

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 221/Vns/2019

Assessment Year: N.A.

Atmanusandhan Kendra Kalyanpuri, Baaharvani, Paura, Chanduli-232103, U.P.	v.	The CIT(Exemption), 5 <sup>th</sup> Floor, South Block, T.C./46V, UPSIDC Ltd., VibhutiKhand, Gomti Nagar, Lucknow, U.P.
PAN:AAPCA 0369N		
(Appellant)		(Respondent)

Assesseeby:	None
Revenue by:	ShriRamendra Kumar Vishwakarma, CIT DR
Date of hearing:	24.05.2022
Date of pronouncement:	27.05.2022

**ORDER**

**PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal, filed by assessee, being ITA No. 221/Vns/2019, is directed against the order under Section 12AA(1)(b)(ii) of the Income-tax Act, 1961(hereinafter called "the Act"), dated 28.08.2019 passed by Id. Commissioner of Income-tax (Exemptions), Lucknow(hereinafter called "the CIT(E)" ), vide Order No. ITBA/EXM/S/EXM1/2019-20/1017639846(1), rejecting the application filed by the assessee for registration u/s 12A(1) of the 1961 Act . This appeal was heard in Open court proceedings through physical hearing mode.

2. The grounds of appeal raised by the assessee in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called "the tribunal"), reads as under :

*"1. That the assessee fulfilled all the terms and conditions as required to comply for getting registration as charitable institution. That the assessing officer had asked to show four clauses (clauses 15-18 in order). In the MOA as word by word and not agree with the expression /meaning already mentioned in the MOA.*

*2. We were given only two hearings to present our documents in the end days of time barring month i.e. August 2019.*

*3. It was not possible to produce MOA in such short time which is now amended as per the requirements as per the office letter."*

3. When this appeal was called for hearing before the Division Bench on 24.05.2022, none appeared on behalf of the assessee nor any adjournment application was filed. The notice sent through RPAD had been returned back by postal authorities. It is observed that on earlier occasions also the notices which were sent to the assessee, were returned back by postal authorities, and on earlier occasions also when the appeal came up for hearing before the DB, none appeared on behalf of the assessee nor any adjournment applications were filed, albeit the DB was pleased to adjourn the appeal to next date of hearing on the earlier occasions. This clearly establishes that the assessee is not vigilant about pursuing its appeal and is taking a casual approach after filing the appeal with the tribunal. The Division Bench decided to hear this appeal on 24.05.2022 and declined to grant any further adjournments.

4. The assessee claimed itself to be a charitable entity and has filed application for registration u/s. 12A(1) of the Act in Form-10A on 16.02.2019 with Id. CIT(E). The assessee was accorded an opportunity of being heard by

ld. CIT(E) and details were called from the assessee by ld. CIT(E). The assessee furnished certain details before ld. CIT(E) . It was observed by ld. CIT(E) that the assessee's constitution(MOA) does not have irrevocability clause . The ld. CIT(E) also observed that the constitution(MOA) of the assessee also does not provide that in case of winding up/dissolution of the assessee, its funds /property will be transferred to another charitable entity. Further , it was observed by ld. CIT(E) that the constitution(MOA) of the assessee does not have a clause that the beneficiaries are a section of public and not specific individuals .The ld. CIT(E) also observed that MOA/constitution of the assessee does not have a clause that the assets/funds of the assessee will be used for the objects of the assessee. The ld. CIT(E) asked the assessee to incorporate these clauses in its constitution. The ld. CIT(E) issued notice dated 30.07.2019 to the assessee directing it to incorporate the clauses as per CBDT letter number F.No. 240/8/2015-A & PACII ,dated 14.12.2018 as under:

*"3. As per the notice/letter dated 30-07.2019, incorporating, inter-alia, the requirements as per Board's letter no.F.No. 240/8/2015-A & PAC-II dated 14.12.2018, the applicant was required to furnish information/reply on following issues:*

*15. Your Society Deed/Memorandum of Association does not have irrevocability clause. Please include this clause in your Society Deed/Memorandum of Association and file a certified copy of the amended Society Deed/Memorandum of Association.*

*16. Your Society Deed/Memorandum of Association does not have a clause that the beneficiaries are a section of the public and not specific individuals. Please include this clause in your Society Deed/Memorandum of Association and file a certified copy of the amended Society Deed/Memorandum of Association.*

*17. Your Society Deed/Memorandum of Association does not have any clause providing that in the event of dissolution of society/society/non profit company, the fund/assets of the society/society non profit company will be transferred only to some other society/society MFP/non profit company having similar objectives. Please include this clause in your*

*society deed/memorandum of association and file certified copy of the amended society deed/memorandum of association.*

*18. Your Society Deed/Memorandum of Association does not have any clause providing that the funds/property of the society will be used only for the objectives of the society/society/non profit company. Please include this clause in your Society Deed/Memorandum of Association and file a certified copy of the amended Society Deed/Memorandum of Association."*

5. The Id. CIT(E) observed from perusal of the constitution of the assessee(Memorandum of Association) that at the time of dissolution of assessee, the proceed will be divided amongst the members. The winding up clause as mentioned in the Memorandum of Association was reproduced by Id. CIT(E), as under:

*"If the company shall be wound up, the Liquidator may, with the sanction of a special resolution of the company and any other sanctions as may be required by the Act, divide amongst the members in specie or in kind the whole or any part of the assets of the company (whether they shall consist of property of the kind or not) and may for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members the liquidator may with the like sanction vest the whole of any part of such assets in trustees upon such trusts for the benefit of the contributories in such a way that no member shall be compelled to accept any shares or other securities whereon there is any liability.*

*Thus, this provision of the Memorandum of Association of the company is in contravention to the point no. 17 of the questionnaire. This provision indicates that in the event of winding up of the company, the proceeds will benefit the promoters/share holders/directors of the company, and not used for the charitable purposes."*

Accordingly, the Id. CIT(E) rejected the application filed by the assessee for grant of registration u/s 12A(1) of the 1961 Act

6. Aggrieved, the assessee has filed an appeal before the tribunal and despite several notices issued and sent to the assessee through RPAD, all have

returned back by postal authorities. This is now abundantly clear that the assessee is not interested in pursuing its appeal filed with tribunal. The DB rejected to adjourn the hearing on 24.05.2022 , and proceeded to decide this appeal after hearing ld.CIT-DR and material on record. The ld. CIT-DR vehemently supported the order passed by ld. CIT(E) and submitted that even after grant of opportunity by ld. CIT(E), the assessee did not produced the amended constitution(MOA) , and hence ld. CIT(E) rightly rejected the assessee's application for grant of registration u/s 12A(1). We have observed that ld. CIT(E) has rejected the application of assessee for grant of registration u/s 12A on four grounds, firstly that the assessee's constitution(MOA) does not have irrevocability clause , secondly that the constitution of the assessee also does not provide that in case of winding up/dissolution of the assessee, its funds /property will be transferred to another charitable entity, thirdly that the constitution of the assessee does not have a clause that the beneficiaries are a section of public and not specific individuals, and fourthly that the assessee will use its funds/property for its objects .The ld. CIT(E) asked assessee to incorporate these clauses in its constitution/MOA, but the assessee did not produce amended constitution(MOA) , neither before the ld. CIT(E) and nor even before us. The primary condition for grant of registration u/s 12A is that the assessee is a public charitable trust and is required to fulfill the conditions as are mandated under the 1961 Act for grant of exemption from tax. In the instant case, the assessee constitution/MOA clearly provides that in case of winding up/dissolution of the assessee, the proceeds of assets /property shall be distributed amongst the members, which clearly militate against the charitable nature of the trust. Further, there is no irrevocability clause, that the creation of the charitable entity is irrevocable and all the

funds/ property which become part of the assessee shall not revert back to the contributories/members. The constitution/MOA of the assessee does not have a clause that property/funds of the assessee shall be used solely for the charitable objects of the assessee. Further the constitution/MOA does not have a clause that the beneficiaries of the assessee shall be public atlarge , and not specific individuals. The assessee has not produced amended constitution/MOA even before tribunal, and since the assessee is claiming itself to be charitable entity seeking exemption of its income u/s 11 and 12, the onus is on the assessee to prove that it is a charitable entity fulfilling all the statutory requirements. Under these circumstances, we do not find any merit in the appeal filed by the assessee, which stood dismissed. We order accordingly.

7. In the result, the appeal filed by the assessee in ITA no. 221/Vns/2019 for ay: NA stood dismissed.

Order pronounced in Open Court on 27/05/2022at Varanasi .

Sd/-

[VIJAY PAL RAO]  
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

DATED: 27/05/2022

Aks/-

Copy forwarded to:

1. Appellant –Atmanusandhan Kendra Kalyanpuri, Baravani, Paura,  
Chandauli-232103, U.P.

2. Respondent –The CIT(Exemption), Lucknow

3. CIT-DR, ITAT, Varanasi, U.P.
4. CIT, Varanasi
5. Guard File

Sr. P.S.