

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 864/CHD/2016
Assessment Year : 2016-17

M/s Ashutosh Charitable Trust of
Educational & Medical Sciences,
407/1 Officer Colony, Bitna Road,
Pinjore (Panchkula) Haryana.

Vs

The CIT (Exemptions),
Chandigarh.

PAN: AAETA7868C

(Appellant)

(Respondent)

Appellant by : Shri Ajay Jain
Respondent by : Shri Ravi Sarangal, CIT-DR

Date of Hearing : 02.01.2017
Date of Pronouncement : 12.01.2017

ORDER

PER BHAVNESH SAINI, JM

This appeal by the assessee has been directed against the order of ld. CIT(Exemptions) Chandigarh dated 31.05.2016 rejecting the application under section 12AA of the Income Tax Act on the following grounds :

“1. That the learned CIT(E) has wrongly passed order u/s 12AA of the Income Tax Act, 1961 refusing the grant of registration 12AA

to appellant trust who was formed mainly for purpose of educational & medical relief.

2. The learned CIT(E) has also erred by refusing registration U/s 12AA on irrelevant grounds & without any material on record in respect of genuineness of its activities of appellant trust. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard and disposed off".

2. Briefly the facts of the case are that the assessee filed application for grant of registration under section 12AA of the Income Tax Act. The assessee furnished details called for on the matter. The CIT (Exemption) noted that the Trust Deed evidences a declaration from the Chairman regarding payment of Rs. 11 lacs for the purpose of the trust property evident from the deed. The same, however, has not been reflected in the bank accounts. The aims and objectives of the trust have been narrated in 21 points but main aim apparently is to start educational institution where course in engineering, technical, medical, management etc. will be taught. In addition, there is a proposal to run a hospital also. In order to corroborate the work being done by the trust vis-à-vis the stated objectives, some photographs have been appended wherein medical aid is shown being provided to people. It is mentioned the photographs pertain to June, July and October, 2015. On inquiry, assessee submitted that voluntary medical services have been provided to redeem its charitable objectives and that trust is in the process of opening of a school and

hospital for downtrodden class. However, the predominant purpose of the trust at present seems purchase of large tracts of land ostensibly with the aim to construct school and hospital premises.

3. The Id. CIT also noted in the impugned order that submissions of the assessee have been examined and it revealed that assessee furnished balance sheet on 18.10.2015 and of 31.03.2016. No return of income have been filed for the period ending 31.03.2016 as the same was not due. No PAN number provided. It was noted that balance sheet for the part period was prepared without any reason because there was no need as per the given principles as well as requirements of the various laws to draw a balance sheet for 18.10.2015. It was also noted that apparent explanation for furnishing a part balance sheet appears that the assessee trust was on a sole mission to purchase various pieces of land for the proposed educational institution and after registration of the trust, an OD limit from PNB Baddi of Rs. 9.56 Crores was taken by pledging the FDRs of another trust namely M/s Vishav Manav Roohani Kendra which has been claimed to be registered under section 12A of Income Tax Act through no proof of registration has been filed. Loan is, therefore, not free from encumbrances. The OD limit was sanctioned for purchase of land, copies of the Registered Deed have been filed which revealed that payments have been made from OD limit of PNB, Baddi

and amounts have been paid through DD. However, in case of land purchased for Rs. 1.40 Crores on 28.08.2015, an amount of Rs. 37,85,000/- was paid in February,2015 predates the opening of the trust and as such, apparently the amount have been paid before start of the trust and to that extent, is not part of the property of the trust. It was also transpired that assessee has taken another OD limit of Rs. 10 Crores from State Bank of India Sector 17, Chandigarh which was sanctioned on 09.06.2015. This OD limit is separate from OD limit of PNB, Baddi. When enquired, the submission made by the assessee was that the another OD limit which have been got sanctioned by pledging FDR from M/s Vishav Manav Roohani Kendra. This OD limit was sanctioned but was not utilized for purchase of land as the limit from PNB Baddi was sanctioned on 16.06.2015. The OD limit from State Bank of India Chandigarh has cash deposits and excess OD amount of Rs. 60,281/- have been withdrawn and there is a credit balance of Rs. 3,90,241/-. The OD limit has not been closed. Apparently, the assessee had taken OD limit for purchase of lands but after sanction of the OD limit from PNB Baddi, this amount has been more or less kept as unutilized.

4. The balance sheet ending 31.03.2016 was reproduced in the impugned order. The ld. CIT also noted that the corpus fund shown by the assessee on 18.10.2015 was Rs. 3.11 Crores which have been

increased to Rs. 6.66 Crores as on 31.03.2016. The OD limit from PNB Baddi had outstanding balance of Rs. 3,77,95,902/- as on 18.10.2015 which have been nullified and is not reflected in the balance sheet. The explanation from the assessee in this regard was that once the lands were purchased from following the balance available with PNB Baddi and the corpus donation received in the intermittent period was utilized for payment to PNB Baddi and ultimately, OD limit was nullified. The corpus fund has been shown to have been received from various persons whose names were provided through the initial reply. There was no address and PAN number provided. Individuals in their confirmation have explained to have contributed for corpus and PAN numbers of some of them were also filed. The Id.CIT, however, noted that large number of confirmations were missing. There is no specific direction that same amount should be treated as corpus donation. In some cases, although the corpus donations have been paid through cheque, yet in absence of PAN number, most are unavoidable. The confirmation in respect of whom PAN numbers have been provided, add up to a miniscule compared to the total quantum of the claimed corpus donations in the balance sheet.

4(i) Besides all of the above, even assuming that donation had come for corpus, the expenditure made belies logic as to how a trust claiming to be of a public

charitable character can utilize the entire amount collected as corpus donation on activities like purchase of land which in itself is not a charitable activity. The corpus fund is not allowed to be utilized for attainment of the purpose/objects of a trust. Instead it is to be retained as a source from which trust can earn income which in-turn can be utilized as well as accumulated. In the case of the assessee, corpus fund has been taken as the explanation for all expenditure incurred by the trust. The funds so received have been deposited at the sweet will of the assessee either in OD limit of PNB Baddi or in State Bank of India Chandigarh. The assessee submitted details of donations received and deposited in different OD limit accounts apart from cash receipts of the donations. The donations have been received even prior to filing of the registration application. The corpus donations are identifiable as per provisions of Section 11(1)(d) of the Income Tax Act which can be termed as corpus donations only after recognition and registration of the trust by prescribed authority. In the absence of registration certificate, these amounts may simply be treated as unsecured loans.

5. The ld.CIT, considering the above aspects, noted that assessee has taken the garb of donations for repayment of the OD which in turn was taken by pledging security of FDR of another trust which is claimed to be registered under section 12AA of the Act, the issue of

pledging of FDRs that do not belong to the assessee itself being questionable. The ld.CIT also noted that it is amply clear that assessee trust purchased the land and the process is started even prior to the registration of the trust. Further, source of the investment have not been established. The activities of the assessee trust are apparently seemingly not intended to benefit the public at large and to that extent, the stated aims and objectives of the trust remained to be ostensible and not convincing at all. The registration application was, accordingly, rejected. The assessee is in appeal.

6. We have heard ld. Representatives of both the parties and perused the material on record. The ld. counsel for the assessee submitted that the Trust Deed clearly show that the settler has given a sum of Rs. 11 lacs for the trust property which is deposited in the bank account, copy of the bank account is filed at page 26 of the Paper Book. Therefore, finding of the CIT is factually incorrect that the amount of Rs. 11 lacs have not been reflected in the bank account of the assessee. He has further submitted that the CIT has admitted in the impugned order that aims and objectives of the assessee are charitable in nature because assessee's main objects are to run and manage educational institution in various fields and to run hospital and other educational activities. Copy of the Trust Deed is filed at page 7 of the Paper Book. The ld. counsel for the assessee further

submitted that purchase of land is the first step to attain the objectives of the trust. The land acquired by the assessee was not sold or used for any other purposes other than the aims and objects mentioned in the Trust Deed. Further, construction of building of the school and hospital would take some time, therefore, trust has been created on 27.05.2015 and assessee applied for registration of the trust under section 12AA of the Act. At the stage of registration, the CIT shall have to examine the aims and objects of the assessee trust and there is no requirement that assessee trust should have started all its envisaged activities at the initial stage itself. The balance sheet has been prepared to show the statement of affairs of the trust to CIT at the time of application for registration, copy of which is filed at page 20 of the Paper Book.

6(i) He has further submitted that when the land was purchased out of OD limit from bank, there is no prohibition in Section 12AA of the Act to purchase land out of over draft limit. M/s Vishav Manav Roohani Kendra has been allowed registration under section 12AA of the Act by the CIT, Panchkula vide order dated 17.09.2007 as per direction of the ITAT. Copies of both the orders are filed in the Paper Book. He has further submitted that for purchase of land, advance was given by Shri Balbir Singh and Shri Jasvir Singh to the owners, however, they could not arrange the balance money and

requested trust to purchase the land from the owners as there was a standard clause in the 'Agreement to sell' that buyers shall have the right to get the Deed registered in his own name or any other person. It has nothing to do with the grant or refusal of registration. It is not the case of CIT that trust has paid the money and registration has been done in the name of some other person. Copy of the sale deed is filed at page 29 of the Paper Book. He has submitted that donor has given donation for specific purpose i.e. to purchase the land for aims and objects of the assessee trust and therefore, it is part of the corpus and moreover, it is not voluntary contribution without any purpose. Details of the same are filed from pages 47 to 66 of the Paper Book. The nature of corpus fund does not change irrespective of the fact whether application under section 12AA has been filed or not. The nature of corpus fund is just like a capital which is used for fixed assets and not current assets. The voluntary donation is used to make day-to-day expenses or to run the activities of the trust in ordinary course.

7. The ld. counsel for the assessee relied upon decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs B.K.K. Memorial Trust 256 CTR 424 in which it

was held as under :

The Trust was created on 23.6.2010 and application under Section 12A(1) (aa) of the Act was moved on 19.7.2010 and the same was rejected on 26.11.2010. The application for registration is required to be made within one year of the creation of the Trust and there is no requirement that the Trust or the institution should have started all its envisaged activities in the first year itself. Under Section 12AA of the Act satisfaction regarding the genuineness of the activities of the Trust is to be seen and the stage for application of income is yet to arrive i.e. when such Trust or Institution files its return. Thus the contention that Trust was not set up for charitable purposes and it was utilizing its income not for the said purpose cannot be examined at this stage as only objects of the Trust had to be considered by the Commissioner. The Trust was in nascent stage and was yet to work towards its objects. No substantial question of law arises for determination before High Court and consequently, the appeal was dismissed. ITA No.710 of 2010 -Commissioner of Income Tax—II, Chandigarh Vs. M/s Surya Educational & Charitable decided on 5.10.2011; ITA No.881 of 2010 The Commissioner of Income—tax, Bathinda Vs M/s Baba Deep Singh Educational Society, SCF 23, Bharat Nagar, Bathinda decided on 13.10.2011, followed

7(i) Decision of Hon'ble Punjab & Haryana High Court in the case of CIT Vs Surya Educational & Charitable Trust 355 ITR 280 in which it was held as under :

As per s. 12AA, an application for registration of the trust and institution is required to be made within one year from the date of creation of the trust or the establishment of such institution. The procedure for registration of the trust or institution is prescribed under s. 12AA. In terms of cl. (a) of s. 12AA, the CIT is to satisfy himself about the genuineness of the activities of the

Trust on such inquiries as he may deem necessary. Sub-ss. (1A) and (2) of s. 12AA, are procedural in nature, whereas Sub-s. (3) of s. 12AA, empowers the CIT to cancel the registration of the Trust or Institution, if he is satisfied that the activities of such Trust or Institution are not genuine or are not carried out in accordance with the objects of the trust or institution. Therefore, the object of s. 12AA, is to examine the genuineness of the objects of the trust but not the income of the trust for charitable or religious purposes. The stage for application of income is yet to arrive i.e. when such trust or institution files its return.—CIT vs. Devi Educational Institution & Ors. (1984) 43 CTR (Mad) 48 : (1985) 153 ITR 571 and Aditanar Educational Institution Etc. vs. Addl. CIT (1997) 139 CTR (SC) 7 : (1997) 224 ITR 310 (SC)-distinguished.

7(ii) Decision of ITAT Chandigarh Bench in the case of Yodha Samarak Samity Vs CIT 138 ITD 512 in which it was held as under :

Assessee society perpetuating memories of war heroes and engaged in setting up educational institutions, arranging seminars, holding meetings/conferences and to organize lecture exhibition etc., and further to inculcate moral, spiritual, physical and patriotic spirit is entitled to registration under S. 12AA.

Mere fact that addresses of the donors from whom donation has been claimed to be received were missing cannot form basis of rejection of registration under s. 12AA.

7(iii) Decision of ITAT Chandigarh Bench in the case of Shri Gurudas Educational Trust Vs CIT 177 TTJ 25 in which it was held as under :

Genuineness of the activities of the Trust has to be seen keeping in mind the objects of the Trust. The Ld. CIT has to satisfy himself about the fact that the activities are genuine and in consonance with the objects of the Trust. The enquiry regarding genuineness of the activities cannot be stretched beyond this.

7(iv) On the other hand, ld. DR relied upon impugned orders and submitted that assessee is not entitled for registration.

8. We have considered rival submissions. The assessee has filed copy of the Trust Deed which clearly revealed that the aims and objectives of the assessee trust are to run and manage educational institution and to run hospitals and dispensaries etc. Therefore, the main aims and objectives of the assessee trust are charitable in nature. Even this fact is not denied by the CIT (Exemption) in the impugned order. The CIT noted that the amount of Rs. 11 lacs have not been reflected in the bank account. However, the bank account of the assessee clearly show that the amount mentioned in the trust deed has been reflected in the bank account of the assessee. The purchase of land is the initial stage for formation of the trust so that the assessee could achieve its objectives. Therefore, there is nothing wrong if assessee started purchasing land for the purpose of establishing educational institution as well as hospital etc. for the purpose of the assessee trust. The assessee has also produced photographs before CIT(Exemption) to

show that the assessee has started voluntary services towards the aims and objectives of the assessee trust which have not been disputed. Copies of the same are also filed in the Paper Book. At the stage of grant of registration under section 12AA of the Act, CIT is required to examine the objects of the assessee trust and genuineness of its activities. At the time of registration under section 12AA of the Act, which is necessary for claiming exemption under section 11 and 12, the CIT (Exemption) is not required to look into the activities, where such activities have not or are in the process of its initiation. Where assessee trust is set up to achieve its objectives of establishing educational/medical institutions, is in the process of establishing such institution and receives donations, registration under section 12AA cannot be refused on the ground that trust has not yet commenced charitable activities. At this stage only, genuineness of the objects has to be tested and not the activities which have not commenced.

8(i) We are fortified in our view by judgement of Allahabad High Court in the case of Hardayal Charitable & Educational Trust Vs CIT 355 ITR 534, in which it was held as under :

“At the time of registration under section 12AA of the Income-tax Act, 1961, which is necessary for claiming exemption under sections 11 and 12, the Commissioner is not required to look into the activities, where such activities have not or are in the process of its initiation. Where a trust, set up to achieve its objects of establishing educational institutions, is in the process establishing such institutions, and receives donations, the registration under section 12AA cannot be refused, on the ground that the

trust has not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At this stage, only the genuineness of the objects has to be tested and not the activities, which have not commenced. The enquiry of the Commissioner at such preliminary stage should be restricted to the genuineness of the objects and not the Activities unless such activities have commenced. The trust or society cannot claim exemption, unless it is registered under Section 12AA and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused.

Held, allowing the appeal, (i) that it was not denied that for the subsequent year the assessee had been granted exemption under section 12AA and had also been approved under section 80G, subject to certain conditions. If the Commissioner was satisfied with the genuineness of the objects of the trust for the subsequent assessment year, the refusal of the registration for the preceding assessment year 2011-12 was not justified.

(ii) That the question of exemption from application of income received by way of donation was a separate issue and which may be required to be considered, when the return was filed by the trust and was examined by the Income-tax Officer. The question as to whether the donations by the societies was the expenditure of the trust for charitable and religious purposes will be examined at the time of examining the return.

(iii) That the registration under section 12AA and approval under section 80G would not by itself entitle the trust to exemption of the income of its donors or of the trust for the assessment year 2011-12. For claiming such exemption the returns of the donor and the trust will be examined, for orders to be made in accordance with law."

8(ii) The other decisions relied upon by ld. counsel for the assessee as reproduced above, clearly support the claim of the assessee that assessee is entitled for registration under section 12AA of the Act. In the case of the assessee, the assessee is still in the process of acquiring land and yet to start construction of building for educational and medical institution therefore, at that initial stage, the test of genuineness of the activities cannot be a ground for rejection of the registration application under section 12AA of the Act. Merely because there was some defects in the confirmation of donor, by itself is no ground for rejection of the

registration application. The genuineness of the activities of the trust has to be seen keeping in mind the objects of the trust. The CIT (Exemption) has to satisfy himself about the fact that the activities are genuine and in consonance with the objects of the trust. The other points noted by CIT (Exemption) in the impugned order have been satisfactorily explained by ld. counsel for the assessee. Since the assessee was in process of acquiring land for achieving the aims and objects of the assessee trust, therefore, there is nothing wrong in acquiring land by the assessee. Preparation of the balance sheet for part period is no ground to reject application for registration under section 12AA of the Act because assessee filed application for registration on 23.11.2015 and as such, it is difficult to prepare the balance sheet of the assessee ending 31.03.2016. The assessee also explained that M/s Vishav Manav Roohani Kendra have been allowed registration under section 12AA of the Act who have helped the assessee in its formation. Some advances have been given by different persons which have been used for purchase of land in favour of the assessee. Therefore, it is not a case that advance was given by the assessee trust and the land have been purchased in the name of third person. Moreover, these are not relevant criteria to be considered at the time of grant of registration because aims, objectives and activities of the assessee in reference to objects shall

have to be considered. Application of income for charitable purposes can be examined at the stage of assessment when trust would file the return of income.

9. Considering the totality of facts and circumstances of the case in the light of the decisions above and particularly the fact that there is no denying the fact that assessee's main aims and objects are charitable in nature i.e. running educational and medical institutions, we are of the view assessee would be entitled for registration under section 12AA of the Act.

10. In this view of the matter, we set aside the impugned orders and direct the ld. CIT (Exemption) Chandigarh to grant registration to assessee under section 12AA of the Act as is claimed in the registration application, within one month from the date of the order.

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

Order pronounced in the Open Court.

Sd/-

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 12th January, 2017.
'Poonam'

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT, DR

Assistant Registrar,
ITAT/CHD