



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No289/CTK/2018

Gurukul Foundation, VIM-198, Sailashree Vihar, PS: Chandrasekharapur, Bhubaneswar.	Vs.	CIT (Exemptions), Hyderabad.
PAN/GIR No.AACTG 8341 C		
(Appellant)	..	(Respondent)

Assessee by : Shri Dilip Kumar Mohanty, AR
Revenue by : Shri S.M.Keshkamat, CIT (DR)

Date of Hearing : 03/12/ 2018
Date of Pronouncement : 05/12/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Exemption), Hyderabad dated 26.4.2018.

2. The sole issue involved in this appeal is that the Commissioner of Income Tax(Appeals), Hyderabad was not justified in rejecting the application for grant of registration u/s.12AA of the Act and approval u/s.80G of the Act.



3. The brief facts of the case are that the Commissioner of Income Tax (Exemption), observed that Clause (xv) of the Trust Deed reads as under:

“(xv) “To publish and or publishing books, pamphlets, periodicals and newspapers, journals, magazines, course materials in India or outside for the recognition of education and culture.”

4. A reading of the same shows that the assessee intends to carry out its activities outside India, which is contrary to the provisions of section 11(1)(a) of the Act and, therefore, is not eligible for registration u/s.12AA of the Act. He further observed that the assessee has not filed his income and expenditure account and thus, violated the Rule 17A of Income tax Rules. He also observed that some of the basic clauses such as beneficiary clause, dissolution clause, irrevocability clause, etc are not incorporated in the trust deed. Therefore, he rejected the grant of registration under section 12AA of the Act to the assessee and consequently, rejected the grant of approval u/s.80G of the Act.

5. Ld Authorised Representative of the assessee submitted that the Commissioner of Income Tax (Exemption) failed to consider the amended trust deed dated 7.3.2018 filed by the assessee on 16.3.2018 and on the contrary took into consideration the pre-



amended trust deed dated 3.8.2017. In the amended trust deed, clause 6 of the amended trust deed read with clause 4 of the pre-amended trust deed clarifies that " if any one or more of the objects are held not to be objects of a public charitable nature, the trustees shall not carry out such object or objects as if the same are not incorporated in these present but the validity of the trust created by these presents as a trust of public charitable purposes shall not be effected in any manner". Further, he submitted that clause 55(d) of the amended trust deed provides as under:

"Any of the clauses of this trust deed to the extent that it is repugnant to any claim for exemption or concessions for treatment as a public charitable institution under trust law or for purposes of exemption under Income tax or Direct Tax laws will be treated a void and modified so to be in accord with the requirements of aforesaid laws".

6. He further submitted that the trust deed is dated 3.8.2017 and the application for registration u/s.12AA was filed on 6.10.2017 and since a year has not completed from the date of the trust deed of the assessee, therefore, no income and expenditure and balance sheet was drawn by the assessee trust and, therefore, same could not be filed.

7. With regard to non-availability of beneficiary clause, dissolution clause and irrevocability clause, Id Authorised



Representative of the assessee submitted that at page 15 of the amended trust deed dated 7.3.2018, clause 53(a) reads as under:

“The trust shall be public educational and charitable trust open to all persons irrespective of caste, creed or religion or any community.”

8. With regard to dissolution clause, it was submitted that clause 53(c) of the amended trust deed dated 7.3.2018 reads as under:

“In the event of the above trust being dissolved, it would be open to the Trustee to transfer the property of the Trust in favour of similar trusts having similar objects and not to disburse amongst the existing trustee.”

9. With regard to irrevocable clause of the trust deed, he submitted that clause 55(e) reads as under:

“The trust will be an irrevocable charitable trust.”

10. Hence, he pointed out that refusal to grant registration to the assessee trust by the Commissioner of Income Tax (Exemption) is not based on any tangible material and hence, order of the Commissioner of Income Tax (Exemption) should be set aside and the Commissioner of Income Tax (Exemption) be directed to grant registration to the assessee trust.



11. Ld Departmental Representative could not controvert the submission of Id Authorised Representative of the assessee.

12. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, application for registration under section 12AA of the Act was rejected by the CIT(Exemptions) on the ground that Cl. No. (xv) of the trust deed empowers the trustee to carry on activities outside India which is in violation of section 11(1)(a) of the Act and the trust deed does not provide what will happen to trust property on dissolution of the trust and as well as the trust deed does not provide that the benefit shall be conferred without any discrimination on the basis of caste, creed and religion.

13. Ld Authorised Representative of the assessee submitted that the original trust deed dated 3.8.2017 was modified on 7.3.2018 and the modified trust deed was fled before the CIT(Exemption) on 16.3.2018, which he failed to take into consideration. He pointed out from the modified trust deed that:

Clause 53(a) provides as under:

“The trust shall be public educational and charitable trust open to all persons irrespective of caste, creed or religion or any community.”

Clause 53 (c) provides as under:



" "In the event of the above trust being dissolved, it would be open to the Trustee to transfer the property of the Trust in favour of similar trusts having similar objects and not to disburse amongst the existing trustee."

Clause 55(e) provides as under:

"The trust will be an irrevocable charitable trust"

14. Ld Departmental Representative could not controvert the submission of Id Authorised Representative of the assessee that modified trust deed has not been taken into consideration by the CIT (E).

15. In these circumstances, in our considered opinion, it shall be in the interest of justice to set aside the impugned order of the CIT(E) and restore the matter back to his file for adjudication afresh after taking into consideration the modified trust deed. Needless to mention that the assessee shall be allowed reasonable opportunity of hearing before adjudicating the issue afresh.

16. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 05 /12/2018.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 05 /12/2018
B.K.Parida, SPS



Copy of the Order forwarded to :

1. The Appellant : Gurukul Foundation, VIM-
198, Sailashree Vihar, PS:
Chandrasekharapur, Bhubaneswar
2. The Respondent. CIT(E), Hyderabad
3. The CIT(A)-
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**