

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 165/Asr/2020
Assessment Year: NA

B.M.L. Welfare Trust,
Pampore Kashmir (J&K)

[PAN: AADTB 7192H]

(Appellant)

V. Commissioner of Income Tax
(Exemptions), Chandigarh

(Respondent)

Appellant by Sh. Joginder Singh, C.A.

Respondent by Sh. Hitendra Bhauraoji Ninawe, CIT-DR

Date of Hearing : 22.12.2022

Date of Pronouncement : 20.02.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Exemptions), Chandigarh dated 14.09.2020.

2. The assessee has raised the following grounds of appeal:

"1. That the Learned Commissioner of Income tax (Exemptions), Chandigarh erred in rejecting the application for registration Under Section 12AA of the

Income tax Act, 1961 merely on assumptions, presumptions and apprehensions, without appreciating the factual, legal and statutory position for grant of registration.

- 2. That the Learned Commissioner of Income tax (Exemptions), Chandigarh failed to appreciate that activities of the Appellant, include to establish, equip, maintain, operate, adopt, assist Educational Institutions, Schools and colleges in India for promotion and advancement of education, Training and learning in all disciplines/ faculty including Arts, Science, Commerce, Humanities, Culture, Technology, Vocational, Special Education including information and Bio-Technology and advancement of any other object of general public utility as provided in Section 2(15) of the Income tax Act, 1961.*
- 3. That the Learned Commissioner of Income tax (Exemptions) erred in rejecting the application u/s 12AA on the ground that the appellant Trust has created an arrangement whereby it is not only laundering its income but also diverting the same in the hands of Trustee/ Members and the Applicant trust is not established for the purpose of charity and is not limited to its objectives.*
- 4. That the Learned Commissioner of Income tax (Exemptions) erred in rejecting the application u/s 12AA on the ground that the appellant Trust is being misused as an instrument in the hands of trustee/ member and involved in activities which are not genuine by any definition.*
- 5. That the Learned CIT(Exemptions) has not considered completely the information/ evidence brought on record in correct perspectives while denying the registration u/s 12AA of the Income tax Act, 1961.*
- 6. That while denying the registration u/s 12AA of the Act, the Ld. CIT(Exemption) never held that the Trust was not for charitable Trust as defined u/s 2(15) of the Act.*
- 7. That the order of the Ld. CIT(Exemption) is perverse on account of consideration of facts which are not relevant for deciding an application u/s 12AA and are also volatile on account of non-consideration of vital information submitted by the Appellant.*
- 8. That on the facts and circumstances of the case and in the law, the Ld. CIT(Exemption) has grossly erred in denying registration to the appellant trust u/s 12AA of the Income tax Act as claimed. At the stage of grant of*

registration u/s 12AA of the Act, the Ld. CIT(Exemption) is supposed to examine only the objects of the Trust and is not appropriate on his part to examine the other aspects which is to be examined by the Assessing Officer on year to year basis at the time of claiming exemption u/s 11 of the Income tax Act.

9. *That the order of the Ld. CIT(Exemption) is perverse as the only requirement for granting the registration is that the object of the society should be charitable in nature and its activities were genuine. The Hon'ble Supreme Court in the case of M/s Anand Social and Educational Trust v/s CIT in Civil appeal No.5437-5438/2012 vide order dated 19/02/2020 has laid down the basic principles for allowability of registration.*

10. *That the Ld. CIT(Exemption) has failed to carry out the mandatory requirement of satisfying himself about the objects and genuineness of the activities of the appellant but instead going beyond his mandate by looking into the purposes of creation of the appellant Trust and declining the registration primarily for same reason."*

3. Briefly the facts of the case are that the assessee trust has applied for registration u/s 12AA of the Income Tax Act, 1961 vide its application in Form No. 10A duly filed electronically on 17.12.2019. The Id. CIT(E) has not disputed the aims and objectives of the assessee's trust, are charitable in nature and the activities carried out in lieu of the objects of the trust. The Id. CIT(E) objection was that an arrangement was made by a group of persons who owns the land and had given this land on lease to their partnership firm which subsequently given to their trust at an exorbitant rent. As the trust has paid a huge rent, it becomes clear that these persons are diverting funds of the trust to a partnership firm which is nothing but an

entity controlled by trustee/members of the appellant trust. Thus, the Id. CIT(E) has alleged that applicant trust has created an arrangement whereby it is not only laundering its income but also diverting the same in the hands of the trustee/members. Thus, the CIT(E) held that the applicant trust is not established for the purpose of charity as its activity are not limited to its objectives, rather it is misused as an instrument in the hands of trustee/members and involved of activities which are not genuine by any definition. Accordingly, he rejected the application of the applicant trust for registration u/s 12AA of the Act.

