

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

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

आयकरअपीलसं./ITA Nos.1688 & 1689/KoI/2017

Majumdar Art Foundation C/o. V.N. Purohit & Co., CA, Diamond Chambers, Unit-III, 4 th Floor, Suit No.4G, 4, Chowringhee Lane, Kolkata – 700 016.	Vs.	C.I.T – Exemption, Kolkata 10B, Middleton Row, Kolkata – 700071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AAETM 5832 G		
(Appellant)	..	(Respondent)

Appellant by :Shri V.N. Purohit, FCA & H.V. Bhardwaj, ACA
Respondent by :Shri P.K. Srihani, CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 09/04/2018

घोषणाकीतारीख/Date of Pronouncement : 18/04/2018

आदेश / ORDER

Per Bench:

These two captioned appeals, filed by the assessee, are directed against the orders passed by the Commissioner of Income Tax (Exemption) under section 12AA(1) (b) (ii) and U/s 80G(5) (vi) of the Income Tax Act, 1961, (hereinafter referred to as the 'Act'), Kolkata, dated 04.07.2017 and 03.07.2017 respectively.

2. Since these two appeals pertain to the same assessee, identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. In these two appeals, the assessee is challenging the action of the Id. CIT(Exemption) in rejecting registration u/s 12AA (1) (b) (ii) and consequently denial of approval u/s 80G (5) (vi) of the Income Tax Act, 1961.

4. The brief facts qua the issue are that the assessee trust came into existence vide Deed of Trust dated 17.06.2016. The trust applied for registration u/s 12AA vide application dated 06.01.2017. The CIT(Exemption) has refused registration for the following reasons:

(i)The trust has received Rs.1,00,05,000/- as donation from M/s Gokul Leasing and Finance Pvt. Ltd, as donation. The trust directly brought this amount from Receipt and Payment account to Balance sheet as a corpus donation without registered U/s 12AA of the Act.

(ii).M/s Gokul Leasing and Finance Pvt. Ltd. has donated an amount of Rs. 1,00,05,000/- to the trust and later on the trust returned back Rs. 90,00,000/- to M/s Gokul Leasing and Finance Pvt. Ltd, therefore Id CIT(A) concluded that trust has violated its declared objectives.

(iii) M/s Gokul Leasing and Finance Pvt. Ltd is a specified person U/s 13(1) (c) of the Act.

Based on these reasons, the Id. CIT(Exemption) held that the trust falls within the ambit of section 13 of the Act and therefore, not eligible for registration U/s 12AA of the Act and this way the application for registration u/s 12AA was rejected.

5.Aggrrieved by the order of the Id. CIT(Exemption), the assessee is in appeal before us. The Id Counsel for the assessee has submitted before us that the trust has been carrying on genuine activities as per its object clause.M/s Gokul Leasing and Finance Pvt. Ltd. has paid an amount of Rs.1,00,05,000/- to the trust with the direction that Rs. 90,00,000/- would be the loan and balance amount of Rs. 10,05,000/- (Rs.1,00,05,000- Rs. 90,00,000) would be the donation and later on the trust returned back the loan amount of Rs. 90,00,000/- to M/s Gokul Leasing and Finance Pvt. The Id Counsel submitted that trust is entitled to take loan and the said transaction is genuine and as per the object of the trust, but Id CIT(E) treated the said transaction against the object of the trust and rejected the assessee`s trust application for registration under section 12AA, without

bringing any evidence on record to show that activities of the trust were not genuine. On the other hand, the Id DR for the Revenue has primarily reiterated the stand taken by the Id. CIT(E), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6.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 assesseees 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).

7. In the result, both the appeals filed by the assessee are 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- Majumdar Art Foundation
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.