

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1792/Hyd/14	2013-14	Foundation for Indo-German Studies, Hyderabad [PAN: AAATF3699N]	Director of Income-tax (Exemptions), Hyderabad
1793/Hyd/14	2014-15		

For Assessee : Shri Ajay Gandhi, AR
For Revenue : Shri B.V. Gopinath, CIT-DR

Date of Hearing : 01-08-2016
Date of Pronouncement : 10-08-2016

ORDER

PER B. RAMAKOTAIAH, A.M. :

These two appeals are by assessee against the orders of the Director of Income Tax (Exemptions), Hyderabad, dated 29-11-2012 & 28-08-2014 respectively.

2. Assessee has originally filed an application in Form No. 10A of 15-05-2012 seeking registration u/s. 12AA of the Income Tax Act [Act] which was rejected by the DIT on 29-11-2012. As assessee has not received any order from the DIT, it seems assessee filed another application on 07-02-2014 which was again rejected by the order dt. 28-08-2014. Accordingly, assessee has preferred both appeals, as the first order was also communicated

on 28-09-2014. It was submitted that the issue is same in both the appeal i.e., registration u/s. 12AA of the Act.

3. Briefly stated, assessee is an institution formed vide a Trust Deed executed on 28-03-2012. It sought registration u/s. 12AA of the Act by filing the application in Form No. 10A. Ld.DIT issued a questionnaire and assessee has replied to the questionnaire detailing the activities undertaken by assessee-trust. Ld.DIT was of the opinion that assessee has not given desired reply and accordingly, he was of the opinion that assessee-trust has not carried on charitable activity as per its objects. In addition to the above, the DIT also noticed that the trust intends to carry out activities outside India. The third reason considered by the DIT is that the trust is stated to be irrevocable trust under Clause-7, whereas Clause-37 empowers the trustees is to dissolve the trust. According to DIT, there is an anomalous situation in the trust Deed. The fourth reason considered by the DIT was that Clause-14 mentions that the trust shall have a minimum of two trustees and maximum of 12 trustees, whereas Clause-15 states that Board shall have the power to increase the number of trustees to any number not exceeding 18 (eighteen). Thus, he was of the opinion that there was no clarity in the trust deed about maximum number of trustees. The last issue considered by the DIT was that there are certain ex-officio Members of German Consulate who would also be a Member of the Board of trustees. In view of such stipulation empowering the trust to have a foreign national in their Board, the DIT was of the opinion that trust cannot be considered as an independent/charitable institution. Considering the above,

DIT refused the registration U/s. 12AA. Similar order was passed on the second application filed by assessee, dt. 28-08-2014.

4. Ld. Counsel while referring to the order of the DIT submitted that there is no objection from the DIT about the objects of the trust and assessee has been carrying on the activities as per the objects of the trust. It was his submission that the reasons stated by the DIT are not correct as assessee's activities are charitable in nature. It was further submitted that if there is any violation of the objects, the provisions of Section 11 & 12 would apply, but DIT was not correct in refusing the registration u/s. 12AA. In addition to the activities of the trust, Ld. Counsel also submitted that the trust does not carry out any activities outside India but only co-operates in exchange programmes. It does not mean that assessee extended its activities outside India. He was of the opinion that even in a case where there are activities outside India, AO is empowered to restrict the exemption while scrutinizing assessment, but DIT cannot refuse registration on that ground. He relied on the Co-ordinate Bench decision in the case of Manhattan Foundation Vs. CIT (Exemptions) in ITA No. 1353/Hyd/2015 dt. 24-06-2016. On the objection that the trust is irrevocable as well as having power to dissolve, it was submitted that Ld.DIT got confused the irrevocability of the trust with the power of administering the trust. It was submitted that irrevocability will apply only to the creator of the trust whereas the trustees can have power to dissolve the trust, if they are not able to administer the trust as per its objects. These two are independent of each other and cannot be an issue for rejecting the registration. Coming to the other objection of the DIT about the number of trustees, it was

submitted that there is no confusion about the issue as felt by the DIT. The power given to the trustees to increase the number of trustees as and when required cannot be considered as '*there is no clarity in the trust deed*' as these two clauses operate separately. *With reference* to Clause-16, about co-opted/ex-officio members, Ld. Counsel vehemently argued that there is no restriction about somebody being nominated as trustee. What is required to be examined at the time of registration is whether the objects are charitable in nature and trust is genuine or not? It was submitted that assessee deserves registration u/s. 12AA of the Act.

5. Ld. DR however, supported the arguments of the DIT as stated in the order and defended the action of the DIT.

6. We have considered the rival contentions and perused the documents placed on record. As can be seen from the order of the DIT, there is no comment/ objection about the objects of the assessee-trust. Section 12AA prescribes the procedure of registration. Reading the Section, it becomes clear that after the application is made, the officer has to call for documents or information from the trust to satisfy himself about the genuineness of the activities of the trust and objects of the trust. He can make further enquiry as he may deem it necessary. It is only after satisfying himself about the objects of the trust and genuineness of its activities that he has to pass an order in writing registering the trust or institution. This Section does not refer to any other aspects which the Ld.DIT has undertaken in his order. Since there is no comment about the objects of the trust being not charitable

in nature, we presume that Ld.DIT has no objection to the objects of the trust.

6.1. Coming to the genuineness of the trust, there is no doubt that the trust is genuinely constituted and is active. If there are any violations in fulfilling the objects for which it is constituted, it is the AO who has to examine while allowing the benefit u/s. 11 and 12 of the Act. While registration in accordance with the provisions of Section 12AA of the Act is a condition precedent for claiming the benefits u/s. 11 and 12 of the Act, registration as per Section 12AA by itself will not automatically confer the benefits of Section 11 and 12 of a trust, but the trust will get the benefit only on complying with the requirements of Section 11 & 12 of the Act, which compliance can be examined by the assessing authority while processing the return filed by the trust. So long as the trust has objects which are charitable in nature, it satisfies for registration u/s. 12AA of the Act, unless there is a finding that the trust is not genuine. Even if the objects are mixed in the sense, there are charitable and religious objects, still the trust is entitled for registration as held by various decisions of the judicial authorities. Here, there is no objection on the reason that the trust is a religious trust. So long as the objects are charitable in nature, assessee deserves registration u/s. 12AA of the Act. As submitted by the Ld. Counsel, we are of the opinion that DIT has taken extraneous considerations in refusing to register the trust. We do not find any force in the arguments of the DIT considered in the order for rejection of the registration. Just because the reply is not given as *desired* by the DIT, it does not mean that the trust is not genuine. Moreover, as submitted by the Ld. Counsel, various

clauses of the trust operate independently and there is no confusion as made out by the DIT. In fact the DIT himself got confused in understanding the irrevocability of the trust and power of the trustees in dissolving the trust while administering the same. With reference to number of trustees also there is no confusion as trustees are empowered to enhance the initially constituted trust members to a maximum number of 18, which does not mean that there is no clarity at any given point of time. There can only be trustees as specified in the original trust deed or as enhanced by the Board keeping in view of the requirements. With reference to the foreign national being member of the trust, Ld. DR did not specify any of the law under which it is prohibited. So long as the trust objects are charitable in nature and trust activities/benefits claimed are within India, the trust can get the registration.

6.2. The last objection with reference to activities being carried out outside India. This issue was considered by the Hon'ble Delhi High Court in the case of M.K. Nambyar Saarc Law Charitable Trust Vs. Union of India [269 ITR 556], wherein it was held that:

“CHARITABLE PURPOSES - CHARITABLE TRUST – REGISTRATION OF TRUST -APPLICATION OF INCOME OUTSIDE INDIA -NOT A GROUND FOR REFUSING REGISTRATION-INCOME-TAX ACT, 1961, SS. 11, 12A

So far as the benefit of section 11(1)(a) of the Income-tax is concerned, it can be extended only to the extent to which such income is applied to such purposes in India. However, if the income is applied to the purposes outside India, then clause(c) will be applicable and if the permission is granted by the Board either by general or special order then, benefit can be extended. Section 12AA prescribes the procedure for registration. Reading the section, it becomes clear that after the

application is made, the officer has to call for documents or information from the trust to satisfy himself about the genuineness of the activities of the trust. He can make further enquiry as he may deem necessary. It is only after satisfying himself about the objects of the trust and the genuineness of its activities that he has to pass an order in writing registering the trust or institution. And if he is not satisfied, he can reject the same. This section does not refer to the activities in India or outside India. It refers to application of income for charitable or religious purposes in India as also with direction or order of the Board for application of income as aforesaid outside India.

The assessee-trust applied for registration under section 12A and recognition under section 80G. The application was rejected on the ground that the applicant itself had admitted that the scholarships could be paid to the members even outside India. On a writ petition against the order: Held, that it was very clear that there was non-application of mind. It was necessary for the Commissioner to examine the purpose for satisfying himself that the activities were genuine. The order was not valid”.

6.3. Not only that the Co-ordinate Bench in the case of Manhattan Foundation Vs. CIT (Exemptions) in ITA No. 1353/Hyd/2015 (supra) relied on by the Counsel has considered the decision of the Co-ordinate Bench in the case of Critical Art and Media Practices [153 ITD 644] (Mum) and decision of Hyderabad Bench in the case of International Bhakti Vedanta Institute Trust [42 Taxman.com 330], it was held in the above order as under:

“8. The second objection of the CIT(Exemption) is based on the reading and interpretation of the 'incidental objects' as provided for attainment of main objects in the Memorandum of Association. As per CIT(Exemption), the incidental objects indicate the intention of the assessee to pursue its activities outside India. This objection of the Commissioner for denial of registration is also without any force. We notice from the relevant incidental clause relied upon by the Revenue that such clause primarily enables the assessee to raise funds to attain the main objects of the company. It does not give any impression that the assessee shall carry out its activities outside India. Be it as it may, we simultaneously notice that on this aspect also, the decision of the coordinate bench of the Tribunal in the case of Critical Art and Media Practices (supra) is in favour of the assessee. In that case, under similar circumstances, the Tribunal

came to the conclusion that registration cannot be denied merely because the assessee's activities are extended outside India. Relevant portion of the said decision of the Tribunal reads as under-

"13. Keeping in view of the above submissions, in our view, the second ground on which the registration is rejected needs to be relooked by the Ld. DIT(E). In view of our above observations, we hold that if the activities otherwise are charitable and fall in the definition of charitable purposes as defined under section 2(15) of the Act and further the property is held wholly and exclusively under trust for charitable and religious purposes as provided under section 11 of the Act, then such a trust subject to the fulfilment of other conditions as laid down by the different provisions of the Act, will be entitled to registration and it cannot be denied registration because of the fact that its activities are extended outside India. However, while computing the income as per the provisions of section 11 of the Act, the income which is applied on such an activities in India only, will be eligible for exemption and subject to the provisions of section 11(1)(c) wherein the income applied outside India is also eligible for exemption, if the activities tend to promote the international welfare in which India is interested and the approval has been granted by the Board for such application of income. However, so far as the second ground ITA No.736/M/2013 11 M/s. Critical Art and Media Practices regarding the salary received by the trustees in excess of what may be reasonably paid for such services is concerned, the matter is restored to the file of the Ld. DIT(E) for decision afresh after granting proper opportunity to the appellant trust to present its case and produce necessary evidences, if any, in this regard".

We also note that the decision of the coordinate bench in the case of International Bhakti Vedanta Institute Trust (supra) also squarely supports the case of the assessee. Following the parity of reasoning, we find that the second objection of the Revenue is also not sustainable in law".

6.4. Considering the principles laid down on the subject and the fact that assessee's objects are charitable in nature, we direct the DIT to grant registration u/s. 12AA. As considered by the Hon'ble Delhi High Court in the above referred case of M.K. Nambyar Saarc Law Charitable Trust Vs. Union of India [269 ITR 556] (supra), Assessing Officer is empowered to examine the accounts while granting benefits u/s. 11 & 12 of the Act. With

these directions, DIT is directed to grant registration u/s. 12AA to the assessee-trust.

7. In the result appeal in ITA No. 1792/Hyd/2014 is considered allowed.

8. In ITA No. 1793/Hyd/2014, the issue is similar. We have to allow the assessee's appeal. However, since registration is directed to be granted in appeal 1792/Hyd/2014, no further direction is required in this appeal as the registration granted therein will apply to assessee-trust. Appeal in ITA No. 1793/Hyd/2014 becomes academic in nature. However, this appeal is also allowed for statistical purposes.

9. In the result both the assessee's appeals are allowed.

Order pronounced in the court on 10th August, 2016

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 10th August, 2016

Copy to :

1. Foundation for Indo-German Studies, Hyderabad. C/o. Gandhi & Gandhi Chartered Accountants, 1002, Paigah Plaza, Basheerbagh, Hyderabad.

2. Director of Income Tax (Exemptions), Hyderabad.

3. D.R. ITAT, Hyderabad.

4. Guard File.