

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

ITA No.2252/Hyd/2018

N. Ramya Kirti Memorial Trust, Hyderabad. vs. CIT(Exemptions) Hyderabad.

PAN – AACTN3303M

(Appellant)

(Respondent)

Assessee by : Shri K.A. Sai Prasad
Revenue by : Smt. Nivedita Biswas

Date of hearing : 07-03-2019
Date of pronouncement : 13-03-2019

ORDER

PER D.S. SUNDER SINGH, A.M:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Exemptions) (CIT(E)), Hyderabad dated 05.09.2018. The assessee has raised the following grounds of appeal:

- “1. The order of the Ld. Commissioner is not correct either in law or on facts and in both.*
- 2. The Ld. CIT is not justified in rejecting in rejecting application in for 10A filed by the appellant.*
- 3. The Ld. CIT has erred in not registering the trust u/s 12AA ignoring the objects of the Trust, which are charitable in nature.*
- 4. The Ld. CIT is not justified in over looking the supplementary deed and holding the appellant as a family trust, ignoring the fact that on dissolution, the properties of the trust shall vest with any other association or institution with similar objects only.*

5. *The Ld. CIT is not justified in doubting the genuineness of trust and its activities on assumptions & presumptions ignoring the clause of 14 and statements of accounts filed.*

6. *The Ld. CIT failed to appreciate the fact that clause 3 of supplementary deed provided for investment of funds in the modes prescribed u/s 13(1)(d) r.w.s. 11(5).*

7. *The Ld. CIT is not justified in stating that the trust is a personal property of the Managing Trustee, ignoring the fact that various clauses of the trust deed/supplementary deed doesn't empower the trust property to be a personal property.*

8. *The Ld. CIT has taken irrelevant reasons in rejecting the application.*

9. *Appellant craves leave to add amend or alter any of the grounds at the time hearing of the appeal.*

2. All the grounds of the appeal are related to refusal of registration sought by the assessee u/s 12AA of the Income Tax Act, 1961 (in short 'the Act'). The assessee filed an application in Form - 10A seeking registration u/s 12AA of the Act on 28.03.2018. The Commissioner of Income-tax (Exemptions) ('CIT(E)' in short) verified the Memorandum of Association / Trust deed and observed that the trustees of the trust are the family members consisting of Shri N. Eswar Prasad, settler of the Trust, Shri N. Suman Babu, S/o N. Eswar Prasad, Trustee and Smt. N. Usha, W/o Shri N. Eswar Prasad, Trustee. Therefore, viewed that the decision making power is vested in the hands of one family thus held that it is a family trust. The CIT(E) further observed that as per the Clause-8 of the Trust Deed the 'the Managing Trustee has power to appoint his successor during his life time, hence, viewed that the trust a personal property of the managing trustee and not a charitable organization. The Ld. CIT(E) doubted the genuineness of the activities of the trust also the Ld. CIT(E) verified the

Clause – 9 which gives the powers to conduct the affairs of the trust to the Managing Trustee and in particular to barrow monies for the trust and to carry out the objects. From clause No.9, the Ld.CIT(E) observed that the trust intends invest the funds against the provisions of Sec. 11(5) of the Act. Apart from the above the Ld. CIT(E) found that though the trust was formed in 2014 no activities are carried out till date, therefore held that trust is not a genuine trust and accordingly rejected the application of the assessee for grant of registration u/s 12AA of the Act. Aggrieved by the order of the CIT(E) the assessee filed appeal before us.

3. During the appeal hearing the Ld. AR argued that merely because of the reason that the family members are the trustees the trust cannot be held to be a family trust and for this purpose the Ld. AR relied on the decision of the Coordinate Bench of ITAT Chandigarh in M.R. Educational Trust Vs. CIT in ITA No. 841/CHD/2014 dated 23.05.2016 and the decision of ITAT Ahmadabad in the case of Jupiter Medical Research Centre Trust Vs. Director of Income Tax (E) [2010] 128 TTJ 118 (Ahmedabad) and argued that the as per the objects the trust is formed for public welfare purpose and the objects clearly shows that the purpose of the activities are charitable in nature. Further, the Ld. AR submitted that the trust deed was amended and the supplementary trust deed has been created on 05.01.2018 and the necessary amendment were brought on record to make the investment of the surplus funds as prescribed in Sec. 13(1)(d) r.w.s 11(5) of the Act.

Further in the supplementary deed a Clause has been incorporated in the trust deed to transfer the assets to any other association or institution with similar objects in the event of dissolution of the trust. The Ld. further AR argued that the findings of the CIT(E) that the trust is a family trust, doubting the genuineness of the trust and the fear of making investments against the provisions of section 11(5) of the Act are baseless and without having any foundation. The Ld.A.R further argued that the CIT(E) did not consider the supplementary trust deed and the objects of the trust deed before the refusing the registration. Since, the objects of the trust are genuine and all the conditions required for granting the registration have been satisfied by the assessee trust. The Ld. AR requested for setting aside the order of the Ld. CIT(E) and grant of registration.

4. On the other hand, Ld. DR supported the order of the CIT(E) and argued that the trust has not carried out any activities though it was incorporated in 2014, hence submitted that the CIT(E) has rightly rejected the registration and requested to uphold the order of the Ld. CIT(E).

5. We have heard both the parties and perused the material available on record. We find that the CIT(E) rejected the registration of the trust because of the reasons that the trustees are the family members, there is clause in the trust deed to appoint the successor of the managing trustee during the life time of existing managing trustee and the managing trustee is vested with the powers to borrow the money for conducting the affairs of the trust.

The CIT(E) doubted the genuineness of the trust and viewed that it is a family trust and it is the personal property of the managing trust, due to the reasons mentioned above. In addition to the above the CIT(E) observed from clause 9 that the powers vested in managing trustee with regard to the barrowals of the money to carry out the activities may lead to make the investments against the provisions of Sec. 11(5) of the Act. Apart from the above the CIT(E) observed that though the trust was incorporated no activities have been carried out since its inception. Accordingly rejected the registration of the trust. The Ld. AR has placed the trust deed in paper book in page No. 2 to 12 and the trust is found to be formed for the purpose of public charitable trust with the following objects:

- a. To assist orphans directly or through contributing donations to orphanages.*
- b. To provide scholarships, fellowships and other forms of financial assistance to the needy and deserving students for pursuing education.*
- c. To conduct/maintain clinical labs, hospitals and institutions of similar nature and providing financial assistance to the deserving persons for medical treatment in any medical institution.*
- d. Providing relief to the poor.*
- e. To donate to similar institutions having similar objectives.*
- f. No activities of Trust shall be carried out outside India”.*

5.1 The above objects clearly show that the objects of the trust are public charitable and no personal benefit can be derived by the managing trustee or the family members who happens to be the other trustees. None of the objects can be linked for the personal benefit of the managing trustee or the family members of the trust. Similarly, the

assessee also has enclosed the supplementary trust deed in page No. 14 to 16 of the paper book wherein the necessary Clauses are incorporated for the transfer of the assets to the institutions or the association with similar objects in the event of dissolution of the trust and also to invest the surplus funds in modes prescribed in Sec. 13(1)(d) and Sec. 11(5) of the Act. For Registration of the trust the issues to be examined are the objects of the trust. If the objects of the trust are public charitable the trust has to be registered. It makes no difference even if some of the member trustees are the family members so long as the trust is public charitable and no personal benefit is available to the members. The Ld. AR relied on the decisions of M.R Educational Trust, Jupiter Medial Research Centre Trust and Smt. Mansukhi Devi Bihani Jan Hitkari Trust (cited supra). In the case of M.R educational Trust (supra) the Coordinate Bench of ITAT Chandigarh in para No. 10 held that merely because of the trust is headed by members of the one of the family there is no reason for rejection of the registration. For the sake of clarity and convenience we extract relevant part of the order of the Tribunal in para No. 10 which reads as under:

“10. The Commissioner of Income Tax has doubted the charitable nature of the assessee in view of the fact that the trust is being headed by father as Settler -cumPresident while two of his sons are trustees. In this regard, though the learned counsel for the assessee has given us an explanation that out of seven members of the trust only three belong to one family and other four belong to different four families meaning thereby that there are five different families involved and not one. However, we find no relevance of the fact that the trust is being headed by the members of only one family. Even if a trust is run by only one family, there is no bar on such trust to be registered under

section 12A of the Act. At the time of granting registration what the Commissioner of Income Tax has to see is that the objects of the trust are charitable in nature and the activities of the same are genuine. The fact whether some benefit directly or indirectly is being diverted to one family, can be taken care of by the Assessing Officer at the time of making the assessment and granting exemption under section 11 of the Act. Section 13 of the Act provides for refusing exemption under section 11 of the Act in such cases which the Assessing Officer can examine on yearly basis in every assessment year”.

5.2 In the case of Jupiter Medical Research Centre Trust also the Coordinate Bench held that merely because of all the trustees are family members it does not mean that the trust is not a public trust and merely because the assessee trust not carried out any activity that would not mean that the trust has totally stopped the activity forever. In the case of Smt. Mansukhi Devi Bihani Jan Hitkari Trust (cited supra) the Coordinate Bench of the Jodhpur Bench held that the registration of a trust cannot be refused merely on the ground that in case of vacancy on the Board of trustee, remaining trustees are cooperated from the family members. For registration of a trust at the time of registration, the CIT(E) has to see the objects of the trust are charitable in nature or not and the activities of the same are genuine or not. In the instant case as discussed earlier the objects of the trust clearly shows that they are charitable in nature. From the supplementary deed it is also observed that the surplus funds of the trust would be applied as provided in Sec. 13(1)(d) r.w.s 11(5) of the Act. Carrying of the activities and application of its income for objects is a later part of activity which would be undertaken after registration of the trust. Without having registration the assessee is not permitted to claim the

exemption of its income u/s 11 and the assessee brought to our notice the demand raised by the department u/s 143(1), denying the exemption of voluntary contributions for the assessment year 2015-16 for not having registration. In case of any violation of the objects or receiving the personal benefits by the members of the settlor family/the settlor the assessing officer always have powers to deny the exemption. The CIT(E) did not bring any other evidence on material to suspect the genuineness of the trust or to refuse the registration.. In the instant case all the issues raised by the CIT(E) with regard to the family members of the trustee appointment of the managing trustee and filling up the vacancy of the managing trustee are squarely covered by the decisions cited supra in favour of the assessee. Therefore, we direct the CIT(E) to grant the registration to the trust u/s 12AA of the Act.

7. In the result, appeal filed by the assessee is allowed.

Pronounced in the open Court on 13th March, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 13th March, 2019.

KRK

- 1 N Ramya Kirti Memorial Trust, H.No. 1-1-7/34, Ashok colony, Kapra, Hyderabad.
- 2 CIT(Exemptions), Hyderabad.
- 3 The Addl. CIT (exemptions), Hyderabad.
- 4 The DR, ITAT Hyderabad
- 5 Guard File