

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"
BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6522/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2019-20)

Shree Shreyaskar Ghoghari Parivar, 305, Vasupujya Darshan, Zaver Road, Mulund (west), Mumbai-400 080	बनाम/ Vs.	CIT(Exemp), 6 th floor, Piramal Chambers, Lalbaug Parel. Mumbai-400 012.
स्थायीलेखासं./जीआइआरसं./PAN No. AARTS0574Q		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Devendra Jain, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Simi Samant, DR

सुनवाईकीतारीख/ Date of Hearing	:	21.01.2020
घोषणाकीतारीख / Date of Pronouncement	:	07.02.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Exemp.), Mumbai, in short 'Ld. CIT(E)' dated 23.08.19 for AY 2019-20.

2. The brief facts of the case are that the assessee is a trust filed an online application for registration u/s. 12A of the I.T. Act, 1961 in the prescribed Form No. 10A on 15th March 2019. In order to verify, a notice dated 29.03.2019 was issued and served on the assessee requiring it to furnish certain details like PAN cards of Trust & Trustees, copy of bank account(s), NOC in respect of its office premises, certificate of registration/certificate of incorporation, copies of audited accounts, donors list alongwith confirmation from donors and note on activities undertaken by the trust with documentary evidence. The details were called for hearing on 01.05.2019 & 17.07.2019 and none appeared, but assessee filed following documents on 23.07.19 which are reproduced below:-

- i) Certificate U/s.13(1)(c).
- ii) Notes on Activities carried out by the Trust
- iii) Copy of NOC from the owner of the premises alongwith proof of ownership.
- iv) Certified copy of annual accounts statements for AY 2017-18 and AY 2018-19 respectively.
- v) Copy of Trust Deed

- vi) Copy if proof of identity of main Trustee.
- vii) List of activities carried out by the Trust alongwith expenditure incurred.
- viii) Note on office expenses alongwith copies of bills.
- ix) Details of donation received for FY 16-17, FY 17-18 and FY 18-19 (upto June, 2019).
- x) Bank account details like name of the bank, type of account and account numbers of two bank accounts.
- xi) Undertaking of no infringement to 1st proviso to sec 2(15) of Income Tax Act and to specify of charitable purposes provided in Sec 2(15).

3. Further, Ld. CIT(Exemp) asked the AR to submit the following documents on the next hearing which was fixed on 01.08.2019:-

- i.) Profile of Trustees.
- ii) Copy of PAN migration letter requesting to migrate the same to ITO Ward - 2(3), Mumbai.
- iii) Copy of audited account for the FY 2016-17, 2017-18 and 2018-19 alongwith proof of expenses.
- iv) Year wise activities details alongwith proof of expenses as per audited and provisional accounts.

- v) Year-wise updated statement of accounts.
- vi) Provisional account for the period from 01.04.2019 to 30.06.2019.
- vii) Year-wise list of donars (corpus or general) alongwith confirmation as per audited and provisional account.

4. On 01.08.2019, none appeared on behalf of the assessee nor filed any details as called for. Thereafter, Ld. CIT(E) passed this order with observation that the material submitted by the assessee are not enough to arrive at a satisfaction about of objects of the trust and the genuineness of the trust and its activities, which are essential conditions before granting of registration. Ld. CIT(E) further observed that assessee has failed to furnish the required information despite giving four opportunities. He further observed that in order to grant registration u/s 12AA, only when the Commissioner is satisfied about the objects of the Trust and the genuineness of its activities. Both these requirements are cumulative and not alternative. Further he observed that the onus is on the assessee to produce all relevant documents/information so as to enable the Commissioner to arrive at the requisite satisfaction about the objects of the trust and the genuineness of

its activities. Further, he observed that it is not possible to ascertain the nature of objects for which the trust has been created and whether the same are charitable u/s. 2(15) or not and also its genuineness. Accordingly, he rejected registration 12AA by passing this order.

5. Now before us, the assessee has preferred the appeal against the order of Ld. CIT(E) on the grounds mentioned below:-

1. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Exemptions) has erred in rejecting the application for grant of registration u/s 12AA ignoring the evidences forwarded by the trust in respect of genuineness of the activities and the object of the trust.

2. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other.

6. Before us, Ld. AR submitted that Ld. CIT(E) has rejected the application for registration u/s 12AA, even though all the

information required to verify the objects and its activities were filed before him. He brought to our notice the information which were already submitted before Ld. CIT(E) and further brought to our notice at page no. 8 of the paper book in which assessee has submitted note on activities carried on by the trust. He further brought to our notice the trust deed which was submitted before Ld. CIT(E) which contains the objects of the Trust. He submitted that Ld. CIT(E) has to verify the objects whether it is charitable or not and the details which he asked the assessee to submit the information which is relevant for the assessment and not the information which is required at the time of registration. For that proposition, he relied upon the following case laws:-

- i) Vidyadayani Shiksha Samiti Vrs. CIT (2018) 62 ITR (Trib) 487 (Del)**
- ii) CIT vrs. Babu Ram Education Society (2018) 96 taxmann.com 606 (Allahabad HC).**

7. On the other hand, Ld. DR submitted that as per section 12AA(1)(b), Ld. CIT(E) has to be satisfied on the objects as well as activities carried on by the assessee are charitable or not.

Whatever information submitted by the assessee is not enough and the information sought by the Ld. CIT(E) are relevant to come to conclusion about the activities of the trust. Ld. DR supported the findings of Ld. CIT(E) even though several opportunities were granted to the assessee to submit the information which assessee failed to comply.

8. Considered the rival submission and material placed on record, we notice from the record that assessee has filed information which includes trust registration, copy of the trust deed and note on activities of the trust alongwith audited financial statement for two assessment years. Ld. CIT(E) has passed the impugned order rejecting the application of registration with the observation that the documents submitted before him were not enough to come to satisfaction that the objects of the trust and the activities are not falling under charitable. The Hon'ble Rajasthan High Court in the case of **CIT(E) vrs Dali Bai Sewa Sansthan (2018) 99 taxmann.com 289** considered the similar issue and came to the following conclusion as mentioned below:-

6. Against the said order, an appeal was preferred before the I.T.A.T. and the learned I.T.A.T. while considering the objects (Annex.6) of the charitable Trust, held that as per Section 12A and 12AA of the Act what is intended thereby is only a registration simplicitor of the entity of a Trust, which is condition precedent for claiming of benefits under the other provisions of the Act regarding exemption of income, contribution etc. No examination of the modus of the application of the funds of the Trust or an examination of the ethical background of its settlers is called for while considering an application for registration. The I.T.A.T. further held that stage for consideration of relevance of the object of the Trust and application of its fund arise at the time of assessment, when benefits are claimed by assessee in terms of Sections 11 and 12, the question as to the nature of such contribution and income can be looked into. At the time of registration of the Trust, going by the binding judgments of the Apex Court, what is to be looked into is whether the Trust is a genuine one and whether is a sham institution floated only to avail the benefits of exemption under the Act, therefore, the learned I.T.A.T. allowed the appeal filed by the respondent/assessee and passed order to grant registration under Section

12AA and 80G of the Act to the assessee with effect from filing of application.

9. Further Hon'ble Allahabad High Court in the case of **CIT vs. Babu Ram Education Society (2018) 96 taxmann.com 606 (Allahabad)** and also Coordinate Bench of ITAT, Delhi in the case of **Vidyadayani Shiksha Samiti vs. CIT(E) (2018) 62 ITR (Trib) 487 (Del)** came to the similar conclusion.

10. Therefore, respectfully following the aforesaid decisions, we are inclined to remit this issue back to the file of Ld. CIT(E) to consider the information available on record to conclude whether the trust's objectives and activities are genuine and falling within the ambit of charitable with the information available on record. In our view, Ld. CIT(E) has to verify the trust deed and the objects vis-à-vis the genuineness of the activities by enquiring about the facilities, if required verify the financials only to establish whether the activities are genuine. He is not expected to wear the shoes of AO. Therefore, in case of necessity, further relevant information may be called from the

assessee and proper opportunity of being heard to the assessee may be granted. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

11. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes.**

Order pronounced in the open court on 7th Feb 2020.

<p><i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i></p>	<p><i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 07.02.2020</p>
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai