

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos. 738/Bang/2016 & 1651/Bang/2017

M/s. Ejjipura Holy Christ Education Society, No. 60, Ejjipura, Viveknagar Post, Bangalore – 560 047. PAN: AAAAE6571D	vs.	The CIT (Exemptions), Bangalore.
APPELLANT		RESPONDENT
Appellant by	:	Shri Rajiv Nulvi, CA
Respondent by	:	Shri G. Guruswamy, CIT – DRP
Date of hearing	:	05.11.2018
Date of Pronouncement	:	07.11.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee which are directed against two separate orders passed by Id. CIT(E), Bangalore both dated 23.03.2016 u/s. 12A and u/s. 80G(5)(vi) of IT Act. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee in ITA No. 738/Bang/2016 are as under:-

- “1. The order of the CIT (Exemption) is bad in law and against the fact of the case.*
- 2. On the facts and circumstances of the case and under the provisions of the law, the CIT (Exemption) erred in denying the exemption u/s 12A and approval u/s 80G.*
- 3. On the facts and circumstances of the case and under the provisions of the law, the CIT (Exemption) erred in appreciating the objects of the society in the proper and prospective manner.*
- 4. On the facts and circumstances of the case and under the provisions of the law, the CIT (Exemption) erred in denying the exemption u/s 12A and approval u/s 80G on the grounds that the society was accorded minority status.*
- 5. For these and other reasons which may be adduced at the time of hearing, the appellant prays before this Hon'ble Bench to direct CIT (Exemption) to grant the certificate u/s 12A and approval u/s 80G for substantial cause of justice.*

6. Appellant craves, leaves, to add, to delete or to amend any other grounds at the time of the hearing.”

3. Similarly, the grounds raised by the assessee in ITA No. 1651/Bang/2017 are as under.

“1. The order of the DIT (Exemption) is bad in law and against the fact of the case.

2. On the facts and circumstances of the case and under the provisions of the law, the DIT (Exemption) erred in denying the approval u/s 80G (5) (vi) of the IT Act, 1961.

3. On the facts and circumstances of the case and under the provisions of the law, the DIT (Exemption) erred in appreciating the objects of the society in the proper and prospective manner.

4. On the facts and circumstances of the case and under the provisions of the law, the DIT (Exemption) erred in denying the approval u/s 80G on the grounds that the society was accorded minority status and objects are charitable as well as religious in nature, which is against the object clause of the society.

5. For these and other reasons which may be adduced at the time of hearing, the appellant prays before this Hon'ble Bench to direct the DIT (Exemption) to grant the approval u/ s 80G for substantial cause of justice.

6. The appellant craves leaves, to add, to alter, to amend and to delete any other grounds at the time of the hearing.”

4. The Id. AR of assessee submitted that while deciding the issue against the assessee in respect of granting registration u/s. 12A of IT Act, the Id. CIT (E) has proceeded on this basis that as per the objects of the trust deed, it is seen that the objects include both religious objects as well as charitable objects and the Id. CIT (E) concluded that in case of trust having mixed objects of religious purposes and charitable purposes, registration u/s. 12A cannot be granted. In this regard, he placed reliance on the judgement of Hon'ble Apex Court rendered in the case of CIT Vs. Dawoodi Bohra Jamat as reported in 364 ITR 31 (SC) and pointed out that it was held by Hon'ble Apex Court in this case that if the primary purpose and the predominant object of a trust are to promote the welfare of the general public, the purpose would be charitable purpose and the issue was decided in favour of the assessee and the registration was granted. He submitted that in the present case also, the registration u/s 12A should be granted as well as registration u/s. 80G should also be granted. The Id. DR of revenue supported the order of CIT(E).

5. We have considered the rival submissions. First of all we reproduced the relevant paras from the order of CIT (E) passed by him u/s. 12A of IT Act. These paras are paras 9 to 13. These are as under.

“9. A perusal of the objects of the trust deed would reveal the fact that they include both religious objects as well as charitable objects falling under the limb of advancement of any other objects of general public utility u/s 2(15) of I.T Act. Further, as per provisions of Section 12AA read With Section 11, 12 and 13 of the Act, a trust or institution shall be registered under two exclusive categories i.e. (a) wholly for charitable purposes and (b) wholly for religious purposes. Further, there is no third category i.e. partly for charitable purposes and partly for religious purposes. As such, a trust having mixed objects of religious purposes and charitable purposes cannot be registered u/s 12AA(b). Accordingly, it is not possible to consider this case for registration u/s 12AA.

