

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES : BENCH "A" HYDERABAD**

(Through Video Conference)

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. Nos. 1672 & 1673/Hyd./2018
A.Y. : N.A**

M/s Franco Indian Education Trust,
Hyderabad

vs. CIT (Exemptions)
Hyderabad

[PAN: AAATF6126C]

(Appellant)

(Respondent)

For Assessee: Sri G.Murali Krishna Murthy, AR
For Revenue: Shri Sibendu Moharanaa, D.R.

Date of Hearing : 02/02/2021
& 10.05.2021
Date of Pronouncement : 10/05/2021

ORDER

PER S.S. GODARA, J.M.

This assessee's appeals are directed against the CIT(Exemptions) Hyderabad's order dated 31.05.2018 in case no. 12A & 80G/2017-18 involving proceedings u/s 12AAA(1)(b)(ii) of the Income Tax Act, 1961 (in short 'the Act').

Heard both parties. Case file perused.

2. Both the learned representatives appearing at assessee's and Revenue's behalf invited our attention to CIT(E)'s order under challenge as follows:

"3. It is an admitted fact that the Trust was formed on 31.08.2017 and has not yet been registered under the Societies Act. The AR explained that they are in the process of registering the Trust under the Societies Act.

3.1. It is an admitted fact that the trust has not carried out any activity till date.

4. Trustees:

As per the Trust Deed dated 31.08.2017, the Settlor and the Trustees are as under:

Settlor:

Mr. Prashant Lahoti

Trustee:

Mr. Prashant Lahoti and

Mrs. Rekha Prashant Lahoti.

Mrs. Rekha Prashant Lahoti is Wife of Mr. Prashant Lahoti.

Office of the Trust is residential address of the Managing Trustee-Mr. Prashant Lahoti.

The Trust Deed has been signed by only one trustee i.e. Mrs. Rekha Lahoti as Trustee and Mr. Prashant Lahoti has not signed the Trust Deed as Trustee. Therefore, it is not clear whether Mr. Prashant Lahoti has accepted the Trust Deed or not. Only the last page has been signed by Mrs. Rekha Lahoti as Trustee whereas there are nine pages, thus, all the remaining eight pages have not been signed by Mrs. Rekha Lahoti. The signature of Mrs. Rekha Lahoti on the PAN Card does not match with that signature.

4.1. As mentioned earlier, the Settlor of the Trust is Mr. Prashant Lahoti who has appointed himself and his wife as Trustees. There are no other trustees. Thus, it is a kind of family trust where husband, wife are only the trustees and Husband is the Settlor. It has been also mentioned that Managing Trustee shall be the Chief Functionary of the Trust and he shall control, guide and regulate the work of other trustee and employee. Thus, it means that the entire control of the Trust is in the hands of Mr. Prashant Lahoti who has the authority to control and regulate the Trust Activities. Thus, this is nothing but a one man activity.

4.2. Genuineness in doubt:

For all the reasons discussed above, the genuineness of the Trust and hence, genuineness of the aims and objects of the Trust are in doubt. Till date Assessee has not carried out any activity to establish genuineness of aims and objects. Therefore, Assessee has failed to satisfy that activities, aims, objects of the trust are genuine and trust itself is genuine.

4.3. Case Law:

Self Employers Service Society Vs. CIT 247/TR 18(Kerala)

Hon'ble Kerala High Court in the said case has held "When the Commissioner exercises his jurisdiction under Section 12AA while considering an application for registration under Section 12A he has to be satisfied of the charitable and

religious nature of the objects and genuineness of the activities of the trust or institution. In the present case, admittedly, the society has not done any charitable work during the relevant period, on the other hand, the activities which they have carried on during the period were only for the purpose of generating income for its members. There were no materials before the Commissioner to be satisfied of the genuineness of the activities of the trust or institution. Under these circumstances, rejection of the application under exhibit PS cannot be termed as illegal or arbitrary".

The said case law is squarely applicable to the case of the assessee Franco-Indian Education Trust as in this case also assessee has not produced any material to establish genuineness of the activity of the trust and it has been admitted by Franco-Indian Education Trust that no activity has been carried out.

4. Therefore, for all the reasons discussed above the assessee is not eligible for Registration U/s.12A.

5. Aims and Objects of the Trust:

"1. To support mobility of students, faculty as well as young talent in diverse domain from India to France and from France to India for any long term or short term training or academic program, leading to a graduating degree or not.

2. To provide grants, scholarships, fellowships, assist, support and/or aid other forms of financial assistance to the deserving students, faculty members as well as young talent to enrich their skill by sponsoring them to France - exclusion of all other countries except if the mobility to France includes a stay in another country.

* Students are defined as Indian Citizen or French Citizen, with a serious pedagogical project, recognized by the Government of India.

* Faculty members can be identified as French or Indian Citizen gainfully employed by an academic institution recognized by the Government of France or by the Government of India.

* Both the students and faculty members can be designated as "candidates".

* No discrimination shall be made on the basis of the Sec, race or religious persuasion of the beneficiary.

3. To conduct activities and events to promote its objective amongst potential applicants to the scholarship.

4. To allow students and faculty members of all fields to apply to the grants, scholarships, fellowships, assistance, support and lor aid other forms of financial assistance in the arena of science, art, architecture, engineering,

medicine, management, humanities, literature and any other domain or area of education in France to the interested students in India and vice-versa.

C. The Trust may carry on such income generation activities as are considered necessary in furtherance of the above objectives. "

As per the Trust Deed, Aims and Objects were as mentioned above. It can be seen that one of the object is to carry on income generation activity. It means the assessee intends to start his commercial activities.

As per the Aims and Objects reproduced above, it transpires that assessee's activities are open for French Citizens also. It means assessee intends to help French Citizens by means of scholarship etc. The provisions of Sec.11 and 12 are applicable for the Trust which are having activities within India. However, as mentioned, the assessee intends to give scholarship to French Citizens also. It means the domain of assessee's activities is extended outside India. Therefore, assessee is not eligible for Registration U/s.12A.

6. Therefore, for all the reasons discussed above assessee's application for registration U/s.12A is hereby rejected.

3. There can hardly be any dispute that it is the assessee's object clauses only and not commencement of charitable activity that is required to be considered in section 12AA registration proceedings as per Ananda Socieal & Educational Trust vs. CIIT Civil Appeal no. 5847-5438/2012 dated 07.03.2020. Coupled with this, a perusal of assessee's objects clause prima facie suggest that providing scholarships to Indian students per se, comes under general public utility component/clause of s.2(15) defining 'charitable purpose' under the provisions of the Act. Learned counsel at this stage submitted that all other issues considered in CIT(Exemptions)'s order under challenge be restored back to him for a fresh adjudication so as to enable the tax payer to file necessary evidence on record.

4. After hearing both the parties, we find force in assessee's foregoing plea, that the issue raised herein deserve to be restored to the CIT(E) for his yet another innings of adjudication. We order accordingly.

The assessee or its representative shall appear before the CIT(E) on 31st August, 2021 with all the relevant details at its own risk and responsibility followed by three effective opportunities of hearing.

Both these assessee's appeals are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Pronounced in Open Court on 10th May, 2021.

Sd/-

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(S.S. GODARA)
JUDICIAL MEMBER

Dated: the 10th May, 2021.

* gmv

Copy of the Order forwarded to:

1. M/s Franco Indian Education Trust, C/o M/s Ch.G.Krishna Murthy & Co., Chartered Accountants, 133/1, Prenderghast road, Secunderabad 500 003, Telangana.
2. CIT (Exemptions), Hyderabad.
3. Pr.CIT, (Exemptions) Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard File.