

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.1825/Hyd/2019		
M/s. Society for Economic Development 504, Sahithi Aracade, Besides S.R.Nagar Police Station, Sanjeeva Reddy Nagar, Hyderabad-500 038 PAN : AAKAS3955M	Vs.	CIT(E) 2 nd floor(Annexe) Aaykar Bhawan Basheerbagh Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:		Shri Narayana, P.S., CA
Revenue by:		Shri Solgy Josat Kottaram, CIT-DR
Date of hearing:		04.08.2022
Date of pronouncement:		06.09.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 30.09.2019 passed by the CIT(E), Hyderabad rejecting the request for grant of registration u/s. 12A of the I.T.Act, 1961.

2. Facts of the case, in brief, are that the assessee e-filed application in Form No.10A seeking registration u/s. 12A of the I.T.Act on 30.03.2019. The learned CIT(E) issued a notice to the assessee asking for certain details. From the details so furnished by the assessee, he noted that undue benefit has been given to the President Smt.Kranthi and Treasurer Mr.Ramesh Raja who

have been given salary of Rs. 6 lacs and Rs.4,80,000/- per annum respectively. Further, the society has reimbursed their mobile bills. He noted that although various other persons having higher educational qualifications are paid lesser amounts, however, the President and Secretary of the Society are given much more than the salary given to similarly qualified employees. Further, no attendance register nor any appointment letter was produced to explain the genuineness of the salary paid to them. He further noted that salary of Rs. 9,000/- has been paid to the driver of Smt. Kranthi. Thus, there is violation of provision of section 13 of the I.T.Act for which, the assessee is not eligible for registration u/s. 12A of the Act.

3. He further noted that the President of the assessee Smt.Kranthi, is a partner in the firm called NRH Career Developers whose address is the same as that of the assessee society. Similarly, he noted that activity of NRH Career Developers is for providing skill development Training and the assessee also does skill development. It is also associated with the Skill Development Program of Government. NRH is receiving Income from National Skill development Corporation. Thus, everything of the assessee is matching with that of NRH Career Developers, a Partnership firm.

4. Another observation made by the Id.CIT(E) is that the sanction letter dated 20.03.2017, from Ministry of Minorities Affairs shows that Rs.1,44,07,500/- has been sanctioned to the society for Economic development as a joint venture with Sneha Developers and Sri Sai Constructions. He also observed that the other grants of Ministry of Minorities Affairs were jointly with Sneha Developers, Bihaspathi Educational Societies and Mythri Enterprises. From the pamphlets published by NRH Carriers Developers and assessee, he noted that both are claiming identical activity from the same premises. He therefore held how the so called Charitable entity can have MOU with business entities?.

5. The Id.CIT(E) noted that most of the payments are in cash including the rent and salary. Further, there were self withdrawals from the bank of huge amounts. The assessee did not produce corresponding bills to establish the genuineness of the expenditure, despite being asked to do so. He noted that the assessee has made certain advances which the assessee could not explain. He noted that an amount of Rs. 1 lakh has been shown as short term advance from Mr. Karthik. Although, Mr. Karthik was working as faculty on a salary of Rs. 18,000/- per month, the assessee failed to explain as to why an amount of Rs. 1 lakh has been received from Mr. Karthik. He further noted that bills and vouchers for expenses such as rent advance, advance for

system, advance for Falukuma-Nagulbanda Rent were not produced. The assessee also failed to substantiate as to why it has claimed that it has performed activities as per MOU entered with the government. According to the Id.CIT(E), the assessee is doing contractual activity as per the MOU and therefore, it is not a charitable activity as defined u/s. 2(15) of the I.T.Act. He further noted that assessee has entered into lease deed for five years for a premises, the lease deed dated 17.05.2017 is unregistered and therefore, the assessee has violated the provisions of Registration Act and Indian Stamp Act. It is also not registered as per provisions of section 17 of the Registration Act. This according to him, disentitles the assessee to claim the beneficial provisions like 12AA of the I.T.Act. Finally, the Id.CIT(E) held that as per the amendment in the Income Tax Act, which is effective from 01.09.2019, compliance of the Law for the time being in force by the Trust is mandatory. As per the Registration Act, the lease of immovable property for more than one year has to be registered. However, the assessee has not registered the same. In view of the above and relying on various decisions, he held that the assessee is not entitled to grant Registration u/s. 12AA of the Act. He accordingly rejected the Form No.10A filed before him.

6. Aggrieved with such order of the Id.CIT(E), the assessee is in appeal before the Tribunal by raising the following grounds:-

1) *The Order of the Learned Commissioner of Income Tax (Exemptions), Hyderabad is erroneous both on facts and in law.*

2) *The Learned commissioner of Income Tax (Exemptions), Hyderabad erred in pre-judging the application made in Form 10A, without verifying the facts and statements.*

3) *The Learned Commissioner (Exemptions), Hyderabad erred in holding that the president and the Treasurer of the Appellant Organization are holding a place of profit and deriving undue benefit provided to them.*

4) *The Learned Commissioner (Exemptions) , Hyderabad has overstepped his position in commenting that the interpretation of section 112AA(4) is 'ridiculous'.*

5) *The Learned commissioner (Exemptions) Hyderabad has grossly erred in surmising that merely because administrative offices are pooled under one roof for economic benefits; tantamounts to 'business activity' .*

6) *The Learned Commissioner (Exemptions), Hyderabad has grossly erred in concluding that the short term advances borrowed to meet expenses are not genuine; without even verifying the facts and evidences produced.*

7) *The case laws cited by the Learned Commissioner of Income Tax(Exemptions), Hyderabad are not relevant to the facts of the Appellant.*

8) *Any other ground that may be urged during the time of the hearing.*

7. The learned Counsel for the assessee strongly challenged the order of the learned CIT (E) in denying the grant of registration u/s 12AA of the I.T. Act. So far as the allegation of the learned CIT (E) that undue benefit has been given to the President and the Treasurer is concerned, he submitted that both of them are qualified professionals having requisite skills and competencies. The President, (Ms. V. Kranthi) had earlier worked with A.P. Productivity Council and has taken VRS to set up own training units. The assessee has ten training centres and the President & Treasurer are looking after all the 10 centres. He submitted that Mr. Y.V. Chandra Babu, who is a retired Bank

Manager, has been appointed to head a Center at Kerala with a salary of Rs.45,000/-p.m. Since the President and Treasurer are looking after 10 centres in all and the President has been paid an honorarium of Rs.50,000/-p.m. and the Treasurer Rs.40,000/-p.m therefore no undue benefit has been conferred to them and such payments are reasonable and are at par with the market rates. He submitted that out of the project grants received from the Govt., a minimum of 90% is required to be spent on the specified heads of accounts. The balance 10% of the amount is earmarked to meet the organizational overheads and administrative expenses. From the above 10%, the overall other establishments including honorarium has been paid to Mrs. Kranthi in her professional capacity.

7.1 Referring to the decision of the Hon'ble Rajasthan High Court in the case of CIT vs. Shri Ramdoot Prasad Sewa Samity Trist in ITA No.62/2020 dated 8.2.2022, he submitted that mere transaction of sale and purchase between two related persons would not be covered under the expression "diversion" of income. It has been held in the said decision that diversion of income would arise when transaction is not at arm's length and the sale or purchase price is artificially inflated so as to cause undue advantage to other person and divert the income. He accordingly submitted that denial of registration on the ground that undue benefits are given to the President & Treasurer is not justified.

8. So far as the 2nd allegation of the learned CIT (E) that the address of the partnership firm and that of the assessee is same at S.R. Nagar is concerned, he submitted that nowadays many entities are tying up with each other for space and resources sharing. He submitted that the assessee has subsequently taken another premises on lease and working on expanded activities. Therefore, this cannot be a ground for denying registration u/s. 12AA of the I.T.Act.

9. So far as the allegation of the learned CIT (E) that NRH Career Developers is also providing Skill Development Training is concerned, he submitted that NRH Career Developers is a partnership firm and is into providing training and event management activities on its own. It is run by a team of professionals and the partners are credited with remuneration in terms of section 40(b) of the I.T. Act.

10. So far as the MoU with business entities is concerned, he submitted that there is no element of business in it. He submitted that the assessee entered into MoU with other entities like Brihaspathi Educational Societies, Mythri Enterprises etc., to get eligibility to apply for the schemes of the govt. After allotment, the entire project is being implemented by the assessee only and the role of the MoU partners is Nil.

11. So far as the allegation of the learned CIT (E) that how can charitable entity have MoU with business entities is concerned, the learned Counsel for the assessee referring to various examples such as MoU by Dr. Reddy's Foundation with Dr. Reddy's Laboratories, Apollo Foundation with The Apollo Hospitals; Premji Foundation with WIPRO etc., submitted that merely because the assessee had MoU with certain entities cannot be a ground to question the genuineness of the activities of the assessee.

12. So far as the next allegation of learned CIT (E) regarding genuineness of the books are concerned, the learned Counsel for the assessee submitted that the same is also incorrect. He submitted that the cash withdrawals were made out of which salary payments were made to different individuals and not to a single person as alleged. Relevant vouchers were also produced before the learned CIT (E). He submitted that the cash payments are well within the permissible limits u/s 40A(3) of the Act.

13. So far as the allegation of the learned CIT (E) regarding the genuineness of the advances is concerned, he submitted that the borrowals of Rs.1.00 lakh was made from the President Mrs.V. Kranthi and due to typographical error, the name is printed as Karthik. Although this was clarified before the learned CIT (E)

during the personal hearing, however, he has not appreciated the same properly. He submitted that the amount of Rs.1.00 lakh was repaid on 10.5.2019 by way of NEFT.

14. So far as the allegation of learned CIT (E) that the assessee is doing contractual activities as per MoU and therefore, is not doing any charitable activity as defined u/s 2(15) of the I.T. Act is concerned, he submitted that the assessee has entered MoU with the Govt. of A.P for implementation of certain welfare schemes of the govt. like 'NAI MANZIL'. He submitted that as a procedural part of the implementation scheme, the project implementation agencies have to enter into a MoU with the Govt. He submitted that the decision cited by the learned CIT (E) in the case of CIT vs. Anandan Trust (2018) 96 Taxmann.com 207 is not applicable to the fact of the present case since there is no contract in the instant case and therefore, there is no question of any sub-contract.

15. So far as the allegation of the learned CIT (E) that the lease deed is not registered and therefore, the assessee has violated the Registration Act and Indian Stamp is concerned, he submitted that the assessee had entered into a lease agreement for the office space with the landlord Mr. Mohd Shakir which is for a period of 5 years and the lease deed is Notarised. This has been accepted by the Govt. Departments and they have approved the projects.

Therefore, merely because the assessee has not registered its lease deed will not be a ground for rejection of the registration u/s 12A of the I.T. Act.

16. So far as the various case laws relied on by the learned CIT (E) are concerned, he submitted that the facts of those cases are not applicable to the facts of the instant case.

17. The learned Counsel for the assessee referred to the order passed by the learned PCIT dated 24.9.2021 in assessee's own case granting registration u/s 12A from A.Y 2022-23 to 2026-27, copy of which is placed at Page 25 to 27 of the Paper Book. He accordingly submitted that the learned CIT (E), in the instant case is not justified in denying the claim of registration u/s 12A of the Act without properly appreciating the facts of the case. Therefore, the grounds raised by the assessee be allowed and the assessee be granted registration u/s 12A of the Act.

18. The learned DR, on the other hand, heavily relied on the order of the learned CIT (E) in rejecting the registration claimed u/s 12A/12AA. He submitted that the learned CIT (E) had thoroughly discussed the issue and referred to various violations by the assessee for which he denied the grant of registration u/s 12A. Therefore, the order of the learned CIT (E) rejecting the grant

of registration u/s 12A to the assessee be upheld and the grounds raised by the assessee should be dismissed.

19. We have heard the rival arguments made by both the sides, perused the order of the learned CIT (E) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied on by both the sides. We find the assessee in the instant case filed Form No.10A seeking registration u/s 12A on 13.3.2019. The learned CIT (E) rejected the application for grant of registration on the ground that the assessee has given undue benefit to the President & Treasurer and has thus violated the provisions of section 13 of the I.T. Act. The genuineness of the address is also in doubt because the address of the partnership firm and that of the assessee are same i.e. SR Nagar. Further, the assessee has entered into MoU with business entities and therefore, the genuineness of the activities of the assessee is in doubt. Further, in absence of production of any corresponding bills and vouchers to establish the genuineness of the expenditure, the genuineness of the books are also in doubt. He has also observed that a) the assessee has taken advance of Rs.1.00 lakhs from one Mr. Karthik, b) there are certain contractual activities as per the MoU, (c) the lease deed has not been registered as per the Registration Act and Indian Stamp. In view of the above discrepancies, learned CIT (E) denied the grant of registration u/s 12A of the Act. It is the submission of the

learned Counsel for the assessee that the payments made to the President & Treasurer are comparable and are at par with the market rates. Further, these persons are qualified persons looking after more than 10 centers. It is also his submission that the assessee to reduce its financial burden, shared the premises of the partnership firm. Therefore, the genuineness cannot be doubted. It is his submission that the assessee entered into MoU with other entities only to get the eligibility to apply for the schemes of the government and there is no element of business. Further, the genuineness of the books cannot be doubted since the cash withdrawals were made for payment of salary to different individuals and not to a single person and the payments are within the permissible limit u/s 40A(3) of the I.T. Act. It is also his submission that the assessee has entered into MoU with the Govt. of A.P for implementation of certain welfare schemes and there is no other contract. So far as the advances are concerned, it is his submission that the same has been taken from Mrs. Kranthi and not from Mr.Karthik and the same is a typographical error. So far as the lease deed is concerned, it is his submission that such lease deed is for a period of 5 years and the various govt. departments have accepted and approved the project. Thus, there is no reason for the learned CIT (E) to deny the grant of registration u/s 12A of the I.T. Act.

20. In our opinion and in the light of the arguments advanced by the Id. Counsel for the assessee, the issue has not been properly appreciated by the Id. CIT(E) while denying registration u/s.12AA of the I.T.Act. The various allegations made by the Id.CIT(E) while denying registration u/s. 12AA of the I.T.Act have been addressed by the Id. Counsel for the assessee, which in our opinion requires verification and proper appreciation of facts by the Id.CIT(E). So far as the allegations of the Id.CIT(E) that the assessee trust has paid undue advantage to the President and Secretary is concerned, it is the submission of the Id. Counsel for the assessee that they are looking after 10 centers and the salary paid to them is commensurate with their qualification and the area of operation and therefore, the same in our opinion requires proper appraisal of facts by the Id.CIT(E). Similarly, the allegation that the address of the partnership firm and that of the assessee are same in our opinion cannot be a ground for denying the benefit of registration u/s. 12AA of the I.T.Act. So far as the allegation of the Id.CIT(E) that the genuineness of the books of accounts are doubtful is concerned, we find merit in the arguments of the Id. Counsel for the assessee that the cash withdrawals so made were utilized for payment of salary and various other expenses and there is no violation of section.40A(3) of the I.T.Act. Moreover, we find from the order dated 24.09.2021 of the PCIT that he has granted registration u/s. 12AA of the I.T.Act for the period from the AY 2022-23 to AY 2026-27. Under these circumstances, we are of

the considered opinion that the matter requires a revisit to the file of the PCIT for deciding the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

21. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 06th September, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 06th September, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	M/s. Society for Economic Development 504, Sahithi Aracade, Besides S.R.Nagar Police Station, Sanjeeva Reddy Nagar, Hyderabad-500 038
2	CIT(E), 2 nd floor(Annexe), Aaykar Bhawan Basheerbagh, Hyderabad-500 004
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order