

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Shri N.V. Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A Nos. 2194 & 2215/Kol/2016

Assessment Year : 2015-16

M/s Gaat Foundation,
Murshidabad
[PAN: AABTG 6729 K]
(Appellant)

-vs-

CIT(E), Kolkata

(Respondent)

For the Appellant : Shri S.M. Surana, Adv.

For the Respondent : Shri Anand R. Baiwar, CIT

Date of Hearing : 02.08.2017

Date of Pronouncement : 16.08.2017

ORDER

Per M.Balaganesh, AM

1. These appeals of the assessee arise out of the order of rejection of registration under section 12AA of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and consequential order rejecting approval of exemption under section 80G of the Act , passed by the learned Commissioner of Income Tax (Exemptions) [in short the Id CIT(E)] dated 26.9.2016.

2. The assessee trust came into existence vide deed of trust dated 30.9.2011 for imparting education to the persons belonging to the backward classes , the scheduled caste and the scheduled tribes , to become fruitful citizens of mother India matching shoulder to shoulder with their upper level brethren, to improve their lot educationally, professionally, vocationally, technologically and in all other respects, setting up hospitals , old age home and clinics, solely on non-profit basis. Pursuant to its charitable objects, the assessee trust had constructed a school for imparting education and as on 31.3.2016 had invested a sum of Rs 2,49,38,503/- towards fixed assets

comprising of land and building, machinery & equipments, canteen assets, computer, furniture & fixtures, generator set, air conditioners, cars, fax machine, office accommodation building, inverter, scanner & printer and other assets to the tune of Rs 1,89,83,802/- out of donations received, hostel fees, rental income, interest income etc and out of term loans from Bangiya Gramin Vikash Bank. The assessee trust applied for seeking registration u/s 12A by preferring an application in Form 10A and seeking exemption u/s 80G of the Act in Form 10G before the Id CIT(E) on 31.3.2016.

3. The Id CIT(E) called for the following details from the assessee trust :-

- a. To furnish the audit report for F.Y. 2012-13, 2013-14, 2014-15 & 2015-16.*
- b. To explain why the donations received from ITI, MES, students and other donations received are added to Capital a/c as Corpus fund?*
- c. Copy of Fee Receipt Book in respect of ITI, MES and students for F.Ys. 2014-15 & 2015-16.*
- d. Whether the donations received are reflected in the bank statement? If yes, copy of the statement and if no, the reason thereof may be submitted.*
- e. Certificate from ITI, MES, students and Donors that, donations given shall form part of Corpus fund may be submitted for F.Ys. 2012-13, 2013-14, 2014-15 & 2015-16.*

4. The Id CIT(E) observed that the replies were filed in respect of the aforesaid queries by the assessee on 26.9.2016. From the audited accounts submitted for the financial years 2012-13 to 2015-16, the Id CIT(E) observed that the assessee trust had not obtained registration u/s 12AA of the Act during the relevant period and while that is so, how certain donations received by the assessee trust were classified as corpus donations. The assessee replied that the donors had given the donations with the stipulation that they shall form part of corpus fund of the trust and accordingly the same were treated as corpus donations by the trust in its accounts. With regard to query raised in point no. 'd' , it was submitted that the certificates from ITI, MES and students that donations given shall form part of corpus fund of the trust would be submitted to the learned Assessing Officer later. The Id CIT(E) observed that the denial of answer to point no. 'd' obstacles the purpose of examination of genuineness of activities of the

trust and genuinity of recieing corpus donations could not be verified by the Id CIT(E). The Id CIT(E) observed that the corpus donations could not be claimed as exempt u/s 11(1)(d) of the Act by the assessee for want of registration for the earlier years. He observed that the assessee had violated the provisions of the Act and evaded payment of tax by making ineligible claims of exemption and accordingly concluded that it squarely comes under the ambit of 'not genuine activity' by the assessee trust. Ultimately, the Id CIT(E) based on the financials of the assessee prepared the total income of the assessee trust for the Asst Years 2012-13 to 2016-17 as under:-

Assessment year	Fee received	Deficit	Actual Income
2012-13	Rs. 52,11,592.00	Rs. 22,008.00	Rs. 51,89,584.00
2013-14	Rs. 130,70,072.00	Rs. 17,181.15	Rs. 130,52,890.85
2014-15	Rs. 87,09,725.00	Rs. 2,39,091`.33	Rs. 84,70,633.67
2015-16	Rs. 110,43,675.00	Rs. 2,46,838.61	Rs. 107,96,836.39
2016-17	Rs. 53,25,290.00	Rs. 1,61,213.91	Rs. 51,64,076 .09

5. The Id CIT(E) observed that the assessee had not filed its returns for the earlier years and not paid taxes thereon and accordingly sought to treat the activities of the trust as not genuine and denied the registration u/s 12AA of the Act. Consequentially the Id CIT(E) rejected the claim of exemption u/s 80G of the Act. Aggrieved, the assessee is in appeals before us on the following grounds:-

I.T.A. No. 2194/Kol/2016:

1. *For that the order of Ld. CIT(Exemption) is arbitrary and bad in law.*
2. *For that the Ld. CIT(E) erred in denying the Registration when all the conditions laid down u/s 12A were fulfilled and all the relevant details were filed.*
3. *For that the Ld. CIT(E) erred in denying the Registration u/s 12AA(1) when the activities of the trust were genuine, the Trust was engaged in providing educational services, running the hostel and other educational courses which has not been doubted or disputed by the Ld. CIT(A).*

4. *For that the Ld. CIT(E) erred in equating the receipts under different heads with the genuinely of the trust and if any of the receipts or for that matter the income was liable to tax under the provisions of the I.T. Act, the same can be taxed in accordance with law but for the said reason registration to the trust cannot be denied and it cannot be held that the Trust has indulged in not genuine activities by evading payment of tax or holding that the same was wrong doing of the trust.*
5. *For that on the facts and circumstances of the case, the Ld. CIT(E) should have granted Registration to the Trust.*
6. *For that on the facts and circumstances of the case the order of the Ld. CIT(A) be modified and the assessee be given the relief prayed for.*
7. *For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.*

I.T.A. No. 2215/Kol/2016:

1. *For that the Order of Ld. CIT(E) is arbitrary and bad in law.*
2. *For that the Ld. CIT(E) erred in denying the approval u/s 80G in Form 10G when all the conditions laid down u/s 80G were fulfilled and all the details including the details were filed.*
3. *For that the Ld. CIT(E) erred in denying the Approval u/s 80G when the activities of the trust were genuine, the Trust was engaged in providing educational services, running the hostel and other educational courses which has not been doubted or disputed by the Ld. CIT(A).*
4. *For that the Ld. CIT(E) erred in equating the receipts under different heads with the genuinely of the activities of the trust and if any of the receipts or for that matter the income was liable to tax under the provisions of the I.T. Act, the same can be taxed in accordance with law but for the said reason registration u/s 12AA of the Income Tax Act, 1961 to the Trust cannot be denied and it cannot be held that the Trust has indulged in not genuine activities by evading payment of tax or holding that the same was wrong doing of the trust.*
5. *For that on the facts and circumstances of the case the Ld. CIT(E) should have granted Approval u/s 80G of the Income Tax Act, 1961 to the Trust.*

6. For that on the facts and circumstances of the case the order of the Ld. CIT(A) be modified and the assessee be given the relief prayed for.

7. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing.

6. We have heard the rival submissions. We find that the assessee trust though had come into existence from 30.9.2011 had started its educational activities immediately and had earned some income out of the same as reflected in the income and expenditure account. It is not in dispute that the assessee had not obtained registration u/s 12AA of the Act from 30.9.2011 to 31.3.2016 as admittedly the application seeking for the same had been preferred belatedly. Hence it is not in dispute that the assessee would have to file its returns upto Asst Year 2016-17 in the capacity of Association of Persons (AOP) and pay taxes thereon, unless otherwise exempted under any other provisions of the Act. However, mere non filing of the returns for the earlier years and payment of taxes thereon, could not stand as a hindrance for granting of registration u/s 12AA of the Act. From the provisions of section 12AA of the Act, the Id CIT(E) is expected to call for such documents and information about the activities of the trust and have to satisfy himself about the objects of the trust or institution and genuineness of its activities. In the instant case, it is not in dispute that the assessee is indeed running an educational institution by running school and imparting education. The fees are collected from students for imparting the said education. It is not in dispute that the objects stated in the trust deed are charitable in nature. The assessee had duly furnished the entire audited financial statements upto 31.3.2016 before the Id CIT(E). Hence the activities carried out by the assessee trust upto 31.3.2016 could be easily verified from the same. There is no defect pointed out in the said accounts except stating that corpus donations could not be exempt u/s 11(1)(d) of the Act for want of registration u/s 12AA of the Act for the earlier years. Moreover, we find that the treatment of corpus donations as revenue donations for the earlier years would only be a computation of income aspect and could be examined at the relevant point of time by the Id AO. In our considered

opinion, that need not be looked into at the time of grant of registration u/s 12AA of the Act. Hence we are convinced about the fact of genuineness of activities carried out by the trust and the objects of the trust as per the trust deed and implementation of the said objects by running a school which are charitable in nature and hence we find that the assessee would be entitled for registration u/s 12AA of the Act. We find that the Id CIT(E) merely based on the reply given by the assessee trust that the details of corpus donations linking the same with the bank statements would be furnished before the Id AO , had erroneously framed an opinion that the genuineness of activities of the trust are not proved. This in our considered opinion, is a fallacy in the order of the Id CIT(E). Just because the returns are not filed for the earlier years prior to the date of preferring application for registration u/s 12AA of the Act, that alone would not make the activities carried out by the trust as ingenuine and would not make the assessee trust as uncharitable organization. The department had to take recourse to taking action for not filing returns for the earlier years in the manner known to law as the doors of the revenue are not closed in that regard. In our opinion, that should not jeopardize the grant of registration to the assessee trust with effect from 1.4.2016 onwards. We find that the reliance placed on the following decisions by the Id AR squarely supports the case of the assessee:-

a) *Decision of Hon'ble Punjab & Haryana High Court in the case of CIT(Exemptions) vs Shri Shirdi Sai Darbar Charitable Trust (Dharamshala) reported in (2017) 395 ITR 567 (P&H)*

“Briefly, the facts as narrated in the appeal, necessary for adjudication of the controversy involved, may be noticed. The respondent-assessee, a trust, filed an application for registration u/s 12AA of the Act on December 9, 2014. Vide order dated June 26, 2015, annexure A-1, the Commissioner of Income Tax (Exemptions) CIT(E) denied registration to the assessee on the ground that it had not filed any return of income for the assessment years 2012-13 to 2014-15. The assessee's receipt for these years was Rs. 5,52,369, Rs. 15,15,442 and Rs. 10,47,415 respectively. It was further recorded that the accounts were not got audited by the assessee. Thus, the Commissioner of Income-Tax (Exemptions) held that the accounts of the assessee were not reliable/genuine. Clause 12 of the objects of the assessee-trust conferred absolute

powers on the trustees to manage the property of the trust which in turn was liable to attract the provisions of Section 13(1)(c) of the Act. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated June 8, 2016, annexure A-2 the Tribunal allowed the appeal filed by the assessee and directed the Commissioner of Income Tax (Exemptions) to grant it registration. It was held that non-filing of the return was not a valid ground to deny registration as the Commissioner of Income Tax (Exemptions) had only to satisfy himself about the charitable nature of the objects and genuineness of the activities of the trust. It was further recorded that provisions of Section 13 of the Act were to be looked into by the Assessing Officer at the time of assessment proceedings and not at the time of granting registration u/s 12AA of the Act. Further, no adverse remarks had been made by the Commissioner of Income Tax (Exemptions) with regard to the objects contained in the memorandum of the trust. Hence, the instant appeal by the appellant-Revenue.

3. We have heard learned counsel of the appellant-Revenue.

4. The matter has been examined by the Tribunal after perusing the relevant statutory provisions. It has been categorically recorded by the Tribunal that the Commissioner of Income Tax (Exemptions) has to satisfy two conditions while granting registration u/s 12AA of the Act. Firstly, whether the objects of the assessee are charitable in nature and thus, the activities are genuine. It cannot be concluded on the basis that the assessee has not filed its income tax return in earlier years that the activities of the assessee are not genuine. It has been further recorded that section 13 of the Act comes into play at the time of granting exemption u/s 11 of the Act and not at the time of granting registration u/s 12AA of the Act. No adverse remarks have been recorded by the Commissioner of Income Tax (Exemptions) with regard to the objects contained in the memorandum of the assessee-trust to come to the conclusion that its activities are not genuine. Thus, it has been rightly directed by the Tribunal to the Commissioner of Income Tax(Exemptions) to grant registration u/s 12AA of the Act.

Learned counsel for the appellant-Revenue has not been able to show that the findings recorded by the Tribunal are in any way illegal or perverse warranting interference by this Court. Consequently, no substantial question of law arises and the appeal stands dismissed”.

b) Decision of Hon’ble Punjab & Haryana High Court at Chandigarh in the case of CIT vs Baba Deep Singh Educational Society (ITA NO. 881 of 2010) ; CIT vs Aklia Educational & Research Society (ITA NO. 882 of 2010) ; CIT vs Saint Kabir Educational Trust (ITA NO. 883 of 2010) and CIT vs Amravati Educational Society (ITA NO. 884 of 2010) dated 13.10.2011.

“The power of the CIT regarding the scope of Section 12AA of the Act has been considered by this Court in the order dated 5.10.2011 passed in I.T.A. No. 701 of 2010 (Commissioner of Income Tax-II, Chandigarh vs. M/s Surya Educational & Charitable

Trust) and it has been held that Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust was undertaking at present and also which it may contemplate to undertake. The insertion of Sub Section 3 to Section 12AA of the Act regarding the powers of the Commissioner to cancel the registration if the activities of the trust are not carried out in accordance with such objects was also noticed.

The Allahabad High Court in Commissioner of Income Tax vs. Red Rose School 2007 (163) TAXMAN 19 has held that the jurisdiction of the Commissioner at the stage of proceeding application u/s 12AA of the Act is limited regarding whether the activities are genuine and in consonance with the objects of the trust or institution and where education is being imparted as per the rules and the factum of establishment and running of school is not disputed the same was a genuine activity and the enquiry regarding genuineness of the activities cannot be stretched beyond this.

In view of above facts and circumstances, it would be clear that 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.

Accordingly, no substantial question of law as contended in the present appeal arises for determination by this Court and the order dated 31.03.2010 passed by the Tribunal is upheld. Consequently, the appeal is dismissed”.

We find that the other two decisions of co-ordinate bench of Raipur Tribunal in the case of *Rishabh Foundation Trust vs CIT in ITA NO. 88/Rpr/2014 dated 4.5.2017* and Pune Tribunal in the case of *Yashaswi Education Society vs CIT in ITA No. 250/PUN/2014 dated 13.4.2017* also endorsed the aforesaid views.

6.1. In view of the aforesaid facts and findings and respectfully following the judicial precedents relied upon hereinabove, we hold that the assessee trust would be entitled for grant of registration u/s 12AA of the Act in the instant case and the ld CIT(E) is directed to grant registration in accordance with law.

6.2. With regard to denial of exemption u/s 80G of the Act , we find that the ld CIT(E) had denied the same for want of registration u/s 12AA of the Act. In view of our

aforesaid directions to the Id CIT(E) for grant of registration u/s 12AA of the Act, we hold that the assessee is indeed entitled for grant of exemption u/s 80G of the Act. We direct the Id CIT(E) accordingly. Accordingly the grounds raised by the assessee for both the appeals are allowed.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the Court on 16.08.2017

Sd/-
[N.V. Vasudevan]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 16.08.2017

SB, Sr. PS

Copy of the order forwarded to:

1. Gaat Foundation, Satyajalay, Rup Pur, Jema Rajbari, P.S.-Kandi, Dist-Murshidabad, West Bengal, Pin-742140
2. Commissioner of Income Tax (Exemption), 10, Middleton Row, Kolkata (6th Floor).
- 3..C.I.T.(E)-Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches