

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Pawan Singh (JM)

I.T.A. No. 6521/Mum/2012
(Assessment Year 2012-13)

Ghoghari Sports Group C/o. Jayendra Parekh 184/9, 1 st Floor Samuel Street Khoja Galli, Mandvi Chambers, Masjid Bunder Mumbai-400 009. (Appellant)	Vs.	DIT (Exemption) 6 th Floor Piramal Chambers Parel Mumbai. (Respondent)
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----	--------------------------------------------------------------------------------------------------

PAN No.AAAAG8814F

Assessee by	Shri Bhupendra Shah
Department by	Miss Vidisha Kalra
Date of Hearing	4.7.2016
Date of Pronouncement	4.7.2016

ORDER

Per B.R. Baskaran(AM):-

The appeal filed by the assessee is directed against the order dated 28-09-2012 passed by Ld D.I.T (Exemption) rejecting the application filed by the assessee seeking registration u/s 12A of the Act.

2. The assessee trust filed its application seeking registration u/s 12A of the Act in the prescribed form before Ld DIT (E). The Ld DIT (E) took the view that some of the objects of the trust are non-charitable in nature, i.e., they were business like objectives. The Ld DIT(E) referred to the following objectives in this regard:-

- (a) To conduct various courses in the field of information technology.
- (b) To organise career guidance seminar.

Since clause 24 of the trust deed has given full discretion to the trustees to apply the funds of the trust towards attainment of any one or more of the objects, the Ld DIT(E) took the view that there is no binding legal obligation on the trustees to apply only for charitable objectives. Accordingly the Ld DIT(E) took the view that the assessee cannot be given registration, since it is having both charitable and commercial objectives. Accordingly he rejected the application filed by the assessee.

3. The Ld A.R submitted that the objectives of conducting various courses in information technology and organising career guidance seminar should be considered as charitable objectives only, since it is directed to help the students. He submitted that the assessee has nowhere submitted that it is going to run these activities on commercial basis and in fact, it explained that these two activities shall also be carried out without profit motive.

4. On the contrary, the Ld D.R submitted that the above said two activities are commercial in nature. She further submitted many of the objectives are too general in nature and the implementation of the above said two objectives will result in running commercial institutions. In this regard, the Ld D.R placed reliance on the decision rendered by Chennai bench of ITAT in the case of Aurolab Trust Vs. CIT (ITA No.135/MDS/2011 dated 11-05-2011) and submitted that the Chennai bench of Tribunal has passed a reasoned order in the above said case and further held that the trust carrying on business is not entitled to registration u/s 12A of the Act. The Ld CIT (DR) further submitted that the trustees have been given free hand in utilisation of trust funds and hence they could use the funds entirely for commercial objectives also. Accordingly she contended that the Ld DIT(E) was justified in refusing to grant registration to the assessee.

5. We have heard rival contentions and perused the record. We notice the provisions of sec. 12AA of the Act prescribe the procedure to be followed while processing the application filed seeking registration u/s 12A of the Act. As per sec. 12AA(1), the Commissioner has to satisfy himself about the genuineness of activities of the trust or institution and also satisfy himself about the objects of the trust or institution. Hence at the time of processing the application, the Ld DIT can examine the objects of the trust. In the instant case, the Ld DIT(E) has taken the view that the objects relating to conducting of courses in the field of information technology and organising seminars for career guidance are commercial in nature. In our view, the activities carried on by the assessee have to be examined with the motive of the assessee in order to determine as to whether the objectives are commercial in nature or charitable in nature. If the assessee's objective is to earn profit, then the activities should be considered as commercial in nature. During the course of hearing, the Ld D.R referred to case of running a restaurant. If the restaurant is run with profit motive, then the same shall constitute commercial objective. At the same time, a charitable trust provides food without any profit motive; then the very same activity shall be become charitable in nature. Thus, the activities do not determine the character, but the motive of organising the activities determines the character.

6. In the instant case, the assessee has submitted that it is not having any profit motive in conducting the above said programs. Hence, in our view, the Ld DIT(E) was not justified in terming the above said two objectives as commercial in nature, without examining the motive of the assessee. Hence, we are unable to agree with the decision taken by Ld DIT(E). The question of utilisation of funds require consideration only if the objectives are held to be commercial. Hence, the said ground of Ld DIT(E) also fails.

7. The Ld CIT(DR) placed reliance on the decision rendered by Chennai bench of Tribunal in the case of Aurolab Trust (supra). We have gone through the order and we notice that the same has been rendered in the context of cancellation of registration. We notice that the Tribunal has given a specific finding that the assessee therein had carried on its activities in a businesslike manner. In the instant case, the issue before us is with regard to the granting of registration and further the activities have not been carried on in respect of the above said two objectives. Hence, in our view, the said decision cannot be taken support of by the revenue.

8. In view of the above, we are of the view that the application filed by the assessee needs fresh examination at the end of Ld DIT(E). Accordingly, we set aside the order and restore the same to the file of Ld DIT(E) with the direction to examine the application filed by the assessee afresh, after providing adequate opportunity of being heard and take appropriate decision in accordance with the law. The assessee is also directed to furnish all the information that may be called for by Ld DIT(E) in connection with the processing of the application filed by the assessee.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 4.7.2016

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/7/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai