

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BANGALORE**

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER  
and  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA Nos.1256 & 1257/Bang/2015**

Gayathri Nithya Vidya Trust,  
No.51/7-1, Rathna Avenue,  
Off Richmond Road  
Bangalore-560 001. ... Appellant

Vs

The Commissioner of Income-tax(Exemptions),  
Queen's Road,  
Bangalore-560 001 ... Respondent

Appellant by : Shri Padamchand Khincha, CA  
Revenue by : Smt Neera Malhotra, CIT

Date of hearing : 09/12/2015  
Date of pronouncement : 13/01/2016

**ORDER**

**PER SHRI INTURI RAMA RAO, AM :**

These are the appeals filed by the appellant-trust directed against the orders of learned CIT, (Exemptions), Bangalore [Id.CIT(Exemptions) for short] dated 07-08-2015 denying the registration u/s 12A of the IT Act, and approval u/s 80G of the IT Act, 1961.

2. Briefly, the facts of the case are that the appellant-trust was formed on 01-09-2014 and it was duly registered with the Sub-registrar, Bangalore. The appellant-trust was formed with the following objects.

a) To establish, promote, maintain, takeover, grant donation in cash or kind to schools, colleges, research centres and all or any educational institution in order to spread education in all its forms both in the urban and rural areas.

b) To impart training, teaching and to run medical, dental, nursing, ayurvedic, medical colleges, to cater to the needs of the economically weaker sections, of the society and minority community.

c) To establish, maintain or acquire library or libraries, laboratory, laboratory and/or other research institutions for the benefit of the student community.

d) To acquire establish and run professional colleges in medicine, enggg. law, agriculture, computer applications, electronics, commerce and accountancy, business management, pharmacy, nursing, dental, pure and applied science including post graduate centres and research foundations.

e) To guide and provide information to those who are seeking schools from KG classes to college levels.

f) To establish and run Kannada, English and other medium school from KG classes to college level.

g) To institute and award scholarships in India or abroad for the study research and apprenticeship of all any of the aforesaid medical/educational purposes.

h) To negotiate and enter into any agreements with the central and state Government Universities, Municipalities or any other public or private authority which may seem conducive or beneficial to any of the objects of the Trust or be intended to enhance, improve or render more efficiency any property, right, privilege, work or activity of the Trust.

i) To purchase, take on lease or in exchange or otherwise acquire any immovable or movable property, rights or privileges, which may be deemed necessary, expedient or desirable for any of the objects of the trust.

j) To accept, hold or administer any gift donation or contribution in kind or money, whether upon trust or otherwise and to undertake and execute any trust or

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obligations which may be deemed conducive to any of the objects of the trust.

k) To manage, improve, develop alter, repair, demolish, sell, alienate lease, mortgage charge, pledge, hypothecate, dispose of or otherwise deal with the all or any of the property funds, assets, rights and privileges of the trust.

l) To open and operate current, saving or over draft or fixed deposit accounts with any bank or banks.

m) To carry on any activities which may seem beneficial or conducive to any of the objects of the trust and either alone or in conjunction with others or as factors trustees, or agents and upon such terms as the governing body may deem fit.

n) To enter into and carry out arrangements for joint working or for amalgamation with any other association, society or institution having objects within the objects of the trust.

o) Generally to do all other things as are deemed incidental or conducive to the attainment of all or any of the aforesaid objects.

p)To engage teachers, professors, instructors, research workers, fellowship holders staff and experts of good moral character and conduct, able to impart efficiently and economically upto-date instruction to pupils and students in modern science, industrial avocations, professional subjects research work, intellectual and other useful pursuits and to take disciplinary action amounts to the suspension or dismissal in respect of the employees of the institutions of the trust.

q) To establish maintain and run boarding houses and residential institution for the students and those connected with the institutions.

r) To bring out, encourage and develop the incentive and research faculties o the pupils and teachers and to afford opportunities for research work in art, science, cultural and technological subjects.

s) To manage, invest, central dispose of purchase, grant, transfer and otherwise deal with the properties, movable or immovable and subject matter of the trust in such a manner as the trustees deem fit so as to enable the trust to carry out the objects of the trust effectively.

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t) To organize and/or assist in organizing meetings, conferences, seminars, discussion forums, exhibitions etc. in furtherance of the objects of the trust.

u) To accept donations, grants, presents, aid, assistance from the general public, government companies, trusts, societies, associations, firms, institutions in the form of funds properties, movable or immovable services etc to aid further and achieve the objects of the trust.

v) To charge and collect moderate tuition fees as well as any other fees and also recoup themselves for the outlay and expenses, incurred in the upkeep and maintenance of institutions established or about to be established under this Trust Deed.

w) Institute such stipends, scholarships, medals and prizes and on such terms as they may deem fit as may be commensurate with the income of the subject matter of the Trust.

x) The activities of the Trust shall not be carried outside India.

y) The Trust shall not carry on any activity with an intention to earn profit.

z) To do such other acts or make provisions for the starting of such other organizations as are found necessary in furtherance of the objects of the Trust in conformity with Section 2(15), 11,12,13 and Section 80G of the Income Tax 1961.

3. Thus, the appellant-trust was formed with the main object of imparting education in medical and related areas. The appellant trust made an application in form no.10A dated 30-12-2014 to the Id. CIT(Exemptions) for registration of the Trust u/s 12A of the Act, 1961 and for approval u/s 80G of the IT Act, 1961 in form No.10G vide application dated 20-02-2015 for grant of

approval u/s 80G of the IT Act, 1961. The Id. CIT(Exemptions) vide his letter dated 16-04-2015 sought certain information which had been duly complied with by the appellant-trust vide letter dated 19-06-2015. After perusing the information filed by the appellant-trust, the Id.CIT(Exemptions) vide his impugned order dated 07-08-2015 had denied the registration u/s 12A and approval u/s 80G of the Act. The Id.CIT(Exemptions) noticed that the son of the settler of trust had come forward to construct the building in the name of entity called Ozone Orbana Infra Pvt. Ltd., but not in the name of the trust. Therefore, the Id.CIT(Exemptions) inferred that it is only a business venture and further held that it was a case of violation of sec.13(2)(g) of the Act. The Id.CIT(Exemptions) observed that in the absence of relevant details, it was not possible to verify the genuineness of the objects and the activities of the trust. The Id.CIT(Exemptions) drawing support from the decision of the Hon'ble Karnataka High Court in the case of Ganjam Nagappa & Son Trust vs. DIT(E) (269 ITR 59) held that grant of exemption or renewal is not automatic in character and finally denied the registration u/s 12A of the Act and approval u/s 80G, vide the impugned orders.

4. Being aggrieved, the appellant-trust is before with the present appeals.

5. The Id.AR contended that the objects of the trust are not commercial in nature. The mere fact that the proposed activities of the appellant-trust are to be carried out in the rented premises does not render the objects commercial. It is open to the appellant-society to run the activities of the trust either in the own premises or rented premises. So long as the objects of the appellant-trust are charitable in nature, the registration u/s 12A and recognition u/s 80G cannot be denied. The issue of violation of provisions of sec.13 can be examined only during the course of the assessment proceedings and similarly he submitted that the genuineness of the activities of the trust can be tested only after the commencement of the activities of the trust. Therefore, he submitted that on none of these reasons, the Id.CIT(Exemptions) can refuse to grant the registration u/s 12A of the Act.

In support of this proposition, he relied on the following decisions:

- i. CIT vs. A.S.Kuppuraju Brothers Charitable Trust (205 Taxman 9(kar))
- ii. DIT(E) vs. Meenakshi Ammal Endowment Trust (354 ITR 219)
- iii. DIT vs. Garden City Educational Trust (330 ITR 480)
- iv. Sanjeevamma Hanumanthe Gowda Charitable Trust vs. DIT(E) (155 ITR 466)