4. The Ld. Counsel for the appellant Trust submitted before us that the Ld. CIT(Exemptions) has not appreciated the documentary evidence brought on record in right perspectives while denying the registration u/s 12AA of the Income Tax Act, 1961. He argued that the Ld. CIT(Exemption) never held that the Trust was not a charitable Trust as defined u/s 2(15) of the Act, while denying the registration u/s 12AA of the Act; that the impugned order of the Ld. CIT(Exemption) is perverse to the facts on record and that the order of the Ld. CIT(Exemption) is perverse to the facts on record as the only requirement for granting the registration is that the object of the society should be charitable in nature and its activities were genuine. The Hon'ble Supreme Court in the case of M/s Anand Social and

Educational Trust v/s CIT in Civil Appeal No.5437-5438/2012 vide order dated 19/02/2020 has laid down the basic principles for allowing registration.

4.1 The Ld. AR submitted that at the stage of grant of registration u/s 12AA of the Act, the Ld. CIT(Exemption) is supposed to examine only the objects of the Trust and it is not appropriate on his part to examine the other aspects which is to be examined by the Assessing Officer during the assessment proceeding on year to year basis at the time of claiming exemption u/s 11 of the Income Tax Act. He argued that the Ld. CIT(Exemption) has exceeded the mandate of law that requires it to satisfy himself about the objects and genuineness of the activities of the appellant but instead gone on mere assumptions, presumptions and apprehensions, without appreciating the factual, legal by misinterpretation of the purposes of creation of the appellant Trust to decline the registration in violation of the law. In support, he filed a brief synopsis which reads as under:

“The brief facts of the case are that the assessee Trust had applied for the first time for registration under section 12AA of the Income tax Act, 1961 as per the Trust Deed executed on 22nd day of February, 2019 which was duly registered with Sub-Registrar, Pampore. As per Clause 3 of the said Trust deed, the main aims and objectives of the Trust are:-

- (a) *To establish, equip, maintain, operate, adopt, assist educational institutions, schools and colleges in India for promotion and advancement of education, training and learning in all disciplines/ faculty including arts,*

science, commerce, humanities, culture, technologies, vocational, special education including information and bio-technology, distance education etc.

(b)

(c)

(d) etc

From the objects as enshrined in the Trust deed, it is clear that the aims and objects are in conformity with the provisions of section 2(15) of the Income tax Act, 1961. However, the Ld. Commissioner of Income tax (Exemptions), Chandigarh

The purpose of provisions of section 12AA is to enable registration only of such trust or institution whose objects and activities are genuine. Since the section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done and the term activities in the provision includes proposed activities. That is to say, the registering authority is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. The only requirement for granting the registration is that the object of the society should be charitable in nature and its activities were genuine. The Hon'ble Supreme Court in the case of M/s Anand Social and Educational Trust v/s CIT in Civil Appeal No.5437-5438/ 2012 vide order dated 19.02.2020 has laid down the basic principles for allowability of basic registration.

2. It would not be out of place to mention here that your Honour would appreciate the fact that on 20th March, 2020, the Hon'ble Prime Minister addressed to the Nation about the spread of Covid-19 and immediately thereafter, the entire Nation was put under lockdown and all the activities were halted. Keeping in view the sensitiveness of the outbreak of the covid-19, the Union Government issued Press Note dated 31st March, 2020 which clearly substantiates all these facts. The CBDT had issued instructions vide letter No.F.No.380/I/2020-IT(B) dated 08.05.2020 wherein it is categorically mentioned that no communication with the assessee having adverse effect on him/ her is to be done during this period till fresh guidelines are issued by the Board. But inspite of grim situation prevailing in the entire world including India, the assessee trust filed all the information as called for by the Ld. CIT(E) on different dates. These facts have duly been incorporated by the Ld. CIT(E) in his order and copies of the submissions made are submitted herewith for your kind perusal.

3. The Ld. CIT(E) has not pointed out any adverse on the object and activities of the trust. The Ld. CIT(E) has to satisfy while granting the registration u/s 12AA of the Act that the objects of the assessee trust are charitable in nature and the activities are genuine. The objects of the trust are educational and are covered under the definition of section 2(15) of the Income tax Act, 1961. The Hon'ble Supreme Court in the case of M/s Anand Social and Educational Trust v/s CIT in Civil appeal No.5437-5438/2012 vide order dated 19/02/2020 has laid down the basic principles for allowability of registration. Since the assessee Trust has fulfilled as the requisite conditions as laid down under the said provisions of the Act, it is prayed that the Ld. CIT(E) may kindly be directed to allow registration under Section 12AA of the Income tax Act, 1961 to the assessee trust.

Further, the Hon'ble Delhi Bench 'G' Delhi in the case of Sanatan Dharam Sabha Durga Bhavan Hissar Road, Rohtak v/s CIT(E) Chandigarh ITA No. 2468 & 2469/2017 held that **we may observe at the stage of grant of registration u/s 12AA of the Act what is required to be seen, whether activities of the Trust or institution are genuine and secondly, objects are of charitable in nature. At the stage of granting registration u/s 12A of the Act, authority concerned should not assume the role of AO to examine whether the conditions for availing the exemption u/s 11 of the Act are fulfilled or not. These aspects certainly can be looked into at the stage of assessment. In any case of the matter, even after grant of registration u/s 12AA, if in future, it is found that the activities of the trust are in genuine and the trust is deviating from the objects based on which registration was granted, the authority concerned can proceed to cancel the registration.**

Also reliance is placed on the judgment of the Hon'ble jurisdictional Bench in the case of M/s Shri Swami Shankarnath Parvat Charitable and Welfare Trust V/s CIT(E), Chandigarh vide order dated 21.09.2021 passed in ITA No.602/Asr/2018. The issue in the said judgment is squarely covered to the case of the assessee trust.

In view of all these facts, it is prayed that the Ld. PCIT (Central) may be directed to allow registration to the assessee Trust.”

5. The Id. DR stands by the Id. CIT(E)'s order.

6. Heard the rival contentions and perused the material on record. Admittedly, the department has not disputed the fact that the Trust was a charitable Trust as defined u/s 2(15) of the Act, as the Ld. CIT(Exemption) never objected to the charitable nature of objectives and genuineness of the activities of the Trust while denying the registration u/s 12AA of the Act. In our view, merely questioning the purpose of creation of Trust without disputing the charitable nature of objects, genuineness of activities and the manner of carrying out the activities of the trust in consonance to its objectives renders the impugned order of the Ld. CIT(Exemption) perverse to the facts on record. Further, the only requirement for granting the registration is that the object of the society should be charitable in nature and its activities were genuine. On this issue, the Hon'ble Supreme Court in the case of M/s Ananda Society and Educational Trust v/s CIT in Civil Appeal No.5437-5438/2012 vide order dated 19/02/2020 has laid down the basic principles for allowing registration by observing that Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such

registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

7. The Coordinate Bench in the case of M/s Sh. Swami Shankarnath Parvat Charitable and Welfare Trust v. CIT(E) Chandigarh (Supra) held 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 carry on 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."

23. Similarly in CIT vs. Surya Education Charitable Trust in ITA No. 701/2010 the Hon'ble Jurisdictional High Court in paragraph 11 had held as under:

"Section 11 of the Act contemplates that the income as specified therein shall not be included in the total income of the previous year of the person in receipt of the income derived from the property held under the Trust wholly for charitable or religious purposes, whereas Section 12 of the Act, deals with the contributions received by the Trust or an Institution, established for charitable and religious purposes, receiving contribution,

shall not be an income in terms of Section 11 of the Act. The benefit of Sections 11 and 12 of the Act, are available only if such Trust or Institution is registered under Section 12AA of the Act. On the other hand, Section 10(23C) of the Act are the provisions of the Act in substitution of the earlier provisions of Section 10(22) of the Act as to which income shall not be included in computing the total income of any person. Therefore, the provisions of Sections 11, 12 or Section 10(23C) of the Act, deal with the income of a Trust or of the Institution and the circumstances as to when such income is to be excluded for computing the total income, but the basis of such benefit is the registration under Section 12AA of the Act. Unless a Trust or Institution is registered under Section 12AA of the Act, such Trust or Institution shall not be entitled to exclude from its total income, deductions or contributions or from other sources. Therefore, the principles laid down for excluding the income from consideration under Section 10(22) now 10(23)(C) or Sections 11 and 12 are not applicable while considering the application for registration under Section 12AA of the Act. The application for registration is required to be made within one year of the creation of the Trust. Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust is undertaking at present and also which it may contemplate to undertake. The insertion of sub-section (3) to Section 12AA of the Act, clarifies the said fact, when it empowers the Commissioner to cancel the registration if the activities of the Trust are not carried out in accordance with such objects. Therefore, the object of Section 12AA of the Act, is to examine the genuineness of the objects of the Trust, but not the income of the Trust for charitable or religious purposes. The stage for application of income is yet to arrive i.e. when such Trust or Institution files its return. Therefore, we find that the judgments referred to by the learned counsel for the appellant are not applicable to the facts of the present case arising out of the question of registration of the Trust and not of assessment.”

