

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.1997/Mum/2013

(निर्धारण वर्ष / Assessment Year :NA)

Manekji Motal Charitable Trust, 20, Kapadia Chambers, 2 nd Floor, 51, Devji Ratanshi Marg, Masjid_East, Mumbai-400009	बनाम/ Vs.	Director of Income (Exemption), 6 th floor, Piramal Chambers, Parel, Mumbai-400012
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AACTM9481H

अपीलार्थी ओर से / Appellant by:	Shri Sanjay R Parikh
प्रत्यर्थी की ओर से/Respondent by	Shri N P Singh

सुनवाई की तारीख / Date of Hearing : 4.8.2016

घोषणा की तारीख /Date of Pronouncement : 22. 8.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Director of Income Tax (Exemption), Mumbai dated 21.2.2013.

2. The only issue raised by the assessee in the grounds of appeal is against the rejection of registration u/s 12A of the Income Tax act, 1961 (hereinafter called and referred to as the Act) by the Director of Income Tax (Exemption). The Director of Income Tax (Exemption) rejected the

application of the assessee for registration u/s 12A on two grounds first that the trust did not provide for "dissolution clause" in the deed of trust and therefore the appellant could not be said to have validly constituted public trust and second that the applicant trust incurred a sum of Rs.3,92,830/- on religious activities for the purpose of Pooja and making donations for religious purposes which worked out to 29% of its gross receipt of Rs.13,55,090/- and thus, the activities carried by the applicant were not in consonance with the objects set out in the trust deed and finally the Id. Director (Exemption) held that he was not satisfied with the genuineness of the activities of the trust which was a pre-condition for the registration and accordingly rejected registration of the application trust.

3. The Id. AR vehemently argued that the Director (Exemption) has wrongly rejected the application for registration u/s 12A of the assessee on two reasons i.e. absence of dissolution clause in the trust deed and the application of 29% of its gross receipt for making donations to various temples and for performing Pooja. The Id. AR submitted that so far as the absence of dissolution clause mentioned in the trust deed of the appellant trust is concerned, the Id. AR relied on the case of CIT V/s Tapagachha Sangh Mota (2015) 59 Taxman.204 (Guj) (ii)Geeta Lalwani Foundation V/s Director of Income Tax Exm) in ITA No.3566/Mum/2013 and as regard the second reason cited for rejection u/s 12A, the Id.AR strongly relied on the decision of Chennai Tribunal in the case of Life Shines Educational and

Charitable Trust V/s ACIT (2015) 39 ITR (Trib) 291 (Chennai) and thus submitted that the registration was denied without any cogent reasons.

4. On the other hand, the Id. DR strongly relied on the order of Director (Exemptions) and prayed for upholding the same.

5. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that in the present case before us the registration was denied and rejected by the Id. Director (Exemption) for two reasons (i) for absence of dissolution clause in the trust deed and (ii) the application of income of the trust to the extent of 29% for various religious activities by making donations to the temples and for performing poojas in AY 20011-12. We are in agreement with the Id. AR that the application of the trust cannot be rejected on these flimsy grounds. Moreover the case of assessee find support from the decision of Tapagachha Sangh Mota (supra), wherein the Hon'ble High Court has held that registration u/s 12A cannot be denied on the ground that deed of trust does not contain dissolution clause. In the case of Geeta Lalwani Foundation (supra) , the coordinate bench has held as under :

"5. We have heard both the parties and perused the orders of the Revenue Authorities as well as cited judgments of the higher judiciary and the relevant material placed before us. After hearing both the parties and on perusal of the orders of the Revenue Authorities, we find the judgment of the Hon'ble Kerala High Court in the case of Self Employers Service Society (supra) is decided on the facts of the said trust generating the income and not undertaking any charitable work.

Thus, the same is distinguishable. In the present case, assessee is yet to commence its activities and therefore, the assessee cannot be described as undertaking the activities for generating income only. Regarding the dissolution clause noting is brought on record even before us that the Bombay Public Trusts Act, 1950 mandates for incorporation of mandatory clause of dissolution of any irrevocable trust. Therefore, in our opinion, the decision of the DIT (E) rejecting the registration u/s 12A is required to be reversed. Accordingly, grounds raised by the assessee are allowed."

6. So far as the second objection by the Director (Exemption) for rejection of registration of trust u/s 12A is concerned , we are of the opinion that the application of income of the trust has to be seen at the time of assessment and it is premature to examine the said issue at the time of grant of registration u/s 12A of the Act. The case of the assessee is supported by a decision of the Tribunal Life Shines Educational and Charitable Trust Vs ACIT (Supra) in which it is held that the issue of application of income or the activities carried on were to be considered at an appropriate proceedings i.e. the assessment proceedings and not at the time of granting registration u/s 12A. In view of the ratio laid down in the decisions cited (supra), we find that the order of Id.CIT(A) is wrong and cannot be sustained as registration has been denied for no valid reasons. We ,therefore following the ratio laid down by the above said decisions, set aside the order of Id.Director (Exemption) with a direct to grant registration to the assessee u/s 12A of the Act.

7. In the result the appeal of the assessee is allowed.

The above order was pronounced in the open court on 22nd Aug, 2016.

घोषणा खुले न्यायालय में दिनांक: 22nd Aug,2016 को की गई ।

Sd/-

(SHAIENDRA KUMAR YADAV)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(RAJESH KUMAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 22nd Aug, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai

		Date	Initials	
1.	Draft dictated on	4.8.2016		SPS
2.	Draft placed before author	17.8.2016		SPS
3.	Draft proposed & placed before the Second Member			JM
4.	Draft discussed/approved by Second Member			AM
5.	Approved Draft comes to the Sr. PS			SPS
6.	Kept for pronouncement on			SPS
7.	File sent to the Bench Clerk			SPS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to A.R.			
10.	Date of dispatch of order			