

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. Nos.66 & 67/Bang/2016

SHARADA FOUNDATION,
C/o Sri Ramakrishna Ashrama (Bailur Math),
Swami Vivekananda Marg,
Yerlapady Village, Govindoor Post,
Bailur-574 102, Karkala Taluk,
Udupi District, Karnataka.

... Appellant.

Vs.

The Commissioner of Income Tax (Exemptions),
Bangalore.

..... Respondent.

Appellant By : Shri H. V. Gowthama, C.A.

Respondent By : Shri Sanjay Kumar, CIT-III (D.R)

Date of Hearing : 20.10.2016.

Date of Pronouncement : 26.10.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

1. These appeals by the assessee are directed against the order dt.6.11.2015 of Commissioner of Income Tax (Exemptions) passed under Section 12AA(1)(b)(ii) of the Income Tax Act, 1961 (in short 'the Act') as well as under Section 80G(5)(iv) of the Act. Since both impugned orders

are based on common facts therefore, these appeals are heard together and disposed of by this consolidated order.

2. The assessee has raised the grounds in ITA No.66/Bang/2016 as under :

1. The learned Commissioner of Income Tax (Exemption) erred in rejecting the application made by the Appellant Foundation for grant of Registration u/s. 12AA(1)(b)(ii) of Income Tax Act, 1961,
2. The learned Commissioner of Income Tax(E) was wrong in not considering the material furnished by the Appellant Foundation complying with all the requirements of Income Tax Act, as suggested by the learned Commissioner of Income Tax and also had furnished the accounts for the period from the date of commencement of the foundation from 13.12.2014 till 31st October 2015.
3. The learned Commissioner of Income Tax had rejected the application for Registration u/s.12AA only on the grounds that as per clause in the Trust Deed, it is mentioned as the assets of the foundation, on dissolution, shall be transferred to Sri Ramakrishna Ashrama (Bailur Math) or to Sri Sharada Math, Dakshineswar, West Bengal, which enjoys recognition u/s.80G of Income Tax Act. This matter was not communicated to the Appellant by the learned Commissioner of Income Tax (E), even while suggesting certain changes to be made in the Trust Deed vide communication from Income Tax Dept. on 22.07.2015 and 16.10.2015.
4. Further, the learned Commissioner of Income Tax (E) ought to have appreciated that the foundation being the follower of Sri Ramakrishna Ashrama's principle, on dissolution, the Author desires that the assets should go to an organization founded under the principles of Sri Ramakrishna Ashrama. Therefore the dissolution clause contained that assets should go to Sri Ramakrishna Ashrama. However, since the learned Commissioner of Income Tax(E) had not intimated the Appellant, suggested changes in the Trust Deed relating to dissolution clause, the order has been passed by the learned Commissioner of Income Tax(E) without applying the principles of natural justice.

5. The mere fact that the date of proceedings of Commissioner of Income Tax (E) rejecting order u/s.80G(5)(iv) is mentioned as 28.09.2015, wherein it is stated that the application for Registration u/s.12A has been rejected vide order dated 06.11.2015 itself shows that the learned Commissioner of Income Tax(E) has not applied his mind while passing the order. It may also be observed that in the order u/s.12AA letter dated 16.10.2015 was issued intimating some of the discrepancies, which itself is after the date of passing the proceedings regretting the Recognition u/s.80G of Income Tax Act, which shows that the rejection has been made without applying the mind.

For the above grounds and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal be allowed.

3. The assessee filed an application for Registration under Section 12AA on 5.5.2015. The CIT (EXEMPTIONS) vide letter dt.16.10.2015 pointed out some discrepancy and called for certain details/clarifications. In response the assessee furnished the details on 4.11.2015. On verification of the details on record, it was found that one of the clauses of the Trust Deed states that in the case of Dissolution of the Trust, the property of the Trust should go to Sri Ramakrishna Ashrama however as per the provisions of the Income Tax Act in case the Dissolution the properties go to any other Trust which has similar objectives. Since the status of Sri Ramakrishna Ashrama regarding Regn. Under Section 12A was not known or brought to the notice of CIT (E), he has held that in the absence of relevant details it is not possible to verify the genuineness of the Trust in this case and accordingly rejected the application for Regn. Under Section 12A of the Act.

4. Before us, the Id. AR of the assessee has submitted that this question was not confronted to the assessee for its clarification and therefore in the absence of an opportunity to the assessee to clarify that Sri Ramakrishna Ashrama is registered under Section 12A of the Act, the finding of the CIT (EXEMPTIONS) is based on assumption. The Id. AR further submitted that even otherwise the assessee has amended its Trust Deed vide Supplementary Deed dt.10.3.2016 and particularly the irrevocability and failure of the Trust Clause. The Id. AR has pointed out that as per the Supplementary Deed in case of Dissolution of the Trust the properties of the Trust shall be transferred to Sri Ramakrishna Ashrama if the same continue to be Registered under Section 12AA of the Income Tax Act and recognized under Section 80G at the time of Resolution of the assessee-trust or any other charitable trust registered under Section 12AA and recognition under Section 80G of the Act or any other trust, society having similar objects as of assessee. Therefore the Id. AR has submitted that as per the amendment by Supplementary Deed dt.10.3.2016, the objection raised by the CIT (EXEMPTIONS) are now removed. Since the CIT (EXEMPTIONS) did not afford an opportunity to the assessee to rectify the defect if any in the trust deed therefore the Id.

AR has pleaded that the matter maybe remanded to the CIT (EXEMPTIONS) for fresh consideration in the light of the amendment vide Supplementary Deed.

5. On the other hand, the Id. DR has relied upon the impugned order of the CIT (EXEMPTIONS) and submitted that despite the discrepancy pointed out by the CIT (EXEMPTIONS) the assessee failed to furnish the relevant details and to satisfy that the objects of the assessee-trust are charitable and activities are genuine.

6. Having considered the rival submissions as well as relevant material on record, we note that vide letter dt.16.10.2015, the CIT (EXEMPTIONS) called certain details/clarifications from the assessee which are listed in the impugned order itself. From these requisite details it is clear that the question of irrevocability clause and distribution of the property in case of Dissolution was not raised by the CIT (EXEMPTIONS) and therefore the assessee was not confronted with such an objective regarding the distribution of the trust properly in case of dissolution. The CIT (EXEMPTIONS) has observed in paras 2 & 3 of the impugned order as under :

“2. The appellant trust furnished the details on 4.11.2015. The trust has irrevocability clause and it is mentioned in the trust

deed that in case of dissolution of the property of the trust should go to Sri Ramakrishna Ashrama. However in the I.T. Act, in case of dissolute the properties should go to any other trust which has similar objectives. It will not be known whether Sri Ramakrishna Ashrama is recognized under Section 12A of the IT Act at that time. In other words, it cannot be pre-determined before its dissolution.

3. At the stage of Registration under Section 12AA, the Commissioner in receipt of an application for Registration of a trust or institution has to satisfy himself about the objects of the trust or institution and the genuineness of its activities. In the absence of relevant details, it is not possible to verify the genuineness of the objects and the activities of the trust in this case. in this connection reliance is placed on the following decisions :-

a) The Hon'ble Karnataka High Court in the case of Ganjam Nagappa and Son Trust Vs. DIT(E) reported in 269 ITR 59 have held that "Grant of exemption or renewal is not automatic in character.

b) The Hon'ble ITAT, Bangalore in the case of DBA Institution vide its order in ITA No.667(BNG)/08 dt.27.01.2009, has held that the DIT(E) was within his jurisdiction to reject the application of the assessee-trust for grant of registration under Section 12AA since the applicant trust "could not substantiate its claim by bringing out the carrying on of charitable activity" & proceeded to uphold the order of the DIT(E) in rejecting the application u/s.12A.

c) Hon'ble Kerala High Court in the case of Self Employers Institution Vs. CIT reported in 247 ITR 18 has held that where there is no material before the Commissioner to be satisfied of the genuineness of the activities of the trust is a valid reason for rejection."

7. Thus it is clear that the denial of Registration is based on the ground that on the dissolution of the assessee-trust the properties were to go to Sri Ramakrishna Ashrama whose status of Registration under Section 12A

was not known. As the assessee was not given an opportunity to clarify on this point therefore, the denial of Registration is without verifying the necessary record and status of Sri Ramakrishna Ashrama. In any case, the assessee has subsequently amended the Trust Deed vide Supplementary Deed dt.10.3.2016 whereby it has incorporated the necessary amendment in the said irrevocability clause regarding distribution of property on dissolution to satisfy the requirement as per the provisions of the Income Tax Act. In the facts and circumstances of the case, we set aside the impugned order passed under Section 12AA(1)(b)(ii) of the Income Tax Act and remand the matter to the record of the CIT (EXEMPTIONS) for deciding the matter afresh after considering the amendment carried out by the assessee vide Supplementary Deed dt.10.3.2016 as well as after giving an opportunity of hearing to the assessee.

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8. The learned A. R. of the assessee has submitted that this is an order consequent to the order dt.6.11.2015 passed under Section

12AA(1)(b)(ii) of the Act. He has further submitted that no independent decision was taken by the CIT (EXEMPTIONS) but the application for recognition under Section 80G was rejected in view of the order dt.6.11.2015. The Id. AR has further submitted that this order stated to have been passed on 28.9.2015 whereas it is based on the order dt.6.11.2015 which is a subsequent date order therefore this order is not sustainable. The Id. DR has submitted that it is only a typographical error as regards the date of order however, the CIT (EXEMPTIONS) cannot take a different view while considering the application for approval under Section **80G(5)** when the application under **Section 12AA(1)(b)(ii)** is rejected.

9. Having considered the rival submissions as well the relevant material on record, we note that the application for Registration under Section 80G(5) was rejected by the CIT (EXEMPTIONS) based on the order dt.6.11.2015 passed under Section 12AA(1)(b)(ii) of the Act. As we have already set aside the order passed under Section 12AA(1)(b)(ii) therefore the impugned order rejecting the application under Section 80G(5) is also set aside for reconsideration.

10. In the result, the assessee's appeals are allowed for statistical purposes.

Order pronounced in the open court on 26th day of Oct., 2016.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dt. 26.10.2016.

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore