

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.6768/Del./2015

ITA No.4490/Del./2018

The Rotary Megapolis Foundation, vs. DIT, Exemption,
D – 17A, Kailash Colony, New Delhi.
New Delhi – 110 048.

(PAN : AACTT5439L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri P.C. Yadav, Advocate
REVENUE BY : Shri J.K. Mishra, CIT DR

Date of Hearing : 26.11.2018

Date of Order : 30.11.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, The Rotary Megapolis Foundation (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned order both dated 19.10.2015 passed by Ld. CIT (Exemptions), New Delhi on the following grounds inter alia that:-

“ITA NO.6768/DEL/2015

1. That on facts and circumstances of the case, the order passed by the Ld. DIT - Exemption is bad both in the eyes of law and on facts.

2. *That the Ld. DIT - Exemption has erred in rejecting the application for registration u/s 12AA.*
3. *That the Ld. DIT - Exemption has erred in rejecting the application in Form No. 10G for registration u/s 80G.*
4. *That the Ld. DIT - Exemption has erred in deciding the case without giving proper opportunity of being heard and dismissing the same on irrelevant grounds.*
5. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”*

ITA NO.4490/DEL/2018

1. *That on facts and circumstances of the case, the order passed by the Ld. CIT - Exemption is bad both in the eyes of law and on facts.*
2. *That the Ld. CIT - Exemption has erred in rejecting the application in Form No. 10G for registration u/s 80G, merely due to rejection of registration u/s 12AA.*
4. *That the Ld. CIT - Exemption has erred in deciding the case without giving proper opportunity of being heard and dismissing the same on irrelevant grounds.*
5. *That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the applications moved by the assessee company in Form No.10A and 10G for registration under section 12AA of the Income-tax Act, 1961 (for short 'the Act') and approval u/s 80G of the Act respectively have been rejected by the ld. CIT on the grounds that the nature of the Trust in question is against the norm and character of a charitable organisation; that all

the powers have been centralized with Trustees who can utilize the same for personal benefits and the donors would be controlling the function of the Trust at their own wishes and objects; and that the balance sheet filed by the Trust is unsigned and is not containing the detailed list of donors.

3. Feeling aggrieved, the assessee company has come up before the Tribunal by challenging the impugned order passed by Id. CIT by way of filing the present appeals.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee has produced before Id. CIT (Exemptions) the Trust Deed, bank statement, copy of provisional accounts, original vouchers related to expenses on charitable activities. The assessee has constituted a Trust vide Trust Deed containing comprehensive object clause with main objects as under:-

“5. OBJECTIVE CLAUSE

The objects of the Trust shall be :

MAIN OBJECTS

a) Rehabilitation of Slum & Street children.

- b) Setting up of orphanages & old age homes.*
- c) Education of persons of economically weaker sections of the society.*
- d) Rehabilitation of handicapped persons.*
- e) Grant of Scholarships to the deserving students and support for books, uniforms, travel, accommodation, etc.*
- f) Providing environment protection, pollution control and hygiene in the living conditions of the poor.*
- g) Providing medical aid to the weaker sections of the society.*
- h) Conservation of water and other natural resources.*
- i) Holding blood donation and eye camps and other such health check up camps for the economically weaker sections of the society.*
- j) Rehabilitation of victims of natural calamities, such as, floods, droughts*
- k) To engage any other activity in order to fulfill the above objects.”*

6. The Id. CIT (Exemptions) declined the registration and approval u/s 12AA and 80G of the Act to the assessee by picking up the three clauses of the Trust Deed which are as under :-

“15.15 The Board of Trustees may join, co-operate and amalgamate the trusts created by these presents or any portion thereof with any trust or institution having allied and/or similar objects upon such terms as they may in their absolute discretion think fit.

15.18 The Board of Trustees shall be entitled at their discretion from time to time to start, discontinue, abolish and restart any charitable institution, to impose any condition or conditions to any subscription or donation made by them and to earmark any portion of the Trust property or income for any particular object or objects.

25. POWER TO MODIFY THE TERMS OF THE TRUST IN THE INTEREST OF BENEFICIARY: The Trustees appointed in this deed will have the power to modify the terms of the Trust as they deem fit to keep the interest of the beneficiaries always in their mind. Whenever such modification is proposed,

the decision of the majority of the Trustees shall prevail even over those Trustees who may have given their dissent to such modification.”

7. Bare perusal of the aims and object of the Trust constituted by the assessee leads to the conclusion that the same has been established for rehabilitation of slum and street children; to set up orphanages and old age homes; providing education to the weaker sections of the society, rehabilitation of handicapped persons and grant of scholarships to the deserving students, etc.

8. The Id. CIT (E), without examining the aims and objects of the assessee Trust, picked up three clauses from other objects centralizing powers of the Board of Trustees to start, discontinue, abolish and restart any charitable institution and to impose any condition to any subscription or donation and that it may also join, cooperate and amalgamate the Trust with any Trust or institution having similar objects and having powers to modify the terms of the Trust in the benefit of the beneficiaries.

9. However, when we examine all the powers conferred on the Board of Trustees in the light of the main objects and other objects of the Trust, it leads to the inescapable conclusion that the Trust has been created for just charitable purpose. Main objects of the Trust are only to confer the powers on the Board of Trustees to run

the Trust in an efficient and charitable manner. Furthermore, assessee brought on record the detail of activities being carried out by the assessee vide letter, available at pages 15 & 16 of the paper book, to the notice of Id. CIT (E) showing that in order to achieve the objects of the Trust, it has hired five rooms in slum and JJ area and has already engaged five teachers to teach children of weaker section of the society. The assessee has also placed before Id. CIT (E) updated bank statement, copy of provisional accounts as on 10.09.2015 and original vouchers related to expenses on charitable activities.

9. The Id. CIT (E) has also pointed out that the balance sheet placed on file by the assessee is unsigned and detailed list of donors has not been submitted nor the detailed notes on its activities have been filed. We are of the considered view that when the assessee has categorically brought on record the activities being carried out in order to achieve objects of the Trust vide letter, available at pages 15 & 16 of the paper book, along with annual report, available at page 18 of the paper book, showing the detailed notes on its activities, the registration u/s 12A cannot be declined on the basis of mere conjectures particularly when aims and objects of the assessee Trust are categoric one and they have already hired

five rooms and engaged five teachers to educate the children of the weaker section of the society.

10. Furthermore, when we examine the clauses 15.2 & 15.3 of the Trust Deed again it goes to prove the Board of Trustees shall spend each and single penny in furtherance of the cause of main objects of the assessee Trust and they will maintain the true and accurate accounts which would otherwise be subject to the scrutiny at the time of assessment of the assessee Trust in every assessment year. So, all aims and objects enshrined in the Trust Deed need to be read as a whole to work out if the Trust has been established to carry out the charitable activities.

11. So far as question of complete list of donors by the assessee is concerned, the same is otherwise required at the time of assessment and not at the time of registration u/s 12A of the Act. Furthermore, assessee Trust is required to carry out the charitable activities only after getting registration u/s 12A of the Act. Even otherwise, providing registration u/s 12A of the Act is not a licence for any Trust to utilize the same for their own benefit and for commercial purposes, which aspect is to be seen at the time of assessment.

12. Ld. CIT (E) was only required to firstly satisfy himself if the Trust has been established for charitable activities and its activities

are genuine for the purpose of grant of registration u/s 12AA of the Act. Moreover, in the instant case, the CIT (E) has not given any contrary observation that the assessee Trust's activities are not genuine rather he has declined the registration u/s 12A and approval u/s 80G merely on the ground that Board of Trustees having absolute powers which, to our mind, are to be examined in the light of the activities being carried out and to be carried out by the assessee Trust.

13. Hon'ble Allahabad High Court in case cited as *CIT (E) vs. Yamuna Expressway Industrial Development Authority – (2017) 395 ITR 18 (All.)* while discussing the scope of sections 11 & 12 of the Act has held that it is not within the purview of Commissioner to examine whether the assessee was entitled to exemption u/s 11 or 12 since that was within the jurisdiction of AO and not the Commissioner (E). Hon'ble High Court further held that, *“A body or institution which is functioning for advancement of objects of general public utility and whose activities are not in the nature of trade, business or commerce or sheer profit making, is entitled to claim itself to be constituted for "charitable purposes" and seek registration under section 12A(1) of the Income-tax Act, 1961. Charitable purpose primarily means that the predominant object must be to promote welfare of general public. An ancillary*

activity, if any, to that general one performed by the institution would not render such institution "non-charitable".

14. In view of what has been discussed above, we are of the considered view that the assessee Trust having been constituted to carry out the charitable activities is entitled for registration u/s 12AA of the Act and consequent approval u/s 80G but the ld. CIT (E) has erred in declining the registration u/s 12AA of the Act on the basis of conjectures and surmises that the Trust can be utilized for personal benefits of the Trustee which could be even commercial in nature without having any material on file in this regard, which is not sustainable in the eyes of law. Consequently, appeals filed by the assessee are allowed directing the ld. CIT (E) to provide registration u/s 12AA to the assessee and also to grant consequent approval u/s 80G of the Act.

Order pronounced in open court on this 30th day of November, 2018.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 30th day of November, 2018

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(E), New Delhi.
- 5.CIT(ITAT), New Delhi.

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NEW DELHI.**