

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B' LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.624/Lkw/2019

A.Y. N.A.

International Devraha Divya Foundation Trust, 1069 Devraha Baba Ashram, Thanamant, Dangoli Bangar, Mathura PAN AAATB6921F	Vs.	CIT(Exemption), Lucknow
(Appellant)		(Respondent)

Appellant by	Shri Abhinav Mehrotra, Advocate
Respondent by	Smt. Sheela Chopra, DR
Date of hearing	28/12/2021
Date of pronouncement	20/01/2022

ORDER

PER T.S. KAPOOR, A.M.:

1. This is an appeal filed by the assessee against the order of Id. CIT(E), Lucknow dated 30.9.2019.
2. The Id. AR at the outset submitted that the assessee had filed an application for registration u/s. 12A of the Act which the Id. CIT(E) has rejected by holding that the trust had not got registered itself u/s. 12AA or Section 10(23C)(iiiad) of the Act and he further held that return of income for AYs 2016-17, 2017-18 and 2018-19 was filed by the appellant in ITR-7 which was incorrect as the ITR-7 can be filed by the persons who are required to furnish return u/s. 139(4A),(4B),(4C) and (4D) of the Act and such return is to accompany with

audit report u/s. 12A(b) of the Act. The Id. AR submitted that the Id. CIT(E) while rejecting application of assessee has held that since the appellant was not having registration u/s.12AA of the Act he cannot file ITR in Form 7 as per law and therefore he rejected the application of the assessee. Explaining the facts of the case, the Id. AR submitted that assessee had filed an application for registration earlier also which was not disposed of by Id. CIT(E) within six months from the date of such application and therefore in view of judgment of Hon'ble Apex Court in the case of Society for Promotion of Education Adventures supports conservation of environment there was a deemed grant of registration to the assessee and therefore in view of that judgment the assessee had filed returns along with audit reports on the basis that it was registered u/s. 12A of the Act. The Id. AR submitted that the reason cited by Id. CIT(E) for rejecting the application of assessee is not as per law and in this respect our attention was invited to registration u/s.12A where the requirement of filing the documents along with the application for registration were mentioned. Therefore, it was prayed that since the Id. CIT(E) has not commented adversely on the objects of the assessee, which necessarily are charitable in nature and has also not adversely commented on the genuineness of activities, therefore it was prayed that the Id. CIT(E) be directed to grant registration to the assessee.

3. The Id.CIT (DR) on the other hand, submitted that Id. CIT(E) has elaborately dealt with the application of the assessee and has rightly rejected the application of the assessee and therefore it was prayed that appeal filed by the assessee may be dismissed.

4. We have heard the rival parties and have gone through the material available on record. We find from the findings of Id. CIT(E) that the primary reason for rejecting the application of the assessee is that he held that the assessee was not registered u/s. 12A of the Act and therefore it had violated various provisions of the Act and had wrongly claimed the income to be

exempted u/s. 12A of the Act. For the sake of completeness the findings of Id. CIT(E) are reproduced below:

“4.2 Further, the annual accounts submitted by the applicant as required under Rule 17A (1) (e) of Income Tax Rules, suffer from incorrectness and following errors:

1. The applicant has gross receipt of Rs.1.04.33,129/- in F.Y. 2017-18 from donation, besides donation receipt for corpus of Rs.47.5_lakhs. Applicant received donations of Rs 40,88,362/- in F.Y 2016-17 and Rs.90,79,530/- in F.Y. 2015-16. The applicant does not have registration/approval u/s 12AA or section 10(23C)(iiiad). The applicant is not engaged in educational activity, therefore, provisions of section 10(23C)(iiiad) are not applicable to the applicant. Return of Income has been filed for A.Y. 2016-17, 2017-18 and 2018-19 by the applicant in ITR -7, which is incorrect. ITR-7 can be filed by persons including companies required to furnish return under section 139(4A),(4B),(4C) and (4D). Such Return of Income under section 139(4A) is be statutory filed along with audit report under section 12A(b) of the Income Tax Act 1961, in Form 10B by persons registered under section 12AA of the Income Tax Act 1961 and who are in receipt of income derived from property held under a trust for charitable or religious purposes. Since the applicant is not having registration under section 12AA, he cannot file ITR in Form 7 as per law.

