

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

**Before Shri Waseem Ahmed, Accountant Member &
Shri Soundararajan K, Judicial Member**

ITA No.4/Coch/2024 : Asst.Year 2023-2024

M/s. Aarpee's Charitable Trust 58/E, RMH Arcade, Chungam Thamarassery Calicut - 673 573 PAN : AAJTA5174C.	v.	The Commissioner of Income- tax (Exemption) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.Rishal K, Advocate
Respondent by : Sri.Sanjit Kumar Das, CIT-DR

Date of Hearing : 25.09.2024	Date of Pronouncement : 29.10.2024
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ORDER

Per Bench :

This is an appeal filed by the assessee challenging the order of the Commissioner of Income-tax (Exemption), Cochin, dated 23.08.2023, in respect of the registration granted u/s.12A of the Income-tax Act, 1961.

2. Delay of 57 days in filing the appeal before the Tribunal is condoned by considering the assessee's condonation petition, accompanied by an Affidavit of Sri. Mohammed Ali, Secretary of the Trust, explaining the delay(s) as well as going by the decision in the case of Collector Land Acquisition v. Mst.Katiji & Ors. (1987) 167 ITR 471 (SC) settling the issue long back that all such technical aspects must make way for

the cause of substantial justice the delay is condoned and the appeal is admitted for adjudication.

3. The assessee-trust originally executed a trust deed in which several clauses are made which shows that the trust was formed for the benefit of the members of the trust and also the beneficiaries of the trust belong to a particular religious community. On the above said basis, the Id.CIT(E) rejected the application for regularizing the registration. As against the said order, the trust filed the present appeal before this Tribunal with the following grounds:-

"1: The order of the learned Commissioner rejecting the application of the appellant and cancellation of the provisional registration, alleging that the Trust is formed for the benefit of the members of the Trust, is wrong, contrary to law, facts and circumstances of the case.

2: The learned Commissioner ought to have noted that it is settled law that while considering the application for registration, what is required to be considered is the nature of the aims and object which in the instant case, would show that the Trust is a Public charitable Trust and beneficiaries are the members of the Society as a whole.

3: The learned Commissioner ought to have considered the "object of the Trust" as detailed and elaborated in the Deed of Trust as amended by the First Supplemental Deed dt. 04.08.2023. The "Objects" as detailed in the Deed dt. 04.08.2023 would very clearly show that the beneficiaries are "the Public at large" - [kindly see Cl. 4: Aim and Objectives"] and the Trust intends to "introduce a Welfare Scheme such as charity, financial aid, and medical aid in order to support the members of the Society" [kindly see Cl. 4(i)] etc.

4: In this regard, the learned Commissioner has failed to note dictum laid down by the Apex Court in DIRECTOR OF INCOME TAX [EXEMPTION] Vs MEENAKSHI AMMA ENDOWMENT TRUST [2022] 447 ITR 663 (SC) where the Court held that "Registration under section 12AA cannot be denied to the assessee/trust on the ground that it has not commenced charitable activities".

The learned Commissioner has also failed to note the decision of the Hon'ble of Punjab & Haryana in COMMISSIONER OF INCOME TAX [EXEMPTION] Vs SHRI SHIRDI SAI DARBAR CHARITABLE TRUST [2017] 395 ITR 567 where the Court held that only two requirements as stated hereinabove to be fulfilled - while granting registration under s. 12A of the Act - are with respect to the charitable nature of the objects of the assessee and genuineness of the activities.

5: A detailed reading of the impugned order would show that the learned Commissioner has been "guided" by the objects and aims as set forth in the Original Deed of Trust dated 16.08.2022 and not the amended/Supplemental Deed dt. 04.08.2023.

It is therefore prayed that the impugned order passed by the learned Commissioner (Exemption) u/s 12A of the Act may be set aside."

- 4.** At the time of argument, the learned AR submitted that the trust had amended the original trust deed and filed the amended deed while filing the application for regularization of the registration granted under the provisions of the Act, but the ld.CIT(E) had relied on the original trust deed and rejected the claim of the assessee, and therefore, prayed to allow the appeal.
- 5.** The learned Departmental Representative relied on the order of the ld.CIT(E) and prayed to dismiss the appeal.
- 6.** We have heard the arguments of both the parties and perused the material available on record. As seen from the rejection order in paragraph 2, the ld.CIT(E) had mentioned about the copy of the deed furnished by the assessee-trust whereas in the next paragraph he had relied on the clauses in the original trust deed in which the ld.CIT(E) had found fault

with. In fact the learned CIT(E) mainly relied on clause No.9, of the original trust deed, which says that every member shall be granted financial aid on the next financial year and priority shall be granted to the antecedent members. We have perused the order of the ld.CIT(E) and we found that the ld.CIT(E) has mainly relied on the clause mentioned in the original trust deed but he has not considered the amended trust deed filed before him, even though he had extracted in paragraph 2 of his order, and therefore, the matter should be revisited by the ld.CIT(E).

We, therefore, set aside the order of the ld.CIT(E) and direct him to consider the amended deed furnished by the assessee and thereafter pass fresh orders on the application filed by the assessee for regularizing the provisional registration granted u/s.12A of the Act. It is ordered accordingly.

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

Order pronounced on this 29th day of October, 2024.

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-
(Soundararajan K)
JUDICIAL MEMBER

Cochin ; Dated : 29th October, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin