

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2204/Del/2015

Shri Raj Rajeshwari Trust,
Gumaniwala, Amit Forest Road, Rishiesh
PAN:AAMTS7680J
(Appellant)

Vs.

CIT(E)
5, Ashok Marg,
Lucknow
(Respondent)

Assessee by :
Revenue by:
Date of Hearing
Date of pronouncement

Sh. Kapil Goel, Adv
Sh. Ravi Jain, CIT DR
05/09/2016
07/09/2016

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id Commissioner of Income Tax (Exemptions), Lucknow, dated 24.02.2015 against order u/s 12AA (1)(b)(ii) of the Income Tax Act refusing registration u/s 12AA of the Income Tax Act.
2. The assessee has raised the following grounds of appeal:-
 - “1. *That the learned Commissioner of Income Tax (Exemptions) has grossly erred both in law and on facts in rejecting the application for registration of the assessee trust u/s 12AA(1)(b)(ii) of the Act.*
 2. *That the learned Commissioner of Income Tax has failed to appreciate that education perse is a charitable object under section 2(15) of the Act and once appellant trust had led evidence to establish the construction of a school, it could not be validly held that the appellant society has so far not started any charitable activities or that the papers filed by the applicant do not represent the charitable nature of activities.*
 3. *That the judgments relied upon by the learned Commissioner of Income Tax to deny the claim of registration are wholly inapplicable on the fact of the appellant trust.*
 4. *That the learned Commissioner of Income Tax has failed to appreciate that actual commencement of charitable activities is not a relevant precondition for grant of registration to a charitable trust 12AA(1)(b)(ii) of the Act*
 5. *That the judgments relied upon by the learned Commissioner of Income Tax to deny the claim of registration are wholly inapplicable in as much as*

application of income is an irrelevant consideration at the time of grant of registration under the Act.”

3. The solitary issue involved in the appeal is that the assessee is a trust formed on 26.12.2012 for the purpose of environment, water conservation, women empowerment and education, preferred an application for registration u/s 12AA of the Income Tax Act in Form 10A on 21.08.2014 before the Id. CIT(E), Lucknow. The earlier jurisdiction was with CIT, Dehradun, because of change of jurisdiction notice for hearing on 11.02.2015 was issued, and however, the assessee trust did not comply with this notice. Before the Id CIT, Dehradun some details were filed by the assessee. Therefore, the Id CIT(E) decided the issue on details available on record. According to the Id CIT (E) the assessee has not started any charitable activity and has no details regarding the expenses directly relatable to such activities were available before him. He held that for the purpose of registration the objects of the trust as well as the genuineness of the activities are to be proved, therefore, relying on the decision of Hon'ble Delhi High Court in case of Kirti Chandra Taravati Charitable society Vs. DIT (E) 232 ITR 11 and decision of Hon'ble Kerala High Court in Dawn Education Charitable Trust Vs. CIT 370 ITR 724 refused the registration rejecting the application of the assessee. Aggrieved by the above order the assessee is in appeal before us.
4. The Id AR contended that carrying on the activities is not a requirement for the purpose of granting registration u/s 12AA of the Act. He further referred to his written submission at Page 1 to 4 of the paper book filed by him. His main reliance was on decision of Kolkata Bench of ITAT dated 29.04.2016 in case of Broadway Charitable Trust. He further referred to the clauses of the trust deed at page No. 27 and 28 of the paper book to show that object of the trust are charitable in nature. He also referred to the notes on activities of the trust at page no 9 of the paper book. He further submitted that as there is no defect in form No. 10A filed by the assessee the Id CIT (E) erred in not granting the registration to the trust.

5. The Id DR submitted that as nobody on behalf of the assessee attended before the Id CIT (E) when opportunity was granted to demonstrate about genuineness of the activities before the Id CIT (E), therefore on the basis of information available the registration is rightly rejected.
6. We have carefully considered the rival contentions and also perused the material available on record. The assessee trust filed application for registration in Form No. 10A of the Act. Provision of section 12AA of the act provides that before granting registration the authority shall call for such documents or information as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust and may also make such enquiries as he deems necessary in this behalf. After satisfying himself about the objects of the trust and the genuineness of its activities he can pass an order granting/ refusing registration to such trust. In the present case Id CIT (E) has not held that the objects of the trust are not in accordance with provision of section 12AA. He held that expenditure incurred by the trust were not found to be for any charitable activities as it has not started any charitable activities during the year. Further assessee has also not availed opportunity of hearing and placing evidence on record before him about the charitable activities of the trust. Reliance placed by the Id AR on the order of Kolkata Bench of ITAT is distinguishable on facts as the issue before the bench was that the settled property in the trust was not with settler which devolved on the trust and therefore whether valid trust has come in to existence in absence of 'property'. In the present case no such issue is involved, but the issue is that assessee trust has not made available details about the activities of the trust and therefore on the material available on record application of registration was rejected. On looking at the trust deed object of the trust are charitable in nature which even the Id CIT (E) has also not doubted. In notes on activities, assessee has submitted that it has started construction of school; however no details were made available before us about payment/ expenditure for land or construction expenses of building; however no details were filed before the Ld CIT (E) or before us.

Therefore, in the interest of justice, the matter is set aside to the file of the Id CIT (E) to grant an assessee one more opportunity to demonstrate about the genuineness of the activities and then he may decide the issue in accordance with the provisions of section 12AA of the Act.

7. In the result the appeal of the assessee is allowed with above direction.

Order pronounced in the open court on 07/09/2016.

-Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 07/09/2016
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi