

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.73 & 74/Coch/2019
Assessment Year : -

<p>1. Iswar Jyothi charitable Trust, Infant Jesus Convent ICSE School, Murikkumpuzha P.O., Thiruvananthapuram-695 302. PAN:AAATI 7282G]</p> <p>2. Infant Jesus Convent, Murikkumpuzha P.O., Thiruvananthapuram-695302. PAN:AABAI 3842A]</p>	Vs.	<p>The Income Tax Officer (Exemptions), Trivandrum.</p>
(Assessee-Appellant)		(Revenue-Respondent)
Assessee by		Shri P.V. Chacko, CA
Revenue by		Smt. A.S. Bindhu
Date of hearing		22/07/2019
Date of pronouncement		24/07/2019

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the assesseees are directed against the different orders of the CIT(Exemptions), Kochi dated 27/09/2018.

2. There was a delay of 47 days in filing the appeals before the Tribunal. The Id. AR has filed condonation petition accompanied by an affidavit wherein it was stated that the office bearers of the Trust who are sisters were fully engaged in activities connected with religious functions on account of Christmas. It was submitted that the chartered accountant of the assesseees were far away at Cochin which caused much delay in getting timely service from them, and also due to their busy

engagements connected with hearing of time barring income tax assessments for AY 2016-17 at various Income Tax offices which contributed to the delay of 47 days in filing the appeals before the Tribunal. It was submitted that the delay was not deliberate and beyond the control of the assessee. Hence, it was prayed that the Tribunal may condone delay of 47 days in filing the appeals and the appeals may be disposed of on merits.

2.1 We have heard the rival submissions and gone through the reasons advanced by the assesseees for filing the appeals belatedly before this Tribunal. We are satisfied with the reasons explained by the assesseees for filing the appeals belatedly. Accordingly, we condone the delay of 47 days in filing the appeals and admit the appeals for adjudication.

3. The assesseees have raised the following grounds of appeals:

1. The learned Commissioner could not appreciate the genuineness of the object and activities of the trust for the reasons:

-that out of the 26 purely educational and charitable objects, one is to co-ordinate the activities of future trusts, that may be formed in the area allotted to the sisters of St. Theresa's Province Trust.

-that the school building of the Trust is on the land of the convent which is another assessee and school have no control over the land

-that the convent is functioning in the same premises.

-that as per previous account, funds of school and convent are mixed up.

2. The learned Commissioner is convinced and he had stated the 'main activity' of the applicant is the running of an ICSE School.

3. Out of 26 objects, some are purely educational to mention a few, promote education, diffuse useful educational knowledge, adult education, health education, formal education etc; others are purely charitable such as housing for the poor, promotion of self help and cooperative spirit among villagers, promote cottage industry for weaker section, Agriculture development in rural areas, fight against poverty, relief in natural calamities etc. etc.

The only clause cited by the teamed Commissioner to reject the application is the 2nd one viz. to co-ordinate the activities of trusts those may be formed in future for such educational and charitable purpose within the geographic area allotted to St. Teresa's Province Trust of Sisters.

4. Normally, the sisters establish a convent after purchasing necessary land. Then the land in excess of convent's use is used to do some charitable activities useful to the people around. Hence they have started the CBSE School surrendering the necessary land for the purpose of the school and obtained recognition on the basis of the lands surrendered and constructed school building in it.

5. The existence of the convent (another assessee in the premises of the School Trust in no way affect detrimentally the interest of the Trust. Moreover, as the sisters themselves being the Trustees, it is all the more better for the children of the School, to be properly educated and morally guided.

6. To a certain extent, there was mixing of funds of the school and the convent, as the convent managed the school by meeting every need of the school from their other sources. To make the management of the school more systematically, separation of accounts was highly necessary and that is why, the charitable School Trust and the Religious Convent had separately applied for 12A registration.

7. In the order rejecting the 12A application itself, the learned Commissioner had admitted that "however the main activity of the applicant is running an ICSE School", which itself shows the Applicant is a genuine Institution eligible for 12AA registration.

It is humbly prayed that on the honest statement of the learned Commissioner, regarding the existence of an ICSE School, alone functioning under valid registered Trust, we may be granted the registration u/s 12AA of the Act.

4. The facts of the case in the case of M/s. Iswar Jothi Charitable Trust, Infant Jesus Convent ICSE School are that it had filed application in the prescribed Form No.10A on 23/03/2018 requesting for Registration under section 12AA of the Income Tax Act, 1961. On verification of the deed, the CIT(Exemptions) notified that one of the main objectives of the applicant as per clause (b) of aims & objectives of the trust is "To coordinate the activities and the functioning of South Province and other Trusts which may be formed in the future in any part of this Province which will come under the jurisdiction of St. Therese's Province Trust." However, it was noticed that the main activity of the applicant was running an ICSE School. It was observed that as per the statements of A/cs furnished along with the application the building belonged to the Trust and the building was constructed in land belonging to another entity which remains a serious concern on the genuineness of the claims made by the Trust. It was also seen that the applicant as such does not have any control over the land on which the school was constructed. The accounts of the school was also reflected in the accounts produced by Infant Jesus Convent which was functioning in the same premises and had made an application for registration u/s 12A on 23/03/2018. Thus, it was seen that funds and activities of both applicants were mixed up. Further, it was noticed that as per clause (b) of the aims & objectives of the Trust is "To coordinate the activities and the functioning of South Province and other Trusts which may be formed in the

future in any part of this Province which will come under the jurisdiction of St. Therese's Province Trust" which is not a Charitable or Religious activity. In view of the above, the CIT(Exemptions) was not satisfied with the genuineness of the objectives and the activities of the Trust. Therefore, the application for registration u/s 12AA of the Income Tax Act filed in the case was rejected.

5. The facts of the case in the case of Infant Jesus Convent are that it had filed application in the prescribed Form No.10A on 28/03/2018 requesting for Registration under section 12AA of the Income Tax Act, 1961. The CIT(Exemptions) noticed that the applicant had not furnished a valid declaration of its objective clause of religious as well as charitable nature. During local enquiry it was noticed that the Infant Jesus Convent was functioning in the premises of Ishwar Jyothi Charitable Trust. This Trust had also filed an application for registration u/s.12A with a deed registered in Sub-registrar office, Pattom with objective of Education. From the Income & Expenditure account statements and Balance Sheet filed by the applicant along with Form 10A, it was noticed that the main activity of the applicant was running the school. However, this school had filed application for registration u/s 12A in the name of Ishwar Jyothi Charitable Trust. Since no other objects could be ascertained from the statement of accounts, the genuineness of activities could not be ascertained. In view of the above, the CIT(Exemptions) was not satisfied with the genuineness of the objectives and the activities of the Trust. Therefore, the application for registration u/s 12AA of the Income Tax Act filed in the case was rejected.

6. We have heard the rival submissions and perused the record. Before the CIT(Exemptions), the Ld. AR filed the following documents in the case of assessee, Ishwar Jyothi Charitable Trust:-

1. Detailed Argument Notes
2. Order u/s. 12AA of CIT(Exemptions), Kochi
3. Application for 12AA Registration
4. Trust deed
5. Certificate of Affiliation of School
6. Comparison of fees collection – Trust & Convent
7. Decision of the Chandigarh Bench of the Tribunal in the case of Baba Amarnath Educational Society vs. CIT in ITA No.825/CHD/2011 dated 29/12/2011.
Decision of the Jodhpur Bench of the Tribunal in the case of Modern Defence Shikshan Sansthan vs. CIT (108 TTJ Jodh 732).
8. Income & Expenditure and Balance Sheet for 2016-17
Income & Expenditure and Balance Sheet for 2015-16
Income & Expenditure and Balance Sheet for 2014-15

6.1 Similarly, before the CIT(Exemptions), the Ld. AR filed the following documents in the case of assessee, Infant Jesus Convent:-

1. Detailed Argument Notes
2. Order u/s. 12AA of CIT(Exemptions)
3. 12AA Application – Form 10B
4. Certificate of Establishment
5. Document of Establishment
6. Extracts from Original Constitution of the Congregation
7. Land Document Copy
8. Statement of fees comparison – Convent & Trust
9. Income & Expenditure and Balance Sheet for 2016-17
Income & Expenditure and Balance Sheet for 2015-16
Income & Expenditure and Balance Sheet for 2014-15

6.2 Out of the above, the Ld. AR in the case of Infant Jesus Convent has not filed before the CIT(Exemptions), the Certificate of Establishment, Document of Establishment, Extracts from Original Constitution of the Congregation and Land Document copy and in the case of Ishwar Jyothi Charitable Trust, the certificate of affiliation. These documents would throw light on the activities of the assessee-Trusts. Therefore, it is appropriate to remit the issue to the file of CIT(Exemptions) to examine the documents afresh and decide the issue in accordance with law after affording opportunity of hearing to the assessee. Further, each assessee has to prove the genuineness of the activities carried out by them and also they have to prove that there was mixing up of funds of each other. Thus, the grounds of appeals of the assesses are partly allowed for statistical purposes.

7. In the result, the appeals of the assesses are partly allowed for statistical purposes.

Order pronounced in the open Court on this 24th July, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 24th July, 2019

GJ

Copy to:

1. Iswar Jyothi charitable Trust, Infant Jesus Convent ICSE School, Murikkumpuzha P.O., Thiruvananthapuram-695302..
2. Infant Jesus Convent, Murikkumpuzha P.O., Thiruvananthapuram-695302.
3. The Income Tax Officer (Exemptions), Trivandrum.

4. The Commissioner of Income-tax(Exemptions), Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin