

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.4219/Del/2015
Assessment Year : N.A.

M/s Tata Community
Initiatives Trust,
C/o Tata Services Limited,
10th Floor,
Jeevan Bharti Tower-1,
124, Connaught Circus,
New Delhi – 110 001.
PAN : AACTT4708J.
(Appellant)

Vs. Commissioner of Income Tax
(Exemptions),
26th Floor, E-2 Block,
Pratyaksh Kar Bhawan, Civic
Centre, J.L. Nehru Marg,
New Delhi – 110 002.

(Respondent)

Appellant by : Shri H.P. Agrawal, Ms. Surabhi
Agarwal and Shri Rohit Bajaj, CAs.

Respondent by : Smt. Parmita Biswas, CIT-DR.

Date of hearing : 28.01.2019

Date of pronouncement : 29.01.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Exemptions), Delhi dated 29th April, 2015.

2. In this appeal, the assessee has raised the following grounds:-

“1. That the Commissioner of Income Tax (Exemptions) has erred on facts and in law in registering the Appellant under Section 12AA read with Section 12A of Income-tax Act, 1961 (“Act”) as a specific category, i.e. ‘General Public Utility’.

2. That the Commissioner of Income Tax (Exemptions) has erred on facts and in law in not granting registration under Section 12AA of the Act at an entity level for the Appellant.

3. That the Commissioner of Income Tax (Exemptions) erred on facts and in law in not considering all the objectives of the Appellant such as education, medical relief, etc.”

3. At the time of hearing before us, it is stated by the learned counsel that learned CIT(Exemptions) passed the order u/s 12AA directing the registration of the trust as “general public utility trust”. He stated that learned CIT(Exemptions) is supposed to register the trust or refuse to register the trust u/s 12AA. There was no necessity of qualifying the trust as a “general public utility trust”. He stated that the objects of the trust are wide enough and some of them would fall within the ambit of education, relief to poor etc. He further stated that the registration given by learned CIT(Exemptions) is with the condition that the exemption to the assessee u/s 11, 12 and 13 would be available only after the Assessing Officer is satisfied about the genuineness of the activities claimed to be carried on in each financial year relevant to the assessment year. Thus, every year, the Assessing Officer will examine whether the activity of the assessee falls within the ambit of Section 2(15) or not. Therefore, the order of learned CIT(Exemptions) should be modified and the trust should be registered without any qualification being “general public utility trust”.

4. Learned CIT-DR, on the other hand, relied upon the order of learned CIT(Exemptions).

5. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that Section 12AA provides the procedure for registration of the trust. It reads as under:-

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

(a) call for such documents or information from the trust or institution as he things 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 :

***Provided** that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.*

[(1A) All applications, pending before the [Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.]

(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) [or clause (aa) [or clause (ab)]] of sub-section (1)] of section 12A.]

[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)]] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the

activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution :

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]

[(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)] and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.]”

6. From the above, it is clear that Section 12AA(1)(b) provides that if the Principal Commissioner or Commissioner is satisfied about the object of the trust and the genuineness of its activities, he shall pass an order in writing registering the trust and if not so satisfied, pass an order refusing to register the trust. Thus, the power of the CIT is to register or to refuse the registration of the trust. He is not supposed to qualify the trust as “general public utility trust”. From the definition of “charitable purpose” in Section 2(15), we find that following activities fall within the ambit of “charitable purpose” :-

“2. In this Act, unless the context otherwise requires, -

[(15) “charitable purpose” includes relief of the poor, education, [yoga,] medical relief, [preservation of

environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

[Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless –

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]].”

7. It is for the Assessing Officer to examine every year after considering the activities of the trust whether they fall within any of the above clauses of charitable activities. The CIT is not supposed to specify while registering the trust the activities which can or would be performed by the trust. In view of the above, we direct that the trust would be granted registration under Section 12AA of the Act without any qualification.

8. In the result, the appeal of the assessee is allowed as above.
Decision pronounced in the open Court on 29.01.2019.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(G.D. AGRAWAL)
VICE PRESIDENT**

VK.

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1. Appellant : **M/s Tata Community Initiatives Trust,
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2. Respondent : **Commissioner of Income Tax (Exemptions),
26th Floor, E-2 Block, Pratyaksh Kar Bhawan,
Civic Centre, J.L. Nehru Marg, New Delhi – 110 002.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar