

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 840/Bang/2024 (Assessment Year: 2024-25)		
Printech Park Cluster-Bangalore #84/1, KSPA-XIL PTTC 6th Corss, 4th Main, Chamarajpet, Bengaluru 560018 PAN – AABTP8959N (Appellant)	vs.	The Income Tax Officer (Exemption), Ward - 2 Bengaluru (Respondent)
Assessee by: Shri Kupendra Setty, CA		
Revenue by: Ms. Anjala Sahu, CIT-DR		
Date of hearing:	26.06.2024	
Date of pronouncement:	28.06.2024	

ORDER

Per: Prakash Chand Yadav, J.M.

This appeal filed by the assessee challenges the DIN & order No. ITBA/EXM/F/EXM45/2003-24/1063255632(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 23.03.2024 passed under Section 12AA of the Income Tax Act, 1961 (the Act).

2. The brief facts of the case are that the assessee is a society, setup for advancement of General Public Utility (GPU). It has formulated various byelaws for carrying out charitable activities, which includes promoting and supporting of printing allied industries. Few of the activities as coming out from material on record are mentioned herein below.

- i) development of industrial layout, not yet completed
- ii) Maintenance of the Printing Cluster(industrial layout)
- iii) CFC-Printing Services to general public and members.

3. It is pertinent to observe that the assessee society has got registration u/s 12A since AY 2014-15, which means revenue has accepted it as a charitable organisation. In fact in one of the year the co-ordinate bench of this Tribunal, in the assessee's own case dated 07.10.2015 has also held that the GPU of assessee are in the nature of charitable activities. The view of the Coordinate Bench has been fortified by the Hon'ble High Court vide order dated 10.02.2021. (Copy placed on record by the assessee).

4. In the impugned year also, the assessee got provisional registration in Form 10AC/24 dated 27.05.2021 with DIN: AABTP8959NE2020601. However when assessee applied for permanent registration the DIT(E) dismissed the application of the assessee despite the submissions of all the details as required by Id. DIT(E).

5. Aggrieved with the order of the DIT(E) assessee came before us and contended that the activities of the assessee society are for the benefit of public at large cannot be treated as commercial activities, especially when the objects of the society are for no profit motive. The activities of society are not profit motive as evident from the following facts.

- i) there is no distribution of profit or surplus, amongst members
- ii) there is no payment of salaries/remuneration/other benefits to the members of the society
- iii) the activities are not continued on sound and recognized business principles
- iv) the society is running under losses as can be verified from audited financial statements.

6. Counsel for the assessee after referring to the activities concluded his arguments by averting that the rejection of registration u/s 12AB is uncalled for in the present case.

7. The Id. Counsel of the assessee, also argued the DIT(E) has also not provided copy of the report received from the Assessing Officer (AO) and also violated the principles of justice.

8. Ld CIT-DR appearing virtually drew the attention of Bench towards the financials of the assessee and contended that perusal of the receipt and expenditure accounts of the assessee would show that the assessee mainly drawing income from other sources and not from any charitable activity or activity of GPU. CIT-DR further contended that the assessee has not applied the funds in furtherance of the

objects of GPU. Lastly she relied on the Judgment of Hon'ble Supreme Court in the case of Ahemdabad Urban Development Case reported in 2022] 449 ITR 1 (SC) herein after referred to as AUDA case).

9. After considering the rival submissions, we observe that though the assessee has raised 6, the solitary issue is whether s.12A registration is to be granted to the assessee on the ground that the assessee is engaged in running services in the nature of GPU without charging any exorbitant fees for such services. We observe that the the Id. DIT(E) has rejected the application due to following reason: -

“8. From the above financial statements, it could be observed that assessee was developing the land acquired from KIADB and was in the process of converting into sites for sale. Further the assessee has received income for lending its common facility centre (CFC) for its members and non-members, which are shown under the heads “MMC Charges received” and “Sales-Printing”.”

10. It is pertinent to observe that the assessee has been provided Common Facility Center(CFC), by Karnataka Printer Association. In this CFC the Government of India as well as State Government of Karnataka has contributed a combined share of 85% and the balance 15% was collected from the members to start the CFC. Since the Center and State Govt has got substantial interest, it is thus obvious that accounts of assessee would be subjected to examination by CAG also. Be that as it may be it is the submissions of the assessee that entire income has been utilised to train the service cluster members.

11. In this factual backdrop we are of the opinion that at the time of grant of registration u/s. 12A, the authorities have to see two things: -

- (a) Whether the objectives of the assessee, applying for registration, are for General Public Utility; and
- (b) The activities of the assessee are genuine or not.

12. The collection of fees and application of income etc. would have to be examined at the stage of assessment proceedings u/s 143(3) of the Act. Granting registration per se does not mean that assessee will automatically get the benefits of section 11 to 13, **dehors** any scrutiny proceedings.

13. The Legislature has empowered the authorities to withdraw registration of s. 12A, in case the registered society violates the stipulations for which 12A exemption has been granted. Reference can be made to the judgment of Hon'ble Apex Court in the case of Annada Social & Educational Trust Vs CIT reported in 272 Taxman 207(SC), wherein their lordships have observed as under:-

“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”

14. We are conscious of the fact that the above observations are in the matter of trust. However the same will apply mutatis mutandis in the case of an entity carrying out activities of General public utility

15. When we examine the proceedings happened in the case at hand in the light of the above judgment we observe that the DIT(E) has stepped into shoes of AO and has discussed such issues which are subject matter of assessment, means he has proceeded to assess the income of the assessee, and that too without providing the report of the AO..

16. Further the assessee has been granted 12A registration in the past years also by the Revenue as observed elsewhere in this order and in one of the year the ITAT, has granted registration to the assessee society, which in turned affirmed by the Hon'ble Jurisdictional High Court. Further the assessment of AY 2022-23 has been framed u/s 143(3) dated 24.03.2022, Copy of the order at **Page Number 46 to 49 of the PB**. In those proceedings no adverse comment has been made by the AO.

16. So far as applicability of AUDA (supra) case is concerned certain observations made by the Hon'ble Apex Court in para 202 of the judgement are quoted hereunder: -

202. In the opinion of this court, the change in definition in Section 2(15) and the negative phraseology excluding from consideration, trusts or institutions which provide services in relation to trade, commerce or business, for fee or other consideration has made a difference. Organizing meetings, disseminating information through publications, holding awareness camps and events, would be broadly covered by trade promotion. However, when a trade promotion body provides individualized or specialized services such as conducting paid workshops, training courses, skill development courses certified by it, and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinised more closely. Such activities are in the nature of services "in relation to" trade, commerce or business. These activities, and the facility of consultation, or skill development courses, are meant to improve business activities, and make them more efficient. The receipts from such activities clearly are 'fee or other consideration' for providing service "in relation to" trade, commerce or business."

11. A perusal of the above would show that the Hon'ble Apex Court has categorically held that **in case an entity providing GPU services, having 12A registration, provided individualised and specialised services then it is a matter of debate** whether the services would be in the nature of GPU services or not. However, all these things are to be examined at the time of assessment by the AO and at the time of registration the authority is not empowered to step into the shoes of the AO. In fact the appeals before the Larger Bench of Apex Court in the case of AUDA were arising from the proceedings of 143(3) of the Act and not in the context of granting registration under 12A or 10(23(C)).

12. In view of the above discussion we are of the view that having regard to the fact that it is the stage of granting 12A registration to the assessee the DIT(E) has erred in denying 12A to the assessee. Therefore we direct the DIT (E) to examine the matter a fresh in the light of the above observation after confronting the report of the AO to the assessee.

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

Order pronounced in the open Court on 28th June, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bengaluru, Dated: 28th June, 2024
n.p.

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2. *The Respondent*
3. *The CIT, concerned*
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By Order

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Assistant Registrar
ITAT, Bangalore