



2. In this case, assessee has filed an application for registration of trust u/s. 12AA of Income Tax Act. The application was accompanied by copy of the certificate of registration by Asstt. Charity Commissioners and copy of PAN Card.
3. Thereafter ld. DIT(E) and asked the assessee to submit the details charitable activities carried out by you in the past. And application of the assessee was rejected on the ground that as main object of the trust is to give benefit to the family member of the deceased members of the Rotary Club and same is not giving benefit to public at large and giving benefit to group of deceased members.
4. Assessee contended that in Memorandum of Association, it is mentioned that the trust shall be a voluntary, non-political, non profit making charitable and social services organization. “ To do all necessary acts for the general welfare and upliftment of the members.”
5. And ld. A.R. cited an order of ITAT Mumbai Bench in ITA No. 319/Mum/2012 in the matter of M/s. The Bombay Presidency Golf Club Ltd. and stated that registration was given to that Club though club was giving its facilities and benefits to its members only and relief was granted to the assessee with following observation:

*10. Thus, the test of business, trade or commerce has to be viewed from the angle that the activity of the trust has continued on business principle and pursued with reasonable continuity. If the principle and ratio laid down by the Honble High Court is applied in the instant case, it would be seen that none of its receipts can be said to be arising or accruing from the activities which have been carried out for the purpose of business or in the nature of trade or commerce. All its activities are towards promotion of game of golf and other ancillary activities carried are only incidental to the said game only. Any transaction which are*

*incidental or ancillary towards fulfillment of object of other general public utility will not normally amount to business, trade or commerce, unless there is some intention to carry on business, trade or commerce on a permanent basis or with a reasonable continuity. There is no evidence and material on record to show that the activities of the assessee trust were done on sound and recognized business principle or have been pursuing its business activities with reasonable continuity. If there is some incidental or ancillary receipts during the course of carrying out its promotional activity of game of golf or for maintenance of its club and the facilities, it cannot be held to be in the nature of business, trade or commerce. From the perusal of income and expenditure account, it is seen that there is an operating deficit of 978.96 lakhs i.e. expenditures are far more than the receipts. In such a situation a club or trust does try to generate receipts to cover its expenditure which are only for fulfillment of its objects. However, such receipts should be strictly confined to attainment of its object and not for simply accumulating surplus. Thus, the embargo or rider given in proviso to section 2(15), cannot be the ground for cancellation of registration in the case of the assessee. Even otherwise this aspect has to be examined in the course of assessment proceedings and not for the purpose of cancellation of registration u/s.12AA(3) which is confined to twin conditions laid down therein.*

*11. There is another angle in this case, that it is a Club and all its activities are restricted to among its members and, therefore, principle of mutuality applies in its case. Reliance has been placed on Board Circular No. 11 of 2008 dated 19-12-2008 by the assessee which explains the amended proviso to section 2(15) in the following manner :-*

*“The newly inserted proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e., the fourth limb of the definition of charitable purpose contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity”.*

*“There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund*

*for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such case, there must be a complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non- members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15)”.*

*From the above, it is clear that even in terms of proviso to section 2(15), which has been clarified by the Board that in such cases where principle of mutuality are applicable, registration cannot be cancelled simply by relying on the proviso to section 2(15). No where it has been brought on the record that the activities of the assessee are not governed by principles of mutuality or it has been dealing with non members. Thus, from this aspect also new proviso does not apply to the case of the assessee.*

*12. In view of the above, we hold that cancellation of registration u/s 12AA(3) by learned DIT(E) in the case of the assessee is not tenable either in law or on facts and accordingly we set aside the order of the learned DIT(E) and direct that registration granted u/s 12AA earlier cannot be cancelled in view of the reasoning given by learned DIT(E). Accordingly ground taken by the assessee is allowed.*

*13. In the result, the appeal filed by the assessee is allowed.*

6. Ld. A.R. also cited a judgment of Hon’ble Supreme Court in the matter of Ahmedabad Rana Caste Association vs. CIT (1971) 82 ITR 704 (SC) wherein Hon’ble Supreme Court granted relief to a trust which belonging to a Rana Community of Ahmedabad with following observation:

**“Section 11 of the Income-tax Act, 1961 [Corresponding to section 4(3)(i) of the Indian Income-tax Act, 1922] - Charitable or religious trust - Exemption of income from property held under - Assessment years 1960-61 to 1962-63 - Assessee, an association of persons, held properties for various**

***purposes including management of movable and immovable properties of Rana caste or community of Ahmedabad, doing acts to improve education of community to give medical help etc. - Tribunal found that beneficiaries of assessee were members of Rana community meaning thereby natives of Ahmedabad only and other members of community accepted by caste as per old customs and usage of community and staying in Ahmedabad - Tribunal held that there being no vagueness about beneficiaries or of their public character, assessee being a charitable trust, was entitled to exemption under section 11 - High Court, however, held that beneficiaries did not constitute a well-defined section of public connected together by a common quality or characteristic - Whether to serve a charitable purpose it is not necessary that object should be benefit whole of mankind or all persons in a particular country or state, and it is sufficient if intention to benefit a section of public as distinguished from a specified individual is present - Held, yes - Whether predominant content and requirement of clause defining "beneficiaries" in constitution of assessee was factum of their belonging to Rana community of Ahmedabad and common quality, therefore, uniting potential beneficiaries into class consisted of being members of Rana caste or community of Ahmedabad whether as natives or as being admitted to that caste or community under custom or usage and mere fact that a person Rana community who was not an original native of Ahmedabad had to prove his credentials according to custom and usage of that community to get admitted into that community did not introduce a personal element which would detract from impersonal nature of common quality -Held, yes - Whether, therefore, income of assessee, trust was exempt under section 11-Held, yes"***

7. Ld. A.R. also cited a judgment of Hon'ble High Court of Chhattisgarh in the matter of CIT vs. Chhattisgarh Urology Society wherein relief was granted by the Hon'ble High Court wherein trust was meant for the charitable activities to promote the Urologist Doctors for the mutual benefit of each other with following observation:

*8. Indisputably, the respondent has moved the application before the expiry of one year from the date of its creation. In course of processing of the application, the trust was noticed to submit the books of accounts for FY 2013-14. While rejecting the application, the CIT has opined that the trust having failed to produce the books of accounts and further that the charitable activity is for promoting the Urologist so that more and more patients visit these Urologists, therefore, the society is basically in the nature of club of Urologist*

*Doctors for the mutual benefit of Doctors who are its members, it is not entitled for registration.*

*9. As against the above findings, the Appellate Tribunal has referred in paragraph 6 of its impugned order, the aims and objects for which the association is established. The aims and objects categorically refer to conduct of pre-medical checkup camps for public at large without discriminating on the basis of caste, creed, community and religion and to reach out public at large to educate them about healthy life and benefit of cleanliness, amongst other objects.*

*10. The provision contained under Section 12A nowhere empowers the CIT to assess the objects vis-a-vis the books of accounts. Even otherwise, it is not to be seen at this stage as to whether the fulfillment of the charitable trust would eventually benefit the members of the society. If the constituent of the trust engage in some genuine charitable activity which may benefit them in some other aspect of their personality which may include their vocation in life, it would not affect the genuineness of the objects of the trust. A person does not engage in charity for not doing anything in the other walks of life. A charity for one particular object is not for destroying the career for an individual which he is otherwise entitled to profess. If this ground is considered to be affecting the genuineness of the trust, people successful in different walks of life would never engage in charitable activity.*

*11. In the matters of Commissioner of Income Tax vs Vijay Vargiya Vani Charitable Trust and Fifth Generation Education vs Commissioner Income Tax, it is held that at the stage of Section 12A, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of Section 12A read with Rule 17A and whether Form No.10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this State, it is not proper to examine the application of income.*

*12. In the case at hand, the order passed by the CIT does not say in definite terms, that the objects of the society are not charitable in nature. Merely because the trust consists of Urologist Doctors and the charitable activity may mutually benefit those members, the object itself would not cease to be charitable in nature.*

*13. For the foregoing, we are satisfied that the Appellate Tribunal has rightly interfered with the order passed by the CIT. No substantial question of law arises in this appeal for determination in view of the plain language of Section 12A of the Act, 1961. The appeal being sans substance, it deserves to be and is hereby dismissed.*

8. On the other hand, ld. D.R. argument was that registration has rightly been declined by the DIT(E) because as per Memorandum of Association of the trust are not meant for general public and trust is meant for benefit flows only to its member as is clear from the objects of the trust.
9. We have gone through the relevant record and impugned order and heard both the parties. Trust has been given a certificate from the office of the Charity Commissioner after going through the Memorandum of Association and seeing the activities of the trust and trust is meant for deceased member of Rotary Club Family Members. As Rotary Club is carrying out charitable activities for the public at large as organizing the blood donation camp giving books to poor students and doing charity for orphanage etc.
10. As we can see, there are trusts meant for benefit of war widows those widows are also getting Government pension and in some of the cases they have been allotted petrol pump, gas agencies and houses etc. has been given to them at concessional rates by the Govt. but apart from that there are trusts those are getting donation and doing lots of activities for betterment of the war widows and their families.
11. In our considered opinion, if there trust registration is legal and valid why Rotary Club Social Security fund cannot held to be legal and valid. In our considered opinion, rejecting the application for registration of the Trust is amounting to miscarriage of justice. DIT(E) ought to have allowed the registration application filed to the assessee.

12. In the result, order of the ld.DIT(E) dated 30.12.2013 quashed and we direct the department to grant registration u/s. 12AA to the assessee.

13. In the result, appeal filed by the Assessee is allowed.

Order pronounced in Open Court on	19 - 02- 2020
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Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 19 /02/2020

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad