

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

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

ITA No.1034/Bang/2024

Canara Bank Golden Jubilee Staff Welfare Fund No.14 Naveen Complex M.G.Road Bangalore – 560 001. PAN: AAATC1435H.	vs.	The Commissioner of Income- tax (Exemption) Bangalore.
(Appellant)		(Respondent)

Appellant by: Sri.C.Ramesh, CA
Respondent by: Sri.D.K.Mishra, CIT-DR

Date of Hearing : 16.07.2024	Date of Pronouncement: 22.07.2024
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ORDER

Per Prakash Chand Yadav, JM :

The present appeal of the assessee is arising from the order of the learned CIT(Exemption), Bangalore dated 27th March, 2024 having DIN & Order No.ITBA/EXM/F/EXN45/2023-24/1063440703(1).

2. The assessee has raised eleven grounds of appeal. However, the solitary issue involved in the present appeal is whether the action of the CIT(E) in denying registration u/s.12A of the Income-tax Act, 1961 to the assessee is tenable or not.

3. The facts leading to the filing of the present appeal are that the assessee is a charitable trust registered under the Karnataka

Societies Act on 13th August, 1956. The assessee has obtained provisional registration u/s.12AB of the Act on 6th January, 2022, which was valid for Asst. Years 2022-2023 to 2024-2025. Thereafter the assessee on 30th September, 2023 filed an application in Form No.10AB seeking regularization of the provisional registration. On receipt of the application from the assessee, the CIT(E) written letters to the Jurisdictional Assessing Officer (JAO) and sought his comments on the details / documents filed by the assessee. The Id.CIT(E) observed that the JAO has not recommended for the regularization of registration of the assessee-society. Thereafter the Id.CIT(E) has gone through the balance sheet and income and expenditure account of the present assessee and concluded that the assessee is meant only for the benefit of Canara Bank Employees. The Id.CIT(E) was of the view that the benefits are exclusively meant for the members of the assessee and not for general public at large and hence the assessee cannot be said to be a society engaged in charitable activities. The Id.CIT(E) referred to the proviso of section 2(15) of the Act and held that the assessee is not engaged in advancement of the object of general public utility.

4. Aggrieved with the order of the Id.CIT(E), the assessee filed the present appeal and argued that the Id.CIT(E) has erred in not regularizing the assessee for certificate u/s.12AB of the Act. The Counsel for the assessee has also filed written submissions before the Bench and has relied upon various judgments.

5. The learned Departmental Representative appearing for the Revenue relied upon the orders of the authorities below and argued

that the ld.CIT(E) is correct in denying the certificate u/s.12AB of the Act to the assessee.

6. After considering the rival submissions, we observe that the assessee-society was created on 13th August, 1956. The Memorandum of Association of the assessee-society is annexed in paper book pages 19 to 28. The main objects of the assessee-society are as under: -

“a) Economic, Social and Moral advancement of the members, and to encourage and help them to develop habits of thrift, self help and better living.

b) to provide recreation and arrange outing and run holiday and convalescent homes for members,

c) to give financial aid or loans with or without interest to members in case of sickness, disability, or distress amongst the members or their families or for education of their children, etc., and to adopt any measures or proposals or take such steps as may be determined from time to time for the welfare of the members of the Fund, whether singly or in collaboration with other institutions or associations.”

7. The dissolution clause of the present assessee is there at page no.27 para 60, which reads as under:-

“(i) The Association may. be dissolved only after a resolution of the General Body specially called for the purpose is passed with a majority of 51 per cent of the total number of members of the Association and 4/5th the number of members present either in person or by proxy at the meeting.

ii) In the event of the Association being dissolved for any cause whatever, if there shall remain after the satisfaction of all debts and liabilities, any property or ... but shall be given or transferred to some other Association of institution like Schools, hospitals, etc., carrying some welfare activities to be determined by a majority of not less than 60 per cent of total member or members present in

person or any proxy at a meeting convened for dissolution after giving 21 days notice to all the members of the Fund.”

8. Further perusal of the Rules and Regulations of the assessee-society in detail would reveal that the assessee-society has been incorporated for the welfare of Canara Bank Employees having more than 20 thousand members. It is pertinent to observe that no distinction has been made by the assessee-society, vis-a-vis, members of society in terms of their cast, religion or any other distinct factors. Therefore, it is not a case where the assessee-society is incorporated for the welfare of a particular class of people or for a particular religion. Further, it is categorically mentioned that whatever surplus would accrue to the assessee-society, the same would be spent for the welfare of the members of the society (**Clause 9(ii)** Pg Number 34 of PB). On a thorough perusal of these Rules and Regulations of the society it is clear that the society has been meant to provide financial assistance to the employees of Canara Bank in hard times of life. The office bearers of the society are serving on honorary basis without any remuneration (clause 46 of Rules). The society is also charging interest from the members. In clause 42 of the Rules and Regulations of the society it is mentioned that the society can invest funds in share, securities, etc. For such activity we direct the assessee to maintain separate accounts in term of section 11(4). After perusing the dissolution clause, it is abundantly clear that the surplus funds remained after discharging the liabilities of the society would not devolve or distribute among any of the members of the society or office bearers, rather the same would be given to some hospital or school or any society carrying on welfare activities for General public at large.

9. It is settled position of law that an association which is formed for the welfare of public at large is entitled for the registration of 12AB. Reliance can be placed on the following judgments and the restrictions imposed in proviso to section 2(15) would come into play only when the society is carrying out any activity in the nature of trade, commerce or business. A reference can be made to the judgment of Hon'ble Delhi High Court in the case of ICAI Vs DG (Exemp) reported in 347 ITR 99(Del), while interpreting provisions of proviso to section 2(15) Hon'ble High Court observed as under:-

*“As the first proviso was introduced w.e.f. 1st April, 2009, the scope and ambit of the said proviso to s. 2(15) of the Act has to be examined and considered. Earlier orders under s. 10(23C)(iv) are not relevant and are inconsequential, as they have not examined the scope and ambit of the first proviso. The proviso applies only if an institution is engaged in advancement of any other object of general public utility and postulates that such an institute is not "charitable" if it is involved in carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. **The second part, "any activity of rendering any service in relation to any trade, commerce or business" obviously intends to expand the scope of the proviso to include services, which are rendered in relation to any trade, commerce or business. The proviso further stipulates that the activity must be for a cess or fee or any other consideration. The last part states that the proviso will apply even if the cess or fee or any other consideration is applied for a charitable activity/purpose.** The proviso has to be given full effect to. Thus, even if cess, fee or consideration is used or utilized for charitable purposes, the proviso and the bar will apply. An institution will not be regarded as established for charitable purpose/activity under the last limb, if cess, fee or consideration is received for carrying on any activity in nature of trade, commerce or business or for any activity of rendering of any service in relation to any trade, commerce or business, even if the consideration or the money received is used in furtherance of the charitable purposes/activities. In view of the first proviso, the decisions that the application of*

money/profit is relevant for determining whether or not a person is carrying on charitable activity, are no longer relevant and apposite. Even if the profits earned are used for charitable purposes, but fee, cess or consideration is charged by a person for carrying on any activity in the nature of trade, commerce or business or any activity of rendering of any service in addition to any trade, commerce or business, it would be covered under the proviso and the bar/prohibition will apply”

10. Recently Hon’ble Apex Court in the case of Ahmedabad Development Authority 449 ITR 1 (SC) has observed as under:-

*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. Considering the above the judgments of the Hon’ble Delhi High Court and Apex Court, we are of the view that the CIT(E) has erred in law in denying the registration u/s.12AB of the Act to the appellant-society. It is settled law that at the time of grant of registration, the only thing which is required to be seen is (a) whether the objects of the society or trust as the case may be are charitable in nature; (b) whether the activities of the society or trust 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. Further, 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. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22nd July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore; Dated: 22nd July, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst.Registrar
ITAT, Bangalore