

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI ABRAHAM P. GEOGE, ACCOUNTANT MEMBER
AND SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.630/Bang/2015
Assessment year : N.A.

M/s. Savithri Charities, No.76, Savithri Farm House, Suprabhathanagar, Tigalarapalya, Peenya 2 nd Stage, Bangalore – 560 058. PAN: AAOTS 3442G	Vs.	The Commissioner of Income Tax (Exemptions), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri N.R. Nagaraj, Advocate
Respondent by	:	Smt. Neera Malhotra, CIT(DR)

Date of hearing	:	01.02.2016
Date of Pronouncement	:	10.02.2016

ORDER

Per Vijay Pal Rao, Judicial Member

This appeal by the assessee is directed against the order dated 26.2.2015 passed u/s. 12AA of the Income-tax Act, 1961 [“the Act”] of the Commissioner of Income Tax (Exemptions) [“CIT(E)”] whereby application of the assessee for registration u/s. 12AA was rejected.

2. The assessee trust filed an application in Form 10A for registration u/s. 12AA on 21.8.2014. The CIT(E) noted from the trust deed that as per clause 5d, the board of trustees shall fill up the vacancy of the trustees that may arise either by removal or otherwise, through a resolution of the board by nominating the successor/descendant of the outgoing/removed/deceased trustee / No outsider from the family of the trustee nominated hereby shall be nominated to the board. Further, clause 5f reads that after the author demits his office of managing trustee on his own, Smt. S. Mokshatara shall become the managing trustee and induct a new member as a trustee as provided under clause 5(d). The CIT(E) was of the view that these two clauses of the trust deed required amendment by substituting the successor of the trustee in the board by nominating 'any person', instead of 'family member of the trustee'.

3. The assessee contended that the provision in clause 5d & 5f is meant to protect the trust property and money contributed by the managing trustee and his family members and therefore no amendment is required in respect of the clauses of the trust deed, when the objects of the trust are charitable in nature. The CIT(E) rejected the application for seeking registration u/s. 12AA by observing that the trust is reluctant to carry out the amendment as required by him, therefore he has concluded that the trust is basically a private trust for all intents and purposes and not a genuine public charitable trust.

4. Before us, the Id. counsel for the assessee has submitted that the CIT(E) has not disputed the charitable nature of the objects of the trust and the purpose for which the trust is created/floated. However, application of the assessee seeking registration u/s. 12AA has been rejected by the CIT(E) by objecting to clauses 5d & 5f providing for the successors of the trustee in the board from the family members of the trustee and not outsider. He has further contended that to bring a trust within the framework of charitable nature, it is only the object which matters and not its constitution. The objects of the trust are well defined in the trust deed itself and therefore constitution of the trust in managing the trust property cannot be a ground for rejection the application seeking registration u/s. 12AA of the Act. In support of his contentions, he has relied on the following decisions:-

- (i) Guru Govinda Singh Education Society v. CIT, 313 ITR (AT) 32 (ASR)
- (ii) Agarwal Mitra Mandal Trust v. DIT(E), 293 ITR (AT) 259 (Del)
- (iii) B.K.K. Memorial Trust v. CIT, ITA No.6088/Del/2010 dated 10.6.2011.

5. On the other hand, the Id. DR has relied upon the impugned order of CIT(E) and submitted that the CIT(E) has rejected the application by noting the fact that the assessee trust is more of a private trust and not a public charitable trust.

6. Having considered the rival submissions as well as relevant material on record, we note that the assessee trust was created by trust deed dated 14.7.2014 which has been duly registered with the Sub-Registrar, Peenya, Bangalore. The objects of the trust are as under:-

- (a) To render financial assistance by way of scholarship, maintenance to students starting from primary to collegiate level.
- (b) To render medical assistance by way of helping the poor and needy in getting proper and adequate medical treatment including diagnostic and therapeutic in a good and recognized medical institution.

7. Thus, there is no dispute that the trust's main objects are to provide financial assistance to the poor students who hail from the family Below Poverty Line and parents of such students are unable to finance the education. The objects of the trust are not disputed by the CIT(E) being charitable in nature. The CIT(E) has objected to the clause 5d & 5f whereby the successor of the trustees in the board of trustees on a vacancy arising either by removal or otherwise, shall be by nominating the successor/descendant of the outgoing/removed/deceased trustee. Thus, as per these clauses, only a successor/descendant of the outgoing trustee can be nominated as trustee only from the family members of the trustee. This provision does not allow any outsider to be nominated as a trustee of the trust. Therefore the CIT(E) advised the assessee trust to amend these

clauses by incorporating nomination of the trustee as 'any person' instead of the specified successor/descendant of the outgoing/deceased trustee.

8. At the outset, we note that as per provisions of section 12A of the Act, what is required to be considered for the purpose of satisfying the authority is whether the existence of the trust is genuine and the objects of the trust are charitable in nature. The constitution of the board of trustees does not affect the genuineness of the activities and the charitable nature of the objects of the trust, as the trustees are only managing the affairs and property of the trust and are not the beneficiaries of the trust. Thus, once the objects of the trust are found to be charitable in nature and the activities of the trust are not doubted and therefore, genuineness of the existence of the trust are not in question, then the mere constitution of the board of trustees cannot be a ground for rejection of registration u/s. 12AA. In the case of *Guru Govinda Singh Education Society v. CIT*, 313 ITR (AT) 32 (ASR), the Amritsar Bench of the Tribunal has observed in para 23 as under:-

“23. The contention of the assessee as aforesaid has not been refuted. A copy of the FIR was duly filed before the Assessing Officer. A copy thereof has been filed before us too. Moreover, again, there is no charge of the Commissioner of Income-tax against the activities of the assessee. Further, it has not been denied that the educational activities in the rural area have been carried out by the assessee-society, which activities had already been challenged. The assessment order for the assessment year 2004-05 was passed on December 18, 2006. A copy thereof is at the assessee's paper book pages 88 to 99. Pertinently, no addition was made by the Assessing Officer, proving the case of the

assessee that the activity was carried on in the normal course. Further, the assessee produced before the Assessing Officer a list of the donees with complete addresses and details, a copy of which is at the assessee's paper book pages 91 to 94. The Assessing Officer is not shown to have made any addition and in fact, he has not doubted such donees. Therefore, this issue raised by the learned Commissioner of Income-tax cannot lead to cancellation of the registration granted. Pertinently, under section 12AA(3) of the Act, the learned Commissioner of Income-tax is entitled only to look into the activities and objects of the trust, and no further.”

9. Thus, it is settled proposition of law that at the time of granting registration u/s. 12AA, the competent authority has to look into the activities of the trust and objects of the trust and no further. Similarly, in the case of *Agarwal Mitra Mandal Trust v. DIT(E), 293 ITR (AT) 259 (Del)*, the Delhi Bench of the Tribunal has observed in paras 7 & 8 as under:-

“7. As already noted, the procedure for registration laid down in section 12AA requires the Commissioner of Income-tax to satisfy himself about the genuineness of activities and object of the trust or institution and as such, the scope of his powers is limited in this regard to make such enquiries, as he may deem fit, to satisfy himself in respect of these two aspects. As held by the hon'ble Supreme Court in the case of *Ahmedabad Rana Caste Association [1971] 82 ITR 704*, an object beneficial to the section of the public is an object of general public utility and to serve a charitable purpose, it is sufficient if the intention is to benefit a section of the public as distinguished from a specified individual. This decision of the hon' ble apex court followed subsequently by the hon' ble Allahabad High Court in the case of *Surji Devi Kunji Lal Jaipuria Charitable Trust (No. 1) [1990] 186 ITR 728* and in the case of *CIT v. Pt. Ram Shanker Misra Trust [1996] 222 ITR 252* to hold that the expenditure incurred by a trust for the benefit of one community is an expenditure incurred on a public charitable object, still holds the field notwithstanding the provisions contained in section 13(1)(b) since the definition of

the term "charitable purpose" given in section 2(15) continues to remain the same. The provisions of section 13(1) are thus not directly relevant in this regard. On the other hand, the said section begins with the words "Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person. . . ." which clearly envisages operation of section 11 or section 12 before the provisions of section 13 can be applied or invoked in a given case. It also shows that the said provisions can be applied or invoked only at the time of computation of total income of the previous year of the person who is claiming exemption under section 11 or section 12. Both these situations contemplated in section 13 can arise only and only if registration under section 12A is granted to the said person. If the same is not granted and the person is refused the registration under section 12A, he would not be entitled to claim any benefit available under section 11 or 12 and there will be no occasion to the Assessing Officer to invoke or apply section 13 in his case. This position would not only be contrary to the scheme of the Act as laid down in sections 11, 12, 12A, 12AA and 13 but the same may also cause prejudice/hardship to the persons in certain cases. For instance, the objects for which the assessee-trust in the present case is established, as indicated in object clauses No. 3(1) and 3(2), no doubt are for the benefits of a particular community, viz., vaish. Nevertheless, as per object clause 3(4), it was also established to run schools, colleges, hospitals etc. for the benefit of public at large. In this situation, if the registration applied for under section 12A is not granted to it for violation of the provisions of section 13(1)(b) and it is ultimately found that the assessee-trust actually accomplished the objects as indicated in clause No. 3(4) only for the benefit of public at large without there being any activity undertaken as per object clause No. 3(1) and 3(2), it would be deprived of any benefits which otherwise were available to it under section 11 or section 12. This certainly is not the legislative intention as reflected in the scheme laid down in sections 11, 12, 12A, 12AA and 13. On the contrary, the phraseology of section 13, as already discussed, makes it explicitly clear that the said provisions become operative or relevant only at the stage of assessment when the Assessing Officer is required to examine the claim of the assessee for benefits under section 11 or section 12 while computing the total income of the assessee of the relevant previous year. The application of section 13 thus falls within the

exclusive domain of the Assessing Officer and the provisions contained therein can be invoked by him while framing the assessment and not by the Commissioner of Income-tax while considering the application for registration under section 12AA.

8. Keeping in view the reasons given above, we are of the view that the action of the learned DIT (Exemption) in refusing to grant registration to the assessee-trust on the ground of violation of the provisions of section 13(1)(b) was not justified especially when he had not doubted either the genuineness of the activities of the assessee-trust or the nature of its object being charitable. In that view of the matter, we set aside his impugned order and direct that registration applied for by the assessee-trust under section 12A be granted to it.”

10. Identical issue was also considered by the Delhi Bench of the Tribunal in the case of *B.K.K. Memorial Trust v. CIT*, ITA No.6088/Del/2010 dated 10.6.2011 in paras 12 & 13 as under:-

“12. Apropos the powers of the trustees, these are contained at APB-12 and are as follows:-

“Powers and Duties of Other Trustees :

1. The Board of Trustees may appoint one or more trustees as and when required.
2. The Trustee shall have right to serve the Trust by fulfilling the aims and objects of the Trust on behalf of the Board of Trustees and in favor of the beneficiary as per aims and objectives and rules and regulations of the Trust;
3. That if any Trustee violates or denies the duties and do unlawful acts which is beyond the rules of the Trust, he will be fully liable for all costs, damages, losses for the same.
4. Board of Trustees may remove any Trustee/Trustees other than the three founder trustees without prior intimation/Notice to the said Trustee and without citing any reason. If the work of the any Trustee is not satisfactory and/or against the public policy

and trust interests he shall be immediately removed from the trust.

5. The trustees will serve the Trust as per direction of the Board of Trustee and the terms and conditions of the Trust.

6. The trustees will follow all the terms and conditions of the Trust and they will save the Trust accordingly.

7. The office of the Trustee shall become vacant on the happening of the following events:

- a. Death of Trustee.
- b. Physical or mental inefficiency of a Trustee.
- c. Resignation of the Trustee.
- d. On being rendered incapable to perform the duties of the Trust.
- e. In being convicted of any serious criminal offence involving moral turpitude.
- f. On being adjudged insolvent.”

(APB-12)

13. Firstly, it is not the learned CIT's purview to go into such aspects while considering the registration of a trust. As noted above, u/s 12AA, the only thing is to be seen is the charitable objects and the genuine activities of the trust. Otherwise too, it is seen that the powers of the trustees evince that if any trustee violates the duties and commits unlawful acts beyond the rules of the trust, he would be fully liable for the same. The board of trustees has been empowered to remove trustees other than the founder trustees, if their work is not satisfactory and/or against public policy and the interest of the trust. We find nothing wrong with such powers of the board of trustees. Obviously, if a trustee acts against the interest of the trust or against public policy, he invites removal from the post.”

11. The Tribunal held that it is not in the purview of the CIT to go into such aspects while considering registration of trust. What is required to be seen is only the charitable nature and activities of the trust for the purpose of granting registration u/s. 12AA of the Act.

12. In view the above facts and circumstances of the case, when the charitable objects of the trust and genuineness of the activities of the trust has not been doubted by the Id. CIT(E), then by following the decisions of the coordinate Benches of the Tribunal, we set aside the impugned order of the Id. CIT(E) and direct the Id. CIT(E) to grant registration u/s. 12AA of the Act.

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

Pronounced in the open court on this 10th day of February, 2016.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dated, the 10th February, 2016.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.