

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**I.T.A. No. 1546 & 1547/HYD/2016**

Neelkanth Vidyapeeth, Majeedpur Village, Bata Singaram P.O., Abdullapurmet Mandal, Ranga Reddy District. <b>[PAN: AABTN 3063 B]</b> <b>(Appellant)</b>	Vs	CIT (Exemptions), Hyderabad.     <b>(Respondent)</b>
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For Assessee	:	Shri A.V. Raghu Ram
For Revenue	:	Smt. Alka Rajvanshi Jain, CIT-DR

Date of Hearing	:	17.07.2018
Date of Pronouncement	:	20.07.2018

**ORDER**

**PER B. RAMAKOTAIAH, AM**

The issues in these appeals are with the rejection of applications u/s 12AA and 80G by the CIT (Exemptions) vide the common order dated 29.07.2016.

2. Briefly stated facts are that the assessee trust was formed by a trust deed dated 14.10.2008 and has applied for registration / approval u/s 12AA and 80G on 05.01.2016. The CIT (Exemptions) rejected them for the following reasons:-

*"2. I have gone through the information filed by the Trust. The following discrepancies were noticed.*

- 1) Original trust deed was not produced for verification by the Department.*
- 2) In the Bye laws – no amendment clause as required for granting registration u/s 12A was not provided i.e., seeking prior approval of CIT (E) before any amendment to the trust deed is made.*

3) *Dissolution clause is not properly drafted as per the required provisions as assets are supposed to be transferred to one M/s. Swaminayan Mandir Trust, Vadhvan, without any specific reference to the registration u/s 12AA or 80G granted to such entity on winding up of the present trust.*

3A) *Absolute discretion given to trustees as per clauses (XII) of item '8' page no. 9.*

(4) *Though the Aims & Objects list out number of activities of charity, the trust is presently running only a hostel (as per financials of A.Y. 2015-16) (Receipts – 2.57 Crore) and his activity as per trust deed @ clause No.2 of page No.6 is not mentioned as run for “no profit” or free of cost to the poor & needy or as a charitable activity.*

4. *In view of the above, I am of the view that the trust is not fit for grant of registration u/s 12AA of the Act. Hence, the application in Form No.10A filed by the above trust is rejected. As such, the other application in Form No.10G filed, is also rejected.”*

3. Assessee has raised various grounds and finally filed revised grounds numbering 8 in appeal 1546/Hyd/2016 and similarly in appeal 1547/Hyd/2016.

4. It was submitted by Learned Counsel that learned CIT(E) erred in rejecting the registration u/s.12AA on the ground that original trust deed was not produced, no clause is provided in the deed to seek approval from CIT(E) for amendment to trust deed, dissolution clause is not properly drafted and that absolute discretion given to trustees as per trust deed and finally that the trust is presently running only hostel as per financial statements for A.Y.2015-16 and such activity is not mentioned as being run on no profit or free of cost or as a charitable activity in the trust deed. It was submitted that learned CIT(E) failed to appreciate that all the reasons mentioned for rejecting registration are declaratory and not mandatory and further the finding that the receipts shown in A.Y.2015-16 is only hostel is factually incorrect as there is

school fee collection in another statement enclosed to the return and thereby erred in rejecting the registration. Further Ld CIT(E) failed to appreciate that clause with regard to amendments is required only where there is a clause in trust deed authorizing the trustees to amend the trust deed and not otherwise and thereby erred in considering lack of such clause to seek approval department as a reason for rejection of registration. It was further contended that after introduction of provision to deal with dissolution of trust in the Act there is no requirement for providing a clause to transfer properties only to bodies having 12A registration, though the clause in the trust deed provides for transferring it to a trust which has registration u/s.12A of I.T. Act, which is never verified by the department. It was stated that Ld. CIT(E) erred in giving a finding that original trust deed was not produced for verification though the same was produced during the hearing before the Officer in the Headquarters and holding the same against the assessee for such officer's failure to record such verification and rejecting the registration. It was contended that CIT(E) erred in holding that clauses (XII) of item 8 at page 9 of trust deed confers absolute discretion though it is a clause commonly found in all trusts & societies and it does not effect the objects of the trust or cause doubt on genuineness of the trust. It was the submission that assessee trust fulfils all conditions specified and so the applications are to allowed.

5. Learned CIT-DR relied on the order of CIT (E).

6. We have considered the issue and examined the documents. The reasons given by the Ld CIT (E) in rejecting the application are frivolous and devoid of any merits. It was the contention that original deed was produced. Even otherwise, certified copies of the deed were enclosed to the application. So the rejection on that ground is not proper. The

reasons 2 and 3 can be a condition for granting registration but cannot be part of the trust deed. These are not required under the Trust Law. Reason 3A is commonly found in all trusts and there is no absolute discretion for other matters, except when it is being merged. That cannot be a reason for rejection. As far as the fourth reason is concerned, assessee's computation filed before the CIT (A) clearly indicates two sources of receipts – school fee and hostel fee: There are separate income and expenditure statements but in the computation both are mentioned. It is not correct on the part of the CIT (E) to consider one statement and state that it is running only hostel whereas it is running a school also, the statements of which are on record. Since the reasons are not maintainable and since the CIT (E) has not rejected on any valid ground, that trust is not charitable, we direct the CIT (E) to consider granting the registration u/s 12AA / 80G after fresh consideration. The impugned orders of CIT (E) are set-aside with a direction to the CIT (E) to consider the applications as per law.

7. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> July, 2018.

Sd/-  
**(CHALLA NAGENDRA PRASAD)**  
**JUDICIAL MEMBER**

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 20<sup>th</sup> July, 2018

OKK, Sr.PS

## Copy to

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5.	<i>D.R. ITAT, Hyderabad.</i>
6.	<i>Guard File</i>