

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER  
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No. 1134/Ahd/2016  
(Assessment Year: NA)

Rotary Flamingo Charitable Trust,  
10, Accord Hospital, Mundra Road,  
Bhuj 370001

Appellant

Vs.

The CIT (Exemptions), Ahmedabad

Respondent

PAN: AAATR8928A

आवेदक की ओर से/By Assessee : Astha Maniar, A.R.  
राजस्व की ओर से/By Revenue : Shri V. K. Singh, Sr. D.R.  
सुनवाई की तारीख/Date of Hearing : 21.02.2018  
घोषणा की तारीख/Date of  
Pronouncement : 23.02.2018

**ORDER**

**PER S. S. GODARA, JUDICIAL MEMBER**

This assessee's appeal arises against the CIT(Exemptions), Ahmedabad's order dated 18.09.2015, in case no. CIT(E)/AHD/12AA/961/2015-16, rejecting its registration application u/s.12AA of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. It emerges at the outset that the learned CIT(Exemptions) has held that the assessee has not filed the relevant details in support of its abovestated registration application as under:

**ORDER UNDER SECTION 12AA OF THE INCOME-TAX ACT. 1961**

*The application for registration of the Trust u/s 12AA of the Income-tax Act was received on 31.03.2015 by this office in Form No.10A under Rule 11A A of the Act along with registration certificate of charity commissioner. The list of the Objects of the Trust includes many activities.*

2. A letter dated 07.05.2015 was issued to the applicant to furnish detailed note on the activities actually carried out by the Trust as well as the following documents / details:

1. Please give details of institution being run/proposed to be run by your trust.
2. Please furnish name and address of branches, if any.
3. Please state whether jurisdiction over the case vest with CIT(E)/Ahmedabad with details of ward/circle where you are filing return of income.
4. Certified Copy of Trust deed /M.O.A., if it is not in English then certified English translation also.
5. Copy of PAN Card of Trustees with details of Circle/Ward where they are filing Return of Income.
6. Please state whether area of operation of your activities mentioned in the deed?(Note: Area of operation should be within India)
7. Please submit List of main objects of the Trust and specify like religious, relief of the poor, education, medical relief ,etc., and any other objects of general public utility, if any.
8. Please clarify whether any of the objects is religious in nature?(Mention the number of the clause and page number of the deed.)
9. Please also clarify whether any of the objects is neither religious nor charitable?(Mention the number of the clause and page number of the deed?)
10. Please state whether the objects of the trust are for any particular caste, creed, religion or community.
11. Whether deed contains Investment clause? If not, then furnish declaration u/s. 11(5) of the I.T.Act?
12. Please state whether deed contains Amendment/Alterations clause? (to be amended with the approval of Pr.CIT(Exemption), Ahmedabad.
13. Please specify the clause in Trust deed regarding revocability or irrevocability.
14. Please state whether deed contains utilization clause? (Specifying that the profits are to be used only for the objects of the trust.)
15. Please specify the clause in the Trust deed which says that beneficiaries would be without discrimination on the basis of caste, creed, religion or sex and not for specific individuals.

16. *Please state any part of trust property or income is used or applied or ensures directly or indirectly for the benefit of any person specified u/s.13(3) of the IT. Act?*
17. *Copy of Bank Account since inception of Trust or last three years.*
18. *Details of donations received or paid and confirmation/PAN of the donors.*
19. *Details of movable & immovable assets held as on date.*
20. *Please give details of premises of Trust whether premises owned by the Trust or Rented. Whether NOC from the premises owner is obtained or rental agreement is enclosed.*
21. *Please submit documentary evidences of actual charitable activities carried out by the Trust from the date of inception of Trust till date.*
22. *Whether registration u/s.-12AA has been refused/rejected earlier? If so, state briefly the reasons for such refusal/rejection.*
23. *Please submit Copy of Audited Accounts like copy of receipt and payment A/c., Income & Expenditure A/c, Balance Sheet, for three years or from the date of creation till date, whichever is less.*
24. *Please give details as to how the Trust generates funds for achieving the object of Trust.*
25. *Please submit evidences that the corpus amount has been transferred to the Trust/Institution.*
26. *Please specify that the Trust is in receipt of amounts mentioned in first proviso to section 2(15)of the I.T. Act.*
27. *Copy of Certificate of Undertaking?*
28. *Copy of Certificate u/s. 13(1) (c) of the I.T.Act?*
29. *Further, it is seen that as per trust deed the dissolution clause is not proper/ not there.*

*The above-mentioned inquiry about the actual activities of the Trust is necessary in view of the mandatory provisions of the procedure for registration u/s 12AA according to which the CIT (Exemption) "shall –*

- (iii) *call for such documents or information from the trust or institution as lie thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*
- (jjj) *after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he -*
- (kkk) *shall pass an order in writing registering the trust or institution;*
- (d) *shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant:*

*Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard."*

3. *However, on given date, neither applicant attended the office nor furnished any details/ documents nor sought any adjournment.*
4. *However, with a view to give one more opportunity of being heard to the applicant, another letter marked 'Final Opportunity' was issued to the*

*applicant on 24.07.2015 requiring the details/ documents as mentioned therein. It was stated without any ambiguity in the said letter that failure to comply with the said letter will entail rejection of its application under reference. This letter also failed to evoke any response from the applicant. Therefore, in the absence of complete details/ documents, it is not possible to satisfy about the genuineness of the activities of the above trust or the same being carried out in accordance with the objects of the trust.*

5. *Looking to the above facts, I am unable to arrive at the satisfaction of the genuineness of the activities. Hence, the application filed in Form No.10A for the approval u/s. 12AA of the Income-tax Act, is rejected.”*

3. Learned counsel representing assessee refers to the relevant statement of facts pleading therein that father of the managing trustee and President had demised at the time when the registration's case was fixed before CIT(Exemptions). He stated to have filed for adjournment application as well. Learned counsel attributes lack of proper communication between the assessee and the relevant date of hearing in registration proceedings as the main case for not having been able to file the relevant details on record. She informs us that the assessee is very much interested in pursuing its registration plea before the CIT(Exemptions). She has also filed a detailed compilation of all the relevant details comprising of forwarding letter of registration application, Form 10A, copy of memorandum and request of Association of the Trust, Charity Commissioner's Bhuj's Certificate, PAN card, notice dated 07.05.2015, adjournment application sent through courier, its tracking detail, death certificate of father of the managing trustee, reply of notice dated 07.05.2015 (which could not be filed), copy of enquiry application dated 05.01.2016 and request letter seeking copy of the impugned order; respectively. The above details in support of assessee's registration application need to be examined in detail in corresponding proceedings. Learned Departmental Representative fails to dispute correctness thereof at this stage. We thus deem it appropriate to observe that larger interest of justice would not be met in case learned CIT(Exemptions) takes on record all these details and passes a fresh order as per law after affording adequate opportunity of hearing to the assessee. We make it clear that it shall be incumbent on the assessee to obtain a copy of our instant order and send the same alongwith the above case records to the file of learned

CIT(Exemptions) within a period of eight weeks of the date of the receipt of the certified copy of this order failing which our directions would stand vacated.

4. This assessee's appeal is allowed for statistical purposes.

[Pronounced in the open Court on this the 23<sup>rd</sup> day of February, 2018.]

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 23/02/2018

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।