6. On the other hand, learned CIT, DR relied on the orders of the CIT(Exemptions) .

7. We have heard the rival submissions and perused the material on record. In the present appeal, the only issue to be adjudicated is whether the CIT(Exemptions) is justified in denying the registration u/s 12A of the Act and approval u/s 80G of the IT Act, 1961. The Id. CIT(Exemptions) denied the registration only on the ground that the proposed activities of the appellant-trust are commercial. In support of this conclusion, he cited the instance of building being constructed in the name of one of the business entity called Ozone Orbana Infra Pvt. Ltd., by son of settler. He further observed that it amounts to a clear violation of the provisions of sec.13(2)(g) of the Act. One more reason assigned by the Id.CIT(Exemptions) is that in the absence of commencement of activities the genuineness of the activities cannot be examined. In our considered opinion, the approach of the Id.CIT(Exemptions) is totally erroneous and cannot stand the test of the law laid down by the Hon'ble jurisdictional High Court in the cases referred herein below:

(i) The Hon'ble jurisdictional High Court in the case of Sri Gururaja Seva Samithi had clearly held that the question of verifying the activities of the trust can be considered only after it is registered and carries on activities subsequently. The Hon'ble High Court after referring to the its earlier decision in the case of Sanjeevamma Hanumanthe Gowda Charitable Trust Vs DIT(Exemptions) held as follows;

"4. It is an undisputed fact that at the time of application for registration the respondent society had not commenced its activities and had not received the income. The question of verifying the genuineness of the activities of a trust can be considered only after it is registered and carries on the activities. It is settled law that in the first year when the trust is sought to be registered, it could not have carried out any activity, thus the question of verifying the genuineness of such activities cannot be considered. The refusal to register the trust on such ground by the DIT(Exptn.) could not be justified. The Tribunal has relied on the Division Bench judgment of this court in the case of *Sanjeevamma Hanumanthe Gowda Charitable Trust Vs DIT(Exptn.)* 285 ITR 327, wherein it has been held that for arriving at the satisfaction for genuineness of the society or trust, the CIT has to look at the objects of the trust and it is not authorized to go into the nature of the activity by which the income is derived by the trust.

5. In the present case, the question is with regard to the registration of the trust in question wherein the objects have been clearly specified. The question of assessing the activities of the trust would arise only after the trust is registered and carries on the activities. At the time of initial registration, the same cannot be a question to be considered. In our view, the Tribunal has rightly allowed the appeal and directed the DIT(Exptn.) to register the society as a religious trust u/s 12A of the Act".

(ii) Further in the case of CIT vs. A.S.Kupparaju Bros. Charitable Foundation Trust (supra), the Hon'ble High Court held that in deciding the genuineness of the trust, what is to be seen is whether in terms of objects set out in the trust deed, whether the trust is carrying on its activities or not. The relevant paragraph is extracted below:

".....The certificate of registration is only an enabling provision to claim exemption. By merely granting a certificate income is not exempted. That is only a first stage to claim exemption. The Commissioner of Appeals should not have confused these two aspects and seems to think as the trustees and his family members are

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treating the property as their own and misutilising the property it is not a genuine trust. When once it is admitted that in pursuance of the trust deed and in terms of the objects set out therein, schools and colleges are being run and educational institutions are being run as rightly held by the Tribunal, nothing more requires to be established to show that the trust in question is a genuine trust and therefore, the assessee is entitled to the registration under Section 12AA of the Act. As set out above, even if the registration is granted, the exemption from the provisions of the Income Tax Act in particular sections 11 and 12 is not automatic. It is only when the assessee satisfies the requirement of section 13, he would be eligible for exemption. That is a matter to be gone into by the Assessing Authority in respect of the returns filed every year and if according to them there is misappropriation of funds and it is hit by section 13 of the Act, certainly, they can deny the benefit of exemption. But that is not a ground to deny the registration in the instant case under Section 12AA, when admittedly the trust has been established to run schools and colleges for imparting education, which is a charitable purpose. In that view of the matter, we do not see any merit in this appeal. The substantial question of law framed in this appeal is answered in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed."

(iii) Again, the Hon'ble jurisdictional High Court in the case of Meenakshi Ammal Endowment Trust (supra) held that once the objects of the trust are found to be charitable, registration has to be granted by the CIT and if it is found subsequently that the trust has not carried out any charitable activity, it is always open to the CIT to cancel the registration under the provisions of sec.12AA(3) of the Act. The relevant paras 5 and 6 of the judgment are reproduced below:

**"5.** On a perusal of the records we note that the trust was formed on January 23, 2008, and within a period of nine months they had filed an application under section 12A for issuance of the registration claiming exemption. The fact that the corpus of the trust is nothing but the

contribution of Rs. 1,000 by each of the trustees as corpus fund goes to show that the trustees were contributing the funds by themselves in a humble way and were intending to commence charitable activities. It is not even the case of the Revenue that by the time the application of the assessee came to be considered by them, the assessee had collected lots of donations for the activities of the trust. On the other hand, the grievance of the concerned authorities seems to be that there was no activity which could be termed as charitable as per the details furnished by the assessee, therefore, such registration could not be granted. When the trust itself was formed in January, 2008, with the money available with the trust, one cannot expect them to do activity of charity immediately and because of that situation the authority cannot come to a conclusion that the trust was not intending to do any activity of charity. In such a situation the objects of the trust have to be taken into consideration by the authority and the objects of the trust could be read from the trust deed itself. In the subsequent returns filed by the trust, if the Revenue comes across that factually the trust has not conducted any charitable activities, it is always open to the authorities concerned to withdraw the registration already granted or cancel the said registration under section 12AA(3) of the Act.

**6.** A trust could be formed today and within a week registration under section 12A could be sought as there is no prohibition under the Act seeking such registration. The activities of the trust have to be considered if such registration is sought much later than the formation of the trust or after expiry of the earlier registration granted in favour of the trust. Therefore, in a case of this nature where the trust has approached the authority for registration under section 12A within a span of eight months of its formation, the abovementioned criteria, namely, the objects of the trust for which it was formed will have to be examined to be satisfied about its genuineness and the activities of the trust cannot be the criterion, since it is yet to commence its activities.”

(iv) Again, in the case of Garden City Educational Trust (supra), the Hon'ble High Court held that once the objects of the trust are found to be charitable and fulfilled the required procedural requirements, registration u/s 12A has to be granted

and the benefit of exemption in terms of sec.11 and 12 is to be examined during the course of assessment proceedings by the Assessing Officer. The relevant paras 16 & 17 are extracted hereunder:

**"16.** We are of the view that the applicant before the Commissioner did impart education in terms of section 12A, as it is not in dispute that one of the objects or even the main object of the trust is imparting education. It is also not in dispute that the trust is imparting education and it is not as though some other activity which is not in the nature of education is sought to be passed off in the name of education. So long as the trust has education as one of its objects which is one of the enumerated heads which qualify and come within the scope of charitable purpose as enumerated in clause (15) of section 2, it has to be accepted that the trust is having a charitable purpose as its object and may qualify for claiming exemptions in terms of sections 11 and 12 subject to fulfilling conditions enumerated therein and, if so, grant of registration, so long as the procedural requirements are complied is inevitable.

**17.** It is not the finding of the Commissioner that the applicant-assessee had not complied with any of the procedural requirements. The Tribunal is fully justified in observing that the manner of application of funds and as to whether the applicant-assessee can claim the benefit of exemption in terms of sections 11 and 12 is a question which has to be examined by the Assessing Officer at the stage when it is urged and not by the Commissioner when such question is not before the Commissioner. It is hereby clarified and emphasized that while registration in accordance with the provisions of section 12A of the Act is a condition precedent for claiming the benefits under sections 11 and 12 of the Act, a registration as per section 12A by itself, will not automatically confer the benefits of sections 11 and 12 on a trust, but the trust will get the benefit only on complying with the requirements of sections 11 and 12 of the Act, which compliance can be examined by the assessing authority, while processing the return filed by the trust. Therefore, this appeal has to be dismissed."

(v) It may be further added that the co-ordinate bench of the Delhi Tribunal in the case of Paramount Public School Vs CIT, Rohtak in ITA No.5712(Del.)2013 dated 28-10-2015 (to which one of the Members viz., the Hon'ble AM is the author), after referring to the decision of the Hon'ble High Court of Karnataka in the case of Sanjeevamma Hanumanthe Gowda Charitable Trust Vs DIT(Exeption.) 285 ITR 327 (Kar.,) Hon'ble P&H High Court in the case of CIT Vs Surya Education and Charitable Trust (2013) 355 ITR 280(P&H) and Allahabad High Court in the case of Fifth Generation Education Society Vs CIT 185 ITR 634 (All.HC) held as follows vide para-7 of the judgment.

*"7. The ratio that can be culled out from the above decisions is that the Commissioner is only entitled to examine whether the objects of the institutions are charitable or not. Once the objects of the institutions are found to be charitable, the Commissioner has no option, but to grant registration. In the present case the Commissioner has not found that any objects of the trust are not charitable in nature. The objections raised by the CIT that the appellant had failed to comply with the direction of the Commissioner of Income, Rohtak to file the details of donors of corpus funds and the institution was collecting the fees from the students are not relevant considerations at the time of grant of registration under Section 12AA of the Act. These are the issues to be examined during the assessment proceedings after grant of the registration under section 12AA of the Act. Therefore, we direct the Commissioner of Income Tax, Rohtak, to grant registration to the appellant society within a period of 30 days from the date of receipt of this order. Accordingly, the grounds of appeal filed by the appellant society are allowed in full.*

8. Thus the law is fairly well settled that at the time of granting registration u/s 12A of the Act, the CIT is only empowered to look

at the objects of the trust whether charitable or not. Once the objects of the trust are found to be charitable, the CIT has no option but to grant registration. The issues such as violation of provisions of sec.13 and the exemption u/s 11 and 12 can be examined by the AO after the return of income is filed. It is only after the activities of the trust are commenced the genuineness of the objects can be examined during the course of assessment proceedings, after the grant of registration by the IT Authorities. Applying the above legal position to the facts of the present case, it is not the case of the Id.CIT(Exemptions) that the objects of the trust are not charitable in nature. The objects of the appellant-trust clearly fall within one of the limbs of charity i.e. education and the appellant-trust had complied with all the procedural requirements and filed the details as called for by the Id.CIT(Exemptions). The only grievance of the Id.CIT(Exemptions) appears to be that the son of the settler is constructing a building in the name of the entity in which he was interested as a shareholder or director and not in the name of the trust proposed to be used for the purpose of the appellant-trust. This, does not, in any way militate against the charitable character of the objects of the appellant-trust. It is not the case of the Id.CIT(Exemptions) that the funds of the appellant-trust were used for the construction of the building in the name of that entity. This, neither infringes the provisions of sec.13 nor can be examined at the stage of granting registration, as held by the

Hon'ble High Court in the cases cited supra. The genuineness of the activities of the trust can be examined only after commencement of the activities of the appellant-trust. Respectfully following the ratio laid down in the cases cited supra, we direct the Id.CIT(Exemptions) to grant registration u/s 12A of the IT Act.

9. The appeal filed by the appellant-trust is allowed.

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10. Since we have directed the Id.CIT(Exemptions) to grant the registration of the trust under the provision of sec.12A of the Act, appeal No.1256/Bang/2015, the issue of approval u/s 80G is only consequential in nature. From the impugned order it is clear that the Id.CIT(Exemptions) denied approval u/s 80G for the very same reasons on which the registration u/s 12A was denied. Following the same parity of reasoning give by us in the appeal filed against denial of registration u/s 12A, we direct the Id.CIT(Exemptions) to grant the approval u/s 80G.

11. In the result, the appeals filed by the appellant-trust are allowed.

*Order pronounced in the open court on this 13<sup>th</sup> day of January, 2016*

sd/-  
**(Vijay Pal Rao)**  
**JUDICIAL MEMBER**  
Place : Bangalore  
D a t e d : 13/01/2016  
**\*eks**

sd/-  
**(Inturi Rama Rao)**  
**ACCOUNTANT MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
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- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal,  
Bangalore