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

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT AND
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA Nos.4941/Del/2011 & 3061/Del/2013
Assessment Year : 2011-12

Tsurphu Labrang, E-59, Ground Floor, Greater Kailash, Part-II, New Delhi – 110 048. PAN : AABTT9161A.	Vs.	Director of Income Tax (Exemptions), Plot No.15, 3rd Floor, Aayakar Bhawan, Laxmi Nagar District Centre, Delhi – 110 092.
(Appellant)		(Respondent)

Appellant by	:	Shri K. Sampath and Shri Girish K. Shukla, Advocates.
Respondent by	:	Shri A.K. Saroha, CIT-DR.
Date of hearing	:	06.08.2015
Date of pronouncement	:	08.09.2015

ORDER

PER G.C. GUPTA, VP :

These two appeals by the assessee are directed against the order of learned Director of Income Tax (Exemptions) rejecting the claim for registration of the assessee u/s 12AA of the Income-tax Act, 1961. These appeals of the assessee are being disposed of with this consolidated order.

ITA No.4941/Del/2011 :-

2. The grounds of appeal of the assessee are as under:-

"1. That the learned DIT(Exemption) has erred on facts and in law rejecting the appellant Trust's application for registration under section 12A of the Act.

2. That the findings arrived at by the learned DIT(Exemption) are contrary to the facts of the appellant Trust's case and material placed by it on record before him.

3. That the order of the learned DIT(Exemption) u/s 12AA(1)(b) refusing to register the Trust is purely based on suspicion, surmises and conjectures without there being any evidence or material in support thereof.

4. That the order of the learned DIT(Exemption) is devoid of any reasonable basis and is sought to be sustained on account of non-fulfillment of assumed requirements (Execution of Trust deed and its Registration) for which there is no compulsion in Law, in the face of the position emerging from the well sustained contentions of the appellant Trust.

5. That the findings arrived at by the learned DIT(Exemption) about the appellant Trust's activities being not genuine are contrary to the facts of the appellant Trust's case and material placed by it on record before him.

6. That the finding of the learned DIT(Exemption) about the benefit of the appellant Trust's (charitable) activities not being available to all communities and people and its being a private religious body is grossly erroneous and devoid of any material basis.

7. That the learned DIT(Exemption) has erred on facts and in law in rejecting the appellant Trust's application seeking registration under section 12A, in fact without hearing the authorized representatives of the appellant Trust himself, the proceedings all through having been conducted either by his Income Tax Officer (HQ) or his Inspector.

8. That the learned DIT(Exemption) has allowed his decision to be influenced by suspicion and in the end in basing his finding on surmises and conjectures, without *confronting the appellant Trust with his suspicions in the matter and thereby infringing the principles of natural justice too.*

9. That the order of the learned DIT(Exemption) is erroneous and prejudiced as indicated from his observation about the appellant Trust having made its compliance to the terms of his office notice dated 25.04.2011, as late as on 14.08.2011, instead of on 24.06.2011, a fact borne from the record of the proceedings."

3. Learned counsel for the assessee submitted that the assessee is an institution/trust which was created in the year 1159 AD and no formal deed of trust was executed at that time. He referred to the provision of Rule 17A of the Income-tax Rules, 1962 as also reproduced by the DIT (Exemptions) in his impugned order to submit that Rule 17A specifically provides that where the trust is created or institution is established under an instrument, the instrument in original together with one copy thereof and where the trust is created or institution is established otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof has to be filed along with prescribed form No.10A in duplicate. He submitted that the DIT(Exemptions) has gone into the issues relating to the income and expenditure account of the assessee, which were the subject-matter of assessment and not relevant for the purpose of granting registration u/s 12AA/12A of the Act. He submitted that the DIT(Exemptions) has also considered that some foreign donations were confiscated by the Government of India due to non-registration of the assessee trust under the relevant laws. He submitted that the registration under relevant laws for foreign donations can be made only after grant of registration u/s 12AA/12A by the Income Tax Department. He submitted that there is no legal requirement of filing of the original trust deed, as in this case, the trust was created in the year 1159 AD

and, at that time, there was no law for execution of a trust deed and the trust relates to the period before coming into force the Indian Trust Act or the Income Tax Act, 1922 or 1961. He submitted that the assessee has filed a duly sworn declaration of trust dated 29th March, 2011 by His Holiness Shri Ogyene Trinley Dorjee, the 17th Gyalwang Karmapa, the present head of the Karma Kagyu lineage residing in exile in Dharamshala (Himachal Pradesh) along with two other office holders of the trust, wherein it was unequivocally declared that the trustees stand possessed of the 'trust fund' comprised of both movable and immovable properties which are duly accounted for in the books of account of Tsurphu Labrang and all the income arising there from upon trust shall be applied for the aims and objects of the trust. He submitted that the aims and objects and purposes of the trust have been detailed in the said declaration of the trust, copy filed before the Revenue authorities and as well in the compilation filed before the Tribunal. The various terms and conditions for the smooth running of the affairs of the trust and also regarding appointment of additional trustees etc. have been detailed in the said declaration of the trust. He referred to the reply of the assessee dated 24th June, 2011 addressed to the Assessing Officer wherein, in point No.1, the original declaration of the trust was produced before him for verification, copy of the said letter has been filed in the compilation by the assessee. He referred to the letter of the assessee dated 23rd August, 2011 addressed to the Assessing Officer, wherein also, in paragraph 1, it is specifically mentioned that the original declaration of trust was produced before the Assessing Officer. He submitted that all the aims and objects and purposes of the trust were charitable in nature without any discrimination on account of origin, colour, religion, caste, creed or gender. The objects of the trust include establishment and running of educational institutions, the training of students, vocational training institutions, medical care institutions and other social institutions and relief camps or projects in the unfortunate event of visiting calamities and to render assistance to helpless destitute, physically challenged, downtrodden and weaker sections of the society and to give assistance to the deserving students and scholars and to undertake projects of general public utility, publication and distribution of books, to aid restoration and renovation of old monasteries and other cultural establishments, to undertake and or aid programmes and projects for the preservation and protection of environment and so on. The learned counsel for the assessee submitted that it has been specifically mentioned in the aims and objects and purposes of the trust that all the services to the society at large shall be without any discrimination on account of origin, colour, caste, creed or gender etc. He relied on the decision of Hon'ble Apex Court in CIT Vs. Dawoodi Bohra Jamat – [2014] 364 ITR 31 (SC). He submitted that Circular No.108 of the CBDT dated 20th March, 1973 applies to the facts of the case of the assessee. He submitted that the law does not compel a person to do some impossibility and relied on the decision of Hon'ble Apex Court in Krishnaswamy S.PD. and Another Vs. Union of India and Others – [2006] 281 ITR 305 (SC). He submitted that the Hon'ble Courts have laid down in a series of decisions that a trust or association of persons holding properties for the benefit of a particular caste or community and performing charitable activities for the purpose are entitled to the exemption from tax and registration u/s 12AA of the Act. He relied on the decision of Hon'ble Supreme Court in Ahmedabad Rana Caste Association Vs. CIT, Gujarat – [1971] 82 ITR 704 (SC), and of Hon'ble Allahabad High Court in CIT Vs. Pt. Ram Shanker Misra Trust – [1996] 222 ITR 252 (Allahabad) and CIT Vs. Surji Devi Kunji Lal Jaipuria Charitable Trust (No.1) – [1990] 186 ITR 728 (Allahabad) in support of his arguments.

4. The learned counsel for the assessee submitted that the DIT(Exemptions) while making enquiries during the course of proceedings u/s 12AA/12A of the Act for grant of registration could make enquiry only regarding the genuineness or otherwise of the objects of the trust but not regarding the application of income of the trust for charitable or religious purpose, which is a subject matter of the assessment, to be considered by the Assessing Officer at the time of assessment. For this proposition, the learned counsel for the assessee relied on the following decisions:-

(i) Malik Hasmullah Islamic Educational and Welfare Society Vs. CIT, Faizabad – [2012] 138 ITD 519 (Lucknow).

(ii) Sanjeevamma Hanumanthe Gowda Vs. DIT(E) –[2006] 285 ITR 327 (Karn).

(iii) CIT Vs. Surya Educational and Charitable Trust and another – [2013] 355 ITR 280 (P&H).

(iv) CIT Vs. Leuva Patel Seva Samaj Trust – [2014] 42 Taxman.com 18 (Guj.).

(v) CIT Vs. R.S. Bajaj Society – [2014] 42 Taxman.com 5763 (All).

(vi) CIT Vs. Janak G. Education Society – [2013] 39 Taxman.com 2 (P&H).

(vii) CIT Vs. BKK Memorial Trust – [2013] 29 Taxman.com 286 (P&H).

(viii) CIT Vs. Arulmigu Sri Kamakatchi Amman Trust – 20 Taxman.com 55 (Mad).

(ix) CIT Vs. Springdale Educational Society – [2011] 16 Taxman.com 285 (P&H).

(x) DIT(E) Vs. JITO Chennai Chapter – [2012] 204 Taxman 157 (Madras).

(xi) CIT Vs. Arulmigu Sri Kamatchi Amman Trust – [2012] 206 Taxman 69 (Madras)(Mag.).

(xii) CIT Vs. Dawoodi Bohara Jamat – [2009] 317 ITR 342 (MP).

(xiii) CIT Vs. Chandra Chairtable Trust – [2007] 294 ITR 86 (Guj).

(xiv) CIT Vs. Shri Digamber Jain Mandir – [2010] 189 Taxman 106 (Raj).

5. The learned counsel for the assessee argued that the test of 'general public utility' was examined by the various Hon'ble Courts and it was held that they were very wide words and would exclude the object of private gain. He relied on the decision of Hon'ble Privy Council in All India Spinners' Association Vs. CIT, Bombay – [1944] 12 ITR 482 (PC), of Hon'ble Madhya Pradesh High Court in Laxminarayan Maharaj and Another Vs. CIT – [1984] 150 ITR 465 (MP) and of Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT – [1992] 193 ITR 321, 328 (SC) in support of his argument. He submitted that the SLP of the Department against the decision of Hon'ble Madhya Pradesh

High Court in Laxminarayan Maharaj and Another (supra) was dismissed by Hon'ble Apex Court in 186 ITR (St.) 32 (SC).

6. Learned counsel for the assessee concluded his arguments with the submission that the Revenue could not establish any violation of any of the aims and objects and purposes of the assessee trust duly evidenced by the 'declaration of trust' dated 29th March, 2011 and all the statutory conditions have been complied with and the trust exists for charitable purposes only and, therefore, is eligible for grant of registration u/s 12AA/12A of the Act.

7. Learned CIT-DR has opposed the submissions of the learned counsel for the assessee. He submitted that under the scheme of the Act and in particular in the provision of Section 12AA, the Department is to satisfy itself not only with regard to genuineness of the trust but also with regard to genuineness of the activities of the trust. He submitted that in this case, the assessee could not file any evidence to prove that the trust was created in the year 1159 AD and was doing charitable activities. He submitted that the onus was on the assessee to file evidence that the objects exist in the year 1159 AD and amendments to the objects of the trust were made by the trust with the resolution passed from time to time and credible evidence has to be filed by the assessee trust to prove the same. He submitted that a plain reading of the objects of the trust as detailed in the declaration of the trust dated 29th March, 2011 makes it clear that these could not be the aims and objects of the trust in the year 1159 AD. He referred to the aim & object No.(l) wherein it is mentioned that the assessee trust "*to undertake to establish, aid, manage and or run any institution or project of general public utility which is a charitable purpose within the contemplation of clause (15) of section 2 of the Income-tax Act, 1961*

which is not in derogation of the tenets of the Dharma preached and propagated by it". He submitted that likewise, the aim & object No.(o) in the said declaration of trust provides "*to undertake and or aid programmes and projects for the preservation and protection of environment with active engagement of monasteries, communities and other related development organizations*". He submitted that these objects could not exist in the year 1159 AD as the Income-tax Act, 1961 itself came into being centuries later and the subject of preservation and protection of environment has come into existence recently and, therefore, the assessee has to prove with evidence that when the objects of the assessee trust were amended to this effect, incorporating these objects in its aims and objects, and when resolution to this effect was passed by the trustees of the assessee trust. He submitted that the trust is stated to be created in the year 1159 AD in China and there is no evidence brought on record by the assessee to prove that they have passed a resolution that they have settled in India or are "in exile" in India. Learned CIT-DR submitted that the copy of form No.10A, i.e., application for registration u/s 12AA of the Act shows that the address of the assessee trust is shown in a chamber in Tis Hazari Court in Delhi, although there was no activity undertaken by the assessee trust in Delhi. He submitted that the 17th Karmapa, the head of the assessee trust has come to India in the year 1974 but has applied for registration in the year 2011 and there was no valid reason for such inordinate delay in applying for registration u/s 12AA of the Act. He submitted that there was a violation of foreign exchange laws by the assessee trust and the assessee has spent ₹30.28 lakhs under the head 'legal expenses' and violation of the law was clearly against the public policy. The learned CIT-DR submitted that the 17th Karmapa, as head of the assessee trust, was taking food and clothes and meeting his personal expenses from the resources of the assessee trust and which is in violation of the provision of Section 13 of the Income-tax Act. He submitted that the assessee should prove that from where the 17th Karmapa has spent for his personal requirements. He relied on the order of the learned DIT(Exemptions).

8. Learned counsel for the assessee, in his rejoinder, submitted that the assessee is seeking registration from assessment year 2011-12 onwards and has applied for registration u/s 12AA/12A on 31st March, 2011 and, therefore, to say that there is a delay in applying for registration u/s 12AA/12A of the Act, is not relevant. He submitted that the assessee was in the process of acquiring premises in Delhi at the time of filing of application for registration u/s 12AA/12A of the Act and, therefore, for compliance purposes, has given the address of his counsel having office at Tis Hazari Court, Delhi. He submitted that this issue was not raised by the learned DIT (Exemptions) and, therefore, could not be allowed to be raised in the appellate stage before the Tribunal. He submitted that the 17th Karmapa, the head of the assessee trust, has not taken a single penny as salary and has already renounced the world and merely taking food and clothes could not be said to be a violation of the provision of Section 13 of the Income-tax Act. He submitted that the assessee has filed a copy of the declaration of trust by His Holiness 17th Karmapa running in 18 pages before the Revenue authorities as well as the Tribunal and has also filed the copies of 29 other eminent persons well versed with the activities of the trust, copy of which has been filed in the compilation before the Tribunal stating on oath the fact of the existence of the assessee trust for more than 800 years and the fact of donations received by the assessee for charitable and religious purposes under obligation to spend these on charitable and religious activities and purposes in India. The learned counsel for the assessee referred to page 202 of

the compilation before the Tribunal which shows the details of the application of funds on charitable and religious activities during the period 01.04.2004 to 31.03.2010. He referred to the copy of registration certificate dated 31.08.2009 issued by the Registering Authority, Human Resource Development Department, Government of Sikkim, Gangtok registering the school set up and managed by the assessee trust. He referred to the letter of the Joint Secretary, Government of Sikkim dated 28.02.1984 addressed to the 17th Karmapa giving recognition to Shri Nalanda Institute for Higher Buddhist Studies set up and managed by the assessee trust and a copy of which has been filed in the compilation before the Tribunal. The learned counsel for the assessee referred to various documents, copies of which have been filed in the compilation before the Tribunal to prove that the assessee has taken the charitable activities in the form of providing clean water, sanitation, medical relief camps including eye operations, plantation of trees, feeding of people at large and activities undertaken by the assessee trust for protection of environment and the climate change and to minimize the pollution and to manage waste etc.

9. We have considered the rival submissions and have perused the contents of the declaration of the trust dated 29th March, 2011 and also the copies of documents and evidences filed in the various compilations filed by the assessee before the Tribunal. We find that the assessee has claimed that it is an institution/trust which was created centuries ago in the year 1159 AD and that no formal deed of trust was executed at that time. However, the aims and objects of the trust right from its inception in the year 1159 AD were charitable and religious in nature. It was founded in the year 1159 AD by His Holiness the 1st Karmapa as head of the Karma Kagyu lineage and who has

established Tsurphu Monastery in Tolung Valley in Central Tibet as the main seat of the Karma Kagyu lineage, a sect of Buddhism practiced all over the world. At present, the 17th Karmapa is the supreme spiritual head of Karma Kagyu lineage and, like his predecessors right from the 1st Karmapa, the present Karmapa 17th in line has already renounced the material world to preach the Dharma and does not accept or own any kind of properties personally and, by tradition, have been diverting all such offerings at source to the charitable purposes of general public utility and for propagation of Dharma and Gyan. In the year 1959, His Holiness the 16th Gyalwang Karmapa, followed by Lamas, Sangha and lay communities carrying with them religious ritual articles, murals and lama dance costumes etc. fled Tibet and came into exile in the erstwhile Himalayan Kingdom of Sikkim, now a part of India. Later on, the seat of His Holiness the 17th Karmapa moved from Sikkim to Dharamshala in Himachal Pradesh in January, 2000 and the national headquarters of Tsurphu Labrang were located in Delhi. On 29th day of March, 2011, the present Supreme Head of the sect the 17th Karmapa made a '**declaration of trust'** by way of duly sworn affidavit wherein the relevant facts with regard to the history of the trust were recorded and also it was declared that all the moneys and other properties, both moveable and immovable which were duly accounted for in the books of account of Tsurphu Labrang and carried on its balance sheet and all income arising there from upon trust from time to time were possessed by the trust fund and such income of the trust fund could be applied to the execution of the aims and objects of the trust. The various aims, objects and purposes of the Tsurphu Labrang were detailed in the said declaration of trust dated 29th March, 2011 by the 17th Karmapa. It was claimed that all the aims and objects of the trust were wholly charitable and religious in nature without any discrimination with regard to origin, colour, religion, caste, creed or gender. The various clauses were detailed in this declaration of the trust with regard to management of the trust fund and with regard to the powers of the trustees for the furtherance of the objects of the trust. It was specifically provided that the trustees shall not be entitled to any remuneration for their services as trustees. It was specifically provided that in case of winding up or dissolution of the trust, its assets shall not be distributed amongst the trustees but shall be given or transferred to such societies, trusts or associations having objects similar to that of the trust to be determined by the board of trustees at the time of dissolution or, in default thereof, by the court of competent jurisdiction. The assessee trust applied for registration u/s 12AA/12A of the Income-tax Act, 1961 on the prescribed form 10A with the Commissioner of Income Tax, Delhi. The claim of the assessee that it was a charitable and religious trust and all its aims, objects and purposes were wholly charitable and religious in nature and it has complied with all statutory conditions for registration u/s 12AA/12A of the Act was rejected by the DIT (Exemptions), against which, the present appeals before the Tribunal.

10. We find that the reasoning of the Department for rejecting the claim of the assessee for registration u/s 12AA/12A was that the assessee trust could not file any evidence to prove that the trust was created in the year 1159 AD and was doing charitable activities and that the onus was on the assessee to file evidence that the objects existed in the year 1159 AD and the amendment to the objects of the trust were made with the resolution passed from time to time and credible evidence has to be filed by the assessee trust to prove the same. The learned CIT-DR has pointed out certain aims and objects detailed in the declaration of the trust dated 29th March, 2011 which could possibly not exist in the year 1159 AD. The Revenue has also

objected to the belated application of the assessee trust for registration u/s 12AA/12A filed on 31st March, 2011 as there was no valid reason for such inordinate delay. The department was not satisfied that the assessee has undertaken activities of charitable nature or with regard to the genuineness of the activities. The Department has concluded that the assessee trust exists for a particular caste or community and not public at large and has objected to violation of foreign exchange laws by the assessee trust. The department has also objection to the personal expenses of the head of the trust, the 17th Karmapa, from the funds of the assessee trust.

11. We find that the various issues as culled out from the pleadings of the parties could be summarized as under:-

(I) Whether, for registration under the provisions of Section 12AA/12A of the Income-tax Act, 1961, the execution of a formal deed of trust is necessary, without which the registration could not be granted to the institution/trust.

(II) Whether, the aims and objects and purposes of the assessee trust were charitable in nature, qualifying the trust for registration u/s 12A/12AA of the Act.

(III) Whether, the DIT (Exemptions) could go into the issues relating to the income and expenditure account of the assessee, which were the subject-matter of assessment and whether they are relevant for the purpose of granting or otherwise of registration u/s 12AA/12A of the Act.

(IV) Whether, the DIT (Exemptions)/CIT(E) while making enquiries during the course of proceedings u/s 12AA/12A of the Act for grant of registration could make enquiry only with regard to the genuineness or otherwise of the aims and objects of the trust but not regarding the application of income of the trust for charitable or religious purposes, which is a subject-matter of assessment, to be considered by the Assessing Officer at the time of assessment.

(V) Whether, the activities of the trust for the benefit of a particular caste or community and performing charitable activities for the purpose would debar the institution/trust from exemption from tax and registration u/s 12AA/12A of the Act.

(VI) Whether, the supreme head of the trust taking food and clothes etc. from the funds of the trust was violative of the provisions of Section 13 of the Act, particularly when he was not drawing any salary for his services rendered to the trust.

12. Now, we proceed to deal with the above mentioned issues in the light of the facts of the case and the law applicable to it. The first and second issues as reproduced above are taken together. With regard to the first issue that whether for registration under the provisions of section 12AA/12A of the Income-tax Act, 1961, the execution of formal deed of Trust is necessary without which the registration could not be granted to the Institution/Trust, we find that there is no such condition laid down by the Legislature under the provisions of the Income-tax Act, 1961 or the Rules made there under. Rule 17A of the Income-tax Rules, 1962 lays down the procedure for application for registration of charitable or religious trusts etc., which is reproduced here under :

"17A. An application under clause (aa) of sub-section (1) of section 12A for registration of a charitable or religious trust or institution shall be made in duplicate in Form No.10A and shall be accompanied by the following documents, namely :-

(a) where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof; and where the trust is created, or the institution is established, otherwise than under the instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof :

***Provided** that if the instrument or document in original cannot conveniently be produced, it shall be open to the Commissioner to accept a certified copy in lieu of the original;*

(b) where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made, two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up."

13. A plain reading of Rule 17A(a) makes it clear that where the Trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof, has to be filed along with prescribed Form No.10A for registration of the Institution/Trust u/s 12A of the Act. However, the second limb of Rule 17A(a) provides that where the Trust is created, or the Institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof, has to be filed along with the statutory Form No.10A for registration of the Institution/Trust u/s 12AA/12A of the Act. Thus, the applicable Rule 17A itself provides that

it is not necessary that the Institution/Trust should be established under an instrument. The Rule 17A does not prescribe that in case the Institution/Trust is established otherwise than under an instrument, what type of document evidencing the creation of the Trust or the establishment of the Institution, has to be filed, meaning thereby that the document evidencing the creation of Trust or the establishment of Institution could be of any type. As per the provisions of the Indian Trust Act, the Trust can be created even orally and if the assessee is able to give some evidence of creation of such Trust by a word of mouth, the same shall be eligible for registration u/s 12AA/12A of the Act, provided such evidence is filed and the other conditions under the statute are satisfied.

14. We find that the argument of the learned CIT-DR, that procedurally in order to have a valid trust under Indian Trust Act, 1882 an instrument declaring trust should be made on non-judicial stamp paper with prescribed fee signed by the settlers and all the trustees and should be registered with the Registrar of Properties etc., is devoid of any merit as Rule 17A of the Income-tax Rules, 1962 itself provides that where the institution or the trust is established otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof can be filed along with the prescribed form No.10A for registration u/s 12AA/12A of the Act. What would be the document evidencing creation of the trust or the establishment of the institution, has not been defined in the Rules. Accordingly, any evidence to establish the creation of the trust or the establishment of the institution could be filed by the assessee in support of its case. The argument of the learned CIT-DR that the assessee has not filed the names and addresses of the donors, we find that the donation can be

anonymous also and the taxability thereof can be decided at the time of assessment to be framed by the Department. The plea of the learned CIT-DR, that the trustees took refuge in Sikkim which is part of India since 1975 for 35 years, no return of income was filed by the assessee nor any application for registration u/s 12A was submitted and that the returns for the assessment year 2005-06 to 2010-11 do not contain the stamp affixed by the Department showing the date of receipt thereof, has no relevance as the assessee has sought the benefit of registration u/s 12AA/12A from assessment year 2011-12 onwards only and not the earlier years. The plea of the learned CIT-DR regarding the involvement of the name of the 17th Karmapa in a case u/s 120B (Criminal conspiracy) of Indian Penal Code, which was later on quashed by the Lower Court against the Karmapa and the order of the Lower Court has been reversed by the Hon'ble High Court of Himachal Pradesh and as a result, the Karmapa will remain an accused and trial would continue against him in this case, is of no consequence as the same pertains to the violation of law of the land for which separate proceedings are pending before the Hon'ble Court and shall not affect the issue that whether the assessee trust was having aims and objects and purposes of charitable in nature entitled to registration u/s 12AA/12A of the Act.

15. In Laxminarayan Maharaj and Another Vs. CIT – [1984] 150 ITR 465 (MP), the trust was created 100 years ago without any instrument of document. However, the revenue records relating to land held by the trust, orders relating to property tax and affidavits and declaration of citizens were in support of existence of trust and were filed along with application for registration u/s 12A of the Act. The Commissioner of Income Tax rejected the application on the ground that though documents evidenced existence of trust but did not evidence the

creation of the trust. Hon'ble Madhya Pradesh High Court held that the document accorded a logical basis for inferring creation of the trust and matter was remanded back to the Commissioner to reconsider the application of the trust in the light of the observations made by the Hon'ble High Court. The Hon'ble High Court held :-

> *"When the trust is a trust created under an instrument, rule 17 requires filing of 'the instrument in original' and when the trust is created otherwise than under an instrument 'the document evidencing the creation of the trust has to be filed. An analysis of section 12A(a) and rule 17A(a) will show that the fact to be established is the creation of trust and this fact is required to be established by producing constitutive and evidential documents. When the trust is created under an instrument, the rule requires the production of the constitutive document itself, i.e., the instrument which creates the trust. When the trust is not created under an instrument, it is impossible to produce any constitutive document and, hence, the rule requires production of evidential documents, i.e., the documents evidencing the creation of the trust. The evidential documents cannot be limited to documents which directly prove the creation of the trust; they will embrace all documents which afford a logical basis of inferring creation of the trust and all such documents can be described to be 'document evidencing the creation of the trust' within the meaning of rule 17A(a). A document directly evidencing the creation of the trust is normally the constitutive document which cannot be produced when the trust is not created by an instrument and if the words 'document evidencing the creation of the trust' are construed as limited to documents directly evidencing the creation of the trust, it will be nearly impossible to have a trust registered which was not created under an instrument. This could never have been the intention of the framers of the rule. In our opinion, these words embrace all evidential documents, i.e., all documents which afford a logical basis of inferring creation of the trust. The revenue papers produced by the petitioners consisted of Jamabandis of 1910-11, 1929-30, patta issued in 1931 and Jamabandi of 1954-55. In all these documents, the petitioner-trust is entered as tenant or bhumiswami and the name of the*

Sarbarahkar is also mentioned. The assessment orders relating to the property tax for 1967-68 to 1974-75 were filed. All these documents, though not directly evidencing the creation of the trust, afford a logical basis for inferring creation of the trust prior to 1910-11 and can be described as documents evidencing creation of the trust for purposes of rule 17A. In our opinion, the Commissioner was not right in taking a very narrow view of rule 17A and in holding that the petitioner-trust has not complied with that rule."

16. The SLP against this decision of Hon'ble Madhya Pradesh High Court in CIT Vs. Laxminarayan Maharaj and Another was dismissed by the Hon'ble Apex Court in 186 ITR 32 (St.)(SC).

17. In the case of the assessee before us, the assessee has claimed that the Institution/Trust was created centuries ago in the year 1159 AD and that no formal deed for the Trust was executed at that time. We find that the Indian Trust Act has not come into existence in the year 1159 AD and it was not possible to execute a deed of Trust on stamp paper or in writing centuries ago. However, the supreme Head of the Trust, i.e., 17th Karmapa, who is the supreme spiritual Head of Karma Kagyu lineage, has made a declaration of Trust on stamp paper on 29th day of March, 2011 at Delhi, wherein the entire history of the Trust along with their aims, objects and purposes of the Trust, various provisions with regard to the management of the Trust and its properties and maintenance of accounts etc. have been detailed on solemn affirmation. It has been declared on oath by the present spiritual head of assessee trust that His Holiness the 1st Karmapa, as Head of the Karma Kagyu lineage, has founded and established the Tsurphu Monastery in Tolung Valley in Central Tibet in 1159 AD to be the main seat of the Karma Kagyu lineage, a sect of Buddhism practiced all over the world. It declared that the present 17th Karmapa is the supreme spiritual Head of Karma Kagyu lineage and that he is

recognized all over world and the voluntarily customary offerings from devotees all over the world remain untouched by Karmapas, as they do not accept or own any kind of properties personally by continuing tradition of diverting all these offerings at source to charitable purposes of general public utility and for preservation and propagation of Dharma and Gyan. He declared that in the year 1974, His Holiness the 16th Karmapa followed by Lamas, Sangha and lay communities carrying with them religious ritual articles, murals and lama dance costumes fled Tibet and came into exile in the erstwhile Himalayan Kingdom of Sikkim, now a part of India. Later on the seat of His Holiness the 17th Karmapa moved to Dharamshala in Himachal Pradesh in January, 2000 and the National Headquarters of Tsurphu Labrang were located in Delhi. It was declared in the declaration of the Trust that the trustees stand possessed of the "Trust Fund" comprised of the moneys and other properties, both movable and immovable, which are duly accounted for in the books of accounts of Tsurphu Labrang and is carried forward every year on its balance sheet and the income arising there from is applied to the administration or execution of the aims and objects of the Trust. We hold that in accordance with the provisions of the Income-tax Act, 1961 and rules made there under, the execution of a formal deed of trust was not necessary for grant of registration u/s 12AA/12A of the Act.

18. With regard to the second issue that whether the aims and objects and purposes of the assessee trust were charitable in nature, qualifying for registration u/s 12AA/12A of the Act, the aims & objects and purposes of the Trust have been detailed in the said declaration of Trust dated 29.03.2011 which are reproduced here under :

"1. Tsurphu Labrang has and will have the following aims and objects :

a). To preach the understanding and practicing of Dharma according to the tenets of the Karma Kagyu lineage of Buddhism and propagate it for the benefit of the entire mankind without any discrimination on account of origin, colour, religion, cast, creed or gender; and

b). To organize performance of all Dharma rituals and rites for the benefit and participation of members of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

c). To establish, aid, manage and or run Educational institutions or projects for the benefit of members of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

d) To establish, aid, manage and or run educational institutions for training of students upto Acharya level (Master's equivalent) degree in Buddhist philosophy; and

e) To establish, aid manage and or run monastic and retreat facilities for training of students in rituals and meditation practices relating to Karma Kagyu lineage; and

f) To establish, aid, manage and or run Vocational Training institutions or projects for the benefit of members of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

g) To establish, aid, manage and or run Medical care institutions or projects for the benefit of members of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

h) To establish, aid, manage and or run Social institutions or projects for the benefit of members of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

i) To establish, aid, manage and or run Relief Camps or projects in the unfortunate event of visiting calamities for *the benefit of members of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and*

j) To render assistant, including monetary aids, to the helpless destitute, physically challenged, down trodden and weaker sections of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

k) To render assistance, including financial help, to the deserving students and scholars, especially from the weaker sections, of the society at large without any discrimination on account of origin, colour, religion, cast, creed or gender; and

l) To undertake to establish, aid, manage and or run any institution or project of general public utility which is a charitable purpose within the contemplation of clause (15) of section 2 of the Income-tax Act, 1961 [43 of 1961] which is not in derogation of the tenets of the Dharma preached and propagated by it; and

m) To aid printing, publishing and distribution of books, literature and other communication materials for disseminating and promoting dharma and gyan; and

n) To aid restoration and renovation of old monasteries and other cultural establishments for the preservation of culture and tradition in the Himalaya region; and

o) To undertake and or aid programmes and projects for the preservation and protection of environment with active engagement of monasteries, communities and other related development organizations; and

p) To undertake and execute all such work as is necessary for and incidental or ancillary to the aims & objects above and are not in derogation of the tenets of the Dharma and the aims & objects above."

19. The various clauses for the proper management of the "Trust Fund" and also the appointment of the Trustees and maintenance of

the account books of the trust, have been detailed in the said declaration of the Trust. It further provides that the Trustees shall not be entitled to any remuneration for their services as trustees. It provides that in the event of the Trust being wind up on dissolution of Trust, its properties after satisfaction of all the debts and liabilities, shall not be distributed amongst the Trustees, but shall be given or transferred to such societies/Trust or Associations having similar objects to be determined by the Board of Trustees or, in default thereof, by the court of competent jurisdiction.

20. From a reading of various aims, objects and purpose of the Trust, we find that the aims and objects as detailed above were wholly charitable and religious in nature without any discrimination on account of origin, colour, religion, caste, creed or gender. It provides the objects of running educational Institution, vocational training institutions, medical care Institutions, social institutions, relief camps in the unfortunate events of calamities, assistance to the helpless, destitute, physically challenged, downtrodden and weaker sections of the society at large, to give financial help to the deserving students and scholars, to undertake any Institute or project of general public utility, printing and publishing of books, literature, to aid restoration and renovation of old monasteries, to aid programmes and projects for the preservation and protection of environment and put all incidental or ancillary work in accordance with the aims and objects detailed in the declaration of Trust and not in derogation of the tenets of the Dharma and the aims and objects of the Trust. We find that it has been specifically provided time and again in the aims and objects and purpose of the Trust that it should be without any discrimination on account of religion, colour, origin, caste, creed or gender and shall be for the benefit of the entire mankind and public at large. We find that

the Revenue could not point out even a single aim and object of the assessee-trust which could be called not charitable in nature. The assessee has filed various other evidences in support of its case that the assessee trust existed centuries ago and exists till date. The assessee has filed duly sworn affidavits from 29 eminent persons well versed with the assessee trust, deposing on oath that the assessee trust existed from the year 1159 AD for the aims and objects as specified in the declaration of Trust dated 29.03.2011. The copy of the Revenue record and the copy of registration certificate issued by the Human Resource Development Department, Govt. of Sikkim dated 31.08.2009 granting registration to the school run by assessee-trust, copy of recognition letter dated 28.02.1984 issued by Govt. of Sikkim of Nalanda Institute for Higher Buddhist Studies run by the assessee-trust and various documentary evidence in support of the case of the assessee that it performed various charitable activities including educational, environment protection, medical relief to the poor for the public at large without any discrimination on account of religion or caste, have been filed in the compilation before the Tribunal. The Revenue could not file any evidence to discredit the documentary evidence filed on behalf of the assessee-trust. The argument of the learned CIT-DR that onus was on the assessee to file the evidences that the objects of the assessee trust existed in the year 1159 AD and amendments to the objects of the Trust were made by the Trust with resolution passed from time to time, is devoid of any merits. There could not have possibly any formal trust deed executed on stamp paper centuries ago. The assessee has filed other evidences to prove the creation of the Trust and that the Trust existed for charitable purpose and the same could not be controverted on behalf of the Revenue. The learned CIT-DR has referred to aim and object No.(l) and (o) with argument that these objects could not exist in the year 1159

AD, as there is a mention of the provision of section 2(15) of the Income-tax Act, 1961 in aim and object No.(l) and the aim & object No.(o) provides to undertake the programmes and projects for preservation & protection of environment. We find that this argument of the learned CIT-DR is not sustainable, as it is not necessary that the aims and objects presently being followed by the assessee Institution/Trust should be the same at the time of establishment of the Institution or the creation of the Trust itself. The aims and objects of the trust may be amended and some new aims and objects may be added or deleted in accordance with changing time and as per the requirement of the mankind at large. To ask for documentary evidence in the form of a resolution or some credible proof for the amendment in the aims and objects of the Trust, created as back as in 1159 AD, is uncalled for. We find that the aims and objects of the assessee trust have been detailed and recorded in the declaration of trust dated 29.03.2011, on which date, both the aims and objects No.(l) and (o) were valid and charitable in nature. In this view of the matter, we are of the considered view that the issue No.1 detailed above has to be answered in favour of the assessee and it is held that for registration under the provision of section 12AA/12A of the Income-tax Act, 1961, the execution of a formal deed of Trust is not necessary and the Institution/Trust could be registered under these provisions of the Act without execution of formal deed of trust, in case the other conditions for registration are fulfilled by the assessee. The second issue is also decided in favour of the assessee and it is held that the aims and objects and purposes of the assessee trust were charitable in nature, qualifying the trust for registration u/s 12AA/12A of the Act.

21. With regard to the third and fourth issues that whether the DIT(Exemptions) could go into the issues relating to income and

expenditure account of the assessee, which were the subject matter of assessment and whether they were relevant for the purpose of granting or otherwise of registration u/s 12AA/12A of the Act, we find that while making enquiry during the course of proceedings of granting registration u/s 12AA/12A of the Act, the DIT(E)/CIT(E) is to examine the aims and objects of the trust and that whether they are charitable in nature. The stage for application of income shall arrive when such trust or institution files its return of income with the Assessing Officer. In a case where the DIT(E)/CIT(E) is satisfied after examining the aims and objects of the institution/trust that they were genuine and were charitable in nature and the institution/trust has fulfilled other statutory conditions for grant of registration u/s 12AA/12A of the Act, the DIT(E)/CIT(E) shall allow the registration to the institution/trust. If any misapplication of income is found during the course of assessment proceedings, the Revenue authorities are free to take note of it and tax the same in assessment.

22. In Sanjeevamma Hanumanthe Gowda Vs. DIT(E) – [2006] 285 ITR 327 (Karn), the assessee trust was carrying on its activity by letting out the marriage hall on hire. The Hon'ble High Court held that authorities have to satisfy themselves about the genuineness of the activities of the trust or institution and how the income derived from the trust property was applied to charitable or religious purpose and not the nature of the activity by which the income was derived by the trust. The Hon'ble High Court further held that sufficient safeguard is provided under the Act for cancellation of registration obtained by the assessee in the event of its misusing the provisions.

23. In CIT Vs. Surya Educational and Charitable Trust and another – [2013] 355 ITR 280 (P&H), the Hon'ble Punjab & Haryana High Court

held that the object of Section 12AA is to examine the genuineness of the objects of the trust, but not the application of 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.

24. There are a number of decisions on this issue by the various Coordinate Benches of the Tribunal and the assessee has relied on a number of such decisions by the Hon'ble Courts and the Tribunal as recorded in the foregoing paragraphs of this order.

25. We, being in agreement with the decisions of the Coordinate Benches of the Tribunal and also respectfully following the decisions of various Hon'ble Courts, decide the issue in favour of the assessee and hold that learned DIT(E)/CIT(E) could not go into the issues relating to the income and expenditure account of the assessee, which were the subject-matter of assessment and they are not relevant for the purpose of granting or otherwise of registration u/s 12AA/12A of the Act.

26. The fifth issue that whether the activities of the trust for the benefit of a particular case or community or performing charitable activities for the purpose would debar a trust or an institution from exemption from tax and registration u/s 12AA/12A of the Act, we find that the institution/trust having objects for the benefit and betterment of a particular community would be eligible for registration u/s 12AA/12A of the Act. The law does not compel a charitable institution/trust to do charity for the whole planet. In case an institution/trust exists for charitable purposes for the benefit of an indeterminate group of people, the same shall be eligible for

registration u/s 12AA/12A of the Act. It is now well-settled that an object beneficial to a section of the public is an object of general public utility. The intention of the institution/trust should be impersonal in nature and for a sufficiently defined and identifiable section of the public.

27. In Ahmedabad Rana Caste Association Vs. CIT, Gujarat – [1971] 82 ITR 704 (SC), the facts were that the assessee, an association of persons, held properties for various purposes including management of the movable and immovable properties of the Rana caste or community of the city of Ahmedabad and doing acts of improving the education of the community, giving medical help to the community etc. Hon'ble Apex Court held that it is well-settled that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose, it is not necessary that the objects should be to benefit the whole of the mankind or all persons in a country or state. The Hon'ble Apex Court further held that it is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present and the section of the community sought to be benefited must be sufficiently definite and identifiable or some common quality of a public or impersonal nature.

28. In CIT Vs. Dawoodi Bohra Jamat – [2014] 364 ITR 31 (SC), the activities of the trust were both charitable and religious in nature and the objects of the assessee trust were based on religious tenets. The objects of the assessee trust as mentioned in the trust deed were to arrange for nyaz and majlis (lunch and dinner) on various religious occasions of the Dawoodi Bohra community, for the betterment of the Dawoodi Bohra community and also to arrange for religious education and to establish madarsa and such organization, to assist/help the

needy people for religious activities, to carry out all religious activities according to shariat and direction of shariat-e-mohammediyah for the prosperity of the Dawoodi Bohra community. Hon'ble Supreme Court, dismissing the appeal of the Revenue, held that determination of the nature of the trust as wholly religious or wholly charitable or both charitable and religious under the Act is not a question of fact and held that the objects of the trust exhibited the dual tenor of religious and charitable purposes and activities and Section 11 of the Act allowed such trust with composite objects to claim exemption from tax as a religious and charitable trust subject to the provisions of section 13 and, therefore, the activities of the trust under such objects would be entitled to exemption accordingly.

29. In CIT Vs. Pt. Ram Shanker Misra Trust – [1996] 222 ITR 252 (Allahabad), the trust was for the benefit of section of the public by providing monetary help for marriage of poor girls of a particular community and sacred thread ceremonies of boys also of that community. The Hon’ble Allahabad High Court held that the Tribunal was right in holding that the expenditure incurred by the trust in giving monetary help at the time of marriage of poor girls of a particular community and sacred thread ceremony of boys also of that community was incurred for charitable object.

30. In CIT Vs. Surji Devi Kunji Lal Jaipuria Charitable Trust (No.1) – [1990] 186 ITR 728 (Allahabad), it was held by the Hon’ble High Court that in order to make a purpose charitable, it is not necessary that it should be beneficial to the poor only and what is required is benefit to a section of the public as distinguished from specified individual.

31. In All India Spinners' Association Vs. CIT, Bombay – [1944] 12 ITR 482 (PC), the test of 'general public utility' was examined and it was held that they are very wide words and would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility. In this case, the All India Spinners' Association was formed for development of hand-spinning and hand-weaving for relief of poverty and income was derived by sale of cloth. The issue was decided in favour of the assessee and the assessee's appeal was allowed by Hon'ble Privy Council.

32. In Malik Hasmullah Islamic Educational and Welfare Society Vs. CIT, Faizabad – [2012] 138 ITD 519 (Lucknow), the assessee society was having principal object to establish schools and educational institutions for Muslim boys and girls for providing Islamic education. The CIT denied registration on the ground that assessee-society was established for the benefit of a particular religious community and, therefore, it could not be considered as charitable institution u/s 11 or 12 in view of provision of Section 13(1)(d). The Lucknow Tribunal held that since the Commissioner did not show that the objects of the assessee were not charitable, order denying registration was not justified and decided the issue in favour of the assessee.

33. The last issue No.(VI) is that whether the supreme head of the trust taking food and clothes etc. from the funds of the trust was violative of the provisions of Section 13 of the Act particularly when he was not drawing any salary for his services rendered to the trust, we find that it is an admitted fact in this case that the 17th Karmapa who is the supreme head of the trust was taking food and clothes and meeting his basic needs from the funds of the trust. However, the

provisions of Section 13 do not debar the main whole time trustee/trustees from meeting their basic needs from the funds of the institution/trust particularly when they are not deriving any monetary benefit from the institution/trust. The intention of the legislature in inserting the provision of Section 13 is not to debar the genuine basic expenditure of the Mehant or supreme head of the trust or trustees. The provision is meant to debar the author or the trustees of the trust from parting away part of the income or any property of the institution/trust for their personal benefit. In the case before us, it is an admitted fact that the supreme head of the trust, the 17th Karmapa, has renounced the world and the offerings made to him are diverted at source to the funds of the trust and no part of the income or property of the trust is kept by the 17th Karmapa for his personal benefit and that he is whole time committed to work for the fulfillment of the aims and objects and purposes of the trust and has never drawn any salary or remuneration for his services rendered to the trust. The food and clothes and similar expenditure are the basic needs of a person for survival and the expenditure incurred for fulfillment of these basic needs of the supreme head of the institution/trust could not be held as violative of the provisions of Section 13 of the Act. In this view of the matter, the issue is decided in favour of the assessee and it is held that the supreme head of the trust taking food and clothes and similar basic needs from the funds of the trust were not violative of the provisions of Section 13 of the Act.

34. In this view of the matter, we hold that the execution of a formal deed of trust was not necessary for grant of registration u/s 12AA/12A of the Act and that the aims and objects and purposes of the assessee trust were charitable in nature and the issues relating to the income and expenditure account of the assessee were the subject-matter of

assessment and were not relevant for the purpose of grant or otherwise of registration u/s 12AA/12A of the Act, and the activities of the trust for the benefit of a particular community would not debar the institution/trust from exemption from tax and registration u/s 12AA/12A of the Act and, that the learned DIT(Exemptions)/CIT(E) could make enquiries during the course of proceedings for registration u/s 12AA/12A with regard to the genuineness or otherwise of the aims and objects of the trust and not regarding the application of income of the trust for charitable or religious purposes, which is a subject-matter of assessment to be considered by the Assessing Officer at the time of assessment and that the supreme head of the trust taking food and clothes etc. from the funds of the trust is not violative of the provisions of Section 13 of the Act, and the assessee in this case has fulfilled all the preconditions for grant of registration u/s 12AA/12A of the Act and, accordingly, we direct the learned DIT (Exemptions) to grant registration to the assessee trust u/s 12AA/12A of the Act with effect from assessment year 2011-12 onwards, within a period of fifteen days from receipt of this order. We direct accordingly. The grounds of appeal of the assessee are allowed.

ITA No.3061/Del/2013 :-

35. At the time of hearing, both the parties submitted before us that this appeal of the assessee shall become infructuous since the miscellaneous application of the assessee against the original Tribunal's order in ITA No.4941/Del/2011 was allowed and the *ex parte* order passed by the Tribunal was recalled and, therefore, the appeal of

the assessee in ITA No.3061/Del/2013 may be dismissed. Accordingly, the appeal of the assessee in ITA No.3061/Del/2013 is dismissed.

36. In the result, the appeal of the assessee in ITA No.4941/Del/2011 is allowed and the appeal of the assessee in ITA No.3061/Del/2013 is dismissed.

Decision pronounced in the open Court on 8th September, 2015.

Sd/-	Sd/-
(J. SUDHAKAR REDDY) **ACCOUNTANT MEMBER**	**(G.C. GUPTA)** **VICE PRESIDENT**

VK.

<u>Copy forwarded to: -</u>

1. Appellant : **Tsurphu Labrang,**
   E-59, Ground Floor, Greater Kailash, Part-II,
   New Delhi – 110 048.

2. Respondent : **Director of Income Tax (Exemptions),**
   Plot No.15, 3rd Floor, Aayakar Bhawan,
   Laxmi Nagar District Centre, Delhi – 110 092.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar