

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH
(Conducted Through Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 1783/Ahd/2018
Assessment Year: N.A.

The Panchkuva Cloth Merchant Association, 518, Panchkuva, Ahmedabad-380002 PAN: AAAAT9945Q (Appellant)	Vs	The CIT (Exemption), Ahmedabad (Respondent)
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Revenue by: Shri Vinod Kanwani, CIT-D.R.
Assessee by: Shri S.N. Soparkar, A.R.

Date of hearing : 11-02-2021
Date of pronouncement : 04-05-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal arises from order of the CIT (Exemption), Ahmedabad dated 28-06-2018, in proceedings under section 12AA of the Income Tax Act, 1961; in short “the Act”.

2. The solitary ground of appeal of the assessee is directed against the decision of Id. CIT(Exemption) in rejecting their application in form no. 10A for the approval u/s. 12AA of the Act.

3. The fact of the case is that assessee has filed application for registration u/s. 12AA of the Act on 27th December, 2017 along with registration certificate issued by the Charity Commissioner. Ld. CIT (Exemption) has called various detail vide letter 5th Jan, 2018 mentioned at para 2 of the order u/s. 12AA of the Act reproduced as under:-

“The application for registration of the Trust u/s 12AA of the Income-tax Act was received on 22.12.2017 by this office in Form No. 10A under Rule 11AA of the Act along with the Registration Certificate issued by the Charity Commissioner,

2. A letter dated 05.01.2018 was issued to the applicant to furnish detailed note on the activities actually carried out by the Trust as well as the following documents / details:

- 1. Copy of Form No. 10-A duly signed.*
- 2. Copy of PAN Card of the Trust.*
- 3. Copy of Certificate of Registration of Trust.*
- 4. Please give details of institution being run/proposed to be run by your trust.*
- 5. Please furnish name and address of branches, if any.*
- 6. Please state whether jurisdiction over the case vest with .CIT(E), Ahmedabad with details of ward/circle where you are filing return of income.*
- 7. Certified Copy of Trust deed /M.O.A., if it is not in English then certified English translation also.*
- 8. Copy of PAN Card of Trustees with details of Circle/Ward where they are filing Return of Income. You are also requested to file complete names, address of trusts who these trustees and there spouses are interested. The present sources of income should also be filed.*
- 9. Please suite whether area of operation of your activities mentioned in the deed ?(Note: Area of operation should be within India)*
- 10. Please submit List of main objects of the Trust and specify like religious, relief of the poor, education, medical relief ,etc., and my other objects of general public utility, if any.*
- 11. Please clarify whether any of the objects is religious in nature ?(Mention the number of the clause and page number of the deed.)*
- 12. Please also clarify whether any of the objects is neither religious nor charitable ? (Mention the number of the clause and page number of the deed ?) /*
- 13. Please state whether the objects of the trust are for any particular caste, creed, religion or community.*
- 14. Whether deed contains Investment clause? If not, then furnish declaration u/s, 11(5) of the I.T. Act?*
- 15. Please state whether deed contains Amendment/Alterations clause? (to be amended with the approval of QT (Exemption), Ahmedabad.*
- 16. Please specify the clause in Trust deed regarding revocability or irrevocability.*
- 17. Please state whether deed contains utilization clause? (Specifying that the profits are to be used only for the objects of the trust.)*
- 18. Please specify the clause in the Trust deed which says that beneficiaries would be without discrimination on the basis of caste, creed, religion or sex and not for specific individuals.*
- 19. Please state any part of trust property or income is used or applied or ensures directly or indirectly for the benefit of person specified u/s.13(3) of the IT. Act?*
- 20. In the case of Trust running education activities through School/College, please furnish complete details such as fee structure, number of students study in various standards, details and bifurcation of*
- 21. grant received and fees and its utilization, details of students i.e. no. and name of students who have been given exemption from paying fees, etc., copy of attendance registers of students and other books of accounts for verification purpose, etc.*

22. Copy of Bank Account since inception of Trust or last three years. Please give details of cash deposit if any during the period of 09.11.2016 to 31.12.2016.
23. Details of donations received or paid and confirmation/PAN of the donors.
24. Details of movable & immovable assets held as on date.
25. Please give details of premises of Trust whether premises owned by the Trust or Rented. Whether NOC from the premises owner is obtained or rental agreement is enclosed.
26. Please submit documentary evidences of actual charitable activities carried out by the Trust from the date of inception of Trust till date.”
27. Whether registration u/s,-12AA has been refused/rejected earlier? If so, state briefly the reasons for such refusal/rejection.
28. Please submit Copy of Audited Accounts like copy of receipt and payment A/c., Income & Expenditure A/c, Balance Sheet, for three years or from the date of creation till date, whichever is less.
29. Please give details as to how the Trust generates funds for achieving the object of Trust.
30. Please submit evidences that the corpus amount has been transferred to the Trust/Institution.
31. Please specify that the Trust is in receipt of amounts mentioned in first proviso to section 2(15) of the I.T. Act.
32. Copy of Certificate of Undertaking?
33. Copy of Certificate u/s. 13(1) (c) of the I.T. Act?
33. Further, it is seen that a per trust deed the dissolution clause is not proper/not there.”

The Id. CIT(Exemption) has rejected the application of the assessee for approval u/s. 12AA of the Act holding that the assessee has failed to file documentary evidences about the genuineness of its creation and its activities and to verify these activities in consonance with the objects. The relevant part of the decision of the Ld. CIT(Exemption) is reproduced as under:-

- “7. The Applicant Association, vide its submission filed in the office on 18.06.2018, stated that the Association is not registered with any competent authority. It further contended that the trust deed need not be registered with any of the authorities.
8. The above contention of the Applicant Association is carefully considered and found unsatisfactory and untenable in the eyes of law in view of following facts.
- i) Before going into contention of the Applicant made above, it is relevant to go through the relevant provisions of the Act i.e. Section 12A read with Rule 17A which are reproduced hereunder.
- “ 12AA. (1) The [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) [or clause (ab)]] of sub-section (II) of section 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 inquiries 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 so 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-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard,.... "

" Rule 17A (1). An application under clause (aa) of sub-section (I) of section 12A for registration of a charitable or religious trust or institution shall be made in Form No. IDA and accompanied by the following documents, namely;—

(a) where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof, and where the trust is created, or the institution is established otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution together with one copy thereof:

***Provided** that if the instrument or document in original cannot conveniently be produced, it shall be open to the Commissioner to accept a certified copy in lieu of the original..... "*

An analysis of section 12A(a) and rule 17A(a) shows that the fact to be established is the creation of trust and this fact is required to be established by producing constructive and evidential documents. When the trust is created under an instrument, the rule requires the production of the evidential documents, i.e., the documents evidencing the creation of the trust. The evidential documents cannot be limited to documents which directly prove the creation of the trust; they will embrace all documents which afford a logical basis of inferring creation of the trust and all such documents can be described to be 'document evidencing the creation of the trust' within the meaning of rule 17A(a). In other words, document evidencing the creation of the trust and existence legally would be the registration certificate issued by the competent authorities i.e. Charity Commissioner, Registrar of Societies or registrar of Company. Here, the Applicant Association failed to satisfy the requirement of Rule 17A of the IT Rule, 1962

ii) Without getting registered with any competent authority, there is no legal obligation is cast on the part of such trust or institution like filing annual audited accounts, minutes of the meetings held during the year, details of the trustees/managing committee to be furnished with such authority etc. In absence of such registration with any government authority, no verification of the existence, no control/supervision of government over such unregistered entity would be; there to see whether their activities are going on according to their rules and regulation or towards fulfillment of their objects. This may be not the intention of the Statute while making provisions of section 12AA rw r 17A. iii) The documents submitted by the applicant like copy of Rules and Regulation ? ATM Card, annual audit report for F.Yrs 2014-15,2015-16 and 2016-17 etc. though evidencing the existence of the trust but are not documents evidencing the creation of the trust and, therefore, requirement of rule 17A is not satisfied.

In view of above facts, the contention of the applicant is not found convincing and therefore rejected.

9. In view of above, in the absence of complete details/documents, it is not possible to verify the existence and genuineness of the creation of the above trust. Section 12AA makes it very clear that before granting registration under this section, the Commissioner has to satisfy himself about the genuineness of the activities of the trust or institution and also he has to verify that these activities are in consonance with the- objects of the trust or institution. Reliance in this regard is placed on judgment delivered by the Hon. Supreme Court in the case of Commissioner of Income-tax, Ujjain Vs Dawoodi Bohara Jamal Civil Appeal No. 2492 of 2014. The facts considered in para 14 of the judgement by the Hon'ble Apex Court are reproduced for sake of convenience:

" Section 12 A A lays down the procedure to be followed by the Commissioner for grant or refusal of application for registration made under Section 12A. According to procedure so laid down, the Commissioner shall call for documents and information and conduct an enquiry to satisfy himself of the genuineness of the trust and upon reaching satisfaction of the charitable or religious nature of the objects and the authenticity of the activities of the trust, he would grant registration. If he is not satisfied of the aforesaid, the request made in the application may be declined."

As discussed above, the applicant has failed to file documentary evidences to enable me to satisfy about the genuineness of its creation, its activities and to verify these activities are in consonance with its objects."

4. During the course of appellate proceedings before us, the ld. counsel has filed paper book comprising copies of detail and document filed before the ld. CIT(Exemption). He contended that ld. CIT(Exemption) has erred in rejecting application in a general manner for approval u/s. 12AA of the Act without considering the specific nature of object and activities of the assessee as cloth merchant association with object to encourage cloth business and to encourage co-operation and friendship amongst members of the association. The ld. counsel has placed reliance on the decision of Jurisdictional High Court of Gujarat in the case of Gujarat State Plastic Manufacturers Association Vs. CIT Special Civil application No. 6059 of 1996 dated July, 10, 1998. The ld. counsel has further submitted that in the above stated case the association was established with a view to protect general interest of plastic manufacturers and the exact date of creation of association was not known. It is further contended after referring the aforesaid decision of Hon'ble Jurisdictional High Court that it is not necessary that the applicant applying for registration u/s. 12A of the Act must necessarily be a trust. On the other hand, ld. Departmental Representative has supported the order of ld. CIT (Exemption).

5. Heard both the sides and perused the material on record. After perusal of the detailed filed by the assessee, the ld. CIT (Exemption) has rejected application filed by the assessee in form no. 10A for the approval u/s. 12AA of the act on the ground that assessee has failed to file documentary evidences to enable him to satisfy to the genuineness of its creation, its activities and to verify these activities in consonance with its objects. After perusal of the material on record, it is noticed that assessee

has placed documents at pages A to T along with documents from 01 to 73 in the paper book pertaining to the specific nature and activities of the assessee as cloth merchant association which were filed before CIT(Exemption). It is also observed that the Id. CIT(Exemption) has not given any specific reasons for disproving these documents in the order passed u/s. 12AA of the Act. We have gone through the decision of Hon'ble Jurisdictional High Court of Gujarat in the case of Gujarat State Plastic Manufacturers Association Vs. CIT supra wherein the issue of granting approval u/s. 12A was decided in favour of the assessee after taking into consideration the specific nature of the activities of the trust. The relevant part of the para from the decision of Hon'ble Jurisdictional High Court is reproduced as under:-

“Rule 3 states that the association was established with a view to protect general interest of plastic manufacturers and to encourage allied interest and form co-operation amongst them that it was to work directly or indirectly for the welfare of the interest of plastic manufacturers class; to make research for the development of plastic industry; to resolve any dispute between the members of the association or the members of the association and other persons; and to do all such work directly or indirectly for fulfilling the above object of the association. It was also stated that the association will not do any act for its profit, will fulfill the object of the association and that its funds, reserve fund. etc. will be used for the general and extraordinary object of the association.”

The Id. CIT (Exemption) stated that the assessee association was not registered with any competent authorities i.e. Charity Commissioner/Registered Registrar of Societies/Registrar of Companies etc.. In this regard, we have perused the provision of section 12A of the Act r.w.s. Rule 17A of the I.T. Rule, 1962. The Clause (a) of rule 17A of Income Tax Rules requires that the application of registration under section 12A of a charitable or religious trust or institution would be accompanied by the following documents namely, where the trust is created or the institution is established, under an instrument, the instrument in original and where the trust is created or the institution is established, otherwise than under an

instrument, the document evidencing the creation of the trust or the establishment of the institution. Thus, rule 17A nowhere envisages the existence of a trust deed or its registration. The factum of existence of trust can also be established by producing documents evidencing the creation of the trust. Section 12AA lays down the procedure for granting Registration. Rule 17(A)(a) show that when the trust is not created under an instrument it is impossible to produce any constitutive document hence the rule requires production of evidential documents i.e. the document evidencing the creation of trust. We observe that specific evidential documents furnished by the assessee in the paper book as referred above in this order has not been verified and examined by the Id. CIT(Exemption) in the context of evidential documents. In view of the above facts and circumstances, we would deem it proper to set aside the impugned order to the file of the Id. CIT(Exemption) for deciding afresh after considering the specific documents placed in the paper books as referred above. Therefore, we restore the issue to the file of the Id. CIT (exemption) for adjudicating afresh after taking into consideration the observation of the Hon'ble High Court of Gujarat and clause (a) in Rule 17A of the I.T. Rule, 1962. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 04-05-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 04/05/2021

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद