

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.309/Del/2016

Vidyadayani Shiksha Samiti, 2, Civil Lines, Roorkee.	Vs.	CIT (Exemptions)-5, Lucknow.
PAN : AAAAV6951C		
(Appellant)		(Respondent)

Assessee by : Shri Piyush Kaushik, Adv.
Department by : Shri Vijay Verma, CIT-DR
Date of hearing : 05-12-2017
Date of pronouncement : 14-12-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 21.08.2015 passed by CIT (Exemptions), Lucknow [in short (the CIT)] u/s 12AA(1)(b)(ii) denying the registration sought by the assessee u/s 12A(1) of the I.T. Act.

2. Facts of the case, in brief, are that the assessee society filed an application for registration u/s 12A(1) on 30.03.2015 before the ld. CIT. Since there was no compliance by the assessee as observed by the ld. CIT in his order, he proceeded to decide the issue on the basis of material available on record. From the details furnished by the assessee along with the application in Form No.10A he observed that the assessee society has not carried on any charitable activities. Due to non-production of books and vouchers by the assessee, the genuineness

of activities could not be verified. According to him, as per the provisions of section 12AA(1)(b), two factors namely the object of charitable purpose and genuineness of activities have to be proved before granting the registration. Since the assessee failed to prove the same, he held that the assessee society has not made out the case for granting the registration u/s 12AA(1)(b) of the I.T. Act. He referred to the decision of the Hon'ble Delhi High Court in the case of Kirti Chandra Tarawati Charitable Society vs. DIT (Exemption) reported in 232 ITR 11 wherein it has been held that there is no obligation on the CIT to grant registration to a society merely by looking at the instrument creating the society and shutting his eyes to the actual activities carried out by it. He also referred to the decision of the Hon'ble Kerala High Court in the case of Self Employers Service Society vs. CIT reported in 247 ITR 18 wherein it has been held that if a society proposed to carry out charitable activities in future, registration even u/s 12AA would not be available to it. He also referred to the decision of the Hon'ble Uttarakhand High Court in the case of CIT vs. National Institute of Aeronautical Engineering Education Society reported in (2009) 181 taxmann.com 205 and the decision of the Lucknow Bench of the Tribunal vide ITA No.809/LKW/2014 order dated 26.02.2015 and various other decisions and held that assessee's claim in absence of sufficient material required for formation of the satisfaction cannot be accepted. He accordingly rejected the claim of assessee for grant of registration u/s 12A of the I.T. Act.

3. Aggrieved with such order of the Id. CIT, the assessee is in appeal before the Tribunal by raising the following grounds :-

“1. That on the facts and circumstances of the case and in the Law, the CIT (Exemptions) has grossly erred in denying registration to the assessee society u/s 12(A)(a) of the Income Tax Act, 1961 ('the Act') as claimed.

2. That on the facts and circumstances of the case and in the Law, the CIT (Exemptions) has grossly erred in denying registration to the assessee society u/s 12A(a) of the Income Tax Act, 1961 ('the Act') as claimed in gross violation to the principle of natural justice & fairness.

That the appellant craves leave to Add to and / or Amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.”

4. Ld. counsel for the assessee referred to page 1 of the Paper Book and drew the attention of the Bench to the copy of the Form 10A wherein the assessee had enclosed the documents such as Certified Copy of Trust Deed, Last three years income tax returns, acknowledgements, Audited Balance Sheets of the assessee for last three years, copy of Minutes of the last Board Meeting, PAN of the Trust and the declaration u/s 13(1)(b), (13(1)(c) and 13(1)(d). Referring to page 30 of the Paper Book, he drew the attention of the Bench to Clause IX of the objectives of the society, according to which, the object of the society was to start, establish and maintain schools or colleges or technical institutions etc. Referring to page 39 of the Paper Book, he drew the attention of the Bench to Clause 16 of the Rules and Regulations of the society which prescribes the liabilities and responsibilities. Relying on the following decisions, he submitted that education *per se* is charitable activity :-

(a) Shavak Shiksha Samiti vs. CIT, 104 TTJ 127 (Del.).

(b) Aryan Educational Society vs. CIT, 93 ITD 546.

- (c) Shanti Education and Welfare Society vs. CIT, ITA No.5970/Del/2012.
- (d) Amby International School Academy vs. DIT, ITA No.6214/Mum/2009 dated 25.01.2012.
- (d) Indo-American Society vs. ACIT, 278 ITR (AT) 49.

5. Ld. counsel for the assessee submitted that at the stage of grant of registration u/s 12A, ld. CIT is supposed to examine only the objects of the society/trust and it is not appropriate on the part of the CIT to examine the aspect of application of income at the stage of granting registration u/s 12AA, which is to be examined by the Assessing Officer on a year to year basis at the time of claiming exemptions u/s 11 of the I.T. Act.

6. Referring to the decision of the Delhi Bench of the Tribunal in the case of *Bhartiya Kisan Sangh vs. CIT* reported in (2017) 59 ITR (Trib) 228 (ITAT [Del]), he submitted that the Tribunal granted registration to the assessee trust wherein under identical circumstances the ld. CIT (Exemptions) had rejected the grant of registration u/s 12A(1) of the I.T. Act. The Tribunal at para 6.9 of the order held that at the stage of granting registration u/s 12A, the ld. CIT (Exemptions) is required to see the objects of the society and not required to examine on the application of income which will have to be undertaken by the Assessing Officer on a year to year basis after the assessee files return of income claiming exemption under section 11 of the I.T. Act.

6.1 Referring to the decision of the Hon'ble Allahabad High Court in the case of *Fifth Generation Education Society vs. CIT* reported in 185 ITR 634, he

submitted that the Hon'ble High Court in the said decision has held that at the time of considering the application for grant of registration u/s 12A, ld. CIT is not required to examine the application income or carrying on of any activity by assessee trust or institution. Referring to the decision of the Hon'ble Karnataka High Court in the case of CIT vs. A.S. Kupparaju Brothers Charitable Foundation Trust reported in (2012) 69 DTR 315, he submitted that the Hon'ble High Court in the said decision has held that once it is admitted that in pursuance of the trust deed and in terms of the objects set out therein, schools and colleges are being run and educational institution are being run, nothing more requires to be established to show that the trust in question is a genuine trust. Referring to the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT vs. D.P.R. Charitable Trust reported in (2011) 61 DTR 410, he submitted that the Hon'ble High Court in the said decision has held that while considering the application u/s 12A, the ld. CIT is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit while granting registration. Since the assessee trust was established for educational purposes it was held that the trust is entitled to registration. Referring to the decision of the Hon'ble Kerala High Court in the case of Sree Anjaneya Medical Trust vs. CIT reported in (2016) 382 ITR 399, he submitted that the Hon'ble High Court in the said decision has held that while granting registration u/s 12A only genuineness of trust is to be examined and no

examination of application of funds or ethical background of settlors called for at that stage.

7. Referring to the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. B.K.K. Memorial Trust reported in (2013) 256 CTR 424, he submitted that the Hon'ble High Court in the said decision has held that while granting registration u/s 12AA only object of trust has to be seen, it cannot examine that trust was not utilizing its income for charitable purposes.

8. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of Shree Balaji Educational Trust vs. CIT reported in (2016) 47 ITR 595, he submitted that the Tribunal has also held the same view by following various decisions. He submitted that since the assessee trust has filed the relevant details along with the application in Form No.10A and since it is imparting education by running various schools and colleges which is charitable in nature, therefore, the ld. CIT should have granted registration u/s 12A of the I.T. Act.

9. Ld. DR on the other hand strongly supported the order of the ld. CIT. He submitted that the ld. CIT has got ample power u/s 12AA to examine the books of account of the assessee. By not allowing him to examine the books of account and thereby restricting his powers is contrary to the provisions of the Act. He submitted that ld. CIT has thoroughly discussed the issue by relying on various decisions which are applicable to the facts of the present case. He also

relied on the decision of the Hon'ble Bombay High Court in the case of Blue Star Ltd. vs. CIT reported in 217 ITR 514.

10. Ld. counsel for the assessee, in his rejoinder, submitted that the decision relied on by the ld. DR in the case of Blue Star Ltd. (supra) is not applicable to the facts of the present case. In that case the issue was relating to capital receipts or income whereas in the present case the issue is relating to power of ld. CIT at the time of granting registration u/s 12A of the I.T. Act. Therefore, the same is distinguishable and not at all applicable to the facts of the present case.

11. We have considered the rival arguments made by both the sides, perused the order of the ld. CIT and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is a society running certain schools and colleges. It applied for registration u/s 12A of the I.T. Act in Form No.10A. A perusal of the objectives of the society as per Memorandum of Association, copy of which is placed at page 30 of the Paper Book shows the following objects of the society :-

- (i) *To impart education of Indian Culture, Languages, Art, Science and Technology and in other areas irrespective of caste and creed.*
- (ii) *To develop and encourage and indigenous system of education based on latest scientific researches.*
- (iii) *To create and provide facilities for all round development of the child.*
- (iv) *To organize cultural activities for promotion of various aspects of India Culture.*
- (v) *to provide facilities for social and economic development for the poor and needy who deserve.*

- (vi) *To establish libraries with books on religious, life histories and teachings of great personalities.*
- (vii) *To evolve and encourage interest in physical and mental upliftment through game, yoga, asans and physical exercises.*
- (viii) *To encourage studies and lectures on religions, culture, ethics and spirituality.*
- (ix) *To start, establish and maintain schools or colleges or technical institutions etc.*
- (x) *To establish and maintain charitable hospitals, public health centre, and social up-lift centres.*

12. Since the assessee trust did not produce the books and vouchers in respect of expenses claimed by the society for verification of the activities of the trust, the Id. CIT held that the assessee trust is not carrying out any charitable activities and, therefore, the genuineness of the activities could not be verified. Relying on various decisions, the Id. CIT rejected the claim of registration sought by the society u/s 12A(1) of the I.T. Act. It is the submission of the Id. counsel for the assessee that at the time of granting of registration the Id. CIT is required only to examine the objects of the trust and is not required to examine the books of account of the trust and it is only during the claim of exemption u/s 11 the Assessing Officer will examine the same and allow or disallow the same as the case may be. It is also his submission that since the assessee trust is imparting education by running various schools and colleges, therefore, it is doing charitable activities as according to him “education” *per se* is charitable activity.

13. We find merit in the above submission of the Id. counsel for the assessee. So far as whether education *per se* is charitable or not, we find the Delhi Bench

of the Tribunal in the case of Shavak Shiksha Samiti (supra) at para 3 has observed as under :-

“3. We have considered the facts of the case and rival submissions. Section 2(15) defines the term 'charitable purpose' in an inclusive manner and includes within its ambit relief of poor, education, medical relief and advancement of any other object of general public utility. While, there could be some dispute in interpretation of the words "any other object of general public utility", there is no dispute that education per se is a charitable purpose just like relief of poor or medical relief. The society also does not exist for profit as there is no clause for distribution of profits or net assets in case of dissolution to members. The precondition for grant of registration under Section 12AA is that objects are charitable in nature and activities are genuine. We have seen that objects are charitable. The society is trying to set up a school in pursuance of its main object, which is a genuine activity. The learned CIT has also not referred to any material to show that the activities are not genuine. It is no doubt true that income of the society can also be exempted under Section 10(23C), but when two recourses are available to a person under the law, it is for him to choose one, the other or both the recourses. The assessee applied for its registration, to which it was entitled. We are of the view that under the circumstances, it has to be registered. The learned CIT is directed to grant registration to the society.”

14. The Co-ordinate Bench of the Tribunal in the case of Shanti Education and Welfare Society vs. CIT in ITA No.5970/Del/2017 order dated 16.01.2015 has also held similar view by observing as under :-

“8. Applying the foregoing ratio, it is evident that the relevant determinative factor for conferring registration is the object of the society and the quantum of profits/ surplus is an irrelevant factor. In the present case, admittedly and undisputedly appellant society is imparting education. And education per-se is a charitable object u/s 2(15) of the Act. The basis of impugned action to regard the society as commercial at the stage of registration on the basis of expenditure incurred on advertisement and publicity is unwarranted and against the settled interpretation of the statute. Before concluding we also take notice that the ld CIT has relied on the judgment of Hon'ble High Court of Uttarakhand in the case of CIT Vs. Queen Educational Society, which is not applicable to the facts of the present case, for the reason that the examination at the stage of registration is to be confined to the objects and moreover as held by the Apex Court in American Hotel & Lodging Association Educational Institute (supra) the character of the recipient of the income must have the character of educational institution is to be determined irrespective of the profits. In view of the above we reverse the order of the CIT and direct it to grant registration u/s 12A of the Act.”

15. The various other decisions relied on by the Id. counsel for the assessee in the Paper Book also supports the view that education *per se* is a charitable activity.

16. Now, coming to the powers of the Commissioner as to whether while granting registration u/s 12A he is required to examine the books of account etc. or he is only to satisfy himself regarding the objects of the trust and genuineness of the activities of the trust, we find various courts have held that while granting registration u/s 12A the Id. CIT is required to see only the objects of the assessee trust/society and not to examine the application of income. He is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit while granting registration. He is only required to examine the objects of the trust. We find identical issue had come up before the Tribunal in the case of *Bhartiya Kisan Sangh Sewa Niketan* (supra). In the said case also the assessee trust did not produce the books of account, bills and vouchers etc. for verification of the Id. CIT for which the Id. CIT held that the assessee society is not carrying out any charitable activities. Due to non-compliance of assessee society, the genuineness of the activities could not be verified. The Id. CIT, therefore, relying on various decisions including the decisions which have been relied on by the Id. CIT in the present case, rejected the claim of registration u/s 12A(1) of the I.T. Act. When the matter travelled to the Tribunal, the Tribunal allowed the claim of registration

by holding that at this stage on granting registration u/s 12A the Id. CIT is required to see the objects of the society and not required to examine the application of income which will have to be undertaken by the Assessing Officer on a year to year basis after the assessee files the return of income claiming exemption u/s 11 of the I.T. Act.

17. We find the Hon'ble Allahabad High Court in the case of Fifth Generation Education Society (supra) has observed as under :-

“2. A reading of the section shows that the registration under Section 12A is a pre-condition for availing of the benefit under Sections 11 and 12. Section 11 provides for exemption of income which is applied for charitable purposes. Section 12 is in the nature of an explanation to Section 11. Before a person can claim the benefit of Section 11, or Section 12, as the case may be, he must obtain registration under Section 12A. The application for registration under Section 12A has to be made in Form No. 10A prescribed by Rule 17A before the expiry of one year from the date of creation of the trust or the establishment of the institution, whichever is later. It has to be made by the person in receipt of the income of the trust.

3. It is evident that, at this stage, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of Section 12A read with Rule 17A and whether Form No. 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this stage, it is not proper to examine the application of income.

4. The order impugned does not say that the objects of the society are not charitable in nature ; it merely says that they are general in nature. Just because they are general, they do not cease to be charitable. The Commissioner has also observed that no activity has been carried on by the society. It is also not the requirement of Section 12A of the Act. Nor has Section 80G any relevance at this stage. The impugned order cannot, therefore, be sustained and it is quashed.”

18. We find the Hon'ble Karnataka High Court in the case of A.S. Kupparaji Brothers Charitable Foundation Trust (supra) has observed as under :-

“The certificate of registration is only an enabling provision to claim exemption. By merely granting a certificate income is not exempted. That is only a first stage to claim exemption. The Commissioner of Appeals should not have confused these two aspects and seems to think as the trustees and his family members are treating the property as their own and misutilising the property it is not a genuine trust. When once it is admitted that in pursuance of the trust deed and in terms of the objects set out therein, schools and colleges are being run and educational institutions are being run as rightly held by the Tribunal, nothing more requires to be established to show that the trust in question is a genuine trust and therefore, the assessee is entitled to the registration under section 12AA of the Act. As set out above, even if the registration is granted, the exemption from the provisions of the Income Tax Act in particular sections 11 and 12 is not automatic. It is only when the assessee satisfies the requirement of section 13, he would be eligible for exemption. That is a matter to be gone into by the Assessing Authority in respect of the returns filed every year and if according to them there is misappropriation of funds and it is hit by section 13 of the Act, certainly, they can deny the benefit of exemption. But that is not a ground to deny the registration in the instant case under Section 12AA, when admittedly the trust has been established to run schools and colleges for imparting education, which is a charitable purpose. In that view of the matter, we do not see any merit in this appeal. The substantial question of law framed in this appeal is answered in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed.”

19. We find the Hon’ble Madhya Pradesh High Court in the case of D.P.R.

Charitable Trust (supra) has observed as under :-

“8. Sec. 12A of the Act prescribes conditions for registration of the trust whereas s. 12AA of the Act prescribes the procedure for registration. A careful reading of the relevant provisions would reveal that application for registration under s. 12A has to be made in Form No.10A prescribed by r. 17A before the expiry of one year from the date of creation of the trust or establishment of the institution whichever is later. The application has to be made by a person in receipt of income of the trust. Thus while dealing with the application for registration the CIT has to examine whether the application is made in accordance with s. 12A r/w r. 17A and whether Form No.10A has been properly filled up. He may also examine whether objects of the trust are charitable or not. Sec. 12AA nowhere provides that CIT while considering the application for registration is also required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit. The language employed by the legislature in s. 12AA only requires that activities of the trust or institution must be genuine which should be in consonance with the object of the trust. At this stage, the CIT is not required to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of s. 12A r/w r. 17A and whether Form No.10A has been properly filled up. He has also to see whether the objects of the trust are charitable or not. Our view finds support from the Division Bench decision of the Allahabad High Court rendered in the case of Red Rose School (supra) and the decisions in the case of New Life in Christ Evangelistic Association (supra), Fifth Generation Education Society (supra) and Shantagauri Ramniklal Trust (supra).

9. *In the backdrop of aforesaid legal position facts of the case may be seen. Admittedly the application submitted by the respondent was in consonance with the procedural requirement prescribed in this regard. From the trust deed which was filed before the CIT the objects of the trust could be ascertained. From perusal of cl. (3) of the trust deed we find that the objects of the trust are charitable in nature and are in tune with s. 2(15) of the Act and, therefore, the Tribunal rightly opined that the order of the CIT rejecting the application under s. 12A was unjustified.”*

20. The various other decisions relied on by the ld. counsel for the assessee in the Paper Book also support his case. In view of the above discussion, we hold that the ld. CIT was not justified in rejecting the claim of registration u/s 12A. We, therefore, set-aside the order of the ld. CIT and direct him to allow registration u/s 12A of the I.T. Act.

21. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 14th day of December, 2017.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 14-12-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT (Exemptions)
- 4) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi