

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

Before Sh. N. K. Saini, AM and Sh. Sudhanshu Srivastava, JM

ITA No.110/Pat./2016, Asstt. Year :

Akhileshwar Seva Trust , Patna.	Vs	Commissioner of Income Tax (Exemptions),Patna (Bihar)
(APPELLANT)		(RESPONDENT)
PAN No. AAETA1397G		

Assessee by :Shri Manish Rastogi , Adv.
Revenue by : Smt. Archana Sinha, Sr. S.C.

Date of Hearing : 15.03.2018	Date of Pronouncement : 16 .03.2018
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ORDER

Per Sudhanshu Srivastava, JM:

This is an appeal filed by the assessee against order dated 22.08.2016, passed by the Ld. CIT (Exemptions)-Patna refusing registration u/s 12AA of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), to the assessee trust.

2. The Ld. AR drew out attention to the impugned order and submitted that the registration had been refused on the ground that the trust was paying rent to the mother of the settler of the trust and further there was a rectification in the trust deed. It was submitted that the Ld. CIT (E) had misdirected himself in refusing registration of the trust as at this stage the Ld. CIT (E)

should have inquired into the objects of the trust and genuineness of the activities. It was prayed that the appropriate directions may be issued to the Ld. CIT (E) for granting registration to the trust.

3. The Ld. Sr. Standing Counsel for the Department opposed the assessee's prayer for registration.

4. We have heard the rival submissions and have also perused the material on record. We find force in the contention of the Ld. AR that at the time of granting registration u/s12AA of the Act, the Ld. CIT (E) is expected only to examine whether or not the objects of the trust are charitable and that the Ld. CIT (E) cannot, at this juncture, enter into the realm of examining the genuineness of the activities of the trust. We find that in the case before us, the Ld. CIT (Exemptions) - Patna has, nowhere in his order, disputed that the objects of the assessee society were charitable in nature.

4.1 In the case of *CIT vs. Vijay Vargiyavani Charitable Trust*, reported in 369 ITR 360(Raj), it has been by the Hon'ble High Court of Rajasthan as follows:-

“8. In our view, the object of section 12AA is to examine the genuineness of the objects of the trust but not the income of the trust for charitable or religious purpose. The Commissioner cannot sit in the chair of the Assessing Officer to look into the amount spent on charitable activities at the time of creation of the trust. The stage for reviewing the application of income has not arrived at when such trust or institution files application for registration of the trust/society.”

4.2 Similarly, the Hon’ble High Court of Punjab and Haryana, in the case of *Commissioner Of Income Tax-I vs. Sri Guru Gorakh Nath Charitable Trust*, reported in 378 ITR 685 (P&H), has held as follows:-

“7. A perusal of the above section would go on to show that the Commissioner has to satisfy himself of the objects of the trust and the genuineness of the activities and after giving an opportunity of being heard to the trust or the institution, a refusal can be made to register the trust. Thus, the section gives power to the Commissioner to look into the genuineness of the activities of the trust and to satisfy himself about its activities. Under Section 12A, the provisions of Sections 11 and 12 shall not apply in relation to the income of any trust or institution unless various conditions are fulfilled. The said sections provide

that income from property held for charitable purposes shall not be included in the total income of the previous year of the person in receipt of the income.

8. The provisions of Section 12AA, thus, also give the power under sub-section (3) to cancel the registration of the activities of the trust if it is not carried out in accordance with the objects but the Commissioner has to keep in mind that it is not to act as an Assessing Authority while deciding the application under Section 12AA and the enquiry regarding the genuineness of the activities of imparting education with a charitable purpose is to be kept in mind. The objects of the trust, thus, have to be taken into consideration. Section 2(15) defines charitable purpose and the same includes relief in education and advancement of any other object of general public utility. In case the utility is carried out in the nature of trade, commerce, business, the proviso provides that the same will not be a charitable purpose. Sub-section 2(15) reads as under:

'Sub-section 2 (15) - "charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it

involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [twenty-five lakh rupees] or less in the previous year;”

4.3 A perusal of the impugned order shows that the Ld. CIT (E) has nowhere made any reference to the objects of the assessee trust, which was incumbent upon him at the time considering the assessee's application for grant of registration. In our considered opinion, the Ld. CIT (E) should have examined the objects of the trust vis-à-vis they being charitable in nature and should not have ventured into considering the appropriateness of rent or the amendment in the Trust Deed. Accordingly, we restore the file to the office of the Ld. CIT (E) with the direction to examine the assessee's application in light of the objects of the trust and adjudicate the issue in accordance with law after

giving proper opportunity of being heard to the assessee to represent its case.

5. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order Pronounced in the Court on 16 /03/2018)

Sd/-
(**N.K. Saini**)
ACCOUNTANT MEMBER

Dated: 16 /03/2018
s.sinha*

Sd/-
(**Sudhanshu Srivastava**)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR