

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

**BEFORE SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1386(BNG.)/2014
(Assessment year : 2014-2015)**

M/s Printech Park Cluster,
84/1, KSPA-XIL PTTC
6th Cross, 4th Main,
Chamarajpet,
Bangalore-560 018
PAN No.AABTP8959N

Appellant

Vs

Director of Income-tax (Exemptn.)
Bangalore

Respondent

**Assessee by : Shri K. Kiran Kumar, Advocate
Revenue by : Smt. Chandana Ramachandran, CIT-III**

**Date of hearing : 22-09-2015
Date of pronouncement : 30-09-2015**

ORDER

PER SMT ASHA VIJAYARAGHAVAN, JM:

This appeal is by the assessee is directed against the order of the DIT(E), Bangalore dated 17-09-2014 for the assessment year 2014-15.

2. The facts of the case are that M/s Printech Park Cluster, Bangalore had filed an application in Form No.10A on 24-03-2014 seeking registration u/s 12A of the Act, 1961. The Association of Group of Persons and it has been registered with the Registrar of Societies. The

3. DIT(E) observed as follows;

“ It is clear from the Bye-laws that one has to become member and enroll by paying an admission fee of Rs.1,000/- and Annual Membership Fee of Rs.1,000/-. The Membership of the Association shall be open for all tiny, small scale, medium and large printers, traders, business service providers engaged in printing activities with a valid license to that effect by concerned authority situated in Karnataka and outside with the approval of the Committee. There are other clauses in Bye-laws which deals with the rights and duties of members and also the responsibilities of the Association like utilization, management of he assets and liabilities. The statement of income and expenditure has also been seen”.

4. The DIT(E) further held that on the prima facie, the assessee does not fit into the frame of ‘Charitable purpose’ which includes relief of the poor, education, medical relief and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility, as defined in sub-section 15 of sec.(2) of the IT Act, 1961.

5. The DIT(E) also stated that the assessee by letter dated 21-07-2014 has furnished the half baked information without any evidence in

respect of the genuineness of the activities of the trust as defined in sub-sec.(15) of sec.2 of the IT Act, 1961.

5.1 The DIT(E) further pointed out that the objects and activities of the trust states as follows;

“ The Association is mutual concern, as it is society registered under the Societies Act, with objects of activities for the mutual benefit of the members who are engaged in printing and other related business activities”.

5.2 The DIT(E) concluded as follows;

From the perusal of the Memorandum of Association and the Bye-laws and also considering the explanation of the assessee, the assessee is not a trust/institution and the objects pursued by the assessee are not for charitable purposes, hence registration u/s 12A is rejected.

6. Aggrieved the assessee is in appeal before us.

7. We have perused some of the main objects which are as follows;

“ Clause(1) page: 3

1) Promote and support the Printing and allied Industries, Trade and Commerce in and around Bangalore including Harohalli industrial area.

Clause(12) page:5

Crate, operate and maintain infrastructure and other common or special facilities for the welfare of employees of industries.

Clause(2) page:5

Create infrastructure facilities or upgrade infrastructure facility needed for development of the industries and business establishments in Bangalore including Harohalli industrial area either directly or through Bangalore cluster, KSPA or any other similar association and to take all steps needed in this regard.

The issues before us, to be addressed are the following ;

1) whether in case of the trust/society created for the advance of general public utility it is necessary that objects should be benefit to the public at large or it would be that object beneficial to a section of public would be an object of general public utility, as defined u/s 2(15) of the IT Act, 1961.

2) Genuineness of the activities of the trust has been commented upon by the DIT(E) at para-6 of his order. The

issue whether at the time of granting registration u/s 12A, the DIT(E) can go into the genuineness of the activities of the trust.

3) Whether the society is not driven primarily by desire or motive to earn profits, but to do service for the advancement of general public utility should be regarded as 'institution established for Charitable purposes'.

6.1 We shall give our opinion for all the three issues stated above.

7. On the first issue of (Supra) the Apex Court in Ahmedabad Rana Caste Association Vs CIT (1971) 82 ITR 704 and CIT Vs Ahmedabad Rana Caste Association (1985) 140 ITR 1(SC) pointed out that the law recognizes no purpose as charitable unless it is for a public charity. That is to say, a purpose must, in order to be charitable, be directed to the benefit of the community or a section of the community. The expression 'object of general public utility', however, is not restricted to the objects beneficial to the whole of mankind. An object beneficial to a section of the public is an object of general public utility. The section of the community sought to be benefitted must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature.

7.1 The ratio of the Apex Court decision was followed in the case of Hiralal Bhagwati Vs CIT 246 ITR 188. The society in this present case is for the benefit of the members who are engaged in printing and other related activities and has an object beneficial to the section of public who are associated with printing and would be an object of general public utility specified u/s 2(15) of the IT Act, 1961.

8. With respect to the second issue the decision of the jurisdictional High Court in the case of DIT(E) Vs Meenakshi Amma Endowment Trust (2013) 40 Taxmann.com 30(Kar.) is to be followed wherein it has been held that where a trust had approached authority for registration u/s 12A with a span of eight months of its formation. Only objects of trust for which it was formed would have to be examined for one to be satisfied about its genuineness and not its activities. In the present case, though the society has been incorporated on 26-06-2009, it has applied for 12A registration only on 24.03.2014. However, the society has been conducting its activities in accordance with its objects namely...the members who are engaged in printing and other related business activities. The genuineness of the activities would not be the criterion to

grant registration u/s 12A as the objects are for general public utility as defined u/s 2(15) of the IT Act, 1961.

9. With respect to the third issue, we reproduce Circular No.11 of 2008, dated 19th December, 2008....

“ Furthermore, in the Memorandum regarding Delegated Legislation – Rationalization and Simplification Measures, it has been noted as under;-

“Streamlining the definition of ‘charitable purpose’ Section 2(15) of the Act, defines ‘charitable purpose’ to include relief of the poor, education, medical relief and the advancement of any other object of general public utility.

It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under section 10(23C) or section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the advancement of an object of general public utility’ as it is included in the fourth limb of the current definition of ‘charitable purpose’. Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

With a view to limiting the scope of the phrase ‘advancement of any other object of general public utility’. It is proposed to amend section 2(15) so as to provide that

'the advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of-

(a) any activity in the nature of trade, commerce or business, or

(b) any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity.

This amendment will take effect from the 1st day of April, 2009 and will accordingly, apply in relation to the assessment year 2009-10 and subsequent assessment years”.

10. Hence, the proviso will hit only such case the organization is carrying on business activity with a profit motive in the garb of charitable purpose. It has been clearly established by various decisions that when the main object of the institution was 'charitable in nature', then the activities carried out towards the achievement of the said, being incidental or ancillary to the main object, even if resulting in profit and even if it is carried out with non-members, were all held to be 'charitable in nature'. The basic principle underlined the definition of charitable

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purposes remains unaltered even by amendment to section 2(15) of the Act w.e.f. 1.4.2009, though the restrictive first proviso was inserted therein. In the given facts of the case, the assessee's association's primary purpose was to give focus o areas of education, environment and engagement (community and employee). It has through constant and well monitored support aimed towards community sustainability. Therefore, they have focused on areas of education and environment, watershed management, women empowerment through skill development initiatives, provision of drinking water, youth empowerment, medical health amps, environmental conservation program and promotion of sports and a host of extracurricular activities at local levels aimed towards community sustainability. Hence, the assessee association primary purpose was advancement of objective general public utility and it would remain charitable even if an incidental or ancillary activity or purpose of achieving the main purpose was profitable in nature. Hence the finding of the Director of Income-tax (Exemption) has mentioned in the object clause-17 under the said Incidental Objects under Part-B of the MOA at para-5 of his order stating it to be non-charitable does not disentitle the assessee for availing exemption u/s 12 of the IT Act. The relevant portion of the decision of Kolkata Bench of the ITAT in the case of Indian

Chambers of Commerce (2014) 52 Taxmann.com 52 (Kolkata-Trib) is reproduced here under;

“The concept behind section 28(iii) is to cut at the mutuality principle being relied on in support of a claim for exemption, when the assessee was actually deriving income or making profit as a result of rendering specific services for its members in a commercial way.

The reason for the introduction of section 28(iii) is to ignore the principle of mutuality and reach the surplus arising to the mutual association and this is clear from the ITA No.739 of 2014 IP India Foundation, Hyderabad fact that these provisions are confirmed to services performed by the association for its member’s. Such income would either be charged as business income or under the residual head, depending upon the question whether the activities of the association with the non-members amount to a business or otherwise, section 28(iii) constitutes certain income of the association to be business income without affecting the scope of the exemption under section 11.

Section 2(15) which incorporates the definition of ‘charitable purpose’ simply shows that several mutual associations may also fall within the definition. The receipts derived by a chamber of commerce and industry for performing specific services to its members, though treated as business income under section 28(iii) would still be entitled to the exemption under section 11 read with section

2(15) provided there is no profit motive. Thus, assessee being a charitable institution carrying on the object of promotion and development of trade and commerce and which was not involved in the carrying on of any activity in the nature of 'business', the said section 28(iii) does not apply.

Apex Court in the earliest CIT Vs Andhra Chamber of Commerce (1965) 55 ITR 722 had clearly laid out the principle that if the primary purpose of an institution was advancement of objects of general public utility, it would remain charitable even if an incidental or ancillary activity or purpose, for achieving the main purpose, was profitable in nature.

4. Respectfully following the Co-ordinate Bench decision, we allow the assessee's appeal.

5. In the result, appeal filed by the assessee is allowed".

11. We have heard both parties and have perused the material on record.

12. Again, the Hon'ble Delhi High Court in the case of India Trade Promotion Organization Vs Director General of Income-tax (Exptns.) & Others (2015) 371 ITR 333, held vide para-58 as follows;

“ 58. In conclusion, we may say that the expression ‘charitable purpose’ as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running foul of the principle of equality enshrined in Article 14 of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C) (iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or in directly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a ‘charitable purpose’. On the flip side, where an institution is not driven primarily by a desire or

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motive to earn profits, but to do charity through the advancement of an object of general public utility. It cannot but be regarded as an institution established for charitable purposes'.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on the 30-09-2015

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Place: Bangalore:

D a t e d : 30-09-2015

am*

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
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By order,
AR, ITAT, Bangalore