

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

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
AND SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.1559/Bang/2016
(Asst. Year --)

Brahma Shree Narayana Guruswamy
Vaidika Prathishtana R,
D.No.1-240/2, Adyar Village & Post
Mangalore.
PAN ó AACTB4936E.

. Appellant

Vs.

The Commissioner of Income-tax
(Exemptions),
Bangalore.

. Respondent

Appellant by : Shri Sandeep, C.A

Respondent by : Shri Sundar Rao Chintala, CIT

Date of Hearing : 28-11-2017

Date of Pronouncement : 6-12-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the CIT(Exemptions), Bangalore u/s 12AA(1)(b)(ii) of the Income-tax Act, 1961 (in short -the Act) dated 30/6/2016 rejecting the assessee's application for registration.

2. Briefly stated, the facts relevant for the disposal of this appeal are as under:-

2.1 The assessee, a trust established on 1/1/2009 filed an application for registration u/s 12A of the Act on 9/12/2015. As per the impugned order, certain details/clarifications were called for by the Assessing Officer (AO) vide letter dated 28/1/2016 to which there was partial compliance by the assessee. It is mentioned that vide office letter dated 2/6/2016, the ld CIT required the assessee to file certain details by 8/6/2016. In view of the assessee's non compliance thereto, the ld CIT rejected the assessee's application for registration on grounds of absence of relevant details.

2.2 Aggrieved by order of the CIT(Exemptions), Bangalore dated 30/6/2016 rejecting the assessee's trust's application for registration, the assessee filed an appeal before the Tribunal which was dismissed for non-prosecution vide order of even number dated 30/5/2017. This order of the Tribunal was recalled vide order in M.P No.185/Bang/2017 dated 1/9/2017. It is in these circumstances that this appeal is now before us.

3. Grounds of appeal raised by the assessee are as under:-

“1. That the order of the learned Commissioner of Income-tax (Exemption), in so far it is prejudicial to the interest of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the order of the learned Commissioner of Income-tax (Exemption) in denying the registration u/s

12A of the Act is violative of principles of natural justice is liable to be quashed.

3. That the finding of the learned Commissioner of Income-tax (Exemption) that the appellant has not responded to the notices issued by the department is perverse as being contrary to the materials on record.

4. That the learned Commissioner of Income-tax (Exemption) ought to have granted the registration u/s. 12AA of the Act.”

4. According to the ld AR for the assessee, after the assessee trust put forth an application for registration on 9/12/2015, the AO called for certain details vide letter dated 28/1/2016 and in response thereto the assessee filed details on 3/3/2016. It is submitted that the letter dated 2/6/2016 said to be issued by the ld CIT calling for details was not received by the assessee, but the assessee had received a telephonic message from the office of the ld CIT to amend the trust deed by removing the clause of opening branch office of the assessee trust outside India. The ld AR stated that the assessee sent a notarized copy of the rectified trust deed to the ld CIT on 20/6/2016 by speed post from Mangalore (copy of letter and speed post receipt are placed at page 1 of paper book) which was received/delivered to the addressee i.e ld CIT on 22/6/2016 as per the e-record of India Posts (copy placed at page 2 of paper book). It is the contention of the assessee that even after its compliance with filing the

details/documents required by 22/6/2017, the Id CIT went on to incorrectly observe that the assessee trust had not responded and in the absence of details rejected the assessee's application for Registration vide order dated 30/6/2016. It is prayed that in the above factual matrix of the case, the impugned order of the Id CIT be set aside and the matter be remitted back for fresh consideration of the assessee's application for registration.

4.2 Per contra, the Id DR for Revenue relied on the order of the Id CIT rejecting the assessee's trust's application for registration.

4.3 We have heard the rival contentions and perused and carefully considered the material on record. From a perusal of the records before us, it appears that after the assessee trust filed the application for grant of registration u/s 12A of the Act on 9/12/2015, the AO required the assessee to file certain details. According to the AO the assessee filed incomplete details/clarification on 5/1/2016 and 3/3/2016. The record indicates that further details were required by the office of the Id CIT i.e amendment of the Trust deed by excluding a certain clause; which was conveyed to the assessee telephonically. As per the details filed before us by the assessee trust in paper book (page 1 to 2), copies of the correspondence therein indicate that the assessee sent the Id CIT copies of the rectified Trust Deed vide letter dated 20/6/2016 on 21/6/2016 by speed post from Mangalore which was delivered at the office of the Id CIT at Bangalore on 22/6/2016 as per the e-record of India Post. In this factual matrix of the case, as set out above, it is evident from a perusal of the impugned order that the

Id CIT had not considered the details filed by the assessee trust on 22/6/2016 vide letter dated 20/6/2016, when he passed the impugned order thereafter on 30/6/2016 rejecting the assessee's application for registration for the incorrect reasons that he was doing so in the absence of relevant details, as the assessee had not filed them. In our considered view, in the above factual matrix of the case, the impugned order of the Id CIT, rejecting the assessee's application for registration u/s. 12A of the Act is unsustainable. We, therefore, in the interest of substantial justice, set aside the impugned order of the Id CIT and remand the issue, of the assessee's trust's application for registration u/s 12A of the Act, back to his file for fresh examination and adjudication thereon after affording the assessee adequate opportunity of being heard and to file details/submissions required, which shall be duly considered. We hold and direct accordingly.

7. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on **6th Dec., 2017.**

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore
Dated : 6/12/2017

* Reddy gp / Vms