

**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. 179/CTK/2016

Orissa General Centre,, at: Plot No.11, Akhandalamani Temple Lane, Mahanadi Vihar, Cuttack.	Vs.	CIT (Exemption), Hyderabad.
PAN/GIR No. AAAAO 2330 A		
(Appellant)	..	(Respondent)

Assessee by : Shri Sandeep Kumar Jena, AR
Revenue by : Shri Kunal Singh, CIT DR

Date of Hearing : 25/10/ 2017
Date of Pronouncement : 25 /10/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of CIT(Exemptions), Hyderabad, dated 29.1.2016.

2. The assessee has raised the following grounds of appeal:

"1. For that, the impugned rejection order passed by the Learned C.I.T. (Exemptions) is not just and proper under the facts and in the circumstances of the case as such the impugned order needs to be quashed in the interest of justice.

2. For that, the learned C.I.T. (Exemptions) should not have rejected the Application for grant of registration U/S.12AA on the ground that, the amendment clause does not specifically stipulates that, the Amendment shall be carried out only with the prior approval of the C.I.T.(Exemptions).

3. For that, the learned C.I.T. (Exemptions) should not have rejected the application on the ground that, appellant has not mentioned that, on winding up the Society, the remaining Assets shall be transferred to an institution having registration

U/S.12AA and approval U/s.80G(5) of the Act, in spite of the same has been clearly stipulated in para-10 of the MoA of the appellant.

4. For that, learned C.I.T. (Exemptions) is failed to adjudicate the basic ingredients for granting or rejecting the registration, which has been decided in many judicial pronouncements and the grounds advanced by him cannot be a reason at all to deny the grant of registration to the appellant.

5. For that, the observation of the C.I.T. (Exemptions) that, the objective clause of the MoA has not specifically mentioned the Investment clause, irrevocable clause and utilization clause which is mandatory for grant of registration is not in accordance with the provisions of the Act, as such the impugned allegation needs to be rejected in the interest of justice.

6. For that, the reason assigned by the learned C.I.T. (Exemptions) in Paragraph No.2 and 3 of his order is not only illegal but also contrary to the facts on record, as such the impugned observation needs to be rejected in the interest of justice.

7. For that, since the appellant has qualified for all the requisite requirements, the application for grant of registration u/s.12AA and 80G of the Act needs to be allowed in the interest of justice.

8. For that, the learned C.I.T. (Exemptions) should not have ignored the application filed u/s. 12AA & U/s. 80G of the Act and should have passed an order in the interest of justice.

9. For that, the appellant craves leave of this Hon'ble Tribunal to urge other grounds of appeal, if so arises, at the time of hearing."

3. The brief facts of the case are that the assessee filed application in Form No.10A 27.7.2015 for grant of registration u/s.12AA of the Act. The assessee was required to produce its original Memorandum of Association (MoA) for verification and

detailed reply on specific points. Ld A.R. appeared and filed the same.

4. Thereafter, the CIT (Exemption) refused registration u/s.12AA of the Act on the ground that on verification of MoA, it is found that "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.

5. Before us, Ld A.R. of the assessee submitted that on similar facts of the case, this Bench of the Tribunal in the case of Modern English School Education Society vs CIT (Exemption) in ITA No.03/CTK/2016 order dated 25.7.2017 has held that regarding objection of the CIT (Exemption) that amendment clause" of the MoA of the assessee society does not provide for prior approval of the CIT(E) there is no such provision u/s.12AA of the Act and hence, the CIT (E) is not justified in rejecting the application for registration of the assessee society on this ground.

6. With regard to second objection of the CIT(E) that "Winding up clause" of the assessee society does not provide for transfer of asset to another society, it is observed that the "Dissolution clause" exists and, therefore, the order of the CIT(E) was set aside and the assessee society was granted u/s.12AA of the Act.

7. He argued that the facts in the present appeal are identical to the facts which were in the case of Modern English School Education

Society(supra) and hence prayed that following the same, the appeal of the assessee should be allowed.

8. On the other hand, Id D.R. agreed with the submission of Id A.R. of the assessee.

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, we find that the CIT(E) has refused to grant registration u/s.12AA of the Act to the assessee society on the following grounds:

(i) Amendment clause does not specifically stipulate that the amendments shall be carried out only with the prior approval of the CIT(E).

(ii) Winding up clause does not specifically stipulate that on winding up of the assessee 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.

(iii) Investment clause, Irrevocable clause and utilisation clause are not mentioned in the objectives of the assessee society.

5. We also find that the assessee is a society registered vide Registration No.23123/130 of 2009-2010 dated 26th day of February, 2010 of Registrar of Societies, Orissa, Cuttack. The assessee had applied for registration under section 12AA of the Act in the prescribed Form 10A on 27.7.2015 seeking registration under the Income Tax.

6. 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.

7. 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 may be dissolved by 3/5th of members upon dissolution of the society its assets will be handed over to a similar registered society.

8. A reading of above clause shows that the Memorandum of Association specifically provides for the transfer of assets to similar registered society. 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.

9. 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.

10. Regarding the next 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. No.23123/130 of 2009-2010 dated 26th day of February, 2010 of Registrar of Societies, Orissa, Cuttack. 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.

11. 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. Hence, we set aside the order of the CIT(Exemption), Hyderabad and direct him to grant registration u/s.12AA of the Act to the assessee society. Thus, the grounds of appeal of the assessee are allowed.

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

Order pronounced on 25 /10/2017.

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: Orissa General Centre,, at:
Plot No.11, Akhandalamani Temple Lane,
Mahanadi Vihar, Cuttack.
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