

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH :G : NEW DELHI

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER
AND
SHRI B.C. MEENA, ACCOUNTANT MEMBER

ITA No.4439/Del/2010
Assessment Year : -

Shanti Devi Educational Trust, Vs. CIT,
315-L, Model Town, Aayakar Bhawan,
Rewari. Opp. Mansarover Park,
Rohtak.

(Appellant)

(Respondent)

Assessee by : Shri Ved Jain, CA, Ms Rano Jain, CA &
Shri V. Mohan, CA
Revenue by : Shri D.K. Mishra, CIT, DR

ORDER

PER I.P. BANSAL, JUDICIAL MEMBER

This is an appeal filed by the assessee. It is directed against the order passed by the CIT, Rohtak, under the provisions of Section 12AA (1) (b) (ii) of the Income Tax Act, 1961 (the Act). The grounds of appeal read as under:-

1. That in the facts and circumstances of the case, the learned CIT erred in not appreciating the genuineness of the objects and activities of the appellant trust and refusing registration u/s 12AA (1)(b)(ii).
2. That the appellant craves leave to add or amend the grounds of appeal.
2. An application for registration u/s 12A(1)(aa) was filed in Form No.10 on 1st February, 2010 which was accompanied by trust deed dated 2nd June, 2006 as amended by supplementary deed dated 2nd January, 2010, copy of minutes of meeting, copy of PAN and TAN,

income and expenditure, receipt and payment account and the balance sheet of the trust along with the audit report in Form No.10B for financial year 2007-08, 2008-09 and the copies of income-tax return of financial year 2007-08 and 2008-09. The notices were issued to the assessee seeking certain details and these notices were complied with. The grant of registration has been refused by learned CIT (A) on the following grounds:-

- i) All the trustees of the trust belonged to the same family, thereby closely related to each other;
- ii) Even after amendment in the trust deed, all the properties of the trust as well as absolute financial control remained in the hands of the five trustees and also the crucial power to transfer the assets of the trust to any or many members of the Board of trustees which permits the trustees to get the property of the trust in question transferred in their name;
- iii) In case of transfer of any of the leased asset back to its owner, it is not clear that whether any compensation or consideration will be obtained by the trust from its owner.
- iv) The donated land transferred by the trustee has been entered into the books of account of the trust at a whopping value of ₹ 1 crore and if the trust builds building upon that land, the same will be transferred to the trust later on without absolute befitting consideration as well as compensation which can cause undue benefit to the trustees and will defeat the very basis of the charitable nature of the trust which are enumerated in the trust deed at length.

- v) The percentage of profit of annual receipt for the Assessment Year 2009-10 is 23%.
- vi) The corpus of the trust in question has increased from 1.15 crore in financial year 2006-07 to 2.24 crore in financial year 2008-09 and the source of donation is from agriculturists, the genuineness of which is in serious doubt.

3. Taking into consideration the aforementioned facts, Id. CIT has denied the grant of registration against which the assessee is aggrieved, hence, in appeal. The learned AR after narrating the facts, carried us through the provisions of the trust deed, the English translation of which is placed at pages 7-12 of the paper book. He submitted that the trust deed originally was executed on 2nd June, 2006 by Smt. Shakuntala Yadav, w/o Shri Ajay Singh Yadav, by the donation of ₹ 5,100/- and the following trustees were appointed by the trust deed:-

- | | | |
|----|--|---|
| 1. | Smt. Shanti Devi w/o Rao Abhay Singh
315-L, Model Town, Rewari. | Chief Patron |
| 2. | Smt. Shakuntala Yadav, 315-L, Model
Town, Rewari. | Author of the
Trust and
Chairperson |
| 3. | Sh. Balwant Singh Yadav, s/o Sh. Chuni
Lal, V. Gokul Garh, The. & Distt. Rewari | Vice President |
| 4. | Chiranjeev Rao s/o Capt. Ajay Singh
Yadav, 315-L, Model Town, Rewari. | Secretary |
| 5. | Latika Yadav, d/o Captain Ajay Singh
Yadav, 315-L, Model Town, Rewari. | Treasurer |

4. Referring to the objects which are listed 1 to 22, he submitted that none of the objects of the trust has been shown to be non-

charitable in nature. He particularly mentioned clause 22 of the objects of the trust which read as under:-

“22. This trust is declared wholly public charitable. The trust and trustees will be subject to sections 2 (15), 11,12, 12A, 13, 80(G) and other provisions of the Income Tax Act, 1961 as well as any other statutory modification. The Chairperson/President and the Board of the Trustees are entitled to join in any work relating to objects of public charity and public welfare.”

5. Referring to the above clause, it was submitted by him that once it has been declared in the trust deed that the trust and trustees will be subject to sections 2 (15), 11,12, 12A, 13, 80(G), then, there is no scope for the trust to indulge in any non-charitable activity and in case the trust involve in activity other than charitable, there are provisions in the Income-tax Act itself to take care of that situation. He submitted that at the time of registration what has to be seen is that whether the objects mentioned in the trust deed are charitable or not and the activities of the trust are genuine or not. He submitted that all the factors upon which Id. CIT has denied the grant of registration are irrelevant and the registration has wrongly been refused to the trust.

6. Referring to the first objection of Id. CIT that control of the trust is vested in one family, he submitted that it is the usual feature of a trust. When any charitable trust is created, it will be the desire of that person to keep control of the trust. Having control over the trust cannot be viewed otherwise in the absence of any material to show that the activities are not performed in accordance with the objects. He further submitted that for efficient running of the charitable activities general powers are given to the trustees for the promotion of the charitable activities to attain the objects. That fact also cannot be viewed against the trust as in the absence of those clauses, it will be difficult to meet the situation that may arise in the future. He further referred that so far as it relates to the allegation of Id. CIT regarding

whopping value of land at ₹ 1 crore, the same is based on circle rate and what the assessee trust has paid is only the registration fees and not the amount of ₹ 1 crore for which the stamp value has been determined of the land given by the donor for the purpose of utilization by the trust for its charitable activities. He submitted that execution of trust deed and execution of gift deed should be considered two separate events which cannot be linked with the trust to its disadvantage. He submitted that if trust is getting some land for carrying on its charitable activities, that will be done on the terms of the donor. He submitted that the allegation of the Id. CIT regarding compensation of consideration to be obtained in respect of such asset back to its owner, clause 15 of the trust deed takes care which read as under:-

“15. That for purposes of the trust, if any construction has been made or a new building erected or the form changed of any land, movable or immovable property taken on rent or lease for a limited period as aforesaid then on completion of time limit it will be returned to its owner with right of possession after taking suitable compensation [inserted] and for that [the word no deleted] compensation will be taken.

7. Similarly, he submitted that other allegations of Id. CIT for denying registration are also irrelevant in the absence of any material to show that the assessee trust was not genuinely running the charitable activity. He further relied upon the following decisions:-

- i) Fifth Generation Education Society vs. CIT 185 ITR 634 (All) to contend that the subject matter of inquiry by CIT at the stage of registration is to examine whether the application is made in accordance with the requirements of Section 12A read with Rule 17A and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are

charitable or not and at this stage it is not proper to examine the application of income.

- ii) *New Life in Christ Evangelistic Association (NLC) vs. CIT 246 ITR 532 (Mad)* wherein similar proposition has been laid down that at the stage of grant of certificate u/s 12A, the only inquiry which would possibly be made would be whether the applicant society has actually made an application in time and whether the accounts of the society are maintained in the manner as suggested by that Section and scope of inquiry cannot go beyond that.
- iii) *Dev Dayanand Charitable Education Trust vs. CIT*, decision of the Tribunal dated 13th November, 2009 in ITA No.3554/Del/2008, copy placed on record, wherein it has been held that the power to make amendment in the rules given in the trust deed cannot make the trust a private discretionary trust as such type of apprehension can be judged at the time of assessment proceedings. If any person has misused the trust fund or assessee failed to apply its income as provided in the Act for charitable purposes, then, that amount can always be brought to tax and these factors are not very relevant while considering the issue in respect of grant of registration. What is required to be seen by the Id. CIT is whether prima facie the objects of the trust are charitable or not and its activities are genuine or not.
- iv) *Shri Sain Ji Dharmarth Trust vs. CIT 8 SOT 446 (Del)* wherein it was held that while granting or refusing a registration to a trust, CIT is required to examine whether the object of the trust were for charitable purposes and whether the activities of the trust were genuine.
- v) *Director of Income Tax (Exemption) vs. Bharat Kalyan Pratishtan 257 ITR 609 (Del)*. The exemption in that case

was denied to the assessee mainly on the ground that the assessee trust had allegedly made donation to an association which was involved in unlawful activities and had been declared to be so by the Central Government. However, the said notification later on was quashed. The order of the Tribunal was upheld wherein it was held that grant of exemption could not be denied u/s 11.

8. Therefore, it was pleaded by the learned AR that Id. CIT should be directed to grant the registration to the assessee trust.

9. On the other hand, it was vehemently pleaded by the learned DR that the registration has rightly been refused to the assessee. Learned DR referred to various clauses of the trust deed contending mainly that vast powers are given to the trustees of the trust. He submitted that the affairs of the trust are being managed by the family of the settler and the trustees are closely related to each other. All the controls are in the hands of one family. There is no provision in the trust deed for getting proper consideration in case leased asset is transferred back to the owner. He referred to the land donation deed according to which the assessee is required to return the land to the donor in case the land ceased to be used by the assessee trust for its charitable activity. He vehemently pleaded that the reasons stated by the Id. CIT in his order for non-grant of registration are valid reasons and, therefore, registration has rightly been denied and his order should be upheld.

10. We have carefully considered the rival submissions in the light of the material placed before us. It has not been disputed by the revenue that the objects mentioned in the trust deed are not in the nature of charitable objects. A copy of the report submitted by the Asstt. Commissioner of Income-tax, Circle Rewari, Rewari, placed at pages

14-16 of the paper book will suggest that the reasons given by Id. CIT for refusal to grant registration are based on the said report. For the sake of convenience the reasons as stated in Column No.15 of the said report are reproduced below:-

“15. Information on any other points (not covered in points 1 to 14 above).

The trust was created on 02.06.2006 and running three educational institutions i.e. Smt. Shanti Devi Law College, Smt. Shanti Devi School of Nursing & Smt. Shanti Devi College of Nursing.

The registered address fo the trust is H.No.315-L, Model Town, Rewari. The trustees of the trust are as follows:-

1. Smt. Shanti Devi W/o Rao Abhay Singh, H.No.315-L, Model Town, Rewari.
2. Smt. Shakuntala Yadav, s/o Sh. Ajay Singh Yadav, H.No.315-L, Model Town, Rewari,
3. Shri Balwant Singh Yadav, S/o Sh. Chunni Lal, VPO Gokalgarh.
4. Mr. Chiranjiv Rao S/o Shri Ajay Singh Yadav, H.No.315-L, Model Town, Rewari.
5. Smt. Latika Yadav D/o Sh. Ajay Singh Yadav, H.No.315-L, Model Town, Rewari.

From the above it is evident that the trust has been created by one family and the registered address of the trust is also their home address.

As per the trust deed, all powers lie in the hands of Chairman/Secretary and these persons are mother and son. Further as per para 6 of the trust deed under “Power of Trustees”, the Chairman/Secretary can transfer cash, moveable/immoveable properties of the trust to any body as per their wish. In para 15, under the Powers of the Trustees, the Trust can transfer the properties acquired on rent or lease to the owner of the property along with construction made thereon without any compensation or consideration. There is a possibility that the wealth of the trust in form of building and investment in banks could be transferred to the trustees as the land belongs to these trustees and their family members. In view of the above, it appears that the trust is a family managed body created to run a business in the field of education and to claim tax benefits by registering it under section 12AA of the Income Tax Act, 1961.

Following are some of the other glaring facts about the trust:-

- i) Within a span of three years, the trust has created fixed assets amounting to Rs.2,17,24,790/- and Investment in bank as FDR's of Rs.48,75,000/-. There are no unsecured loans and the secured loans are of Rs.21,26,327/- only.
- ii) Profit as percentage of annual receipts for the A.Y. 2009-10 is 23%.
- iii) Corpus fund has increased from 1,15,05,100/- in the year 2006-07 to Rs.2,24,77,000/- in the year 2008-09. The sources of additions to Corpus are not clear.
- iv) Trust has received donations amounting to Rs.8,55,100/- in the year 2008-09 and Rs.2,09,000/- in the year 2007-08. Details of donations received have not been filed.

The sources of investment in land and building, investment in FDR's, increase in corpus fund, genuineness of donations received, etc. cannot be verified as the assessee trust has not produced books of accounts before the undersigned.

In view of the above facts, it is not clear whether the trust is doing any charitable activity or accumulating wealth by running educational institutions for one particular family. In view of the above, the trust does not appear to be deserving registration u/s 12AA of the Act."

11. Ld. Addl. Commissioner also has objected for grant of registration to the assessee on the basis of the aforementioned report.

12. In the report it has clearly been mentioned that the assessee trust is running three educational institutions, namely, Smt. Shanti Devi Law College, Smt. Shanti Devi School of Nursing & Smt. Shanti Devi College of Nursing. The first objection of Id. ACIT is that the trust is created by one family and the registered address of the trust is also their home address. In our opinion, such fact cannot come into the way for grant of registration as it is a usual feature of creation of charitable trust. Unless it is shown that any benefit has been obtained by any of the trustees, settler or their family members, this factor has no relevance for grant of registration to the assessee trust.

13. The second objection raised by the ACIT is that all powers of the trust lies in the hands of the Chairman/Secretary and these persons are mother and son. It is also the case of ACIT that as per para 6 of the trust deed under the powers of the trustee, the Chairman/Secretary can transfer cash, immovable property of the trust to anybody as per their wish. It may be mentioned here that the said clause has been amended on 23rd December, 2009 by deleting the words "Chairman/Secretary" and inserting in place thereof the words "Board of trustees." The amended clause read as under:-

"6. That the [the words **Chairman/Secretary** and deleted] Board of Trustees may on behalf of the trust keep any money, movable or immovable property in the name of one or more persons as may be decided from time to time by the [the word **Chairman** deleted] Board of Trustees."

14. Therefore, the said reason does not exist now. The other clause on which reliance has been placed is clause 15. The said clause has also been amended and the position has been shown as under:-

"15. That for purposes of the trust, if any construction has been made or a new building erected or the form changed of any land, movable or immovable property taken on rent or lease for a limited period as aforesaid then on completion of time limit it will be returned to its owner with right of possession **after taking suitable compensation** [inserted] and for that [the word **no** deleted] compensation will be taken."

15. As it can be seen from the above clause it has been incorporated that in a case when the construction has been made for the purpose of the trust or a new building has been erected on the land which is taken on rent or lease for a limited period, then, on completion of time limit it will be returned to its owner with the right of possession after taking suitable compensation and for that compensation will be taken. Therefore, the said deficiency also does not exist at the time when the issue regarding registration was considered by Id. CIT. Referring to these clauses it is the case of ACIT that there is a possibility that the

wealth of the trust in the form of building and investment in banks could be transferred to the trustees as the land belong to its trustees and their family members. Referring to this clause only the view was expressed that the trust is a family managed body which is created to run a business in the form of education and to claim tax benefit by registering it u/s 12A of the Act. Since this deficiency has been removed and there is complete absence of any material placed on record to show that these institutions are being run by the trust as a business in the form of education, therefore, such apprehension will be baseless and registration could not be denied to the assessee.

16. Now, the factor that remains upon which Id. CIT has refused to grant registration is that the percentage of profit of annual receipt for Assessment Year 2009-10 is 23% and the corpus of the trust in question has increased from ₹ 1.15 crore in financial year 2006-07 to ₹ 2.24 crore in financial year 2008-09 and the source of donation is from agriculturists the genuineness of which is in serious doubt. As against these objections of Id. CIT, it is the case of the learned AR that the assessee has submitted all the evidences to substantiate the increase in the corpus and donations and the percentage of profit cannot be a ground for rejection of application for grant of registration as these factors can be examined by the Assessing Officer at the time of assessment. It is also the case of the learned AR that Id. CIT has not mentioned any particulars about the discrepancy in all these factors. We find substance in such argument of the learned AR. Though these factors have been mentioned by the Id. CIT in his order, but, he has not pointed out how these factors have rendered the activity of the assessee to be non-genuine activity. The assessee is stated to be running three educational institutions and this fact has been accepted by Id. ACIT in his report, therefore, what is relevant to see is that whether there is any irregularity in the accounts maintained by the

assessee and its activities. No material whatsoever has been brought on record to point out any particular irregularity in this regard. In the absence thereof, the refusal to grant registration will be unjustified. There exist no material on record to suggest that activity of the assessee trust are not genuine. Its objects are charitable in nature. Therefore, we are of the opinion that the assessee's request for grant of registration has wrongly been denied. We direct Id. CIT to grant registration to the assessee.

17. Before we part with this order, it may be mentioned that according to the provisions of sub-section (3) to Section 12AA, even after grant of registration, if the 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, he is empowered to pass an order in writing canceling the registration of such trust or institution after giving the assessee a reasonable opportunity of being heard. Therefore, even after the grant of registration of this Trust is found to be not carrying out its activity in accordance with the objects of the trust, and making violation of any of the provisions of trust deed or Act, then, Id. CIT can use his powers given to him u/s 12AA (3) in accordance with law. With these observations, we allow the appeal filed by the assessee in the manner aforesaid.

18. In the result, the appeal is allowed.

The order pronounced in the open court on 29.02.2012.

Sd/-
[B.C. MEENA]
ACCOUNTANT MEMBER

Sd/-
[I.P. BANSAL]
JUDICIAL MEMBER

Dated, 29.02.2012.
dk

Copy forwarded to: -

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

TRUE COPY

By Order,

Deputy Registrar,
ITAT, Delhi Benches