

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: "D" NEW DELHI**

**BEFORE SHRI J.SUDHAKAR REDDY, A.M.
AND SHRI C.M. GARG, J.M.**

**ITA No: 6475/Del/2014
Assessment Year: -**

Jaipal Singh Sharma Trust vs. CIT, Ghaziabad
40-41, Maliwara Chowk,
Additional Sehani Gate
Ghaziabad

PAN: AANTS 7037 E
(Appellant)

(Respondent)

Appellant by : Shri Amit Goel, C.A.
Respondent by : Ms. Sulekha Verma, CIT, DR

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax, Ghaziabad, passed u/s 12AA of the Income Tax Act 1961 (the Act) dated 30.9.2014, wherein an application made by the Assessee Trust for registration u/s 12AA of the Act in Form No.10A read with Rule 17A was rejected.

2. Facts in brief:- The assessee is a Trust and was established on 22.10.2013. The main objects of the Trust are brought out in para 1 of the Ld.CIT(A), Ghaziabad order which reads as follows: "the main objectives of the Trust are to provide health education including technical education, water conservation and environmental awareness and to establish medical colleges and hospitals etc." It filed an application in form no.10A under Rule 17A of the I.T. Rules, 1962 on 13.3.2014, for grant of registration u/s 12AA of the Act. The Ld.CIT, Ghazaibad rejected the said application on the

ground that the assessee trust has not taken any steps in pursuance of its aims and objects, except acquisition of land and hence the genuineness of the activities of the Trust cannot be verified. He also stated that the evidence brought on record to show the capacity of the lenders who have advanced loans to the assessee trust, are not sufficient. Hence he rejected the application for grant of registration u/s 12AA of the Act, by concluding that the registration cannot be granted to the Trust at this stage.

3. Aggrieved the assessee is in appeal before us on the following grounds.

1. *Whether the learned CIT, Ghaziabad was justified to reject the application for registration U/S 12A of the applicant assessee Trust, In spite of submitting all required facts / evidences.*
2. *Whether the learned CIT, Ghaziabad was justified to reject the application for registration U/S 12A of the applicant assessee Trust on the basis of recording the fact that non verification of genuineness of the activities while in fact applicant assessee Trust have produce all necessary evidence / facts by which genuineness of the activities was verified.*
3. *Whether the learned CIT, Ghaziabad was justified to reject the application for registration U/S 12A of the applicant assessee Trust for which proper opportunity of being heard was not given.*
4. *Whether the learned CIT, Ghaziabad was justified to reject the application for registration U/S 12A of the applicant assessee Trust for which no specific show cause notice stating the reasons was given to the applicant assessee Trust.*
5. *Whether the order dated 30.09.2014 of CIT, Ghaziabad was justified which was sent through Speed Post dated 1.10.2014 at 12:24:00 vide Speed Post No. EU2174224591N, while said order shall be sent latest by 29.09.2014 in view of sub section 2 of section 12AA of the Income Tax Act 1961.*

Sub section (2) of Section 12AA of the Income Tax Act 1961 clearly state

that every order granting or refusing registration under clause (b) of sub section (i) shall be passed before the expiry of six month from the end of the month in which application was received. As application for registration was received on 13.03.2014 by CIT, Ghaziabad.

6. *Whether the order dated 30.09.2014 was barred by limitation in view of provisions of sub section 2 of section 12AA of the Income Tax Act 1961.*

7. *That the appellant seeks leave to add, amend, delete or alter any ground or grounds of appeal petition at the time of hearing of appeal, if deemed necessary, in the interest of justice and equity.*

4. We have heard Shri Amit Goel, the Ld.Counsel for the assessee and Ms.Surekha Verma, Ld.CIT, D.R. on behalf of the Revenue.

5. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

6. In our view the Ld.CIT(A), Ghazaiabad's action of refusing to grant registration to the assessee u/s 12AA of the Act, is not in accordance with law for the following reasons.

(a) The Ld.CIT(A), Ghazaiabad, does not dispute that the aims and objectives of the Trust are charitable in nature.

(b) The reason given by the Ld.CIT(A) for refusing the registration is that, "the second limb i.e. genuineness of the activities of the Trust, could not be verified, for the reason that the assessee has not taken steps in pursuance of its aims and objects, except for acquiring land" is not legally tenable.

This ground taken by the Ld.CIT for refusal of registration is not correct for the reason that:

- (i) The assessee had commenced activities by acquiring land. It was also pointed out that the State Government had exempted the assessee trust from payment of stamp duty on purchase of land, in view of the charitable aims and objectives of the Trust.
- (ii) Even otherwise, it is well settled that at the stage of grant of registration, the non-commencement of the activities by the Trust cannot be a ground for refusal of registration u/s 12AA of the Act.

The above propositions are covered by the following judgements.

- (a) In the case of CIT, Varanasi vs. Varanasi Welfare Trust, Varanasi in ITA no. 227 of 2014 dt. 12.11.2014 the Hon'ble Allahabad High Court held that :

“The CIT, Varanasi rejected the application for registration u/s 12AA of the Act and consequently for the grant of approval u/s 80G(5)(vi) of the Act on the ground that the assessee had not filed material in relation to the activities of the Trust since its inception. In view of the Commissioner, merely expressing an intention to conduct a charitable activity, was not sufficient to grant registration until the commencement of charitable activities is noticed. Hence, the Commissioner held that the object and genuineness of the trust remain unverifiable. The Tribunal, in appeal, has reversed the view of the Commissioner while relying upon its own decision in the case of Panchganga Foundations vs. CIT and on a decision of the Division Bench of this Court in Hardayal Charitable & Educational Trust vs. CIT-II, Agra.

A Division Bench of this Court, in the judgement in Hardayal Charitable (supra), has construed the provisions of section 12AA of the Act, after having due regard to the preponderance of judicial opinion of all the High Courts including of this Court and has held as follows:

“The preponderance of the judicial opinion of all the High Courts including this Court is that at the time of registration u/s 12AA of the Act, which is necessary for claiming exemption u/s 11 and 12 of the Act, the CIT is not required to look into the activities, where such activities have not

or are in the process of its initiation. Where a trust, set up to achieve its objects of enabling educational institution, is in the process of establishing such institutions, and receives donations, the registration u/s 12AA cannot be refused, on the ground that the Trust has not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage only the genuineness of the objects has to be tested and not the activities, which have not commenced. The enquiry of the CIT at such preliminary stage should be restricted to genuineness of the objects and not the activities unless such activities have commenced. The Trust or society cannot claim exemption, unless it is registered u/s 12AA of the Act and thus at that such initial stage the test of genuineness of the activity cannot be a ground on which the registration may be refused.

This aspect of the view of the Tribunal is hence consistent with a judgement of the Division Bench of this Court and would not require this Court to take any different view.”

(b) The Delhi G Bench of the ITAT in ITA 5501/Del/12 in Sai Ashish Charitable Trust vs. DIT(E) held as under.

“8. On a careful consideration of above rival contentions and submissions of both the parties and careful perusal of record, inter alia the impugned order, we clearly observe that the DIT(E) has not pointed out any defect or doubt about the charitable objects of the assessee trust. From the impugned order, we clearly observe that the DIT(E) has rejected the application of the assessee trust for grant of registration u/s 12A of the Act by holding that in absence of any genuine charitable activity, the genuineness of the charitable activities cannot be held to be established. At the same time, we observe that as per ratio of the decision of Hon’ble Jurisdictional High Court of Delhi in DIT vs. Foundation of Ophthalmic & Optometry Research Education Centre, registration u/s 12A is not dependent on commencement of charitable activity. The registration granting authority is not required to examine the question whether the trust has actually commenced and carried on its charitable activities. We also

take cognizance of decision of Hon'ble High Court of Allahabad in the case of CIT vs. RS Bajaj Society (supra) as relied by the assessee, wherein their lordships held that at the time of registration only genuineness of the objects was to be tested, not the activities which were not commenced by that time.

In view of above, we hold that the DIT(E) rejected the application of the assessee for registration u/s 12A of the Act on wrong premise and unjustified grounds. At the cost of repetition, we note that while the DIT(#) has not raised any doubt or objection about the charitable objects of the assessee trust, registration u/s 12A cannot be denied on the ground that the genuineness of the charitable activities cannot be held to be established in absence of any genuine charitable activity. Accordingly, sole ground of the assessee trust is allowed and, consequently, the impugned order is set aside by directing the DIT(E) to grant registration u/s 12A of the Act for the assessee trust.”

(c) The Hon'ble Punjab & Haryana High Court in CIT-II, Chandigarh vs. Surya Educational & Charitable Trust (2011) 15 Taxmann.com 123 (P&H) held as under:

As per section 12AA an application for registration of the trust and institution is required to be made within one year from the date of creation of the trust or the establishment of such institution. The procedure for registration of the trust or institution is prescribed under section 12AA. In terms of clause (a) of section 12AA, the Commissioner is to satisfy himself about the genuineness of the activities of the trust on such inquiries as he may deem necessary. Sub-section (1A) and (2) of section 12AA are procedural in nature, whereas sub-section (3) of section 12AA empowers the Commissioner to cancel the registration of the trust or institution, if he is satisfied that the activities of such trust or Institution are not genuine or are not carried out in accordance with the objects of the trust or institution. [Para 8]

Section 11 contemplates that the income as specified therein shall not be included in the total income of the previous year of the person in receipt of the income derived from the property held under the trust wholly for charitable or religious purposes, whereas section 12 deals with the contributions received by the trust or an institution, established for charitable and religious purposes, receiving contribution, shall not be an income in terms of section 11.

The benefit of sections 11 and 12 is available only if such trust or institution is registered under section 12AA. [Para 9]

On the other hand, the provisions of section 10(23C) are the provisions of the Act in substitution of the earlier provisions of section 10(22) as to which income shall not be included in computing the total income of any person. Therefore, the provisions of sections 11, 12 or section 10(23C) deal with the income of a trust or of the institution and the circumstances as to when such income is to be excluded for computing the total income, but the basis of such benefit is the registration under section 12AA. Unless a trust or institution is registered under section 12AA, such trust or institution shall not be entitled to exclude from its total income, deductions or contributions or from other sources. Therefore, the principles laid down for excluding the income from consideration under section 10(22) now 10(23)(C) or sections 11 and 12 are not applicable while considering the application for registration under section 12AA. The application for registration is required to be made within one year of the creation of the trust. Section 12AA requires satisfaction in respect of the genuineness of the activities of the trust, which includes the activities which the trust is undertaking at present and also which it may contemplate to undertake. The insertion - of sub-section (3) to section 12AA clarifies the said fact, when it empowers the Commissioner to cancel the registration if the activities of the trust are not carried out in accordance with such objects. (Para 10)

As far as the observations made by the Ld.CIT, on the alleged inadequacy of the evidences brought on record to show the capacity of the lenders from whom the assessee trust had borrowed loans, we hold that the comments are vague and not conclusive. Such comments cannot be a ground for refusal of grant of registration u/s 12AA of the Act. The aspect regarding examination of the source and application of the funds are in the domain of the Assessing Officer and not in that of the Ld.CIT, while processing the application u/s 12AA of the Act.

- (d) In the case of CIT vs. Saint Kabir Education Trust/Baba Deep Singh Educational Society (2012) 21 Taxmann.com 38 (P&H), under similar circumstances the Hon'ble Punjab & Haryana High Court held as follows.

“7. In view of above facts and circumstances, it would be clear that respondent society which was admittedly running a Polytechnic College and the activities were interwoven for furthering the projects and activities pertaining to education, the Tribunal rightly directed that registration should be granted to the respondent society with the rider that the same could always be cancelled if it came to the notice of the CIT that the society was not carrying on the activities as per its objects. The Commissioner while processing the application u/s 12AA of the Act was not to act as an Assessing Authority and thus, the Tribunal has rightly allowed the appeal filed by the society in the facts and circumstances of the present case.”

7. In view of the above discussion as well as the case laws referred to, specifically the judgement of the Jurisdictional High Court, we direct the Ld.CIT, Ghaziabad to grant registration to the assessee trust u/s 12AA of the Act to the assessee trust.

8. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 29th October, 2015.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 29th October, 2015

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar