

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI A.T.VARKEY, JM & DR. A.L.SAINI, AM
आयकर अपील सं./ITA No.1404&1405/Kol/2016

(निर्धारण वर्ष /Assessment Year:)

SANKALP SEVA MISSION, C/o Mohan Kr. Mishra, 2, Chaitanya Sett Street, PO : Burrabazr, P.S.Posta Kol-700007	Vs.	CIT(Exemptions), 10B, Middleton Row, Kolkata-700071
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAPTS 9174 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri K.K.Khemka, Advocate
Revenue by : Shri G. Mallikarjuna, CIT DR

सुनवाई की तारीख / Date of Hearing : 20/12/2016

घोषणा की तारीख/Date of Pronouncement 28/12/2016

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned two appeals filed by the assessee, are directed against the orders passed by Id. Commissioner of Income Tax (Exemptions), Kolkata, u/s.12AA of the I.T.Act, & U/s 80 (G) (5)(vi) of the Income Tax Act,1961 (in short 'the Act') both dated 04.05.2016.

2. Brief facts of the case qua the assessee are that the assessee trust applied for registration u/s.12AA of the I.T.Act but the Id. CIT(E) did not grant registration u/s.12AA observing the followings :-

"The aforesaid Trust came into existence vide Trust Deed duly registered from Addl. Registrar of Assurance-III, Kolkata on 29th day of July, 2015. The Trust had filed an application in Form 10A on 21.01.2016 which is in order.

Notice U/S.12AA(1)(a) was issued on 02.03.2016 fixing the case for hearing on 28.03.2016. Sri M.K. Mishra, Trustee appeared on 06.04.2016 and 04.05.2016 and the case was heard. From the documents submitted by the applicant it is found that in the Trust Deed Clause No.3(a) of page no.5 is not proper as under:-

“Promoting, establishing, equipping, erecting, maintain and/or granting all or other financial assistance to schools, colleges, medical college, hospitals, dispensaries, maternity homes, hostels, laboratories, public rest-houses (with or without fooding facilities) librates and measures”.

This clause is not covered within the ambit of Section 2(15) of Income Tax Act as establishing, equipping, erecting, maintaining is purely business venture. Hence, I am not satisfied with the objects of the trust.

In view of the above, the application for grant of registration u/s 12AA is rejected.”

The Id. CIT(E) also did not grant registration U/s 80(G) (5) (vi) of the I.T. Act, observing the followings:

“The society had also filed an application in Form 10A for registration U/s 12AA. The same was rejected vide order No. 10E/648/15-16 dated 04.05.2016. In view of the above, the application for grant of approval U/s 80G (5) (vi) is rejected.”

This way, Id. Commissioner of Income Tax (Exemptions) has rejected both the applications of the assessee. Not being satisfied with the order of the Commissioner of Income Tax (Exemptions), the assessee is in appeal before us. The main grievance of the assessee in both the appeals are confined as follows:

- (I) The Id CIT (E) rejected ‘Grant of registration u/s 12AA of the I.T.Act.
- (II) The Id CIT (E) rejected application U/s 80G (5) (vi) of the Act. This is consequential, because CIT(E) rejected ‘Grant of registration u/s 12AA of the Act.

3. Ld. AR for the assessee has submitted before us that object of the trust is to enhance the charitable activities, but the Id. CIT(E) has wrongly interpreted the clause No. 3(a) of the trust deed. The Clause 3(a) of the trust deed reads as *“promoting, establishing, equipping, erecting, maintaining and/or granting all or other financial assistance to schools, colleges, medical college, hospitals, dispensaries, maternity homes,*

hostels, laboratories, public rest-houses (with or without fooding facilities) librates and measures”.

The purpose of this clause is to open library, reading rooms and to provide food to poor students etc. Therefore, for the purpose of charitable activities the trust wants the said clause and the intention of the said clause is to enhance the charitable activities. The Ld. AR has requested us to send the case back to the Id. CIT(E), so that the assessee may explain before him properly regarding the objects and clauses of the trust deed.

4. Even Id. DR for the Revenue did not object in sending back the case to the CIT(E).

5. Considering the factual position, we are of the view that the issue involved, requires fresh examination at the end of the CIT(E). Therefore, we remit both the cases back to the file of CIT(E) to adjudicate afresh by taking the relevant evidences/explanations from the assessee trust.

6. In the result, both appeals filed by Assessee are allowed for statistical purposes.

Order pronounced in the open court on this 28/12/2016.

Sd/-
(A.T.VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 28/12/2016

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-Sankalp Seva Mission
2. प्रत्यर्थी / The Respondent.-CIT(E), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता