

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6092/Del/2017

Indian By Blood Foundation, 457, 1 st Floor, Sector-21, Gurgaon, Haryana PAN: AADCI0137L (Appellant)	Vs.	CIT(E), Chandigarh, (Respondent)
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Assessee by :	None
Revenue by:	Mr. Paramita M. Biswas, CIT DR
Date of Hearing	09/10/2019
Date of pronouncement	14/10/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT (E), Chandigarh dated 31.07.2017 u/s 12AA of the Act rejecting application of the assessee dated 17.01.2017 seeking registration u/s 12AA of the Act. The sole ground raised by the assessee as per the grounds of appeal is with respect to rejection of application.
2. The brief facts of the case shows that the assessee is a charitable trust filed an application u/s 12AA of the Act in the form 10A having the object of elimination of caste system, spreading the sense of secularism, educate public through the members of Indian by Blood Foundation and for the benefit of Indians who are surviving like a slave. The LD CIT (E) on application made an enquiry as per para five of his order, which is responded by the assessee on 12.06.2017. Further, queries were raised on 24.07.2017, which was complied on 28.07.2017. The ld CIT rejected the application of the assessee for the reason that assessee has filed an earlier application which was rejected on 27.11.2015 on the ground that MOU of the assessee does not contain amendment clause, irrevocability clause, utilization clause or beneficiary clause. He further noted that though assessee is incorporated on 31.05.2012 but till the date of passing of the

order did not carry out any activity. Further, he pointed out that there is discrepancy in the details of corpus donation and other donation. Further, the cash donation received was also not deposited in the bank account. He further noted that the assessee did not file appeal against the order of the rejection and thus, filing afresh application amounts to subverting the due process of law and is not tenable when the case is rejected on merits. According to him, the only remedy available with the assessee was to file an appeal before ITAT. He further noted that still in the MOU such clause are not there which could prove that it is general public character. Thus, he rejected the application of the assessee.

3. Despite notice to the assessee, none remain present and therefore, the issue is decided on merits of the case. On the earlier occasion, also none remain present. Thus, there is no alternative left for us. This also noted by us that this appeal though was filed on 28.09.2017 but was granted early hearing based on the application of the assessee dated 11.05.2019.
4. The ld DR vehemently supported the order of the ld AO and submitted that the assessee has not changed the clauses of memorandum of MOU and therefore, it does not deserve the registration u/s 12AA of the Act. It was further submitted that application of the assessee has been rejected earlier but assessee has not filed any appeal thus now the assessee again filed this appeal without challenging the earlier order of rejection.
5. We have carefully considered the contentions and perused the orders of ld CIT (E). In the present case the only reason that the application of the assessee is rejected as the assessee did not file any appeal before the tribunal against earlier order of the rejection by the CIT exemption. We do not find any such bar in the provision in the Income Tax Act. Assessee might have chosen to file a fresh application for registration u/s 12 A of the income tax act. However, the reason given by the learned CIT – E to reject the present application for non-filing of the appeal by the assessee against the earlier order of the rejection is not in accordance with the law.
6. Further, the assessee has submitted MOU, which is the trust deed. The rejection of application for the reason that there is no beneficiary clause/dissolution in the trust deed is not the right reason for rejection

application of the assessee. In fact absence of such clause does not bar the assessee from registration u/s 12 A of the income tax act as held by the honourable Gujarat High Court in [2015] 59 taxmann.com 417 (Gujarat)/[2015] 233 Taxman 1 (Gujarat). Even otherwise, if the trusts have registered and if any benefit enures to other than beneficiaries of the trust, the amount of such application will definitely invite tax at maximum marginal rate. Such issues can be verified in the assessment proceedings of the trust. Further, any discrepancy in the account of the assessee trust can also be taken care of while making an application of the provisions of section 11 and 12 when such trust is assessed by the assessing officer. For the purpose of registration u/s 12 A of the income tax act the genuineness of the activities of the trust are required to be verified along with the objects of the trust. Therefore, the registration of the trust can only be rejected if the objects are not in accordance with the provisions of the act or the activities carried on by the assessee are not genuine. Therefore, respectfully following the decision of the honourable Gujarat High Court, we set aside the whole matter back to the file of Id CIT (E) with a direction to consider the application of the assessee on the merits of the case. Assessee is also directed to furnish the necessary information is called for. Thereafter the learned CIT – E may examine the claim of the assessee for registration u/s 12 A of the act and decided in accordance with the law.

7. Accordingly, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14/10/2019.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 14/10/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

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ASSISTANT REGISTRAR
ITAT, New Delhi