

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 413/H/2020		
Kavitha Nair Foundation, Hyderabad. PAN - AADTK1899E (Appellant)	Vs.	Commissioner of Income-tax, Exemptions, Hyderabad. (Respondent)
Assessee by:		Shri B. Satyanarayana Murthy
Revenue by:		Shri D. Srinivas
Date of hearing:		20/07/2021
Date of pronouncement:		24/08/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Assessee is directed against CIT(Exemptions), Hyderabad's order dated 20/03/2020 involving proceedings u/s 12AA(1)(b)(ii) of the Income-Tax Act, 1961; in short "the Act" on the following grounds of appeal:

"1. The Order of the Hon'ble Commissioner of Income Tax (Exemptions) is contrary to the facts of the case and the provisions of Law.

2. The Hon'ble Commissioner of Income Tax (Exemptions) is not justified in rejecting the

application for registration U/s. 12A of the Income Tax Act of the Income Tax on the ground that the Assessee has not yet commenced its charitable activities.

3. The decision of the Hon'ble Commissioner of Income Tax (Exemptions) that the Society has to carry out charitable activities for entitling to exemption U/s 12AA is not correct.

4. The Hon'ble Commissioner of Income Tax (Exemptions) should have been seen the genuineness of the activity of the trust as mentioned in the Trust deed and decided the matter on the basis of the genuineness of activities in the Trust deed.

For these and other grounds that may be raised at the time of hearing it is prayed that Order be set aside or modified as may be deemed fit."

2. We notice at the outset that assessee's instant appeal suffers from 3 days delay in filing. To this effect, the Id. AR filed an affidavit wherein it was affirmed that due to COVIP pandemic and consequent lockdown declared by the Govt. of India and the State Govt., physical filing was not allowed, hence, the appeal papers were sent to ITAT by speed post, which caused the impugned delay in filing of the instant appeal. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that revenue's impugned delay of 3 days is neither

intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

3. Briefly the facts of the case are that the assessee filed e-application in Form No. 10A seeking registration u/s 12A of the IT Act on 24/09/2019. After obtaining the documents from the assessee, the CIT(E) observed that the assessee has not yet commenced its activities and the only activity carried out by the assessee is the donation given to M/s Helping Hand Foundation of Rs. 1,00,000/-, which is not a charitable activity as defined u/s 2(15) of the Act. He, therefore, held that there are no charitable activities carried out by the assessee so far as per its objects and hence, the genuineness and activities could not be verified. Relying on various case law, the CIT(E) came to a conclusion that the applicant is not fit for grant of registration u/s 12AA of the Act.

4. Aggrieved by the order of CIT(E), the assessee is in appeal before the ITAT.

5. At the outset, the ld. AR of the assessee submitted that the case of the assessee is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Ananda Social & Educational Trust Vs. CIT, [2020] 114 taxmann.com 693 (SC). Whereas, the CIT(A) has dismissed the assessee's application filed in Form No. 10A seeking

registration u/s 12A of the Act, on the ground that the assessee's activity is not genuine as, he, ought to have granted the registration by looking into the objects of the society. The Id. AR further submitted that CIT(E) should grant registration only on the basis of object clause of the society which is a charitable in nature.

6. On the other hand, the Id. DR relied on the order of CIT(E) and submitted that the society is not a new society and the CIT(E) has power to examine as per the provisions of section 12AA of the Act and, therefore, the CIT(E) has rightly rejected the application of the assessee. The judgments quoted by the CIT(E) are squarely application to the case of the assessee. He submitted that the judgement of the Hon'ble Supreme Court relied on by the Id. AR was pertaining to newly formed society, which got registered on 30/05/2008 and applied for registration on 08/07/2008 i.e. within a period of less than 45 days. Therefore, the judgment was given on the basis of the newly formed society, which is clear from the judgment of the Hon'ble Supreme Court. He submitted that in the impugned case, the society was formed on 04/05/2017 and applied for registration on 24/05/2019 after more than 1 ½ year from the date of registration. He therefore contended that the judgment relied on by the Id. AR is not applicable to the case of the assessee. He submitted that the CIT(E) also observed that the society contributed Rs. 1 lakh to M/s

Helping Hand Foundation, (which is evident from the statement of income and expenditure for the year ended 31st March, 2018 vide page 45 of paper book) which is not a charitable activity in nature, which is beyond the object clause of the society.

7. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We observe that the CIT(E) has dismissed the appeal for registration u/s 12A of the Act by holding that the society is not carrying any charitable activity and also observed that the society has given a donation of Rs. 1 lakh to M/s Helping Hand Foundation, which is not a charitable activity and accordingly, denied registration u/s 12A to the society. The society was formed on 04/05/2017 and applied for registration on 24/05/2019 after more than 1 ½ year from the date of registration. As per the documents produced, the society is not a new society as the Id. AR has relied on the judgement Hon'ble Supreme Court quoted supra. The observations of the Hon'ble Supreme Court in the relevant Para No. 12 are as under:

"12. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to

canyon are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.”

Following the judgment, we reject the argument of the Id. AR that the CIT(E) is bound to grant registration u/s 12AA of the Income-tax Act only on the basis of object clause which is in charitable nature. In the impugned case, the CIT(E) has rightly exercised his power as per the Act as well as, as per the judgment of the Hon’ble Supreme Court quoted supra. We observe that the society has not taken any charitable activity as per the object clause except giving a donation of Rs. 1 lakh to M/s Helping Hand Foundation, which is not a charitable activity as opined by the CIT(E). While going through the object clauses of the assessee society, clause No. 4 reads as under:

“To establish, run, support and grant aid or other financial assistance to schools, Colleges, libraries, reading rooms, universities, laboratories, research and other l’stitutions of the like nature in India, for use of the students and the staff and also for the development and advancement of education and diffusion of knowledge amongst the public in general.”

7.1 Observing the above object clause, the society has given donation, but, the CIT(E) has not found the same as per section 2(15) of the Act. The Id. AR also could not produce any details before us to establish that the details of donation paid to the activities which are charitable in nature. The Id. AR of the assessee requested that the matter may kindly be restored to the file of CIT(E) to demonstrate that the activities of the society are genuine as per the object clauses of the society. Considering the prayers made by the Id. AR as well as considering the arguments from both the sides, we remit the issue back to the file of CIT(E) with a direction to decide the issue after examining the details, which will be put-forth before him by the assessee regarding the charitable activities of the society and in accordance with law after providing reasonable opportunity of hearing to the assessee.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 24th August, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 24th August, 2021.

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Copy to :

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<i>2</i>	<i>CIT(E), 2nd Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.</i>
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<i>4</i>	<i>ITO(E) - 2, Hyderabad.</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>