

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.4918/M/2018  
Assessment Year: 2017-18**

Shri Siddivinayak Educational & Charitable Trust, C/o M.L. Sharma & Co., 107, Chartered House, 297/299, Dr. C.H. Street, Marine Lines, Mumbai – 400 002 <b>PAN: AASTS0720R</b>	Vs.	CIT (Exemptions), 6 <sup>th</sup> Floor, Piramal Chambers, Parel, Mumbai - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vipul Joshi, A.R.  
Shri S.M. Bandi, C.A.

Revenue by : Shri Laxmi Vara Prasad Gude, D.R.

Date of Hearing : 17.07.2019

Date of Pronouncement : 13.09.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 27.02.2018 of the Commissioner of Income Tax (Exemptions) [hereinafter referred to as the CIT(E)] dated relevant to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. The Learned CIT erred in rejecting the application dated 02nd August 2017 for registration of the trust under section 12AA of the Act.

2. The Learned CIT exceeded his jurisdiction conferred under section 12AA[1] of the Act for the purpose of grant of registration by considering the issues not relevant for the approval of the Trust under the said section.

The Appellant, therefore, prays for the following reliefs:

- i). The impugned order dated 27th February 2018 passed by the CIT be quashed and set aside as bad in law.
- ii). The CIT be directed to grant registration to the Appellant under section 12AA of the Act.
- iii). Any other relief which the Honourable Tribunal deems fit."

3. The issue raised in 1<sup>st</sup> ground of appeal is against the order of Ld. CIT(E) rejecting the application dated 02.08.2017 for registration of trust under section 12AA of the Act.

4. The facts in brief are that the assessee trust was constituted on 11.05.2005 vide deed of trust dated 11.05.2005. main objects of the trust inter alia are to construct building for running of educational institutions like school, hospital and orphanage. The said trust was granted registration under Bombay Public Trust Act, 1950 on 27.04.2006. The said trust was basically set up to help poor and deserving students. The trust in order to pursue its objectives acquired a plot of land at village Kavesar, Taluk and district – Thane in the year 2008. The project could not take off due to various impediments and obstacles and the trust has to fight a very prolonged battle to remove the encroachments from the said land. Thereafter, the trust obtained permission from Municipal Corporation for construction of school building and got the application approved from the concerned authorities. The trust commenced the construction of school in 2016 by inviting the tenders and quotations from three parties. The contract was awarded to M/s. V.B. Infra Projects (India) P. Ltd. During financial year 2016-17 the contractor M/s. V.B. Infra Projects (India) P. Ltd. constructed boundary walls and executed other civil works for which an invoice of Rs.46 lakhs + service tax was raised which

was duly accounted for in the books of accounts. However, no payment was made till date as there was no inflow of funds in the trust. The balance sheet as at 31.3.21017 for the financial year 2016-17 as certified by the C.A. contained several apparent mistakes which were later on rectified and a correct audited balance sheet was drawn out after rectifying all the apparent mistakes. The trust applied for the registration under section 12A of the Act in the prescribed form No.10A on 02.08.2017. The Ld. CIT(E) issued notices from time to time calling upon the assessee to furnish the various information/details for verification of objective and their genuineness . The Ld. CIT(E) upon perusal of the details filed, observed that assessee has drawn up two balance sheets for same year i.e. financial year 2016-17 which were apparently not agreeing with each other and accordingly a show cause notice was issued to the assessee on 12.02.2018. The Ld. CIT(E) also pointed out the discrepancies between the two balance sheets and assessee was requested to explain as to how these different balance sheets were prepared for the same period with the same date of signing by the trust and the auditors. From para 6 to 12 of the Ld. CIT(E)'s order the various reasons were assigned for not treating the activities of the trust as genuine and finally the registration was denied for the reasons as contained in paras 7, 8 & 9 of the order passed under section 12AA(i)(b)(ii) read with section 12A of the Act which are reproduced as under:

“7. As per the provisions of Section 12AA(1)(b), a Trust is to be granted registration if the Commissioner is satisfied about the objects of the Trust and the genuineness of its activities. Both these requirements are cumulative and not alternative. The satisfaction of the registering authority cannot be a subjective satisfaction based on whim or caprice. It has to be a bona fide and objective satisfaction, based on due application of mind to a certain set of facts or materials before him. The satisfaction of the registering authority is not a presence or an empty formality but is the

foundation of grant or refusal of registration. In other words, such satisfaction is the crux or essence of the registration proceedings.

**From the discussion made in Para 6 above, it is clear that the assessee Trust committed gross irregularities and illegalities in awarding the contract, taking loans and conducting its affairs. Under these circumstances, I cannot be satisfied with the genuineness of the activities of the Trust.**

**With prejudice to this, I am not satisfied even with the reasonableness of the payments made to M/s. V.B. Infra Projects (I) Ltd., which is a person covered u/s. 13(3). Such violation can now result into denial of exemption U/s. 11 and as per the amended provisions of Section 12AA(4) of the Act, since this itself now can be a reason for cancellation of Registration even if such Trust was earlier registered u/s. 12AA of the I.T. Act.**

8. Without prejudice to the findings given in para 6 and 7 above, it is also a matter of record that assessee has merely acquired land and after acquiring its possession, has built a boundary wall, in its almost 13 years of existence. Even after taking certificate from Charity Commissions on 27/04/2006, for more than 11 years, it had not even applied for a certificate u/s. 12A of the I.T. Act. The Trust has main object of promotion and well being of the residents of adjoining area by providing them better living environment and medical facilities. The Trust aimed at charitable object and other objects for general public utility. Without prejudice to the generality of above aims, it has 27 specific objects, but not a single activity to fulfill any of its objectives was conducted in the 13 years of its existence.

This situation also does not help the assessee in proving its genuineness and sticking towards its objectives, without prejudice to the irregularities and illegalities highlighted above, on the basis of which it is not possible to accept the genuineness of the Trust.

9. Thus, it is very evident that the applicant Trust has not been able to establish the genuineness of expenditure incurred towards the objects of the Trust as well as the genuineness of its activities, on the basis of its submissions. There is enough material before me to have doubts on the genuineness of the trust and its activities and also towards its real objectives. As the applicant Trust has failed to fulfill the mandatory requirements prescribed u/s.12AA read with Rule 17A to satisfy about the genuineness of its activities and objectives, its application for grant of registration is rejected.”

5. The Ld. A.R. vehemently submitted before us that the Trust was formed on 11.05.2005 by deed of trust dated 11.05.2005 with the main objective to construct building for running educational institutions like school, hospital and orphanage which was duly registered with the charity commissioner Bombay Public Trust Act, 1950 on 27.04.2006. The said trust

was constituted to help the poor and deserving students and the land was acquired at village Kavesar, Taluk and district – Thane. The assessee trust could not further develop the said plot of land due to unauthorized encroachments and various legal and other impediments and finally the construction of the school was started in 2016 for which the contract was awarded to contractors M/s. V.B. Infra Projects (India) P. Ltd. in 2016-17. The said contractor has constructed the boundary and executed the other civil works for which the bill was raised of Rs.45 lakhs which was even outstanding as on date, as the trust was not having any funds to discharge its liability. The contract was awarded to the said firm because it has quoted the lowest price for executing the work. The Ld. A.R. submitted that the assessee applied for the registration under section 12A vide application dated 24.07.2017 by filing the necessary documents such as copy of trust, certificate of registration under Bombay Public Trust Act, 1950, list of trustees with their PAN and addresses etc., bank pass books, statements, PAN card of the trust and trustees along with audited accounts and return of income for the Financial Year 2014-15 and 2016-17. The Ld. A.R. submitted that the Ld. CIT(E) rejected the registration to the trust for various reasons such as two different balance sheets for the same period, difference in loans from trustees and others, alleged irregularities in obtaining loan under Bombay Public Trust Act, 1950, awarding project to the contractor M/s. V.B. Infra Projects (India) P. Ltd., contravention of section 13(3) r.w. amended provision of the section 12AA(4) and non carrying on of activities for 13 years. The Ld. A.R. submitted before us that all these adverse observations of the CIT(E) were explained

with reasons and proper explanations however the Ld. CIT(E) has failed to appreciate the facts in correct perspective. The Ld. A.R. submitted that the difference in balance sheets as pointed out by the Ld. CIT(E) was explained and there was no manipulation as alleged by the Ld. CIT(E) by referring to the balance sheets and explaining the entries which had contributed to the difference in the two balance sheets. The Ld. A.R. submitted that there were only the wrong entries were passed by the C.A. of the assessee and even a reconciliation was duly filed before the Ld. CIT(E), a copy of which is also placed before us during hearing. Similarly, the difference in loans from trustees and others were also explained with necessary evidences. The Ld. A.R. submitted that there existed no irregularity/wrongdoings as is apparent from the findings to this effect rendered by the concerned authority under the Bombay Public Trust Act, 1950. So far as the awarding of contract to M/s. V.B. Infra Projects (India) P. Ltd. under Bombay Public Trust Act, 1950 are concerned, the assessee explained that due process was followed by inviting tender from 3 parties and the lowest one was granted the contract though connected to the one of the trustee and therefore the Ld. CIT(E) has no jurisdiction to question the awarding of contract as it would be premature at this stage and can not be considered while granting the registration to the assessee u/s 12A of the Act. The Ld. A.R. vehemently submitted that even as on date, the payment is outstanding to the said contractor and nothing has been paid as the trust does not have any inflow of funds. The Ld. A.R. submitted that such alleged irregularities as per the Ld. CIT(E) has no bearing on the finances on the trust or under the

provisions of section 11 read with section 13 of the Act. The Ld. A.R. further pointed out that percentage of holding of the two trustees in M/s. V.B. Infra Projects (India) P. Ltd. is not 100% as observed by the Ld. CIT(E) but only about 17%. Therefore, the objection raised by the Ld. CIT(E) is without any basis and deserved to be rejected. The Ld. A.R. further submitted that the provisions of section 13(3) of the Act read with amended provisions of section 12AA(4) are not applicable to the trust as the said provisions would apply only where the trust is also granted the registration under the Act and same is sought to be cancelled. But in the present case, the trust has applied for the grant of initial registration u/s 12A of the Act. As regards non carrying on the activities by the assessee trust is concerned, the Ld. A.R. submitted that the assessee trust has acquired plot in 2008 to pursue its objectives but the same could not be developed further due to unauthorized encroachments and various legal impediments/hurdles which were finally resolved in 2016 when the maps of the school building were finally approved and construction was commenced. The Ld. A.R. while summing up his contentions and arguments submitted that at the time of granting registration the Ld. CIT(E) has to see the objectives of the trust, genuineness of the charitable activities proposed to be carried on by the trust and therefore the objections raised by the Ld. CIT(E) are premature which would only be examined only after the trust has carried on his activities in the assessment stages. The Ld. A.R. in defence of his argument relied on the following decisions:

1. CIT v/s. Vijay Vargiya Vani Charitable Trust - [(2014) 369 ITR 360 (Raj)]
2. DIT (E) v/s. Panna Lalbhai Foundation - [(2013) 35 taxmann.com 104 (Guj)]
3. DIT v/s. Foundation of Ophthalmic & Optometry Research Education Centre -[(2012) 355 ITR 361 (Del)]

4. Matru Vandana Trust v/s. DIT (E) - [(2015) 39 ITR (T) 30 (Mum - Trib)]
5. Right to Health v/s. DIT (E) - [(2014) 35 ITR (T) 267 (Hyd - Trib)]
6. Soham For Kids Education Society Centre v/s. DIT (Exemption) - ((2014) 31 ITR(T) 170(Del-Trib)]
7. Jasoda Devi Charitable Trust v/s. CIT - [(2010) 4 ITR (T) 547 (Jaipur)]
8. Dharma Sansthapak Sangh (Niyas) v/s. CIT - [(2008) 118 TTJ 823 (Del - Trib)]
9. Sardari Lal Oberai Memorial Charitable Trust v/s. ITO - [(2005) 3 SOT 229 (Delhi-Trib)]
10. M/s. Organisation for Autistic Individuals (OAI) v/s. DIT (Exemption) - JI.T.A. No. 1935 / M / 13, Order Dated 30.03.2013]
11. Hardayal Charitable & Educational Trust v/s. CIT - II - [I.T. Appeal No. 107 of 2012, Order Dated 15,03.2013, Allahabad High Court]

6. The Ld. D.R., on the other hand, heavily relied on the order of Ld. CIT(E) and submitted that the registration was rejected by the Ld. CIT(E) under section 12A for various reasons as the trust has completely failed in pursuing its objectives and there were also so many irregularities in the functioning for 13 years and thus heavily relied on the order of Ld. CIT(E) and prayed before the Bench that the appeal of the assessee may kindly be dismissed.

7. We have heard the rival submissions of both the parties and perused the material on record. Undisputedly, the assessee has applied for the registration under section 12A and all the necessary documents which are required to be filed with the Ld. CIT(E) have been filed. The Ld. CIT(E) has rejected the registration under section 12A by citing various reasons as has been discussed in detail hereinabove. The Ld. CIT(E) stated in the order that two balance sheets were prepared for the same period with conflicting amounts, difference in loans from trustee and others, alleged irregularities in obtaining loan under Bombay Public Trust Act, 1950, alleged irregularities in awarding the contract to M/s. V.B. Infra Projects (India) P. Ltd. and non carrying on the charitable activities for 13 years etc and

the rejection of registration under section 12A were for the said reasons. In our opinion, the Ld. CIT(E) has to confine himself to the genuineness of the objectives of the trust and not to the activities carried on and the manner in which they were carried as the same would be premature at the stage of examination of application of the assessee for grant of registration under section 12A of the Act. The one more reason, the Ld. CIT(E) has referred to is contravention of section 12AA(4). In this case also these issues are to be examined only after the registration is granted and not at the time of registration. The case of the assessee squarely covered by the case laws as referred to above in the case of CIT v/s. Vijay Vargiya Vani Charitable Trust (supra). The Hon'ble High Court has held that the Commissioner was unjustified in rejecting the application of the assessee based on non charitable activity at the stage of moving application where the objectives incorporated in the trust deed were found to be genuine for carrying out charitable activities. Similarly, in the case of DIT (E) v/s. Panna Lalbhai Foundation (supra) it was held by the Hon'ble Gujarat High Court that where the trust has not commenced its activities, the Commissioner would not have authority to ipso facto reject the application for registration under section 12AA. In the case of DIT v/s. Foundation of Ophthalmic & Optometry Research Education Centre (supra) the Hon'ble Delhi High Court has held that registration is not dependent on commencement of charitable activities and therefore non commencement of charitable activities can not be a ground for rejection of application under section 12AA. In the case of Dharma Sansthapak Sangh (Niyas) v/s. CIT (supra) the Hon'ble Delhi High Court has held that while granting

registration to a charitable institution of trust, if it is at commencement stage, powers of the Commissioner with whom the application is filed by such trust/institution are limited to the aspect of examining whether or not objectives of trust are charitable in nature. The Hon'ble Delhi High Court has held that carrying on of charitable activities at the stage of commencement of institution is not relevant to decide whether the trust is entitled for registration or not. In view of the above facts and circumstances and the ratio laid down by various judicial forums, we are inclined to set aside the order of Ld. CIT(E) and direct the Ld. CIT(E) to grant registration to the assessee trust.

8. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 13.09.2019.**

**Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.09.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.