

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: H: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.297/Del/2021
Assessment Year: 2020-21

Roop V.K Jain Foundation, Plot no. 19 Roz Ka Meo, Industrial Area, Nuh, Mewat, Haryana 122007 PAN AADTR 230 N	vs.	The CIT (Exemption), Chandigarh
(Appellant)		(Respondent)

For Assessee :	Shri Atreya G.C, Adv.
For Revenue:	Ms. Sapna Bhatia, CIT(DR)

Date of Hearing :	12.07.2023
Date of Pronouncement :	14.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(Exemption) Chandigarh dated 16.09.2020 for AY 2020-21.

2. The grounds of assessee are as follows:-

I. THAT the impugned order passed by the learned Commissioner of Income Tax (Exemption) unjust and arbitrary, contrary to provisions of law and facts available on record.

II. That the learned Commissioner of Income Tax (Exemptions) has not considered completely the information/evidence brought on records, in correct perspectives while denying the registration us 12AA of the Income Tax Act.

III. While denying the registration u/s 12AA of the Act, the learned Commissioner of Income Tax (exemptions) never held that the Trust was not for charitable purposes as defined us 2(15) of the - Income Tax Act 1961.

IV. The Ld. CIT(A) has erred on facts and in law in rejecting the application for grant of registration Us 12AA of Income Tax Act, 1961 of the Appellant

on the basis of apprehensions and presumptions for an event that might happen in future and not on the basis of facts ignoring the provisions of Income tax Act 1961.

3. The Id. counsel of assessee submitted that the impugned order passed by the learned Commissioner of Income Tax (Exemption) unjust and arbitrary, contrary to provisions of law and facts available on record and has not considered completely the information/evidence brought on records, in correct perspectives while denying the registration u/s 12AA of the Income Tax Act. He further submitted that the registration u/s 12AA of the Act, the learned Commissioner of Income Tax (exemptions) never held that the Trust was not for charitable purposes as defined u/s 2(15) of the - Income Tax Act 1961 and rejected application merely on the basis of apprehensions and presumptions for an event that might happen in future and not on the basis of facts ignoring the provisions of Income tax Act 1961.

4. Further placing reliance on the order of ITAT Mumbai dated 02.01.2015 in the case of Geeta Lalvani Foundation vs. DIT(E) in ITA No. 3566/Mum/2013 for AY 2013-14 the Id. counsel submitted that nothing has been brought on record, except alleging that there is no dissolution clause in the trust deed, that the same is a mandatory clause of dissolution of any trust. Further placing reliance on the order of ITAT Mumbai Bench dated 14.07.2014 in the case of Tara Educational & Charitable Trust vs. DIT(E) the Id. counsel submitted that the Id. DIT(E) has gone beyond scope of enquiry while rejecting application of assessee on the ground that its trust deed does not contain dissolution clause and on totality of irrelevant ground without pointing out as to how he was not satisfied either about the objects of trust or the genuineness of its activities.

5. Lastly, placing reliance on the judgment of Hon'ble High Court of Bombay in the case of CIT(E) vs Tara Educational & Charitable Trust the Id. counsel submitted that the Hon'ble High Court has upheld the said order of ITAT Mumbai Bench and submitted that in absence of the clause of dissolution in the trust deed would in no manner and impediment in the operation of the statute. The Id. counsel submitted that if it is found necessary then the assessee is ready to include dissolution clause in its trust deed and copy of the same would be submitted to the Id. CIT(E) for his satisfaction and compliance but in absence of any other allegation about the charitable objects of the trust and genuineness of its activities the registration u/s. 12A of the Act cannot be denied at the threshold.

6. Replying to the above, the Id. Senior DR supported the order of Id. CIT(E). however, in all fairness, the Id. CIT(DR) candidly agreed that the only objections of Id. CIT(E) would be met if the assessee trust files its amended trust deed including dissolution clause.

7. On careful consideration of above submissions, from the impugned order we clearly note that the Id. CIT(E) has not made any allegations or has not made any adverse comment or conclusion, except omission of dissolution clause in the trust deed, regarding charitable objects of the assessee and the genuineness of its activities. Therefore in our humble opinion although the inclusion of dissolution clause in the trust deed is not mandatorily required and absence of such clause cannot be a sole basis for rejecting application seeking registration u/s. 12AA of the Act. This conclusion also gets support from the judgement of Hon'ble Bombay High Court in the case of CIT(E) vs Tara Educational & Charitable Trust (supra) and order of ITAT Mumbai Bench in the case of Geeta Lalvani Foundation (supra) therefore the sole basis for rejection of registration u/s. 12AA of the Act taken by the Id. CIT(E) is not correct, valid and sustainable thus the same is dismissed and the Id. CIT(E) is directed to grant registration to the appellant trust u/s. 12AA of the Act.

8. Before we part with the order, we find a proper and necessary to direct the assessee to amend its trust deed by way of inclusion of dissolution clause therefore we direct the appellant to submit a copy of amended trust deed before Id. CIT(E) clarifying the position in a situation dissolution of trust, complying with the requirements of registration granting authority preferably within two months of receipt of this order.

9. In the result, the appeal is allowed with the directions given hereinabove.

Order pronounced in the open court on 14.07.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 14th July, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi