affairs, New Delhi.]*
- (2A) *Final Examination of the Institute of Company Secretaries of India, New Delhi.*
- (3) *The Final Examination of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959).*
- (4) *The Departmental Examinations conducted by or on behalf of the Central Board of Direct Taxes for Assessing Officers, Class I or Group 'A',*

Probationers, or for Assessing Officers, Class II or Group 'B', Probationers, or for promotion to the post of Assessing Officers, Class II or Group 'B', as the case may be.

(5) The Revenue Audit Examination for Section Officers conducted by the Office of the Comptroller and Auditor General of India.

Educational qualifications prescribed.

51. The following educational qualifications are prescribed for the purpose of clause (vi) of sub-section (2) of section 288 :—

A degree in Commerce or Law conferred by any of the following Universities:—

(I) Indian Universities :

Any Indian University incorporated by any law for the time being in force.

(II) Rangoon University.

(III) English and Welsh Universities :

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales.

(IV) Scottish Universities :

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews.

(V) Irish Universities :

The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin.

(VI) Pakistan Universities:

Any Pakistan University incorporated by any law for the time being in force.

Prescribed authority for section 288(5)(b).

52. For the purposes of clause (b) of sub-section (5) of section 288, the "prescribed authority" shall be the⁹⁷[Chief Commissioner or Commissioner] having

jurisdiction over the case in the proceedings connected with which the income-tax practitioner is alleged to be guilty of misconduct.

Register of income-tax practitioners.

53. Every Chief Commissioner or Commissioner shall maintain in Form No. 38, a register of authorised income-tax practitioners to whom certificates of registration have been issued by him under rule 55.

Application for registration.

54. (1) Any person who wishes to have his name entered as an authorised income-tax practitioner in the register shall apply to the⁹⁷[Chief Commissioner or Commissioner] within whose area of jurisdiction he has been practising. The application shall be made in Form No. 39 and shall be accompanied by documentary evidence regarding his eligibility for income-tax practice under clause (v) or clause (vi)⁹⁹[or clause (via)] or clause (vii) of sub-section (2) of section 288.

(2) The applicant shall also furnish such further information as the Chief Commissioner or Commissioner may require in connection with the disposal of the application.

Certificate of registration.

55. If the Chief Commissioner or Commissioner is satisfied that the applicant fulfils the requirements of clause (v) or clause (vi) or clause (via) or clause (vii) of sub-section (2) of section 288 and has been practising before income-tax authorities for not less than one year on the date of the application, the¹[Chief Commissioner or Commissioner] shall enter the name of the applicant in the register and issue him a certificate of registration in Form No. 40.

Cancellation of certificate.

56. (1) A certificate of registration shall stand cancelled when the name of the holder of the certificate is removed from the register under these rules.

(2) When the name of the holder of the certificate is removed from the register, the Chief Commissioner or Commissioner maintaining the register shall notify the fact of such removal to the authorised income-tax practitioner concerned and also to other Chief Commissioners or Commissioners of Income-tax (who shall notify

the fact of the removal to the income-tax authorities subordinate to them) and to the Appellate Tribunal.

Cancellation of certificate obtained by misrepresentation.

57. (1) If at any time the ⁵[Chief Commissioner or Commissioner] is satisfied that the certificate of registration was obtained by misrepresentation as to an essential fact, he shall order the removal of the name of the income-tax practitioner from the register.

(2) No order under sub-rule (1) shall be passed unless the authorised income-tax practitioner has been given a reasonable opportunity of being heard in regard to the proposed removal.

9. Shri B.D. Giri, ITP referred to section 288(2)(v) & (vi) of the IT Act and claimed that since he is retired departmental Officer, therefore, without any certificate of registration as ITP can appear before the Income-tax Authorities and the Tribunal. He has also admitted before us that though he is practicing in Gwalior, but he is not registered with the CIT, Gwalior. His claim is totally wrong and his conduct is liable to be impeached. Section 288(2)(v) & (vi) provides the meaning of authorized representative who have passed any accountancy examination recognized by the Board or any person who has acquired such educational qualifications prescribed by the Board in this behalf. Section 50 of the IT Rules provides accountancy examinations recognized in case of departmental officers and such departmental examination shall be conducted by the CBDT under sub-section (4) of section 50 of the IT Rules. The educational qualification is also provided u/s. 51 of the IT rules. However, mere possession of educational

qualification without conducting departmental examination by the Board itself is not sufficient to have any right to practice as Income-tax Practitioner (ITP in short). According to Rule 53, 54 & 55 of the IT Rules, the Chief Commissioner or the Commissioner shall have to maintain prescribed form to register ITP to whom certificate is issued. The person, who claims to be registered as ITP shall have to file proper application supported by documents to prove his accountancy examination recognized and educational qualifications achieved by him as per Rules. When CCIT or the CIT are satisfied that such person fulfills the requirement of section 288(2) of the IT Act, the ITP would be registered with the CCIT/CIT and a certificate of registration to practice shall be granted in his favour. The other provisions from section 56 & 57 of the IT Rules provides for cancellation of such certificate, which is not necessary in this case because admittedly, Shri B.D. Giri is not registered with CIT, Gwalior as he has not obtained any certificate of registration as ITP in his favour. The above provisions of the IT Act and IT Rules clearly prove that Shri B.D. Giri is not Income Tax Practitioner as recognized in the Income-tax Act and Rules. Therefore, without any certificate of registration in his favour under the above provisions, he cannot practice before the IT authorities and the Tribunal. Therefore, we warn Shri B.D. Giri to be careful in future. Copy of this order be provided to CIT, Gwalior for taking necessary action in the matter because the law would not provide any unauthorized person/representative to

appear before the Income-tax Authorities or the Tribunal. In this view of the matter and the directions above, the appeal of the assessee is allowed for statistical purposes.

10. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court.

Sd/-
(A.L. GEHLOT)
Accountant Member

Sd/-
(BHAVNESH SAINI)
Judicial Member

*aks/-

Copy of the order forwarded to :

1. Appellant
2. Respondent
3. CIT(A), concerned
4. CIT, concerned
5. DR, ITAT, Agra
6. Guard file

By order

Sr. Private Secretary

True copy