2. Moreover, copies of Audit Reports under section 12A(b) of the Income Tax Act 1961 have been submitted by the applicant in FORM No. 10B in respect of F.Y. ending 31.03.2016, 2017 and 2018. In these reports, the auditor has declared that it relates to " IN THE CASE OF CHARITABLE OR RELIGIOUS TRUSTS OR INSTITUTIONS " which is incorrect, because the applicant is not yet registered under section 12AA of Income Tax Act. Audit Report in Form No. 10B is applicable only in the case of those assesseees who already have registration under section 12AA of the Income Tax Act 1951 .

3. Returns of Income has been filed for A.Y. 2016-17, 2017-18 and 2018-19 by the applicant on NIL income which again is incorrect, as (he Income and Expenditure account is showing Surplus of Rs.65,93,899.39, Rs 3,84,7377.86 and Rs 12,66,753.05 respectively. Since the applicant is not registered under section 12AA of the Income Tax Act 1961, these figures could only have been declared by the applicant in ITR-5 of Return of Income as TOTAL INCOME, as the income of the applicant is not exempt from income tax under any provision.

4. In the Income and Expenditure account in respect of F.Y. ending 31.03.2016, 2017 and 2018, the applicant has shown income by way of donations amounting to Rs. 90,79,530/-, Rs. 40,38,362/- and Rs. 1,04,93,129/- respectively. Since the income of the applicant is not exempt from income tax as it is not registered u/s 12AA of the Income Tax Act, the receipt of donations should have been declared by the applicant as "Income

From Other Sources" and as per the Act and Rules of Income Tax, ITR-5 of return of income only could have been filed.

5. The applicant submitted copies of acknowledgement of Returns of Income filed for A.Y. 2016-17, 2017-18 and 2018-19 along with computation of income. In this computation of income the applicant has already considered itself as exempted institution which is registered u/s 12AA of the Income Tax Act and has accordingly claimed capital expenditure of Rs. 66,16,397,23/-, Rs.26,36,469/- and Rs. 15,98,751/-. The computation of income in above three assessment years is incorrect as the applicant is not registered under section 12AA of the Income Tax Act 1961.

5. On perusal of para 4.2, as discussed above, it is clear that the applicant has submitted accounts which are incorrect, and in contravention of provisions of Income Tax Act, including Rule "7A (1)(e) of the Income Tax Rules. The provisions of Rule 17A(1)(e) provide compulsory accompaniment of the following documents, with the application u/s 12A(1)of the Income Tax Act, 1961,:

Where the society or institution has been in existence during any year or years prior to the financial year in which the application for registration is made; self-certified copies of the annual accounts of the society or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;

5.1 The applicant has already considered itself as exempted institution in F.Ys. 2015-16, 2018-17 and 2017-18 and has erroneously submitted such annual accounts on 12.09.2019, which being incorrect, are against the provisions of Income Tax Act and Rules, hence cannot be accepted. The statutory provision of Rule 17A(1)(e) has been clearly contravened and necessary compliance to it has not been made by the applicant, besides having also misreported his income.

6. The applicant has failed to make necessary statutory compliance and also failed to provide necessary satisfaction with regard to its objects and genuineness of its activities. The registration sought by the applicant u/s 12A(1) of :he Income-tax Act, 1961 is therefore rejected."

4.1 We find that while rejecting the application of the assessee the Id. CIT(E) has not commented on the object clause of the assessee and neither he had commented adversely on the activities being carried out by the assessee whereas the requirement of the Act is that at the time of grant of registration to assessee the Id. CIT(E) has to examine the objects of the assessee as well as the genuineness of activities of the assessee. Therefore in view of these facts and circumstances we deem it appropriate to remit the matter back to Id. CIT(E)

who should pass a fresh order in accordance with the provisions of law and after providing sufficient opportunity to the assessee of being heard.

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

(Order pronounced in the open court on 20/01/2022)

Sd/-
(A.D. Jain)
Vice President

Sd/-
(T.S. Kapoor)
Accountant Member

Aks –
Dtd. 20/01/2022

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order
Assistant Registrar