

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 03/CTK/2016**

Modern English School Education Society, Parabeda, Jeypore.	Vs.	CIT (Exemption), Hyderabad.
PAN/GIR No. AACAM 7223 Q		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Kailash Panigrahi, AR  
Revenue by : Shri Kunal Singh, CIT DR

**Date of Hearing : 13/07/ 2017**  
**Date of Pronouncement : 25 /07/ 2017**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the assessee against the order of CIT(Exemptions), Hyderabad, dated 28.9.2015.

2. The sole issue involved in this appeal is that the CIT(Exemptions), Hyderabad was not justified in refusing to grant registration u/s.12AA of the Act and approval u/s. 80G of the Act to the assessee society.

3. Brief facts of the case are that the assessee society filed application in Form No.10A and Form No.10G on 30.3.2015 seeking registration u/s.12AA of the Act and approval under section 80G(5) of the Act. The CIT(Exemption), Hyderabad rejected the application of the assessee on the following grounds:

1) As seen from the MOA, the 'amendment clause' does not specifically stipulate that the amendments shall be carried out only with the prior

approval of the CIT(E). Similarly, the 'Winding up clause' does not specifically stipulate that on winding up of the society, the remaining assets shall be transferred/paid to an institution having registration u/s.12AA and approval u/s.80G(5) of the I.T.Act, 1961.

2. It is also noticed that investment clause is not present, which is mandatory for seeking registration u/s.12AA of the Act.

3. Further, the society is revocable or irrevocable is not clear from the MOU available in the file.

4. Before us, Id A.R. of the assessee submitted that above reasons given by the CIT(Exemption) for refusing registration to the assessee society are not correct. He pointed out from Memorandum of Association and Article of Association of the assessee society that there is an amendment clause which reads as under:

"The rules and regulations of the society can be amended, altered, abridged or extended by a majority of two thirds of the total members present and voting in a General Body meeting. The notice for such proposal has to be submitted in writing to the Secretary atleast thirty days before the date of General Body meeting. The proposal shall have the support of atleast one fourth of the total of the total strength of the General Body. The proposal shall have to bear the names and signatures of the proposer and the supporters clearly.

Copy of the amendments when accepted by the General Body shall forthwith be submitted to the Addl. Registrar of Societies, Koraput or competent concerned authorities for information within one month of such action duly attested by three Executive Committee members of the Society."

5. The management and control clause reads as under:

1. The over all control and management of the society vests in the President of the Society.
2. The secretary shall have the powers on behalf of the society to acquire, hold and dispose of movable and immovable property, to raise funds by contributions, donations and subscriptions, loans and grants and enter into agreement.

3. In the absence of the President, the Vice President of the society shall discharge all the functions of the President or such of the functions which will be deleted by the President to be exercised by the Vice President.
4. The Secretary of the Society may sue or be sued on behalf of the Society.

6. There is also a clause for dissolution, which reads as under:

"The society shall stand dissolved if two thirds of its total members vote for its dissolution in a meeting convened for the purpose.

In the event of its dissolution, the liabilities of the society if any shall be met out of the assets of the society and its surplus assets will pass on to a registered society with similar aims and objectives or to the State Government, under intimation to the registering authority as decided by the Executive Committee. But under no circumstances the assets of the society shall be distributed among the members of the Society."

7. He, therefore submitted that the CIT (Exemption) was not justified in rejecting the application u/s.12AA of the Act of the assessee society. He further relied on the decision of Hon'ble Madras High Court in the case of New Life in Christ Evangelistic Association (NLC) vs CIT, 246 ITR 532 (Mad), wherein, the Hon'ble High Court on the issue that where there was no clear provisions that the funds of the society would be invested in the modes specified under the provisions of section 13(1)(d) of the Act r.w.s 11(5) of the Act and when there was no specific clause that any amendment to the memorandum would be carried out only with the approval of the CIT, Hon'ble High Court has held as under:

"7. A cursory glance through the provisions of s. 12A would show that unless a society or trust, as the case may be, is registered under s. 12A, it would not be entitled to claim the benefits under ss. 11 and 12. The caption of the section says 'Conditions as to the registration of the trusts.' The two conditions which are provided are, firstly, that the person concerned should have made an application for registration in the prescribed form and in the prescribed manner to the authorities named in that section before the first day of July, 1973 or before the expiry of the period of one year from the

date of creation of the trust or establishment of the institution. The second condition provides for the keeping of the accounts in a particular manner and further that such accounts should be audited. The language of the section does not show that in order to be able to get registration under s. 12A of the Act, there is necessity of first establishing as to how the concerned institution or, as the case may be, the society would be able to claim the exemptions under s. 11 or 12 of the Act. There is nothing in the language to suggest that an institution of a religious nature is precluded from getting registration under s. 12A of the Act. The question of exemptions under ss. 11 and 12 of the Act or, as the case may be, under s. 80G of the Act, would come only when the said exemptions are claimed by the society at the time when it is assessed to tax. To consider whether the said society would be entitled to the benefits under ss. 11 and 12 of the Act or, as the case may be, under s. 80G would be pre-judging the issues before the grant of certificate. At the stage of grant of certificate under s. 12A of the Act, the only enquiry which could possibly be made would be whether the society has actually made an application in time and whether the accounts of the society are maintained in the manner as suggested by the said section. Beyond that, the scope of enquiry would not go. In insisting upon the society in changing or amending its bye-laws and in refusing to consider the application on the ground that those bye-laws have not been changed so as to exclude the religious aspect from those bye-laws, the CIT has clearly over-stepped his limits. The said question came up before the consideration of the Allahabad High Court in a reported decision in *Fifth Generation Education Society vs. CIT* (1990) 87 CTR (All) 169 : (1990) 185 ITR 634 (All) : TC 23R.1466, by Justice B.P. Jeevan Reddy (as he then was) who has taken a view in the following words:

"It is evident that, at this stage, the CIT is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of s. 12A r/w r. 17A and whether Form No. 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this stage, it is not proper to examine the application of income."

8. It was therefore his submission that the CIT(Exemption) was not justified in not granting registration u/s.12AA of the Act and approval under section 80G of the Act as applied by the society.

9. Ld D.R. on the other hand relied on the order of the CIT(Exemption).

10. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee is a society registered vide Registration No.2058-27/94 of Addl.

Registrar of Society, Koraput. The assessee had applied for registration under section 12AA of the Act in the prescribed Form 10A on 30.3.2015 seeking registration under the Income Tax Act as well as application in Form 10G was filed on the same date by the assessee society for approval u/s.80G of the Act. The same was rejected by the Commissioner of Income Tax (Exemption), Hyderabad for the following four reasons:

- (i) The amendment clause in the Memorandum of Association (MOA) of the assessee society does not provide that amendments to the MOA shall be carried out with the prior approval of the CIT(Exemption).
- (ii) The Winding Up clause in the MOA of the assessee society does not stipulate that on winding up the society, the remaining assets shall be transferred or paid to an institution having registration u/s.12AA of the Act and having approval u/s.80G of the Act.
- (iii) There is no investment clause in MOA which is mandatory for seeking registration u/s.12AA of the Act.
- (iv) The MOA does not clearly state that whether the society is revocable or irrevocable.

11. As regards the first objection of the CIT(Exemption) that the amendment clause of the MOU of the assessee society does not provide for prior approval of the CIT(Exemption), we find that there is no such provision u/s.12AA of the Act and, therefore, in our considered view, the CIT(Exemption) is not justified in rejecting application for registration of the assessee society on this ground.

12. The second objection of the CIT(Exemption) is that winding up clause in the MOU of the assessee society does not provide for transfer of the assets to another society having registration u/s.12AA of the Act and approval u/s.80G of the Act. We find that Id A.R. of the assessee has filed a copy of the Memorandum of Association and Articles of Association of the assessee society, wherein, the winding up clause reads as under:

“The society shall stand dissolved if two thirds of its total members vote for its dissolution in a meeting convened for the purpose.

In the event of its dissolution, the liabilities of the society if any shall be met out of the assets of the society and its surplus assets will pass on to a registered society with similar aims and objectives or to the State Government, under intimation to the registering authority as decided by the Executive Committee. But under no circumstances the assets of the society shall be distributed among the members of the Society”

12.1 A reading of above clause shows that the Memorandum of Association specifically provides for the transfer of surplus assets to any other registered society with similar aims and objectives or to the State Government in the event of winding up under intimation to the registering authority. Therefore, in view of above clause in the MOA of the society, in our considered view, the Id CIT(Exemption) was not justified in refusing registration to the assessee society on this ground also.

13. The third objection of the CIT(Exemption) for not granting registration to the assessee society is that there is no investment clause which is mandatory for seeking registration u/s.12AA of the Act. In our considered opinion, at the time of grant of registration u/s.12AA of the Act to the society, the CIT(Exemption) is only required to verify whether the

activities of the trust or institution are genuine and that the objects of the trust or institution are charitable. At the stage of granting registration to the assessee society, he is not to see whether the society would be able to claim exemption u/s.11 & 12 of the Act. The question of exemption u/s.11 & 12 of the Act or u/s.80G of the Act would come only when the said exemptions are claimed by the society at the time when it is assessed to tax. To consider whether the said society would be entitled to the benefits of section 11 & 12 of the Act or u/s.80G of the Act would be pre-judging the issues before grant of certificate. Therefore, if there is any violation of the conditions of section 13(1(d) of the Act, the Assessing Officer shall at the time of assessment disallow exemption u/s.11 & 12 of the Act to the assessee society. Hence, in our considered opinion, the CIT(Exemption) was not justified in refusing the grant of registration to the assessee society on this ground also.

14. Regarding forth objection of the CIT(Exemption) in granting registration to the assessee society is that it is not clear from the MOA as to whether the assessee society is revocable or irrevocable. We find that the assessee is a society registered vide Registration No.2058-27/94 of Addl. Registrar of Society, Koraput. The mode of dissolution or winding up of the society is specifically provided in the MOA of the assessee society as quoted above. In view of the same, the observation of the CIT(Exemption) that the society is revocable or irrevocable is not correct as that may be required to be seen in case of a trust and not in case of any institution registered under the Society Registration Act where the mode of winding

up is clearly spelt out in the Society Registration Act as well as MOA of the concerned institution. Hence, in our considered view, the CIT(E) was not right in refusing to grant registration on this ground also.

15. For the foregoing reasons, in our considered opinion, the refusal to grant registration u/s.12AA of the Act to the assessee society is not proper and justified. Similarly, the refusal to grant of approval u/s.80G of the Act is also not justified. Hence, we set aside the order of the CIT(Exemption), Hyderabad and direct him to grant registration u/s.12AA of the Act and approval u/s.80G of the Act to the assessee society. Thus, the grounds of appeal of the assessee are allowed.

16. In the result, appeal filed by the assessee is allowed.

Order pronounced on 25 /07/2017.

Sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 25 /07/2017

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Modern English School Education Society, 17/49, Parabada, Jeypore
  2. The Respondent. CI (Exemption), Hyderabad
  3. The CIT(A)
  4. Pr.CIT,
  5. DR, ITAT, Cuttack
  6. Guard file.
- //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**