

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA Nos. 1716 & 1717/Hyd/2018

James Memorial Educational Trust, Visakhapatnam vs. Commissioner of Income-tax (Exemptions), Hyderabad.

PAN – AABTJ 0402G

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Shri YVST Sai

Date of hearing : 30/07/2019
Date of pronouncement : 31/07/2019

ORDER

PER S. RIFAUH RAHMAN, A.M.:

Both these appeals filed by the assessee are directed against the order of CIT(Exemptions), Hyderabad, dated 27/12/2018.

2. On perusal of record, we find that there is delay of 7 days in filing both these appeals. To this effect, the assessee filed petition requesting for condonation of the said delay, wherein it was stated that during the relevant point of time, the Managing Trustee of the assessee trust was under medical treatment for viral fever and she was not able to move out. A copy of the medical certificate in this regard was annexed to the petition. It, was therefore, stated that the delay occurred due to the said cause, which is beyond her control and is not intentional. It was, therefore, prayed that the delay may be condoned and admit the appeals for hearing and adjudication.

2.1 Since the assessee was prevented by reasonable cause, we condone the delay and admit the appeals for hearing and adjudication.

ITA No. 1716/Hyd/2018

3. Brief facts of the case are, the assessee-trust filed applications in Form No. 10A and Form No. 10G on 29/11/2017 seeking registration u/s 12A of the Income-tax Act, 1961 (in short 'the Act') and approval u/s 80G of the Act.

3.1 After considering the information filed by the assessee, the CIT(E) observed that except running a school, the trust has not done any charitable activity as per its objectives such as construction and maintenance of old age homes and hostels for students etc. He further observed that the trust was formed on 09/09/2011, but, the trust applied for 12A registration on 31/11/2017 i.e. after six years. He noted that as per section 12A(1) application for registration u/s 12A shall be filed within one year of formation of the Trust, but, in this case application for registration was made after six years, for which no valid reasons were provided for delay in filing the application. In view of the above observations, the CIT(E) rejected the application for 12A registration.

4. Similarly, the application in Form No. 10G was also rejected. Therefore, assessee is in appeal before us in ITA no. 1717/Hyd/2017 against the rejection of application u/s 80G.

5. The facts for rejection of application u/s 80G are, the CIT(E) rejected the application in form No. 10G on the ground that the primary condition for approval u/s 80G is 12A registration. Since the application filed by the assessee in Form No. 10A for registration u/s 12A was rejected, the assessee cannot get approval u/s 80G.

6. Aggrieved by the orders of CIT(E), the assessee is in appeal before us against the rejection of 12A registration and approval u/s 80G.

7. Considered the rival submissions and perused the material on record. We notice that Id. CIT(E) has rejected the 12A registration with the observation that assessee has filed application for registration after 6 years without submitting valid reasons for the delay in seeking registration u/s 12A. We observe that there is no such requirement under law. The provisions of section 12A(2) are as under:

"Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately following the financial year in which such application is made."

7.1 The charitable institution may function without any 12A registration. There is no bar that only institution with 12A registration alone should function. When the assessee prefers to get registration under the Act to explore the benefits under the Act, they may prefer to get the trust registered u/s 12A. Hence, the law is very clear that where an application is made on or after 01/06/2007, the benefit u/s. 11 & 12 can be granted from the AY immediately following the PY in which such application is made.

7.2 In view of the above provisions, though, the assessee filed the application for registration u/s 12A after a lapse of 6 years from its inception, the CIT(A) is directed to grant registration for the assessee u/s 12A and 80G after verification of the applications as per law.

8. In the result, both the appeals under consideration are treated as allowed for statistical purposes.

Pronounced in the open Court on 31st July, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st July, 2019

kv

Copy to:-

- 1) *James Memorial Educational Trust, D.No. 7-8-19/A, Flat No. 2, Prince Apartments< Harbour Park Road, Visakhapatnam.*
- 2) *CIT(Exemptions), Ayakar Bhavan, Basheerbagh, Hyderabad.*
- 3) *The Addl. CIT (Exemptions), Hyd*
- 4) *ITO (Exemptions), Visakhapatnam*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*