

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.S. SAINI, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.729 (Asr)/2017
Assessment Year: 2017-18

Shri Bawa Braham Dev Ji Trust Vs. CIT (Exemptions),
Vill: Chak Jadelī C.R. Building, 5th Floor
P.O. Taloor, Tehsil & District: Section 17-E, Chandigarh
Sambha, Jammu (J&K)

[PAN/TAN:AANTS8425N]
(Appellant)

(Respondent)

Appellant by : Sh. Vinamar Gupta CA)
Respondent by: Smt. Parwinder Kaur (CIT, DR)

Date of hearing : 14.05.2019
Date of pronouncement : 14.05.2019

ORDER

PER N.K.CHOUDHRY, JM:

This is an appeal preferred by the Assessee Trust (hereinafter called as the Appellant) against the order dated 26.09.2017, impugned herein, passed by the Ld. CIT (Exemptions), Chandigarh, whereby the Ld. CIT(E) rejected the application for Registration u/s 12AA of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. Brief facts of the case are that the Appellant is an ongoing entity for the last 15 years and had applied for Registration under section 12AA of the Act, on dated 31/03/2017 before the Ld. CIT(E). The application of the appellant was taken into consideration and vide show cause notice dt. 02/08/2017 the

appellant was asked to submit details/clarification as mentioned in para 5 of the impugned order, on or before 16/08/2017. The said show cause notice dated 02/08/2017 was replied by the appellant by filing the reply and documents which have been taken into consideration by the Ld. CIT(E) and on the basis of the reply and documents, the Ld. CIT(E) rejected the application under section 12AA of the Act.

3. The assessee on being aggrieved preferred the instant appeal and raised the following grounds:

1. That learned CIT (E) has erred in law and facts and circumstances of the case by rejecting application for grant of registration to the assessee trust u/s 12AA.

2. That the Learned CIT (E) has erred in law and facts and circumstances of the case in spite of the objects of the assessee being wholly for religious and charitable purposes and the activities being genuine and in accordance with the objects of the trust.

3. That the Learned CIT (E) has erred in law and facts and circumstances of the case by denying registration on presumptions and surmises which have no relevance to the registration of the trust

4. That the Learned CIT (E) has erred in law and facts and circumstances of the case without appreciating the provisions u/s 12AA and on the grounds even beyond the purview of scope of enquiry for registration of trust envisaged under the provisions of the law.

5. That the appellant craves leave to add, alter, amend or vary the grounds of appeal here in above at or before hearing of appeal.

4. Having heard the parties at length and perused the material available on the record, the Ld. AR emphasized that the order under challenge suffers from perversity, illegality and impropriety and therefore is liable to be set aside. On the contrary the Ld. CIT DR relied upon the order passed by the Ld.

CIT(E) and submitted that the Ld. CIT(E) has passed the well reasoned order and therefore does not require any interference and consequently the appeal filed by the appellant is liable to be dismissed.

4.1 From the order it reflects that in para No. 3, the Ld. CIT (E) consciously observed that while considering the case for registration u/s 12AA of the Act, the objects of the Trust/Society and genuineness of the activities are to be examined.

4.2 From the order it also reflects that the Ld. CIT(E) sought certain explanations/documents, which have been specifically clarified and replied by the Applicant by filling the relevant information and documents. Thereafter, no opportunity was provided to the applicant either for corroboration/confrontation and/or for establishing its case for grant of registration, however on the basis of the reply itself, the registration application was rejected.

4.3 It is trite to say that every person has the right to speak and be heard when allegations are being put towards him or her. If no opportunity has been given to the party effected, then it shall amount to violations of the principles of natural justice, which embedded in latin words "Audi Alteram Partem" which means 'hear the other side', or 'no man should be condemned un-heard' or 'both the sides must be heard before passing any order'. The principle of Audi Alteram Partem is the basic concept of the principle of natural justice and has not evolved from the constitution but evolved through civilization and mankind and is the concept of common law, which implies fairness,

reasonableness, equality and equity. In India, the principles of natural justice are the grounds of Article 14 and 21 of the Constitution. Article 14 enshrines that every person should be treated equally. In the landmark case of 'Maneka Gandhi vs. The Union of India' (1978 AIR 597), it has been held by Constitution Bench of the Apex Court that the law and procedure must be of a fair, just and reasonable kind. The doctrine ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. The aim of this principle is to give an opportunity to the parties to defend themselves. Before the court, both the parties are equal and are entitled of equal opportunity to represent them. If the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and shall be liable to be set aside.

4.4 As per the provisions of section 12AA of the ACT, before passing the order for refusing to register the trust or institution, a reasonable opportunity of being heard is required to be given, for the sake of brevity and ready reference the provisions are reproduced herein below:

Section 12AA of the Income Tax Act reads as follows:

"12AA. Procedure for registration.--(1) The Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1) of section 12A, shall--

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities,

he --

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant:

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

4.5 Coming to the instant case, admittedly before declining the registration u/s 12 of the Act, no reasonable opportunity of being heard was provided to the Appellant, which is mandatory, hence on this ground itself, the order under challenge is liable to be set aside.

4.6 In our considered view, to meet the substantial justice, appropriate course would be to set aside the order impugned and remand back the case to the file of the Ld. CIT(E) for decision afresh. Consequently, the case is remanded to the file of the Ld. CIT(E) for decision afresh within 06 months of the receipt of this order, suffice to say due opportunities of being heard should be given to the Appellant. As we have decided to set aside the impugned order and remanded the case to the file of the Ld. CIT (E), hence not dwelling into the merits of the case. The Ld. CIT(E) shall be at liberty to re-consider all issues already raised or to be raised further and otherwise feel, fit and appropriate for consideration for proper adjudication of application for registration u/s 12AA of the Act.

5. In the result, the appeal filed by the Assessee/Appellant stands allowed for statistical purposes.

Order pronounced in the open Court on 14 day of May 2019.

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER
Dated: 14/05/2019
AG,Chd (On Tour).

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) Shri Bawa Braham Dev Ji Trust Vill: Chak Jadel
P.O. Taloor, Tehsil & District: Sambha, Jammu (J&K)
- (2) The CIT (Exemption), Chandigarh
- (3) The SR. DR, I.T.A.T., Amritsar