10. Merely because few charitable clauses are in the deed, the trust cannot become a 'public charitable' trust which is open to all irrespective of caste, religion, faith, color creed etc. Proviso 3 to section 80-G is also very clear in this regard and at this juncture, it may be noted that even for the purpose of recognition u/s 80G, a trust/institution/organisation having mixed objects of religious purposes and charitable purposes cannot be considered inasmuch as under sub-section (5) of Section 80G, any trust /institution/organisation which is established in India for charitable purposes only, is entitled to claim recognition subject to fulfillment of other conditions stipulated thereon. Further, as per sub-section (5B), such charitable trust/institution/ organisation is allowed to incur expenditure during any previous year towards religious purposes for an amount not exceeding 5% of its total income. However, as the objects of the trust are mixed in nature both charitable as well as religious, the trust is considered as not established in India for charitable purposes and, accordingly, it cannot be considered for recognition u/s 80G also.

11. At the stage of Registration u/s 12AA, the Commissioner in receipt of an application for Registration of a trust or institution has to satisfy himself about the objects of the trust or institution and the genuineness of its activities. In the absence of relevant details, it is not possible to verify the genuineness of the objects and the activities of the trust in this case. In this connection reliance is placed on the following Decisions:-

a) The Hon'ble Karnataka High Court in the case of Ganjam Nagappa and Son Trust Vs DIT(E) reported in 269 ITR 59 have held that "Grant of exemption or renewal is not automatic in character.

b) The Hon'ble ITAT, Bangalore in the case of DBA Institution vide its order in ITA No.667(BNG)/08, dt. 27.01.2009 has held that the DIT (E) was within his jurisdiction to reject the application of the assessee-trust for grant of registration under section 12AA since the applicant trust "could not substantiate its claim by bringing out the carrying on of charitable activity" & proceeded to uphold the order of the DIT (E) in rejecting the application u/s. 12A.

c) Hon'ble Kerala High Court in the case of Self Employers Institution Vs CIT reported in 247 ITR 18 has held that where there is no material before the Commissioner to be satisfied of the genuineness of the activities of the trust is a valid reason for rejection.

12. It is subject to the satisfaction of the authority with regard to the charitable character and with regard to the applicant's activities in terms of Rule 17A. Only on being satisfied, registration or renewal is permissible"

13. Further it appears that the applicant is not interested in prosecution of this application and therefore deserves to be dismissed on this account. The law assists those who are vigilant and not those who sleep over their rights. This principle is embedded in the well-known dictum "Vigilantus non dormantibusjura-subveniunt". Courts in several cases have upheld this dictum.

Lack of diligence and follow up on the part of the assessee has been frowned upon by various courts as under:

(i) 106 ITR 653 (SC),

(ii) 118 ITR 461 (SC)

(iii) 286 ITR 688 (MP)

(iv) 257 ITR 301 (Delhi) & (v) 130 Taxman 61 (Mad)"

6. From the above paras reproduced from the order of CIT(E) passed by him u/s. 12A of IT Act, it is seen that apart from noting this fact that the objects of the assessee trust include both religious objects and charitable objects, this is also noted by CIT(E) that at the stage of registration u/s. 12AA, the Commissioner in receipt of an application for Registration of a trust or institution has to satisfy himself about the objects of the trust or institution and the genuineness of its activities and in the absence of relevant details, it is not possible to verify the genuineness of the objects and the activities of the trust. He also noted that in the present case, the relevant details are not provided by the assessee and on this basis, it was concluded in para 13 of the impugned order of Id. CIT (E) that the assessee is not interested in prosecution of this application and therefore, he held that it deserves to be

dismissed on this account. Hence it is seen that the order of CIT(E) is not on this basis alone that the assessee is having dual objects which are charitable objects as well as religious objects. The impugned order of CIT (E) is on this basis also that the assessee has not provided relevant details. Under these facts, we feel it proper to restore back the matter to the file of Id. CIT (E) for fresh decision with the direction to the assessee that the assessee should provide all those details and evidences which are called for by CIT (E) and thereafter, CIT (E) should pass necessary order as per law after considering all the judicial pronouncements, which may be cited by assessee before him. The order of CIT(E) should be a speaking and reasoned order after providing adequate opportunity of being heard to assessee. In view of this decision, no further adjudication is called for at the present stage in respect of both issues i.e. Registration u/s 12A and u/s 80G.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 07th November, 2018.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.