

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.730(B)/2014  
(Assessment year : NA)**

M/s Assisi Education Trust,  
Bagambila, Deralakatta P.O.,  
Mangalore-575 018

**PAN No.AADTA9053A**

Appellant

**Vs**

The Commissioner of Income-tax,  
Mangalore.

Respondent

**Assessee by : Shri V.K.Gurunathan, Advocate  
Revenue by : Shri Farhat Hussain Qureshi, CIT**

**Date of hearing : 08-07-2015  
Date of pronouncement : 17-07-2015**

**O R D E R**

**PER SHRI VIJAY PAL RAO, JM:**

This appeal by the assessee is directed against the order dated 30-04-2014 of CIT, Mangalore passed u/s 12AA of the IT Act, whereby the application of the assessee seeking registration u/s12AA of the Act was rejected.

2. The assessee has raised the following grounds;

*“1. On the facts and in the circumstances of the case, the ld.CIT ought to have granted registration u/s12AA of the Act to the appellant trust on the basis of the application made.*

*2. On the facts, the order of the ld. CIT, is erroneous when she held that sub-clauses(i),(j),(k) & (l) of clause 4 of the Trust Deed were of non-charitable nature, without taking a holistic view of all the clauses of the said Trust Deed.*

*3. The order of the ld. CIT, is erroneous in as much as the order refusing to grant approval under section 12AA was passed without considering the clauses subsequent to clause 4 of the Trust Deed, particularly clauses 5(v)and 7 of the Trust Deed that clarify that the said sub-clauses(i), (j),(k) & (l) of clause 4 were incorporated to aid and achieve the charitable objects the appellant and that the said sub-clauses were not non-charitable in nature.*

*4. On the facts, the ld.CIT ought to have accepted the explanation and submissions of the appellant and granted registration under section 12AA of the Act to the appellant trust as prayed for.*

*5. On the facts, the ld.CIT failed to appreciate that the reasons given to deny the registration under section 1AA of the Act were not in accordance with the provisions of the Act and contrary to law and accordingly, the order of the ld.CIT is liable to be set aside.*

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

3. The assessee is a trust created by a deed of trust dated 22-02-2013. The assessee applied for registration u/s 12AA of the IT Act, 1961 vide its application in form-10A on 30-01-2014. The CIT rejected the application for registration u/s 12AA of the Act, while passing the impugned order on the ground that some of the object of the trust mentioned in sub-clauses-(i),(j),(k),and (l)of clause-4 of the trust deed are not charitable in nature.

4. Before us learned AR of the assessee has referred to the objects of the assessee trust and submitted that the objects of the trust includes to provide education, learning, training facilities to students of all branches of education by all means possible. To achieve this main object of providing learning, training facilities to students of all branches the objects in clause-4 of the assessee also include to establish, start promote maintain, support run & guide schools, colleges, institutes training centres, research centres and all centres of learning and to education right from basic preparatory and primary education upwards to the highest echelons of learning in all branches and fields of knowledge. The learned AR has submitted that the sub-clause-i, j, k & l contain the objects and acts to achieve main object of the assessee and therefore, these objects

are very much charitable in nature. He has referred sec.11((1)(e),11(iA)(a),11(5)(iii),11(4) & 11(4A) as well as sec.12(1) of the IT Act, 1961 and submitted that the object to acquire by purchase, lease gift or grant or bequeath movable or immovable properties deem necessary or useful for the purpose of trust. Similarly, to accept and receive any gift whether the movable or immovable, donation or contribution for the work of the trust and all other acts in relation to the trust property for achieving the object of the trust including invest deposits in banks are permissible under the provision of sec.11 & 12 of the IT Act, 1961. Therefore, the said acts and purposes enumerated in sub-clause I to l of object clause of Trust are permissible under the IT Act, so far these are for the purpose of achieving the main object of the assessee trust. In support of his contention he has relied upon the decision of the Hon'ble Supreme Court in the case of Addl.CIT Vs Surat Art Silk cloth manufacturers Association 121 ITR 1(SC) as well as in case of Dharmadepti Vs CIT 114 ITR 454. Thus, the learned AR has pleaded the impugned order passed by the CIT is not sustainable under law and the assessee is entitle and eligible for grant of registration u/s 12AA of the IT Act, 1961.

5. On the other hand, learned DR has submitted that the CIT specifically issued the show cause notice to the assessee requiring the assessee to file the relevant record for examination. In response the assessee has filed a letter dated 29-04-2014 without complying the

directions of the CIT vide show cause notice dated 24-04-2014 therefore, the assessee did not produce the relevant record for the examination of the CIT. He has relied upon the impugned order of the CIT.

6. We have considered the rival submissions and carefully perused the relevant material on record. Though, the CIT has issued a show cause notice dated 24-4-2014 however, after considering the response of the assessee the CIT has rejected the application for registration u/s 12AA by citing the only reason that the objects mentioned in sub-clause ,j, k,& l of the assessee trust are non-charitable in nature and have not been deleted from the trust deed. For ready reference, we re-produce the order of the CIT.

*“ M/s Assisi Education Trust had applied for registration u/s 12AA vide its application in Form 10A filed on 30-01-2014.*

*During the course of verification it was observed that some of the objects of the applicant mentioned at sub-clauses i,j,k & l under clause-4 of the Trust Deed were not charitable in nature as they pertain to acquisition of property, acceptance of gifts, alienation of property by sale and investment of money in banks. In view of this, office show cause letter dated 22.04.2014 the applicant was offered an opportunity under the proviso to sec.12AA(1)(b)(ii) of the IT Act, 1961 to show cause why an order rejecting its application should not be passed.*

*In response, the applicant has filed a letter dated 29.04.2014. However, the non-charitable objects have not been deleted from the Trust Deed.*

*In view of the above, I am not satisfied about the objects of the Trust. I am constrained to dismiss the application for registration u/s 12AA. Consequently, the above application dated 30.04.2014 stands rejected.*

Sd/-

(LAKSHMI HANDE PURI)  
CIT, MANGALORE

To  
M/s Assisi Education Trust  
Bagambila, Deralakatta P.O 575 018

7. It is clear from the order that the sole objection raised by the CIT is non-charitable nature of the objects mentioned in the sub-clauses i,j,k & l of clause-4 of the trust deed. It is pertinent to mention that the objects stipulated in sub-clauses i to l of clause-4 are not the main objects of the assessee trust, but are the ancillary objects for the purpose of achieving the main object of the assessee. For ready reference we quote the objects of clause-4 as under;

**“4. Objects;**

*a) To provide education, learning, training facilities to students in all branches of education by all means possible.*

*b) To establish, start, promote, maintain, support, run, guide, and assist schools, college, institutes, training centres, research centres and all centres of learning and impart education right from basic, preparatory and primary education upwards to the highest echelons of learning in all branches and fields of knowledge.*

*c) To affiliate, collaborate or associate with universities, institutions or body public, private or government in order to provide high quality education, training and recognition to its students, source and institutes.*

*d) To ward certificates, degrees, diplomas or any other due recognition, scholarships, free ships etc to its students and candidates in their respective disciplines.*

*e) To do whatever necessary in the field of education and learning for promoting literacy, job orientation and employment.*

*f) To award scholarship, prizes, donations etc. for the poor and deserving students and institutions having similar objects.*

*g) To establish maintain, run, improve develop libraries, reading rooms and other facilities for the benefit of the students and public.*

*h) To publish books, periodicals, electro data processing and other communication media works without any motive for profit.*

*i) To acquire by purchase, lease, mortgage loan, gift, grant or bequest movable or immovable properties of all description deemed necessary or useful for any of the purposes of the trust.*

*j) To alienate and receive any gift whether money, property, movable and immovable, donations and contributions for the works of the trust.*

*k) To alienate by way of sale, mortgage, lease, release, loan, pledge, exchange the properties of the trust as may be decided upon by the trustees in accordance with the Canonical provisions.*

*l) To invest, lay aside, deposit I banks or otherwise deal with the money or funds of the trust in keeping with the objects of the trust”.*

8. As manifest from the objects of the assessee that even the objects under sub-clause i to l cannot be said to be non-charitable in nature, when these objects are clearly for achieving and in furtherance to the main objects of the assessee trust to provide education, learning, training facilities to the students in all branches of education. The CIT has not disputed the objects of the assessee as per the other sub-clauses are charitable in nature. We further note from the clause 7(vi) of the trust deed these objects of investments are required to be in conformity with sec.13 r.w.s.11(5) of the IT Act. Therefore, these objects are strictly in consonance with the provisions of sections 11 & 12 of the IT Act. We find that sec.11(1A) permits the income from voluntary contribution made with

a specific direction that this shall form part of corpus. Similarly, sec.12(1) permit any voluntary contribution received by the trust created solely for charitable or religious purpose. Thus, receiving the contribution, donation or gift which is to be used for the stated purpose cannot be termed as a non-charitable object of the assessee. Sec.11(1A)(a) further, provides that for the purpose of sub-sec.1 a capital asset being property held under the trust wholly for charitable or religious purpose is transferred and whole or any part of consideration is utilized in acquiring the new capital asset than such capital gain is eligible for exemption. Section 11(5) permits the deposit in any account with a schedule bank or co-operative society engaged in carrying on the business of banking as well as deposit in any account with the post office savings bank. Apart from the other investments as prescribed there under. Thus, we find that the objects under sub-clause-i to 1 are charitable in nature and cannot be termed as non-charitable. The Hon'ble Supreme Court in case of ACIT Vs Surat Art Silk Cloth Manufacturers Association (Supra) has observed in para-8 as under;

*“8. But the question still remains whether this primary purpose of the assessee namely, to promote commerce and trade in art, silk, yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth could be said to be not involving the carrying on of any activity for profits. This question arises on the terms of s.2 cl.(15) which gives an inclusive definition of charitable purpose. It provides that charitable purpose*

*includes relief of the poor, education, medical relief and the activity for profit. I is now well settled as a result of the decision of this Court and in Dharmadeepti Vs CIT1978 CTR(SC) 120: (1978) 114 ITR 454(SC): TC23R, 289 that the words 'not involving the carrying on of any activity for profit' qualify or govern only the last head of charitable purpose and not the earlier three heads. Where, therefore, the purpose of a trust or institution is relief of the poor, education or medical relief, the requirement of the definition of charitable purpose should be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. But if the purpose of the trust or institution is such that it cannot be regarded as covered by the heads of relief of the poor, education and medical relief, but its claim to be a charitable purpose rests only on the last head advancement of any other object of general public utility, then the question would straight arise whether the purpose of the trust or institution involves the carrying on of any activity for profit. (i) the purpose of the trust or institution must be advancement of an object of general public activity; and (ii) that purpose must not involve the carrying on of any activity for profit. The first condition does not present any difficulty and, as we have already pointed out above, it is fulfilled in the present case, because the primary purpose of the assessee, namely, promotion of commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth is clearly advancement of an object of general public utility. But the real difficulty arises when we turn to consider the applicability of the second condition. What do the words not*

*involving the carrying on of any activity for profit, mean and what is the nature of the limitation they imply, so far as the purpose of advancement of an object of general public utility is concerned”.*

9. Thus, it is clear that the assessee is not found to be involved in the activity of profit and the objects of the assessee are all only to achieve the main objects to provide education, learning, training facilities to the students of all branches of education. Therefore, all these ancillary objects included in the object clause of the assessee are found to be for the purpose of achieving and furtherance of the main objects than, these ancillary objects and acts to attain the main object cannot be held as non-charitable in nature. Similarly, in the case of Dharmadeepti Vs CIT(Supra), the Hon'ble Supreme Court has observed in para-5 as under;

*“5. According to sub-cl.(a) of cl.3 of the MOA, the main objects for which the appellant was formed are to give charity and to provide education. The third sub-l. merely confers power to establish associations and other bodies with the object of promoting the two main objects. Having regard to the language used and the context in which the two main objects are set forth, it would be reasonable to identify the expression to give charity and to promote education with the first two heads, relief of the poor and education in the definition of charitable purpose in s.2(15) of the IT Act. If the MOA had referred to charity as the sole*

*object without any limitation, including those prescribed by the context. It may have been possible to extend it to all the four heads mentioned in s.2(15), as was done in Chaturbhuji Vallabhdas Vs CIT(1946) 14 ITR 144(Bom.) TC23R,357. But the words are to give charity and then to promote education is also specified. Obviously, the former must bear a limited meaning. To our mind, the most appropriate seems to be relief of the poor. That being so, neither of the main objects can be classed under the residual general head. The advancement of any other object of the general public utility. Now those words are followed by the words not involving the carrying on of any activity for profit. Do these restrictive words govern the residual general head only or also the preceding specific heads relief of the poor, education and medical relief?. The specific heads relief of the poor education and medical relief define well known charitable purposes. But the residual general head. The advancement of any other object of general public utility is of wide comprehension. This head was defined in the same terms in the definition of charitable purpose in s.4(3) of the Indian IT Act, 1922. The same words were used in English law to describe one of the heads of charitable purpose in Morice Vs Bishop of Durham (1805) 10 Ves.522,532. Under the English law, they were regarded as words of sufficiently extensive import to warrant the observation by the House of Lords in Williams Trust Vs IRC (1947) 27 Tax Cases 409: (1948) 16 ITR (Supp) 41 (HL) TC23R. 194, that all objects of general public utility were not necessarily charitable, and that while some may be so others may not. The law in India under the Indian IT Act,*

1922, was not in congruency with the English law of charity in as much as by including those words in its statutory definition the Indian law extended the expression charitable purpose to an area beyond that covered by the English law. In other words, purposes recognized as charitable purposes under the English law, they extended also to objects which were not accepted as charitable under the English law. Apparently, when framing the IT Act, 1961. Parliament considered it appropriate to cut down the wide scope of these words by qualifying them with the restrictive words not involving the carrying on of any activity for profit. This was done to emphasize that the residual general head was to be confined to objects which were essentially charitable in nature. It is therefore, clear that the words not involving the carrying on of any activity for profit govern the words the advancement of any other object of general public utility and not the words relief of the poor, education and medical relief, in s.2(15). The heads relief of the poor, education and medical relief remained unqualified by any express statutory restriction and income arising from a profit-making activity linked with those heads enjoyed exemption without express limitation until s.13(1)(b) as inserted in the Act by Taxation Laws(amendment) Act, 1975, with effect from 1<sup>st</sup> April, 1977”.

10. In view of the above facts and circumstances of the case, we hold that the impugned order rejecting the registration u/s 12AA of the IT Act on the ground that the objects mentioned in the sub-clauses i to l of clause-4 of the trust deed are not charitable in nature is not sustainable

and accordingly, the same is set aside. However, the assessee has not filed the relevant record, as required u/s 12AA of the Act to satisfy the authority concerned about the genuineness of the activity. We accordingly, direct the CIT to re-consider the application of the assessee for registration u/s 12AA of the IT Act, in the light of the above observation.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open Court on the 17<sup>th</sup> July, 2015.

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

D a t e d : 17-07-2015

Place: Bangalore

**am\***

**Copy to :**

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

**Sd/-**  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

By order

AR, ITAT, Bangalore