

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI SANJAY ARORA, ACCOUNTANT MEMBER**

ITA No.256/JAB/2018

Assessment Year: N.A.

Sudha Vinod Foundation, 236 Binjhiya Jabalpur Road, Mandla, 481661, (M.P.) [PAN-AAPAS4801D]	vs.	Commissioner of Income Tax, (Exemption), Income Tax Office, II, III & IV Floors, Metro Walk Building, E-5, Arera Colony, Bittan Market, Bhopal, (M.P.) 462016
(Appellant)		(Respondent)

Appellant by	Shri Sukesh Kumar CA
Respondent by	Shri H.P. Meena, DR
Date of hearing	11/12/2019
Date of pronouncement	20/12/2019

ORDER

PerSanjay Arora,AM:

This is an Appeal by the Assessee against the denial of registration under section 12AA of the Income Tax Act, 1961 ('the Act' hereinafter) by the Commissioner of Income Tax (Exemptions), Bhopal ('CIT(E)' for short) vide order u/s. 12AA (1)(b)(ii) dated 26/10/2018.

2. The background facts may be noted in brief. The assessee, a society registered under the Societies Registration Act, 1860 on 29/12/2015, applied for registration u/s. 12AA as a charitable institution on 30/4/2018. The assessee, in the verification proceedings, furnished its' Memorandum of Association, delineating its' objects, which were found to be charitable in

nature. The proposed activities of the society, i.e., projected to be undertaken in the next two years, also called for, were also found to be inconsonance with the objects, found charitable. The assessee, however, had since its' inception not undertaken any activity, which therefore was stated as a reason for it being not entitled for registration u/s. 12AA and, accordingly, refused registration thereunder. Aggrieved, the assessee is in appeal.

3. We have heard the parties, and perused the material on record.

3.1 Without doubt, the competent authority is to be, while granting registration, satisfied about the objects of the trust/institution as well as the genuineness of its' activities. The satisfaction about the objects, it is well settled, implies or connotes a satisfaction as to their being charitable, within the meaning of section 2(15), so that the trust/institution is formed for charitable purposes. There is no doubt with regard thereto in the instant case. Genuineness of its activities is the other aspect on which the Id.CIT(E) is to be positively satisfied. The same implies that they are real and, further, in conformity or in pursuance of the stated objects of the trust. It is the satisfaction *qua* them, absent in the present case, which forms the reason for the denial of registration by the competent authority, whose findings read as under:

‘As per the written submission it is stated above that the proposed plan of the Society is to run education institution. However, the society has not furnished any evidence with regard to establishment or running of school, i.e., Affiliation, approval for construction, etc. From the audit report it does not reveal supporting the actual activities as per its objects. Furthermore one copy of rent agreement of a vacant land is made with a related party. No rent justification or protection clauses for investment are provided for the said agreement.’

3.2 The want of satisfaction, thus, is not for the reason of the activities being found to be not genuine, or not charitable in nature, but principally due to the absence of any activity. This, in our view, is by itself not a valid

objection. The statutory requirement is for an examination of the applicant's activities, i.e., where and the extent carried out, and a positive finding as to the same being genuine, which implies being not a make-believe, an artifice, etc., and, further, in accordance with the objects of the applicant-trust/institution. The absence of any activity cannot lead to a presumption that the activities shall never be carried out, or, where carried out, shall not be genuine. The project under contemplation in a given case may be big, warranting ground work, entailing time, and which would rather be indicative of it being a genuine undertaking. Again, the nature and the range of activities, a matter of fact, could vary with time, and may accordingly, in time, include activities wholly or partly non-charitable. As such, absence of any activity would not by itself imply an inference as to the non-genuineness of the activities. It is always open for the Revenue to examine the same in future, and where found not genuine, cancel the registration. The matter, i.e., a finding as to the genuineness or otherwise of the activities, is essentially a finding of fact and, therefore, as any other, to be arrived at *per* conspectus of the case, having regard to the totality of its facts and circumstances in their setting as a whole. That is, the non-start of the activities could at best be one of the several facts, and nothing turns thereon when considered in isolation. Further, the exemption u/s. 11, it may be appreciated, shall only be on a positive satisfaction of sections 11 to 13. This is also the thrust of the case law relied upon by the assessee before us, as under, which though is not adverted to; the matter, as afore-stated, being principally factual, and the law well-settled:

CIT v. D.P.R. Charitable [2011] 61 DTR 410(MP)

CIT v. Babu Ram Education Society [2018] 96 taxman.com 606 (All)

Fateh Chand Trust & College Committee v. CIT [2018] 67 ITR (Trib) 564 (Agra)

3.3 The Id. CIT(E) has also stated, as a reason for denial of registration, of the rent agreement being for a vacant land with a related party. The name of the party, or the relationship therewith, though hasnot been specified, or even the basis for drawing an adverse inference, as, for example, as being toward diversion of income or funds of the applicant. Further, even so, the same may lead to a violation of sec. 13, which is relevant for the grant of exemption u/s. 11, and would not by itself lead to the activities being regarded as not genuine. It is only where, for example, the land is not suitable for the purpose, or is not accompanied by any efforts to build a structure thereon, or the rent paid is excessive, etc., i.e., leading to the inference of the activities being not genuine, a finding of fact, that the same would become relevant for the purpose of non-grant of registration.

4. We, accordingly, direct for grant of registration to the appellant-society by the Id. CIT(E) forthwith from the date applicable under law; the application for registration having been made beyond a period of one year of the creation of the trust or establishment of the institution, as mandated u/s. 12A(1)(a). We decide accordingly. That the Tribunal is competent to, where satisfied on the basis of the material on record, that the registration ought to been granted by the competent authority, as in the instant case, i.e., has been wrongly refused, direct so, is not in doubt (see *CIT(E) v. Reham Foundation* [2019] 418 ITR 205 (All)(FB)).

5. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on December 20, 2019

Sd/-
(Bhavnesht Saini)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated:20/12/2019

Copy of the order forwarded to :

1. The Appellant: Sudha Vinod Foundation, 236 Binjhiya Jabalpur Road, Mandla, 481661, (M.P.)
2. The Respondent: Commissioner of Income Tax (Exemption), Income Tax Office, II, III & IV Floors, Metro Walk Building, E-5, Arera Colony, Bittan Market, Bhopal, (M.P.) 462016
3. The concerned Pr. CIT
4. Sr. DR, ITAT