



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

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.154/ALLD/2019
Assessment Year: 2019-20

Shiv Shanti Trust 215/02B, Muir Road Ashok Nagar Allahabad	v.	CIT (Exemption) Lucknow
TAN/PAN:AAXTS1040B		
(Appellant)		(Respondent)

Appellant by:	Shri S. K. Jaiswal, C.A.		
Respondent by:	Shri S. K. Madhuk, CIT (DR)		
Date of hearing:	12	02	2020
Date of pronouncement:	13	02	2020

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT (Exemptions), Lucknow, dated 26/9/2019, rejecting the application for registration under section 12A(a) of the Income Tax Act, 1961.

2. The facts of the case are that the assessee filed an application for registration under section 12A(a) of the Income-tax Act, 1961 on 1/3/2019 with the CIT (Exemptions), Lucknow. The Id. CIT (Exemptions) issued a letter, dated 29/8/2019 to the assessee calling for specific queries regarding the application for registration u/s 12A of the Act, for compliance on 17/9/2019. On this date, i.e., 17/9/2019, the Id. Counsel for the assessee attended the proceedings and filed written submissions.

3. The Id. CIT (Exemption), after reproducing the amended clauses of section 12AA of the Act, w.e.f. 1st day of September, 2019, rejected the application moved by the assessee, observing that there is no compliance of laws towards achieving the objects of the assessee-trust.

4. Before us, the Id. Counsel for the assessee filed the copy of the written submissions, dated 17/9/2019, filed before the Id. CIT (E), wherein, the assessee had submitted that the main focus of the trust is imparting of education and overall grooming of personality development of children of rural background and weaker sections of the society; that the trust has proposed to setup an educational institution for imparting of primary level of education at village Bidanpur, Katoda in District Kaushambi; and that this is the very first year of institution of the trust, therefore, the filing of ITR, audit report and audited financial statement for the last three years is not applicable. The Id. Counsel for the assessee, placing reliance on the decision of the Hon'ble jurisdictional High Court in 'Hardayal charitable & Educational Trust vs. CIT', 355 ITR 354, has submitted that where no activities have been initiated by the trust/society and the trust/institution set up to achieve its objects of establishing educational institution, is in the process of establishing such institution, the registration under section 12A cannot be refused. The Id. Counsel for the assessee prayed that therefore, in the interest of justice, the matter may be restored to the file of the Id. CIT (Exemptions), Lucknow for deciding the issue relating to grant of registration under section 12A of the Act, in view of the aforesaid judgment of the Hon'ble jurisdictional High Court, after affording due opportunity of hearing to the assessee.

5. The ld. D.R. has placed reliance on the order of the ld. CIT (Exemption), Lucknow.

6. Heard. We find that the assessee had specifically submitted before the ld. CIT (E), vide letter dated 17/9/2019, that this is the very first year of institution of the trust and the trust has proposed to set up a school at village Bidanpur, Katoda in District Kaushambi on the land owned by the Trustee. However, the ld. CIT(E) rejected the application of the assessee for registration under section 12A of the Act, observing that there is no compliance of the laws towards achieving the objects of the assessee-trust.

7. In 'Hardayal Charitable & Educational Trust vs. CIT' (supra), the Hon'ble jurisdictional High Court, on the issue relating to registration under section 12AA of the Act, held as under:

“At the time of registration under s. 12AA, which is necessary for claiming exemption under ss. 11 and 12, the CIT is not required to look into the activities, where such activities have not or are in the process of its initiation. Where a trust, set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration under s. 12AA cannot be refused, on the ground that the trust has not yet commenced the charitable activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage only the genuineness of the objects has to be tested and not the activities, which have not commenced. The enquiry of the CIT at such preliminary stage should be restricted to genuineness of the objects and not the activities unless such activities have commenced. The trust or society cannot claim exemption, unless it is registered under s. 12AA and thus at such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused.”

8. No decision contrary to 'Hardayal Charitable & Educational Trust vs. CIT' (supra) has been cited before us by the Department.

9. In the case of the assessee under appeal, as contended by the assessee before the Id. CIT(E) and also before us, a trust was set up by the assessee to achieve its objects of establishing educational institution and was in the process of establishing such institutions. In such situation, registration under section 12AA cannot be refused. Therefore, we set aside the order of the Id. CIT (Exemptions) and restore the matter to his file with a direction to re-adjudicate the issue of grant of registration under section 12A of the Act in view of the judgment of the Hon'ble jurisdictional High Court in 'Hardayal Charitable & Educational Trust vs. CIT' (supra), preferably within two months from the date of receipt of this order, on affording due opportunity of hearing to the assessee,.

10. In the result, for statistical purposes, the appeal of the assessee is allowed.

Order pronounced in the open Court on 13/02/2020.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:13/02/2020

JJ:1202

Copy forwarded to:

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