

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA**

**BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA Nos.2248/Kol/2017**

<b>St. Xavier's Collegiate School Teachers' Benevolent Fund</b>	<b>Vs.</b>	<b>C.I.T – Exemption, Kolkata</b>
87, Raja Basanta Roy Road, Kolkata – 700029.		10B, Middleton Row, Kolkata – 700071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : <b>AARTS 8350 A</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Manish Tiwari, FCA  
Respondent by : Shri P.K. Srihani, CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing** : **09/04/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **18/04/2018**

**आदेश / O R D E R**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the assessee, is directed against the order passed by the Commissioner of Income Tax (Exemption) [hereinafter referred to as the 'CIT(Exemption)'], Kolkata u/s 12AA of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. In this appeal, the assessee is challenging the action of the Id. CIT(Exemption) rejecting registration u/s 12AA of the Income Tax Act, 1961.

3. The brief facts apropos this issue are that the assessee trust came into existence as a Trust vide Trust Deed dated 04.10.2016. The aforesaid trust filed an application in Form No.10A for registration u/s 12AA of the Income Tax Act, 1961 on dated 28.02.2017. The CIT(Exemption) has refused registration u/s 12AA of the Act for the following reasons:

(i). The assessee trust is very closely held trust and beneficiaries are also very limited and there was only one beneficiary of the trust till 30.04.2017, namely Shri Chittranjan Roy who was paid Rs.75,000/- on 26.12.2016.

(ii).Trust is not for the benefit of the general public.

Therefore, considering the above reason, the Id. CIT(Exemption) held that since the trust is not for the benefit of the general public, he rejected the application for grant of registration u/s 12AA of the Act.

4. Aggrieved by the order of the Id. CIT(Exemption), the assessee is in appeal before us.

5. We have given a careful consideration to the rival submissions and perused the materials available on record and after hearing the Id. DR for the Revenue, we are of the opinion that so far as grant of registration u/s 12AA of the Act is concerned, the CIT(Exemption)'s jurisdiction is only to verify the objectives of the institution and genuineness of the activities, meaning thereby that, he has to satisfy himself that the objects are charitable in nature and the activities being carried on or to be carried on are genuine, meaning thereby that, they are in consonance for achieving of charitable object and nothing else. So far as the violation of provision of section 13 of the Act is concerned, that is for limited purpose of taxing that amount and denying benefit of section 11 and 12 of the Act but cannot be a reason for refusing to grant registration u/s 12A of the Act or cancel the registration of the trust u/s 12A of the Act. It is clear from reading of section 12A & 12AA of the Act that what is intended thereby is only a registration simpliciter of the entity of a trust. This has been made a condition precedent for claiming the benefits of exemption under the other provisions of the Act regarding exemption of income, contribution etc. No examination of the modus of the application of the funds of the Trust or an examination of the ethical background of its settlers is called for while considering an application for registration. The stage for consideration of the relevance of the object of the Trust and the application of its funds arises at the time of the assessment. Where benefits are claimed by the assessee in terms of section 11 & 12 of the Act, the question as to the nature of such contribution and income can be looked into. At the time of registration of the Trust, going by the binding judgments of the Apex Court, what is to be

looked into is whether the Trust is a genuine one and whether it is a sham institution floated only to avail the benefits of exemption under the Act. For that, we rely on the judgment of the Hon'ble High Court of Kerala in the case of Shee Anjaneya Medical Trust (2016) 382 ITR 399 (Kerala) wherein the same propositions were upheld by the Hon'ble High Court. We note that the question whether the activities of the trust which was formed with the specific intention to carry on certain charitable activities, are actually charitable in nature or not, would not arise for consideration at the stage of grant of registration to the trust u/s 12AA of the Act. Going by the specific words in section 12AA of the Act, what is germane to the issue is only as to the genuineness of the Trust and its activities. We note that there is no such finding in the impugned order of the Id. CIT(Exemption) that activities of the trust were not genuine. Going by the provisions of section 12A and 12AA of the Act, we hold that the grounds raised by the Id. CIT(E ) (Registering Authority), explained in para 4 of our order, for rejecting of registration to the assessee trust cannot be sustained and Id. CIT(Exemption) ought to have examined whether activities of the trust are charitable in nature or not. Therefore, we direct the Id. CIT(Exemption) to examine the genuineness of the Trust and its activities and objectives and adjudicate the issue in accordance with law. Therefore, we allow this appeal for statistical purposes in terms of the discussion made (supra).

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 18/04/2018.

**Sd/-**  
**(A. T. VARKEY)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 18/04/2018

(RS, SPS)

**Sd/-**  
**(A. L. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant- St. Xavier's Collegiate School Teachers' Benevolent Fund
2. प्रत्यर्थी/ The Respondent- C.I.T – Exemption, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches,  
Kolkata.