

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA Nos.470 & 471/Ind/2018

Assessment Year:

Gurudham Ashram Ward 7, Near Jhula Pul, Omkareshwar Dist. Khandwa (M.P.)	Vs.	CIT(Exemption) Bhopal
(Appellant)		(Revenue)
PAN No.AACTG8364P		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, ARs
Revenue by	Shri S.S. Mantri CIT- DR
Date of Hearing	16.01.2020
Date of Pronouncement	23.01.2020

ORDER

PER MANISH BORAD, AM.

The above captioned appeals filed at the instance of assessee are directed against the orders of Ld. Commissioner of Income Tax (Exemption) (in short 'Ld.CIT'], Bhopal, dated 23.03.2018 which is arising out of the order u/s 12AA & 80G of the Income Tax Act 1961(In short the 'Act').

Assessee has raised following grounds of appeal in ITANo.470/ind/2018;

“1. The order of the ld. CIT(A) is bad in law as well as facts on record.

2. The Ld. CIT(E) has erred in rejecting the application made for registration u/s 12AA.”

Assessee has raised following grounds of appeal in ITANo.471/Ind/2018;

“1. The order of the ld. CIT(A) is bad in law as well as facts on record.

2. The Ld. CIT(E) has erred in rejecting the application made for exemption u/s 80G.”

2. Brief facts relating to this issue are that the assessee is a trust established on 31.07.2017 with the main object of a) construction or building or take over and maintain “dharmashala” or ashram etc. of similar nature for providing accommodation to sanyasis and Bandhus who visit holy places for spiritual and charitable purpose. b) providing food & accommodation to Guru Bandhu for religious functions.

3. The assessee trust applied for registration u/s 12AA on 11.09.2017 and for getting certificate as provided u/s section 80G(5)(vi) of the Act. The Ld. CIT(E) rejected both the applications vide order dated 23.03.2018. Assessee’s application u/s 12AA of the Act was rejected for two reasons a) that the trust is a newly created and registered with the Registrar of Public Trust on 31.07.2017 and b) No charitable activity carried out so far.

4. Aggrieved assessee is now in appeal before the tribunal challenging the rejection of assessee’s application u/s 12AA & u/s

80G(5)(vi) of the Act.

5. Ld. counsel for the assessee vehemently argued commonly for both the appeals placing relevant following decisions:

“Delhi High Court in DIT vs. Foundation of Ophthalmic & Optometry Research Education Centre (2013) 355 ITR 361/210 Taxman 36/(2012) 25 taxmann.com 376(Delhi) contended that while examining an application under section 12AA(1)(b) read with section 12A, the concerned Commissioner is not required to examine the question whether the Trust has actually commenced and has, in fact, carried on charitable activities. It was held that the statute does not prohibit the commissioner from registering the Trust solely based on its objects, without any activity and that the court or tax authority ought not to impose restriction which have not contained in the statute.

Reliance is placed by the Madras High Court in DIT€ vs. Sreevi Samaj Tambaram Trust 92014) 362 ITR 199/222 Taxman 252/43 taxmann.com 142(Mad.)

Reliance is also placed on the decision of the Karnataka High Court in DIT (E) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219/219 Taxman 136(mag.)/40 Taxmann.com 30(Kar.) to contend that the objects of the Trust as contained in the Trust deed have to be taken into consideration by the authority while considering an application for registration.

Also held by Hon'ble I.T.A.T., Indore Bench in case of Divine Siksha Samiti (ITANo.1034/Ind/2016 that section 12AA nowhere provides that CIT while considering the application for registration is also required to examine whether the income derived by the trust is being spent for charitable purpose. Relying on D.P.R. Charitable Trust (2011) 61 DTR 410(M.P.)

6. Ld. counsel for the assessee further submitted that in the present case, there is no reason as to why the commissioner had

rejected the registration of the trust when there is ample power under law to rectify any error to cancel the registration of the trust or institution if there is breach of the objects of the trust in the discharged of its charitable objects as propounded the trust deed. The reasons given by the original authority, to reject the registration is not justified. Thus, it is prayed that the registration u/s 12AA may please be granted and consequently registration u/s 80G may also be granted.

7. Ld. counsel for the assessee also referred pointing out that issue is squarely covered in favour of the assessee by the judgment of jurisdictional High Court in the case of *D.P.R. Charitable Trust (2011) 61 DTR 0410 (MP)*.

8. Per contra Ld. Departmental Representative (DR) supported the order of the Ld. CIT(E).

9. We have heard rival contentions and perused the records placed before us. The assessee is aggrieved with the order of Ld. CIT(E) for rejection of application u/s 12AA and also rejecting application of Form No.10G made for grant of approval u/s 80G(5)(vi) of the Act. We observe that in the impugned order Ld. CIT(E) has not questioned the genuineness of the objects mentioned in the trust deed. Therefore, so far as the objects of the assessee trust mentioned in the trust deed page placed at 5 & 6 of the paper book have been considered to be charitable in nature. CIT(E). For better adjudication of the issue we will take to mention the objects

appearing in trust deed:

- (a) *To construct, open build rebuild, equip, take over conduct maintain equip start and grant aids to a “Dharmashala Ashram etc of Similar nature to provide accommodation for “Sanyasis” and Guru Bhandus when they visit holly place “Omkareshwar” for spirituals & Charitable purposes.*
- (b) *To provide good and accommodation to Gurubandhu’s for purnima religious junctions like “Shiverataries”, Guru Purnima, Nanmautssave, Janmashtami, Holi Purnima, 25 December Utsam, Kirtan, Bhandaras etc. as per established by Sadguru Swami Shri Vidhyanand Saraswati.*
- (c) *Trust shall orginise “Sadhana Shievers”, Dhyan Shivers for a period of a week or some days time to time to connect spritely with Guru Parampara.*
- (d) *Establishing, maintain, supporting or helding by monetary gifts, donation or otherwise institutions for the advancements of learing such as libraries, pathshalas, gurukuls, fine art institutions, art galaries industrial technical or-commercial classes or institutions and for the advancements of training such and gymnasiums and other institutions.*
- (e) *To assist, finance, support, establish takeover and/or maintain any institution meant for the relief of the poor and advancement of any other objects of general public utility.*
- (f) *To give and accept donations, subscriptions or contributions to any other charitable or public trust or institutions or organizations in conformity with the objects of the trust.”*

10. The Id. CIT(E) rejected assessee’s application u/s 12AA & 80G(5)(vi) of the Act mainly for the reason that assessee trust being newly incorporated and no charitable activities was carried out so far during the time of filing the application.

11. Now the issue before us is that *“whether a trust or a charitable organization is mandatorily required to perform charitable activities*

as per trust deed before proceeding to file an application for registration u/s 12AA or u/s 80G(5)(vi) of the Act”.

12. We observe that the Hon'ble jurisdictional High Court in the case of *D.P.R. Charitable Trust(Supra)* while adjudicating similar issue relating to registration u/s 12AA of the Act wherein also no activity was carried out and objects of the Trust were not in dispute held against the revenue observing as follows:

7. We have considered the submissions made on both sides. Before proceeding to deal with the controversy we deem it appropriate to notice relevant provisions, namely, ss. 2(15), 12A and 12AA of the Act. Sec. 2(15) and 12A, as they stood at the relevant time, read as under :

"2 Definitions.

2(15) 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

12A. Conditions as to registration of trusts etc.—The provisions of s. 11 and s. 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely : (a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the CIT before the 1st day of July,1973 or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution whichever is later and such trust or institution is registered under s. 12AA :

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of the s. 11 and s. 12 shall apply in relation to the income of such trust or institution,—

(1) From the date of creation of the trust or the establishment of the institution. If the CIT is, for reasons to be recorded in writing,

satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;

(ii) Where the total income of the trust or institution as computed under this Act without giving effect to the provisions of s. 11 and s. 12 exceeds fifty thousand rupees in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in Explanation below sub-s. (2) of s. 288 and the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of the such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed."

Sec. 12AA which was inserted by the Finance Act, 1996 w.e.f. 1st April, 1997 reads as under :

"12AA. Procedure for registration. (1) The CIT on receipt of an application for registration of a trust or institution made under cl. (a) or cl. (aa) of sub-s. (1) of s. 12A, shall—

(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquires as he may deem necessary in this behalf; and

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities he—

(i) shall pass an order in writing registering the trust or institution;
(ii) shall if he is not satisfied pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant : Provided that no order under sub-cl. (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(1A) All applications, pending before the Chief CIT on which no order has been passed under cl. (b) of sub-s. (1) before the 1st day of June, 1999, shall stand transferred on that day to the CIT and the CIT may proceed with such applications under that sub-section from the stage at which they were on that day.

(2) Every order granting or refusing registration under cl. (b) of sub-s. (1) shall be passed before the expiry of six months from the end of the month in which the application was received under cl. (a) or cl. (aa) of sub-s. (1) of s. 12A.

(3) Where a trust or an institution has been granted registration under cl. (b) of sub-s. (1) and subsequently the CIT is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution : Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."

8. Sec. 12A of the Act prescribes conditions for registration of the trust whereas s. 12AA of the Act prescribes the procedure for registration. A careful reading of the relevant provisions would reveal that application for registration under s. 12A has to be made in Form No. 10A prescribed by r. 17A before the expiry of one year from the date of creation of the trust or establishment of the institution whichever is later. The application has to be made by a person in receipt of income of the trust. Thus while dealing with the application for registration the CIT has to examine whether the application is made in accordance with s. 12A r/w r. 17A and whether Form No. 10A has been properly filled up. He may also examine whether objects of the trust are charitable or not. Sec. 12AA nowhere provides that CIT while considering the application for registration is also required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit. The language employed by the legislature in s. 12AA only requires that activities of the trust or institution must be genuine which should be in consonance with the object of the trust. At this stage, the CIT is not required to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of s. 12A r/w r. 17A and whether Form No. 10A has been properly filled up. He has also to see whether the objects of the trust are charitable or not. Our view finds support from the Division Bench decision of the Allahabad High Court rendered in the case of Red Rose School (supra) and the decisions in the cases of New Life in Christ Evangelistic Association (supra), Fifth Generation Education Society (supra) and Shantagauri Ramniklal Trust (supra).

9. *In the backdrop of aforesaid legal position facts of the case may be seen. Admittedly the application submitted by the respondent was in consonance with the procedural requirement prescribed in this regard. From the trust deed which was filed before the CIT the objects of the trust could be ascertained. From perusal of cl. (3) of the trust deed we find that the objects of the trust are charitable in nature and are in tune with s. 2(15) of the Act and, therefore, the Tribunal rightly opined that the order of the CIT rejecting the application under s. 12A was unjustified.*

10. *For the aforementioned reasons, the substantial question of the law framed by this Court vide order dt. 10th Aug., 2006 has to be answered in the affirmative i.e. in favour of the assessee and against the Revenue. In the result the appeal fails and is hereby dismissed.*

13. The above judgment was also followed by Coordinate Bench Indore in the case of *Divine Shiksha Samiti in ITANo.1034/Ind/2016*. Similar view was also taken by the Hon'ble High Court of Delhi in the case of *DIT vs. Foundation of Ophthalmic & Optometry Research Education Centre (2013) 355 ITR 361*.

14. We, therefore, respectfully following the above judgments can safely conclude that carrying out of actual charitable activity cannot be a pre-condition for granting registration u/s 12AA of the Act. What needs to be done on the part of the assessee is to fulfill the requirements as provided in Rule 17A and also guidelines provided in Form No.10A/10G in the Income Tax Rules 1962 and if Ld. CIT(E) finds that the application has been properly made and the objects of the Trust are charitable in nature as per the provisions of Income Tax Act then the assessee should not be denied the registration u/s 12AA of the Act. However, in case the activities of

the trust or the institution are being carried out in a manner that the provision of section 11 & 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then the Pr. Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution, as provided in sub-section (4) of section 12AA of the Act unless it is proved that there was a reasonable cause for the activities to be carried out in the said manner.

15. We, therefore, respectfully following the judgment of Hon'ble jurisdictional High Court in the case of *D.P.R. Charitable Trust(Supra)* direct the Ld. CIT(E) to grant registration u/s 12AA of the Act to the assessee. As regards granting of approval u/s 80G(5)(vi) of the Act, the issue is restored to the file of Ld. CIT(E) for reconsideration after examining the facts of the case and the provisions of law. Thus, the grounds raised in ITANo.470/Ind/2018 are allowed and grounds raised in ITANo.471/Ind/2018 are allowed for statistical purposes.

16. In the result, appeal of the assessee in ITANo.470/Ind/2018 is allowed and ITANo.471/Ind/2018 is allowed for statistical purposes.

The order pronounced in the open Court on 23.01.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 23rd January, 2020

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore