

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'C' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Shri S.S.Viswanethra Ravi, JM]

ITA Nos.32 & 33/Kol/2017Assessment Year : **2016-17**

The Neotia University
Kolkata
(PAN: AAAJT 2617 E)
(Appellant)

-versus-

C.I.T. (Exemptions)
Kolkata

(Respondent)

For the Appellant: Shri S.K.Tulsiyan, Advocate
For the Respondent: Shri G.Mallikarjuna, CIT(DR)

Date of Hearing : 03.08.2017.

Date of Pronouncement : 23.08.2017.

ORDER**PER J.SUDHAKAR REDDY, AM:**

These appeals are filed by the Assessee directed against the order of the Commissioner of Income Tax-(Exemptions), Kolkata dated 31.10.2016 rejecting the registration u/s 12AA of the Income Tax Act, 1961 (Act) to the assessee and consequently its application for approval u/s 80G of the Act.

2. The Assessee is an university which had come into existence by way of law enacted by West Bengal Assembly vide Neotia University Act, 2014 (West Bengal Act XXIII of 2014) and the Act was published in The Kolkata Gazette on 4th February, 2015. The Assessee university filed an application in Form 10A for registration u/s 12A of the Act and for its approval u/s 80G of the Income Tax Act, 1961 (Act) on 18.04.2016. The Id. CIT(Exemptions), Kolkata stated that if the dissolution of the university as enumerated under section 45 of the Neotia University Act, 2014 was not proper for the reason that the university decides to dissolve itself, then the State Government will have full discretion to decide how and to whom the accumulation of income/funds are to be distributed. He held that registration u/s 12AA of the Act cannot be granted with such dissolution clause. He further relied on the section 115TD(1)(c) of the Act and held that dissolution clause in the assessee's constitution is in contradiction to this section. Thereafter he relied on the decision of

Hon'ble Jammu & Kashmir High Court in the case of Jammu Development Authority vs CIT order dated 07.11.2013 in ITA NO.264 of 2012, for the proposition that "even on dissolution or winding up by not having any restriction on application of asset for charitable purpose, the objects of the assessee cannot be said to be charitable in nature". Thus he rejected the applications for registration u/s 12AA of the Act and consequently request for recognition u/s 80G of the Act. Aggrieved the assessee is in appeal before us.

3. The Id. Counsel for the assessee Shri S.K.Tulsiyan submitted that the objects of the assessee university are charitable in nature and this fact is not disputed by the Id. CIT(Exemptions), Kolkata. He referred to section 12AA of the Act and submitted that the requirements of registration of a charitable institution does not refer to a dissolution provision. He pointed out that the procedure required for registration is that the Principal Commissioner or Commissioner called for documents and information to examine the charitable nature of the objects and the genuineness of the activities of the trust or institution and after being satisfied about the objects of the trust or institution and genuineness of the activities pass orders in writing registering the trust or institution or otherwise. Hence he contends that the very ground on which the registration has been rejected in this case is wrong in law. He relied on the following case laws :-

- a) Tar Educational and Charitable Trust vs DIT (Exemptions) in ITA NO.1247/Mum/2013 order dated 18.07.2014
- b) Geeta Lalwani Foundation in ITA No.3566/Mum/2013 order dated 02.01.2015
- c) Rama Rashmi Chhanganlal Waghwal Charitable Trust vs DIT(E) in ITA No.4509/Mum/2013) dated 22.04.2015

4. Alternatively without prejudice he submitted that the Id. CIT(Exemptions), Kolkata has totally misunderstood section 45 of the University Act for the reason that, it provides that it shall not be permitted to serve notice for winding up within a period of 10 years from the date of commencement. Even in the event of dissolution, an administrator is to be appointed by the State Government for the process of winding

up and use of the endowment fund in such a manner as may be prescribed. He submitted that in the eventuality of dissolution, the Government of West Bengal will act in good faith and it cannot be concluded otherwise. He further submitted that consequent to the introduction of section 115TD(1)(a) of the Act, the interest of the revenue is protected as it is a charging provision which will be attracted when a trust or a society is converted to non charitable organisation or gets merged with a non charitable organisation or on transfer of assets of a charitable organisation on its dissolution to a non charitable organisation.