24. Similarly in paragraph 4 of the jurisdictional High Court in the matter of *Shirdi Sai Darbar Charitable Trust* had held as under:

“4. The matter has been examined by the Tribunal after perusing the relevant statutory provisions. It has been categorically recorded by the Tribunal that the CIT (E) has to satisfy two conditions while granting registration under Section 12AA of the Act. Firstly, whether the objects of the assessee are charitable in nature and thus, the activities are genuine. It cannot be concluded on the basis that the assessee has not filed its

income tax returns in earlier years that the activities of the assessee are not genuine. It has been further recorded that Section 13 of the Act comes into play at the time of granting exemption under Section 11 of the Act and not at the time of granting registration under Section 12AA of the Act. No adverse remarks have been recorded by the CIT (E) with regard to the objects contained in the memorandum of the assessee-trust to come to the conclusion that its activities are not genuine. Thus, it has been rightly directed by the Tribunal to the CIT (E) to grant registration under Section 12AA of the Act. The relevant observations recorded by the Tribunal read thus:-

"We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. The first reason on the basis of which the Commissioner of Income Tax (Exemptions) has refused to grant registration to the assessee is that the assessee has not been filing its income-tax returns in the earlier years. We do not find that it is a good reason to reject the application for registration since the two conditions which the Commissioner of Income Tax (Exemptions) has to satisfy while granting the registration under Section 12A of the Act, are that the objects of the assessee are charitable in nature and the activities are genuine. Just because the assessee has not filed its income tax returns in earlier years, it cannot be said that the activities of the assessee are not genuine. Reliance placed by the learned counsel for the assessee on the judgment of the Allahabad High Court as well as the order of the Chennai Bench of the Tribunal are not out of place, whereby it has been held that non-filing of return cannot be one of the reasons for denying registration under Section 12A of the Act. With regard to the second objection raised by the Commissioner of Income Tax (Exemptions) that as per clause- 12 of the Memorandum of trust, the trustees have been given absolute powers to manage the property. We have perused the clause-12 of the Memorandum of the trust, whereby the trustees are authorised to demise the immovable property or properties of the trust either from year to year or for any fixed term or for any term of years or on monthly basis at such rent and subject to such conditions as they deem fit and proper and also accept surrender of lease and may manage the property as they think proper. From the perusal of this clause, we observe that the trustees have been given powers to give property of the trust on lease or on rent. We do not find anything wrong in this clause so as to deny the assessee the registration under Section 12A of the Act. As regards the apprehension of the Commissioner of Income Tax (Exemptions) that his clause may attract the provisions of Section 13 (1)(c) of the Act, we are of the view that the conditions as provided in Section 13 or elsewhere are to be seen by the Assessing officer at the time of assessment proceedings on yearly basis and

not by the CIT (Appeals) while granting registration under Section 12A of the Act.”

24. Respectfully, the following decision of the Hon’ble High Court and the Coordinate Bench in the case of Dr. Madan Lal Atri and Sanatan Dharm Charitable Education Society we are of the opinion that the assessee is entitled registration accordingly we direct the CIT(E) to grant registration to the society from the date of application. ”

10. In the present case the finding recorded by the CIT exemption is not arising out of the record, rather it is contrary to the record. In our view the assessee was able to prove that the objects of the assessee are charitable, and the activities of the assessee are also genuine.

Therefore, respectfully following our decision in the case of Saraswati Education (supra), we direct the CIT exemption to grant registration to the assessee society from the date of application.”

8. In view of above discussion, we hold that the appellant assessee’s grievance is genuine and accordingly, we direct the CIT exemption to grant registration to the assessee trust from the date of application.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.02.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT

- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order