

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI
(Through Virtual Hearing)**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 142/Alld/2018

Assessment Year: N.A.

Surya Charitable Trust SA-2/415-A-9 Prem Chand Nagar Colony Pandeypur, Varanasi-221002, U.P.	v.	Commissioner of Income Tax (Exemption) 05 th Floor, T.C./46V, Vibhuti Khand, Gomti Nagar Lucknow-226010, U.P.
PAN:AARTS2395H		
(Appellant)		(Respondent)

Assessee by:	None
Revenue by:	Shri R.K. Vishwakarma, CIT DR
Date of hearing:	12.10.2022
Date of pronouncement:	13.10.2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 142/Alld /2018, is directed against order dated 16.06.2017 (Order No. ITBA/EXM/S/EXM1/2017-18/1004636847(1)) passed by learned Commissioner of Income Tax (Exemption), Lucknow (hereinafter called "the CIT(E)") u/s 12AA(1)(b)(ii) of the Income-tax Act, 1961 (hereinafter called "the Act") , dismissing application filed by assessee for seeking registration u/s 12A(1) of the 1961 Act . We have heard ld. CIT-DR through Virtual Court through Virtual hearing mode, while none appeared on behalf of assessee when this appeal was called for hearing before Division Bench nor any adjournment application was filed on behalf of the assessee. Even on earlier occasions on 20.03.2022, 23.05.2022 24.05.2022, 05.07.2022 and 24.08.2022 when

this appeal was called for hearing before Division Bench, none appeared on behalf of the assessee nor any application for adjournment was moved but the Division Bench was pleased to grant adjournment. Only on one occasion on 22.3.2022 , adjournment application was moved on behalf of the assessee before Division Bench which stood allowed by Division Bench. The Division Bench decided to adjudicate this appeal filed by the assessee after hearing ld. CIT-DR and pursuing material on record.

2. The grounds of appeal raised by assessee in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called “the tribunal”), reads as under:

“1. That the learned CIT(Exemptions) has erred on the facts and circumstances of the case and in Law in denying registration u/s 12AA on the ground of applicability of section 13(1)(c) read with section 13(3) of the Income Tax Act 1961.

2. That the transactions with specified persons alone will not attract the provisions of section 13(1)(c) of the Act, the rent paid by trust is very meager.

3. That the learned CIT(Exemptions) has erred in law and on facts in not granting an appropriate opportunity of hearing and has thus violated the laws of natural justice.

4. That the Learned CIT(Exemptions) erred in relying on the case laws which are distinguishable and not at all applicable to the facts of the case of the assessee while denying registration to the assessee.

5. That the appellate craves leave to Add to and /or Amend , modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.”

3. The brief facts of the case are that the assessee filed an application for registration u/s 12A(a) of the 1961 Act with ld. CIT(E) , Lucknow, on 19.12.2016. The ld. CIT(E) issued notice's to the assessee calling for information in support of its application. The assessee filed part replies. The ld. CIT(E) observed that the assessee has taken on lease for a period of five years a piece of land on yearly rent of Rs. 1,20,000/- , from Mrs. Ratna Pandey

mother of Trustee of the assessee namely Shri L K Pandey , Shri S K Pandey and Shri K K Pandey. Further, ld. CIT(E) observed that building is being constructed on said land taken on lease by the assessee, out of funds of the assessee-trust. The ld. CIT(E) observed that there is violation of provisions of Section 13(1)(c) read with Section 13(3) of the 1961 Act. The assessee was called upon by ld. CIT(E) to explain, but the assessee did not gave any reply to explain the said transaction with relatives of trustees, and applicability of Section 13(1)(c) read with Section 13(3) of the 1961 Act. The ld. CIT(E) observed that funds of the assessee trusts are being utilized /channelized for the benefit of interested persons rather than being used for benefit of public at large. The ld. CIT(E) observed that lease deed of land provides that on termination of the lease, the assessee can transfer back the land and building to the owner of the lessor namely Mrs. Ratna Pandey. The ld. CIT(E) observed that this application is made as part of planned arrangement to claim tax benefit on one hand and on the other hand to channelize its funds for the benefit of interested persons, in violation of Section 13(1)(c) read with Section 13(3) of the 1961 Act, and hence the assessee is not eligible for exemption u/s 11 of the 1961 Act. The ld. CIT(E) also observed that assessee has not produced, books of accounts , bank statements , vouchers in respect of expenses claimed to verify the objects and activities of the assessee . The ld. CIT(E) doubted the genuineness of the activities of the assessee and also held that objects of the assessee being charitable could not be proved . The ld. CIT(E) rejected application filed by assessee seeking registration u/s 12A(1) of the 1961 Act.

4. The assessee being aggrieved by order dated 16.06.2017 passed by ld. CIT(E) rejecting application for registration u/s 12A(1) has now filed first

appeal with tribunal. We have heard ld. CIT-DR who has strenuously argued to dismiss this appeal. We have also carefully perused the material on record. This appeal is filed belatedly by assessee by 220 days beyond the time prescribed u/s 253(3) of the 1961 Act. The assessee has filed an application praying for condonation of delay supported by Affidavit of Shri Laxmi Kant Pandey , Managing Trustee of the assessee. The reason stipulated in this affidavit is that the impugned order dated 16.06.2017 passed by ld. CIT(E) was duly received by Accountant of the assessee namely Mr. Harsh Agarwal on 26.06.2017, but the accountant misplaced the said order by wrongly tagging with some other file and forgetting the same. The assessee has not filed any affidavit of Mr. Harsh Agarwal , claimed to be Accountant of the assessee. It is also observed that the assessee is not vigilant . The assessee did not filed complete details/explanation before ld. CIT(E) to explain transactions with related parties , being in violation of Section 13(1)(c) read with Section 13(3), of taking on lease parcel of land owned by Mrs. Ratna Pandey for a period of five years on annual rent of Rs. 1,20,000/-. Mrs. Ratna Pandey being mother of the trustees of the assessee , namely Mr. L K Pandey, Mr. S K Pandey and Mr. K K Pandey, is covered u/s 13(3) of the 1961 Act. The assessee was using its own funds for constructing building on the said land. As per term of lease deed, the land so leased by assessee from mother of the trustees , at the option of the assessee could revert back to the owner , on termination of lease. The assessee did not gave any explanation before ld. CIT(E), about this entire transaction with interested parties. Even books of accounts, bank statements and vouchers were not produced by assessee before ld. CIT(E) . The ld. CIT(E) before granting registration u/s 12A is required to satisfy itself about the charitable nature of the objects of the trust

and genuineness of the activities, for which the assessee is required to produce evidences and other material to substantiate its claim. The Id. CIT(E) is empowered to call for all the relevant record and documents for its verification and examination, so as to satisfy itself about the charitable objects and the genuineness of the activity. Hence, the assessee is required to produce the relevant record and the documents including the books of accounts, bank statements, vouchers etc. for verification of the Id. CIT(E), so as to satisfy about the charitable nature of the objects and the genuineness of the activity, which in the instant case the assessee failed to do so. The provisions of section 12AA(1) are extracted hereunder :-

“[Procedure for registration. 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) of sub-section (1)] 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.”

The assessee in the instant case did not produce books of accounts, bank statements and vouchers, to substantiate its claim as to genuineness of its activities as well to charitable nature of its objects. Proceeding further, the assessee filed appeal with tribunal belatedly by 220 days beyond the time prescribed u/s 253(3) of the 1961 Act, and no satisfactory explanation is provided by the assessee. This shows that the assessee is not vigilant and is taking proceedings in a very casual manner. Proceedings further, even before tribunal, no explanation / paper book/written submissions are filed by the assessee, even as of date, although appeal was filed in 2018. The assessee is consistently not attending the proceedings before the Division Bench, on all the occasions on 20.03.2022, 23.05.2022, 24.05.2022, 05.07.2022 and 24.08.2022 when this appeal was called for hearing before Division Bench, wherein none appeared on behalf of the assessee nor any adjournment application was filed on behalf of the assessee, except only on one occasion on 22.3.2022 when adjournment application was moved on behalf of the assessee which stood allowed by Division Bench. Thus, keeping in view the entire conduct of the assessee as well after careful consideration of material on record, we are of the considered view that Id. CIT(E) has rightly rejected the application filed by the assessee for grant of registration u/s 12A(1) of the 1961 Act, as the assessee has failed to satisfy as to genuineness of its activities as well to charitable nature of its objects, and further there are transactions/dealings with related parties covered u/s 13(1)(c) read with Section 13(3) of the 1961 Act, and based on facts and circumstances of the case the benefit is given to related parties covered under Section 13(3). Reference is also drawn to the provisions of Section 114(g) of the Indian Evidence Act, 1872, that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The assessee in the instant case failed to produce relevant evidences, as outlined above. Thus, based on

the entire material on records, facts and circumstances of the case, we dismiss this appeal filed by the assessee. We order accordingly.

5. Thus, the appeal filed by assessee in ITA no. 142/Alld/2018 is dismissed.

Order pronounced through Virtual Court through virtual hearing on 13.10.2022 at Allahabad, U.P.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 13/10/2022

Copy forwarded to:

1. Appellant – Surya Charitable Trust, SA-2/415-A-9, Prem Chand Nagar Colony, Pandeypur, Varanasi, U.P.
2. Respondent – Commissioner of Income Tax(Exemption), Lucknow, U.P.
3. The ld. CIT-DR, ITAT, Varanasi, U.P.
4. CIT, Varanasi, U.P.
5. The Guard File