5. On the scope of the powers of the Id. CIT(Exemptions) for registration he relied on the following case laws :

- a) Allahabad High Court in the case of Fifth Generation Education Society vs CIT 185 ITR 634
- b) Hon'ble Punjab & Haryana High Court in the case of CIT vs Surya Education and Charitable Trust (2013) 355 ITR 280 (P&H)
- c) Sanjeevamma Hanumanthe Gowda Charitable Trust vs Director of Income Tax (Exemption) (2006) 285 ITR 327 (Karn.)

He distinguished the decision of the Hon'ble Jammu and Kashmir High Court in the case of Jammu Development Authority vs CIT (supra) and submitted that the Id. CIT(Exemptions) has wrongly placed reliance on the same.

6. The Id. DR, on the other hand, relied on the order of Id. CIT(Exemption), Kolkata and submitted that the assessee university on dissolution has not laid down the procedure of distribution or transfer of its assets. He referred to section 12AA of the Act and submitted that the Id. CIT(Exemption) has to be satisfied about the genuineness of the activities of the institution and then only grant registration. He pointed out that when the mode of distribution of assets for dissolution is not laid down in the constitution, the income and assets may be utilised for non charitable purposes. He relied on the order of CIT(Exemptions). He pointed out that the State Government can prescribe that the income and assets of the institution on dissolution can necessarily be given to another similar institution registered u/s 12AA of the Act and consequent to such framing of such rules, the institution can approach the Id.

CIT(Exemptions) for registration. He prayed for uphold of the order of CIT(Exemption).

7. After hearing the rival contentions and perusal of the papers on record we hold as follows :-

Section 12AA reads as follows :

12AA (1) The Principal Commission or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) of sub-section (1)] of section 12A, shall –

- (a) Call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*
 - (b) After satisfying himself about the objects of the trust or institution and the genuineness of its activities, he –*
 - (i) Shall pass an order in writing registering the trust or institution;*
 - (ii) Shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,*
- And a copy of such order shall be sent to the applicant :”*

The scope of this section has been examined by various court and it is held as follows :-

The Hon’ble Allahabad High Court in the case of Fifth Generation Education Society vs CIT (supra held as follows :-

"2. A reading of the section shows that the registration under section 12A is a precondition for availing the benefit under sections 11 and 12 of the Act. Section 11 provides for exemption of income which is applied for charitable purposes. Section 12 is in the nature of an Explanation to section 11. Before a person can claim the benefits of section 11 or section 12, as the case may be, he must obtain registration under section 12A. The application for registration under section 12A has to be made in Form No. 10A prescribed by rule 17 A before expiry of one year from the date of the creation of the trust or the establishment of the institution, whichever is later. It has to be made by the person in receipt of the income of the trust.

3. It is evident that at this stage, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of section 12A read with rule 17 A and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not At this stage, it is not proper to examine the application of income.

8. Similarly, the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Surya Education and Charitable Trust, (2013) 355 ITR 280 (P&H) held as follows :

" Therefore, the provisions of Sections 11, 12 or Section 10(23C) of the Act, deal with the income of a Trust or of the Institution and the circumstances as to when such income is to be excluded for computing the total income, but the basis of such benefit is the registration under Section 12AA of the Act. Unless a Trust or Institution is registered under Section 12AA of the Act, such Trust or Institution shall not be entitled to exclude from its total income, deductions or contributions or from other sources. Therefore, the principles laid down for excluding the income from consideration under Section 10(22) now 10(23)(C) or Sections 11 and 12 are not applicable while considering the application for registration under Section 12AA of the Act. The application for registration is required to be made within one year of the creation of the Trust. Section 12AA of the Act, requires satisfaction in respect of the genuineness of the activities of the Trust, which includes the activities which the Trust is undertaking at present and also which it may contemplate to undertake. The insertion of sub-section (3) to Section 12AA of the Act, clarifies the said fact, when it empowers the Commissioner to cancel the registration if the activities of the Trust are not carried out in accordance with such objects.

11. Therefore, the object of Section 12AA of the Act, 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. Therefore, we find that the judgments referred to by the learned counsel for the appellant are not applicable to the facts of the present case arising out of the question of registration of the Trust and not of assessment."

9. The Hon'ble Karnataka High Court in the case of Sanjeevamma Hanumanthe Gowda Charitable Trust Vs. Director of Income Tax (Exemption), (2006) 285 ITR 327 (Karn.) held as follows :-

"The registration of institution relates to the objects so that the activities be charitable, which should be considered as genuine trust. If the activities of the institution are taxable for any reason the matter to be considered at the time of assessment. The source of income cannot be questioned at the time of granting the registration under Section 12AA of the Act"

10. The propositions of law laid down in the above case laws demonstrate that the Id. CIT(Exemptions) can refuse the registration of a trust or institution u/s 12AA of the Act only when (a) he should be satisfied that the objects of the trust or institution are not charitable in nature or he finds that the activities of the trust or institution are

not genuine. In our view registration cannot be denied on the ground that there is no clause prescribing that on dissolution of the institution, the income and assets of the assessee shall be transferred to another similar institution which is registered under section 12AA of the Act.

11. The Id. Counsel for the assessee relied on the decision of ITAT Mumbai 'E' Bench of the tribunal in the case of Tara Educational and Charitable Trust vs DIT(Exemptions) in ITA NO.1247/Mum/2013 dated 14.07.2014 where in at para 4 it is held as follows :-

" 4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the application filed by the assessee U/S 12A of the Act has been rejected by the Id. DIT (Exemptions) mainly on the ground that the relevant Trust Deed does not contain the so-called "dissolution clause". As per the provisions of section 11 & 12 of the Act, income derived from property held for charitable or religious purposes and income of Trusts or Institutions from contributions are exempt from tax provided such Trusts or Institutions are registered U/S 12A of the Act. The procedure for registration u/s 12A is prescribed in section 12AA of the Act which provides that the Commissioner, on the receipt of an application for registration of a Trust or Institution made U/S 12A, shall call for such information from the Trust/Institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the Trust/Institution and may also make such inquiries as deemed necessary on this behalf. It further provides that after satisfying himself about the objects of the Trust/Institution and the genuineness of its activities, the Commissioner shall pass an order in writing registering the Trust/Institution U/S 12A and if he is not so satisfied, he shall pass an order in writing refusing to register the Trust/Institution. The scope of enquiry contemplated U/S 12AA of the Act thus is limited to the extent of Commissioner getting himself satisfied about object of the Trust and the genuineness of its activities so as to grant or refuse the registration U/S 12A of the Act. A perusal of the impugned order of the Id. DIT (Exemptions), however, shows that he has not recorded any adverse comment or dis-satisfaction about the object of the 4 ITA 1247/M/13 Trust or genuineness of the Trust activities. He has refused to grant the registration U/S 12A of the Act on the ground that its Trust Deed does not contain "dissolution clause". In our opinion, the Id. DIT (Exemptions) thus has clearly gone beyond the scope of enquiry contemplated U/S 12A of the Act and has refused to grant the registration u/s 12A of the Act to the assessee Trust on a totally irrelevant ground without pointing out as to how he was not satisfied either about the object of the Trust or the genuineness of its" activities. We therefore set aside the impugned order of the Id. DIT (Exemptions) and direct

that the registration U/S 12A of the Act as applied by the assessee Trust be granted.”

12. Similar is the decision in the case of Geeta Lalwani Foundation vs DIT (Exemptions), Kolkata in ITA No.3566/M/2013 order dated 02.01.2015 wherein it is held as follows :-

“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.”

No contrary decision was brought to our notice by the Id. DR.

13. Respectfully following the proposition of law laid down by the Coordinate Bench of the Tribunal in the cases referred to above we hold that the order of Id. CIT(Exemptions) was an error in rejecting the application of the assessee for registration u/s 12AA of the Act.

14. Coming to the decision of the ITAT, Amritsar in the case of Jammu Development Authority 52 SOT 153 which was upheld by the Hon'ble Jammu and Kashmir High Court , we find that the decision for rejecting the registration was based on the reason that, the authority was established with a profit motive and hence hit by section 2(15) of the Act read with the first and second proviso. The proposition at paras 7.6 and 7.7 of the order are as follows :-

"7.6. Also, at the same time, section 10(20A) which related to income of and Authority constituted in India by or under any law enacted for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages which before the amendment was not included in computing the total income, was omitted. Consequently, the benefit conferred by clause (20A) on such an Authority was taken away. Thus, in view of the fact that section 10(20A) was omitted and an Explanation was added to section 10(20) of the Act, enumerating the "Local Authorities" contemplated by section 10(20), the assessee could not claim any benefit under those provisions after April 1, 2003. The assessee subsequently claimed that its objects falls under the provisions of section 2(15) of the Act and has complied with all the eligibility criteria for grant of registration under section 12A of the Act, which was allowed vide order dated 30.09.2009. It is at this juncture that the first proviso and second proviso were added by the Finance Act, 2008 w.e.f. 01.04.2009, as mentioned hereinabove. Therefore, after

insertion of the said proviso, any institution carrying on of any activity in the nature of trade, commerce or business etc. as mentioned hereinabove, shall not be a charitable purpose.

As per objects of the assessee, it is observed that the main object of the assessee is to promote and secure the development of local area and there is no charitable purpose or any activity for general public utility.

The activities of the assessee are aimed at earning profit as it is carrying on activity in the nature of trade, commerce or business.

Further profit making by the assessee is not mere incidental or by product of the assessee. There is no real object of the assessee and there is no spending of the income exclusively for the purpose of charitable activities and profits of the assessee are not used for charitable purpose under the terms of the object and there is no obligation on the part of the assessee to spend on 'charitable purpose' only.

Also as per clause 53 of the Jammu & Kashmir Development Act, on dissolution of all properties and funds to vest in the Government and for the purpose of realizing properties, the function of the Authority shall be discharged by the Government. We concur with the views of the Ld. CIT on transfer of the properties, funds and dues and liabilities etc. will vest in the Govt. There is no restriction, how the same are to be utilized by the Government. There are other objects like sale and purchase, which makes the Authority a commercial organization. Therefore, in the facts and circumstances of the case, even on dissolution or winding up by not having any restriction on application of asset for charitable purpose, the objects pursued by the assessee cannot be said to be a charitable in nature.

7.7 As regards the reliance on the decisions of various courts of law by the Ld. CIT, most of the decisions have been dealt by the Tribunal in the case of M/s. Jalandhar Development Authority vs. ITO (supra). In the facts and circumstances of the present case, we concur with the views of the Ld. CIT that Jammu Development Authority is an Authority established with the motive of profit constituted under the Jammu & Kashmir Development Act, 1970 and that the activities of such Authority are hit by section 2(15) of the Act read with first and second proviso and are not in line with the objects of the Authority/Trust so far as the activities relating to purchase and sale of properties, as mentioned hereinabove.

Hence, the activities are not genuine to the extent, mentioned hereinabove and the Ld. CIT, Jammu, has rightly being satisfied held that the Jammu Development Authority is not entitled to registration and accordingly cancelled the registration so granted. We find no infirmity in the order of the Ld. CIT, Jammu

and the same is upheld. Thus, all the grounds of the assessee are dismissed.”(Emphasis ours)

A plain reading of the same demonstrates that propositions of law laid down in this judgment is not applicable to the facts and circumstances of the case on hand.

15. We are also convinced with the arguments of the Id. Counsel for the assessee that section 115TD(1)(a) of the Act protects the interest of the revenue and the findings of the Id. CIT(Exemptions) on this issue is not correct.

16. In view of the above discussion we direct the Id. CIT(E) to grant registration to the assessee u/s 12AA of the Act. Consequently we also direct the Id. CIT(E) to grant approval u/s 80G of the Act to the assessee university.

17. In the result both the appeals of the assessee are allowed.

Order pronounced in the Court on 23.08.2017.

Sd/-
[S.S.Viswanethra Ravi]
Judicial Member

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 23.08.2017.

[RG PS]

Copy of the order forwarded to:

- 1.The Neotia University, Viswakarma, 86C, Topsia Road (South), Kolkata-700046.
2. C.I.T. (Exemptions), Kolkata.
- 3.CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O, ITAT Kolkata Benches