

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1602/Bang/2017

M/s. Sri Sahasra Lingeshwara Mahakali Devasthanam, Uppinangady, Puttur – 574 241. PAN : AAKTS 7309 A	Vs.	The Commissioner of Income-tax (Exemptions), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. C. H. Sundar Rao, CIT-DR-I

Date of hearing		20.11.2018
Date of Pronouncement	:	13.12.2018

ORDER

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the ex-parte order of CIT (Exemptions), Bangalore, passed u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 (in short ‘the Act’) dated 22.05.2017, rejecting the assessee’s application for registration.

2.1 In this appeal, the assessee has raised the following grounds:

- 1. The order of the learned CIT[E] u/s.12AA[1][b][ii] of the I.T. Act, 1961 dated 27/11/2015 refusing to register the religious institution under the Hindu Religious Institutions and Charitable endowments Act, 1997 in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities facts and circumstances of the case.*

2. The learned CIT[E] is not justified in refusing to register the trust u/s 12AA[1][b][ii] of the Act, on the ground that it was not possible for him to verify the genuineness of the objects and the activities of the trust, although they are self-evident and manifest and having regard to the genuineness of the objects and the activities of the religious institution the State Government itself in its wisdom enacted the provisions The Hindu Religious Institutions and Charitable Endowments Act, 1996 [Karnataka Act No.33 of 2001] [Act No.1] and The Karnataka Ancient and Historical Monuments and Archeological Sites and Remains Act, 1961 [Act No.2] and in terms of the said enactments the appellant is a religious institution u/s.2[17], notified institution u/s.2[23] and a temple u/s.2[27] of The Hindu Religious institution governed by Hindu Religious Institutions and Charitable Endowments Act 1996 [Karnataka Act No.33 of 2001] and ancient protected monument u/s.2[1] and 2[10] of the Karnataka Act No.7 of 1962 and a protected place of worship contemplated u/s.16 of the Karnataka Act No.7 of 1962 and by enacting the relevant statutes in exercise of the constitutional power to protect them under the Doctrine of State to act as 'parens patriae' of the charities in the state and in exercise of the power and duty, the State continued to look after the conduct of its affairs by appointing an Executive Officer and a Committee under relevant Act and the accounts are all audited and approved by the State and therefore, the finding of the learned CIT[E] is perverse and contrary to record in as much as the appellant has filed all the relevant details like audited accounts, gazette notification, etc., for him to satisfy about the genuineness of the objects and the CIT[E] has overlooked the self-evident and facts that the appellant is a religious institution as recognized by the Act carrying on certain charitable activities and consequently, is entitled to registration u/s.12A of the Act, notwithstanding there is no formal deed of trust.

3. The learned DIT[E] ought to have appreciated that the appellant temple came into existence long before the enactment of Income-tax Act and the objects of appellant trust have been pleaded before him and the same is undoubtedly religious and charitable in nature and accepted as a religious institution under two State Acts and therefore, the learned CIT is not justified in rejecting the application for registration u/s. 12AA of the Act on the most unsustainable ground that the appellant has not complied with the prescribed conditions and furnished him the relevant details.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal

may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

2.2.1 The learned AR for the assessee was heard in support of the grounds raised (supra) and reiterated the submissions put forward by the assessee in the statement of facts filed along with the memorandum of appeal; which are extracted hereunder:

“

1. The appellant is the Executive Officer appointed to look after the deity idol of Sri Sahasra Lingeshwara Mahakali Temple, which is more than 800 years. There is no written document constituting by way of any trust deed, etc., for the appellant Trust. The appellant Executive Officer is appointed to provide facilities to the pilgrims who visit the temple for worship and to look after the administration of the temple, which was earlier being looked for several years by the general public and therefore been a recognized as a temple u/s.2[27] of Act No.1, which has repealed, among others, the earlier governing Acts viz., Karnataka Religious and Charitable Institution Act, 1972, Madras, Hindu Religions and Charitable Act, 1957 as mentioned in the statements and objects of the Act No. 1. The Executive Officer is appointed by the State Government u/s.4 so also an advisory committee u/s. 20 of the Act No.1 referred to above, as per the scheme notified by the Court and governed by the aforesaid Act No.1. Thus, the Executive Officer alongwith the aforesaid committee are delegated the powers of the State Government, which represents the former crown or sovereign, having the character of '*parens patriae*' of the obligation that was imposed upon the Crown of the duty of watching over the interests of wards and charity in general in its kingdom and thus, the Government of Karnataka, more or less, could be considered as the trustee or person in-charge for looking after the temples for religious purposes and to conduct its affairs as defined u/s.24 of the Act No.1.

2. The appellant has come into existence long before the enactment of the Income-tax and also comes within the ambit of the Karnataka Ancient and Historical Monuments and Archeological Sites and Remains Act, 1961 [the Karnataka Act No.2] being notified institution under clause 20 of the aforesaid Act No.2. Thus, the appellant is a Hindu Religious institution governed by Hindu Religious Institutions and

Charitable Endowments Act, 1996 [Act No.1] performing certain charitable acts within the meaning of clause 2[17] of the aforesaid Act No.1. The activities of the appellant also falls u/s.2[15] of the I.T.Act and it is submitted that the appellant temple is a place of public worship of renown. It is a place of pilgrimage visited by thousands of people every year and there can be no doubt about the genuineness of the religious and charitable activities that are conducted by the religious institution. The Executive Officer of the appellant has also furnished the main objectives of the appellant, which is to carry out the worship of Lord Sri Sahasra Lingeshwara Mahakali and to give aid to the poor and to provide free mid day meals to pilgrims and devotees, etc., every day who come to worship the deity idol. The accounts are required to be audited under the Hindu Religious Institutions and Charitable Endowments Act, 1997 and the audited accounts are also furnished, which is placed in the Paper Book. These activities are undoubtedly are of religious in nature and certain charitable activities are also carried on as charity has been part of Hindu religious activity and the Executive Officer and the advisory Committee are only the delegates of the Government to exercise right to perform the duties of the Government under the two State Acts.

3. It is submitted that the appellant had not applied for registration u/s.12A of the Act on account of meager resources and various problems faced. The funds received by way of kanike and sevas were not sufficient even to meet the day-to-day expenditure of the temple administered by the Executive Officer and the committee appointed by the Government under the Governing Acts. It is further submitted that the funds of the temple are applied only for religious and charitable purposes and that too in accordance with the laws framed by the State Government in this regard from time to time. Accordingly, with the above background facts, the Executive Officer was requested by many of the devotees of the temple, who come to worship, to exercise his powers under the Act to accept endowments from the philanthropic public and devotees who come to worship in the temple and in order to add incentive to such devotees to make endowments to secure registration u/s.12A of the I.T.Act, 1961 so that the devotees would come in large numbers to give endowments for the development of the Temple and accordingly, the Executive Officer of the Temple applied for registration on 07/11/2016.

4. It is submitted that the learned ITO [Exemptions], Mangaluru, called for vide letter dated 28.04.2017 called for certain details in connection with the

proceedings u/s. 12AA of the Act. The appellant vide letter dated 10.05.2017 filed some of the details called for by the learned CIT[E].

5. Thereafter, the learned CIT[E] has passed the impugned order observing that in the absence of relevant details, it was not possible for him to verify the genuineness objects and the activities carried on by the trust despite the fact it is administered by the State Government under the two State Acts referred to above and the Executive Officer is the Officer of the Statement Government appointed under the two State Acts to look after the religious institution and audited accounts as required under the statute are also filed before him, which testify very eloquently the genuineness of the activities carried and above all the appellant is a religious institution and in order to win exemption u/s.11 of the I.T.Act, registration of the trust is a must not only by a trust but also a religious institution also and there would be no formal trust deed in the case of religious institution of the kind of the appellant, which is regulated and controlled by State Government in exercise of its sovereign duty and power under two State Acts referred to above.

6. The learned CIT[E] has seriously failed to appreciate that the State Government has taken over the temple to discharge its duty as a sovereign by enacting two State Acts referred to above and in exercise of its powers had appointed the official under the Act for the administration of the deity idol consecrated long ago dating back to more than 800 years and also its properties under the enacted statutes and has appointed members of the Committee by Gazette notification and also appointed the Executive Officer and the revenues by way of kanikas, donations, etc., are all received and controlled by it and all the expenses to be incurred in providing facilities to the pilgrims who throng to worship the deity are to be approved by the committee appointed by the Government through the Executive Officer appointed by it and therefore, the committee and A.O. apart from holding the office as the delegates of the Government are executing the duties which are in the nature of duties to be performed by the trustees and thus, there is obligation in the nature of trust and the learned CIT[E] has seriously erred that it has not been possible for him to verify the objects and genuineness of the activities by following the procedure u/s.12AA of the Act, overlooking the self-evident and manifested fact that State Government has recognized that the temple is a religious institution, which State

Government would not have done and taken over the administration under the Act, as part of its constitutional duties, if it was otherwise.”

2.2.2 According to the learned AR, the assessee’s application for registration u/s 12A of the Act was rejected by the CIT(E) mainly for the reason that the temple is administrated by the Endowment Department of the Government of Karnataka. Drawing the attention of the Bench to the impugned order, the learned AR submits that the second reason for rejection of the assessee’s application for registration is that relevant details were not made available. In respect of the first objection of the CIT(E), the learned AR submitted that under similar facts a Co-ordinate Bench of this Tribunal in the case of Kokkada Shree Southadka Mahaganapathi Temple Vs. CIT(E), Bangalore in ITA No.354/Bang/2016 dated 16.06 2017, held that the CIT(E) had erred in rejecting the application for non-filing/part filing of details, and restored the matter back to the file of the CIT(E) for reconsideration of the assessee’s application for registration u/s 12AA of the Act. It is submitted that in the case on hand also, the assessee is a notified institution u/s 23 of the Hindu Religious Institutions and Endowments Act 1997 (Karnataka Act No.33 of 2001). It was prayed that since the facts in the case on hand is similar to the facts of the cited case i.e., Kokkada Shree Southadka Mahaganapthy Temple Vs. CIT(E), Bangalore (supra), the impugned order of the CIT(E) is liable to be set aside.

2.3 Per contra, the learned DR supported the order of the CIT(E) and submitted that a clear finding is rendered therein by the CIT(E) that in the absence of relevant details, it is not possible to verify the genuineness of the objectives and activities of the assessee trust. The learned DR submitted that even if it is held that the assessee’s application for registration u/s 12AA of the Act deserves consideration, then the matter be restored back to the file of the CIT(E) for fresh adjudication after examination of the relevant details which should be made available to him by the assessee.

2.4.1 We have considered the rival contentions and perused and carefully considered the material on record; including the judicial pronouncement cited (supra). On a perusal of the cited case of the Co-ordinate Bench of this Tribunal i.e., Kokkada Shree Southadka Mahaganapthy Temple Vs. CIT(E), Bangalore, in ITA No. 354/Bang/2016 dated 16.06.2017, it is seen that, just as in the cited case, in the case on hand also, the assessee trust has been notified under the Hindu Religious Institutions and Endowments Act, 1997; as also the Executive Officer is appointed thereunder. In this regard, it is relevant to extract hereunder the operative portion of the decision of the Co-ordinate Bench in the cited case at paras 3 to 5 thereof:

“3. We have considered the rival submissions. First of all, we reproduce the para no. 3 to 6 of the Tribunal order cited by the Id. AR of the assessee. The same read as under.

"3. The Ld. Counsel for the assessee submitted that assessee is an ancient temple and is not a Trust created under a Trust Deed. He submitted that the temple is registered with the Endowments Department, Government of A.P. and therefore, the certificate of registration has to be taken into consideration as a valid document evidencing creation of a Trust. He submitted that the certificate issued by the Endowments Department was enclosed along with the application under section 10A but the CIT(E) has summarily rejected the assessee's application without properly appreciating the legal position of the assessee. The Ld. Counsel for the assessee also relied upon the decision of the Hon'ble ITA.89/H/2016 Sri Kodandaramaswamy Temple, Tamminapatnam, Chillakur (M), SPSR Nellore.

Madhya Pradesh High Court in the case of Laxminarayan Maharaj & Another vs. CIT reported in (1989) 150 ITR 465 in support of this contention. He further submitted that the Revenue had filed SLP before the Hon'ble Supreme Court against the above decision and the Hon'ble Supreme Court dismissed the SLP as reported in 186 ITR (Statute) 32 (SC). Thus, according to him, the CIT (E) has committed an error in rejecting the assessee's application for registration under section 12AA of the I. T. Act.

4. *The Ld. D.R. on the other hand, supported the orders of CIT (E).*

5. *Having regard to the rival contentions and the material on record, we find that the assessee temple is registered with the Endowments Department under*

section 6(c)(ii) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 6 of the Act provides for preparation and publication of list of charitable and religious institutions and Endowments on the basis of the income. Clause-(c) and sub-clause (ii) thereof, provides for religious institutions and Endowments other than Mutts not falling under Clause-

(a) or Clause-(b) of section-6 of the Act. The religious institutions and Endowments are defined under subsections 22 and 23 of Section-2 of the said Act. For the sake of ready reference, they are reproduced hereunder:

"(22) 'Religious endowments' means property (including movable property) and religious ITA_ 89/H/2016 Sri Kodandaramaswamy Temple, Tamminapatnam, Chillakur (M), SPSR Nellore.

offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity and includes the institution concerned and also the premises thereof.

Explanation-1 :- All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a religious endowment within the meaning of this definition, notwithstanding that, whether before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed.

Explanation-II :- Any grant granted to an archaka, service-holder or other employee of a religious Institution for the performance of "any service or charity in connection with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, notwithstanding the grant or ryotwari patta to an archaka, service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwan) Act, 1956 but shall be deemed to be a religious endowment;

(23) 'Religious institution' means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose;".

5.1. The above definitions clearly demonstrate that such religious institutions or Endowments are for the ITA.89/H/2016 Sri Kodandaramaswamy Temple, Tamminapatnam, Chillakur (M), SPSR Nellore.

purpose of any service or charity for the public. Therefore, any institution registered under section 6 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act is deemed to be carrying on the charitable and religious activities.

The certificate of registration therefore, establishes that the 'Temple' is a religious and charitable institution. The Hon ble Madhya Pradesh High Court in the case of Laxminarayan Maharaj & Another vs. CIT (cited supra) has held that when a Trust is not created 'under an instrument i.e., "the document evidencing the creation of the Trust", the evidential document cannot be limited to documents which directly prove the creation of the trust and that all documents which afford a logical basis of inferring creation of the trust can be described to be "documents evidencing the creation of the trust" within the meaning of Rule 17A(a). In the case before us, since the certificate of registration with Endowments Department of the Government of A.P. is a document evidencing the creation of the Trust, we are of the opinion that the CIT(E) has erred in rejecting the application of the assessee for non- filing of the Trust Deed. In view of the same, we deem it fit and proper to set aside the order of the CIT(E) and remand the same to his file for re-consideration of the assessee's application for registration under section 12AA by faking the certificate of registration with the Endowments Department as evidence of creation of trust.

ITA.89/H/2016 Sri Kodandaramaswamy Temple, Tamminapatnam, Chillakur (M), SPSR Nellore.

6. In the result, appeal of the assessee is treated as allowed for statistical purposes."

4. From the above paras reproduced from the Tribunal order cited by the Id. AR of the assessee, we find that in that case also, the assessee was a very ancient temple under the administrative control of the Assistant Commissioner, Endowments Department, Nellore and the same was registered under Endowments Act and its affairs were managed by the Executive Officer of the temple appointed by the Department of Endowments, Government of Andhra Pradesh. In the present case also, the assessee trust had been notified under Hindu Religious Institutions and Charitable Endowments Act 1997 by the state of Karnataka and an Executive Officer was appointed as per Hindu Religious Institutions and Charitable Endowments Act 1997. Therefore we are of the opinion that first objection of the CIT(E) for rejecting the assessee's application for registration by saying that the trust is a temple administered by the Endowment Department of Government of Karnataka is not valid. These objections are rejected being devoid of any merit by respectfully the above cited tribunal order.

5. Regarding the merit, we find that as per letter dated 16.10.2015 available at page no. 57 of the paper book, various queries were raised by the Id. CIT(E) and the assessee was asked to comply on or before 27.10.2015 but the reply of the assessee available at page nos. 58 and 59 of the paper book is dated 10.11.2015 and impugned order had been passed by the CIT(E) on 27.11.2015 and there is no mention of this letter

dated 10.11.2015 in the impugned order passed by the CIT(E). There is no evidence to support the contention that the same was in fact submitted before the CIT(E). Under these facts, we feel it proper to restore back the matter to the file of the CIT(E) for fresh decision on merit after examining the various details which should be made available by the assessee before the Id. CIT(E).”

2.4.2 Respectfully following the above decision of the Co-ordinate Bench of this Tribunal in the cited case i.e., Kokkada Shree Southadka Mahaganapthi Temple Vs. CIT(E) (supra), we are of the view that the first reason given by the CIT(E) for rejecting the assessee’s application for registration by saying that the trust is a Temple administered by the Endowment Department of the Government of Karnataka is incorrect and the same is rejected, being devoid of any merit.

2.5.2 Material on record indicates that the assessee filed its application for registration u/s 12AA of the Act on 07.11.2016. On a perusal of the impugned order, we find that after 5 months, various queries were raised and details/clarifications sought by the CIT(E) vide letter dated 28.04.2017; which the assessee was asked to comply with by 15.05.2017. In the impugned order it is mentioned that the assessee filed incomplete details/clarifications on 11.05.2017 and therefore in the absence of details and the CIT(E)’s view that the assessee was not interested in pursuing the matter, the application for registration has been dismissed ex-parte. In this regard, we observe from the impugned order that, after the assessee filed its application for registration u/s 12AA of the Act, on 07.11.2016, the office of the CIT(E) awoke to the existence of the assessee’s application after more than 5 months later by issue of letter dated 28.04.2017 calling for details from the assessee, based in a mofussil area far away from Bangalore to file details by 15.05.2017. The assessee was afforded this one opportunity only and the CIT(E), after no apparent action for more than 5 months from the date of the assessee’s

application for registration u/s 12AA of the Act, dated 07.11.2016; in less than a month proceeded to call for details, examine them and reject the assessee's application ex-parte vide order dated 22.05.2017. It appears to us that the apparent reason for this hurried disposal of the assessee's application by CIT(E) with undue haste was because as per section 12AA(2) of the Act, order for grant or rejection of registration was to be passed before the expiry of 6 months from the end of the month in which the application for registration was received; i.e., in the case on hand the CIT(E) was bound to pass the order on or before 31.05.2017. The proviso to section 12AA(1) of the Act clearly provides that no order under sub clause (ii) of clause (b) of section 12AA(1) shall be passed unless the applicant has been given reasonable opportunity of being heard. In our considered view, the facts as emanate from the record in the impugned order clearly shows that the assessee in the case on hand was not afforded reasonable opportunity of being heard. In the factual matrix of the case as discussed above, which shows that the assessee has not been provided adequate and reasonable opportunity, as was required under the proviso to section 12AA(1)(b)(ii), and respectfully following the decision of the Co-ordinate Bench in the case of Kokkada Shree Southadka Mahaganapthi Temple Vs. CIT(E) (supra), which is on similar facts, we are of the considered view that, in the interest of substantial justice, it is appropriate to set aside the impugned order and restore the matter of the assessee – trust's application for registration back to the file of the CIT(E) for fresh examination and adjudication thereon after affording the assessee reasonable opportunity of being heard in the matter and to file details / submissions required, which shall be considered by the CIT(E) before deciding the issue. Assessee-trust is also directed to submit details/clarifications called for by the CIT(E). We hold and direct accordingly.

3. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this 13th day of December, 2018.

Sd/-

(N. V. VASUDEVAN)
Vice President

Sd/-

(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 13th December, 2018.

/NS/*

Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.