

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
Before Shri Pawan Singh (JM) & Shri S.Rifaur Rahman(A.M.)

ITA No. 5050/Mum/2018 (Assessment year :2018-19)

Shree Jalaram Seva Mandal Santacruz, C/o Shri Nikhil D Maniar, Amar Kunj Bldg, Ground Floor, Besant Road Santacruz West, Mumbai- 400 054 PAN : AAUTS2243P	vs	CIT(E), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Smt. Aarti Vissanji & Shri Kashyap S Vepari
Respondent by	Smt. Smiti Samant, CIT-DR
Date of hearing	22-01-2020
Date of pronouncement	31-01-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by assessee is directed against the order of Commissioner of Income-tax (Exemption) dated 30-07-2018 passed u/s 12AA in rejecting / declining registration u/s 12A. The assessee has raised the following grounds of appeal:-

- “1. The Commissioner of Income Tax (Exemption) erred in denying the Appellant Registration under section 12AA of the Income Tax Act, 1961.
2. The CIT (E) erred in holding that:
 - a) The objects of Appellant trust are not entirely charitable.
 - b) Some of the objects of the Appellant trust have commercial shades.
 - c) In the absence of activities the genuineness of the objects could not be ascertained.

3. The Commissioner of Income Tax (Exemption) failed to appreciate that:

a) The Appellant is recognized as a Charitable Society as per the Charity Commissioner Mumbai and register under the Maharashtra Public Trust Act, 1950.

b) The Objects of the Trust are for conducting Social Welfare Activities without profit motive.

4. Except conjecture, there was no basis for the CIT (E) to hold that the objects of the Appellant are not charitable.”

2. The brief facts of the case are that assessee is a trust. The assessee was set up vide trust deed dated 18.07.2017. The assessee is also registered with Charity Commissioner, Mumbai vide registration dated 11.01.2018. The assessee filed an application in Form 10A on 18-01-2018 before learned Commissioner of Income Tax (Exemption) “CIT (E)” for registration u/s 12A. The Ld.CIT(E), while making enquiry, asked for certain details from the assessee, like PAN card of trust and settler, bank accounts, NOC in respect of office premises, certificate of registration issued by Charity Commissioner, audited accounts and Note on activities undertaken by assessee with documentary evidences. The Ld. CIT(E) noted that after seeking two weeks time for furnishing necessary details, neither the representative of the assessee appeared, nor furnished necessary details. Accordingly, a notice granting final opportunity was sent to the assessee to file / furnish evidence on 17-05-2018. In response to said final show cause notice, the representative of assessee furnished part details / documents as recorded by Ld. CIT(E).

On the basis of details / evidence furnished, the Ld.CIT(E) took his view that there was no activity conducted by assessee in pursuance of the object. The assessee was again asked to substantiate with documentary evidence about the activities. Ld.CIT(E) further noted that part details / documents were furnished on 24-05-2018. After considering the material available on record, the Ld. CIT(E) noted that objects of the assessee contained a number of activities and if those activities were done along with running of a school for education, then it is possible that these activities were on commercial basis and such activities if done independently, may not qualify for exemption, if any, in the definition of 'charitable activity'. The Ld. CIT(E) concluded that trustees are having power to pursue any or more objects of the trust as the trustees in their discretion may deem fit from time to time and many objects could be used by the trustees which is not charitable and concluded that object of the assessee which have commercial shades; moreover, there are no activities in respect of object from where one can get insight into genuineness of the objects and rejected the application. Aggrieved by the order of Ld.CIT(E), assessee has filed the present appeal before us.

3. We have heard the submission of learned authorised representative (Ld. AR) of the assessee and the departmental representative (Ld. DR) for the revenue and perused the material available on record. The Ld.AR of

the assessee submits that when the trust has not yet commenced its activity, the Ld. CIT(E) would have no authority *ipso facto* to reject application of registration u/ 12AA by taking view that no activity is undertaken by the assessee. The Ld.AR further submits that the trust was in initial stage and was set up by trust deed dated 18-10-2017 and was registered with Charity Commissioner on 11-01-2018 The Ld.AR further submits that at the time of registration, the question of application of income of trust is premature. All these questions may be raised when the assessment is made. The Ld.AR submits that where the primary and predominant object of the trust was to make charity though it may be in a divergent area, the prima facie object of the assessee would remain in the nature of charity. In support of her submission, the Ld.AR of the assessee relied upon the following decisions:-

- CIT(Exemption) vs Manekji Mota Charitable Trust (2019) 109 taxmann.com 258 (Bombay)
- Director of Income-tax (Exemption) vs Panna Llbhai Foundation (2013) 35 taxmann.com 104 (Gujarat)
- Sakhi-Saheli Microfinance Forum vs CIT(E) (2019) 108 taxmann.com 435 (Jaipur-Trib)

4. On the other hand, the Ld. DR for the revenue supported the order of Ld. CIT(E). The Ld. DR submits that assessee failed to substantiate its genuineness of activities by any evidence and the Ld. CIT(E) clearly

held that there is no activities in respect of object wherefrom he may examine the genuineness of the object is shown by the assessee by way of any documentary evidences.

5. We have considered the rival submissions of the parties and have gone through the orders of authorities below. We have noted that the assessee, despite providing various opportunities failed to substantiate its activities. The Ld.AR submits that the trust was in initial stage and was set up by trust deed dated 18-10-2017 and was registered with Charity Commissioner on 11-01-2018. The Ld.AR vehemently submitted that trust has not commenced its activities. In our view, while granting registration, the Ld. CIT(E) is empowered to examine the object of the trust and genuineness of its activities. Perusal of trust deed reveals that the assessee has divergent objects as mentioned at paras 3 & 4 of the trust deed. We have further noted that the trust was registered with Charity Commissioner on 11-01-2018 and the trust has just started its activity. Therefore, no much activity was undertaken by the trust, as it was in the preliminary stage of set up. Moreover, the Ld.CIT(E) has noted that assessee has not furnished any documentary evidence to prove its genuineness of activities. Therefore, we deem it appropriate to restore the matter back to the file of Ld.CIT(E) to consider the matter afresh. The assessee is also directed to furnish all the necessary evidence

and details including the activities undertaken by assessee in accordance with the object of the trust.

6. In the result, appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 31-01-2020.

Sd/-

Sd/-

(S. Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 31st January, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai