

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**
(Through web-based video conferencing platform)

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

I.T.A. No. 252/VIZ/2020

Dhatri Foundation,
D.No. 50-113-9,
Balayyasastry Lay Out,
Visakhapatnam (Urban)

vs.

CIT (Exemption),
Hyderabad.

PAN No. AACTD 3056 H
(Appellant)

(Respondent)

Assessee by : Shri I.Kama Sastry, CA.
Department by : Shri D.K. Sonawal, CIT DR

Date of hearing : 04/03/2021.
Date of pronouncement : 24/03/2021.

ORDER

PER N.K. CHOUDHRY, JUDICIAL MEMBER

This appeal has been preferred by the Assessee/Trust against the order dated 23/09/2020 impugned herein passed by the Id.CIT(Exemption), Hyderabad u/sec. 12AA(1)(b)(ii) of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

2. In this case, the Assessee has filed an application for registration u/sec. 12A of the Act by e-filing on dated 09/02/2020, which was taken up for hearing by the Id.CIT(E) by issuing notice dated 11/03/2020 which remained un-complied. Thereafter, another notice dated

07/09/2020 was sent to the Assessee in response to which the Assessee submitted the documents as mentioned in the questionnaire through e-mail/e-proceedings, on the basis of which the Id.CIT(E) rejected the application of the Assessee by holding as under:-

“3. Religious Objects: While filing form 10A online, the assessee has applied for registration u/s. 12A of the Act as a "charitable" trust. However, the first page of the Trust Deed reads as under:

"Whereas the President Smt. Chirra Visalakshi desirous of starting a non-profit charitable trust namely "Dhatri Foundation" for uplift the poor needy irrespective of caste, creed and religion and purpose of eradication of illiteracy and poverty, providing grant of donations for the orphanages, running old age homes, tribal welfare and to afford relief for the poor, alleviation of human suffering, bible training classes, free Medical aid programmes....

Further the object No. xii) reads as under:

"to work for the moral, educational, cultural, spiritual, medical, social benefit and development of the Community."

As seen from the above, the objects include religious objects also. Registration u/s 12A is granted to any trust/society only if it is created wholly for charitable purpose or wholly for religious purpose, but not for both. Since the objects of the assessee include both religious and charitable objects, registration u/s 12A cannot be granted to the assessee.

4. Activities are meager: The assessee society has been formed in the year 2015. However, as seen from the Income & Expenditure account of the assessee filed for various years, the charitable activities carried out are either meager or nil. Hence, it is premature to grant registration u/s. 12A to the assessee.

5. In view of all the above facts, I am of the view that the applicant is not fit for grant of registration u/s.12AA of the Act. Hence, the application in Form No. 10A filed by the above applicant is hereby rejected.”

3. Feeling aggrieved, the Assessee is before us.

4. The Assessee is a charitable trust and having the following objects as claimed:-

- “i) To create awareness and health and rural development in the villages*
- ii) To support with nutrition to those childrens who are fighting with HIV/AIDS and TB.*
- ii) To help the neglected children to make up what they have missed in the area of Literacy;*
- iv) Providing such welfare services like free lodging, boarding, health and recreation which may make their Life little more comfortable;*
- v) Accomplishing to physical, intellectual and aesthetic development of the child;*
- vi) Create a Home environment that helps children gain in education;*
- vii) Relief of poverty through promotion of Basic Education, Literature, Science and Fine Arts;*
- viii) Providing Medical facilities to the poor needy people who cannot afford medical expenses;*
- ix) To establish Primary Schools/ High Schools/Colleges for the poor needy besides Nursing Institutions and Medical Colleges;*
- x) To promote health education among the people and to provide preventive medical care; Rehabilitation Programs for FBV/AIDS Patients & Establishment of Hospitals at Rural Areas.*
- xi) To support any relief activity including maintenance and support institutions and organizations during time of natural and other calamities;*
- xii) To work for the moral, educational, cultural, spiritual, medical, social benefit and development of the Community;*
- xiii) To establish, maintain, run, develop and improve the extension of Orphanages, Orphan Caring Homes (H.IV infected Children), Day Care Centers, Pre-School Centers, Old Age Homes, Short Stay Homes (Trafficking Women), Lepers Caring Home and Widows Caring Homes etc;*
- xiv) To start vocational Training Centers, Non-Formal Educational Institutions and Child Welfare Centers in India for the benefit and use of the general public;*
- xv) To promote health education among the people and to provide preventive medical care byway of starting Primary Health Centers, Mobile Medical Units and conducting of Free Medical Camps at all the backward villages in every month;*
- xvi) To create awareness among the Rural women about their rights, cleanliness, child care and small savings etc.,*
- xvii) To provide clean and healthy drinking water to the people by establishing R.O. Water Plants,*
- xviii) To start and run cottage Industrial training centers for women in Tailoring, basket making. Handicrafts, Phenol making, embroidering, candle making etc.,*
- xix) To establish Family Counseling Centers, Youth Centers and educate all the depressed people mentally, socially and economically to inculcate a sense of self respect, service and sacrifice;*

- xx) To establish Computer Education Centers, ^{Music} Schools for unemployed youth from the lower caste communities on free of charges;
- xxi) To organize or work for any object of general good and welfare as determined by the trust.
- xxii) To establish Community Welfare centers, Physiotherapy and Rehabilitation Centers and granting the gifts for the construction of the community welfare centers & Rehabilitation centers;
- xxiii) To acquire purchase, hire, exchange, sell or lease any movable or immovable property in furtherance of the objectives of the Trust;
- xxiv) To borrow or raise funds either by loan or otherwise against the security of any immovable property of the Trust in furtherance of the objects of the Trust;
- xxv) To raise donations, contributions of grants either from India or abroad from any person or persons to the attainment of the above objects of the Trust;
- xxiv) The objects of the Trust will not include objects involving the carrying on of any activity for profit within the meaning of the Income Tax Act, 1961.”

5. 1st Ground of rejection:-

We may observe that instead of going into the objects of the trust, the Id.CIT(E) emphasized on the first page of the trust deed, wherein it is written :-

"Whereas the President Smt. Chirra Visalakshi desirous of starting a non-profit charitable trust namely "Dhatri Foundation" for uplift the poor needy irrespective of caste, creed and religion and purpose of eradication of illiteracy and poverty, providing grant of donations for the orphanages, running old age homes, tribal welfare and to afford relief for the poor, alleviation of human suffering, bible training classes, free Medical aid programmes"

5.1 The Id.CIT(E) merely observed that the objects of the Assessee include religious objects. Registration u/sec. 12A is granted to any trust/society only if it is created wholly for charitable purpose or wholly for religious purpose, but not for both. The Id.CIT(E) further observed that since the objects of the assessee include both religious and charitable objects, registration u/sec. 12A cannot be granted to the assessee. The

Id.CIT(E) finally concluded that Assessee-trust having mixed objects/purposes.

5.2 The objects of the Assessee seems to be for mixed activities but not religious and charitable as observed by the Ld. CIT(E). Even the question as to whether the Institution having mixed objects alike religious and charitable, can be registered u/sec. 12A of the Act or not, came into consideration before the co-ordinate bench of the tribunal at Hyderabad in the case of *Rehoboth Mission Vs. Director of Income Tax (Exemption)* [(2010) 29 CCH 443 – Hyd-Trib.] wherein it has been held as under:-

“6. We have gone through the provisions of sec.13(1)(b) of the Act. There is nothing in the language of this provision to suggest that an institution of mixed objects is precluded from getting registration u/s 12AA of the Act. It is also seen from the objects of the trust in question that the assessee is carrying on no non-charitable or non-religious activities. We place reliance on the judgement of ACIT v. Barkate Saifiyah Society 213 ITR 492 (Guj) and CIT v. Chandra Charitable Trust 294 AITR 86 (Guj), wherein it was held that a trust can either be for religious purposes or for charitable purposes or it can be for both. Only a trust which is for religious purpose is excluded and debarred from registration u/s 12AA of the Act. A trust whose object is charitable as well as religious is not debarred from registration. Further, in the case of New Life in Christ Evangelistic Association v. CIT & Others 246 ITR 532 (Mad), wherein it was held that for granting or refusing registration u/s 12A in relation to such trust, the only condition precedent is that an application for registration should be made in time and the accounts of the institute should be audited. No enquiry about objects of the trust can be made u/s 12A of the Act. We have gone through all the judgements cited by the learned counsel for the assessee. The facts of the case in the case considered by the Gujarat High Court squarely apply to the facts of the case on hand. The department has not brought any contrary decision to our notice. In our opinion, in the circumstances under consideration, the DIT(E) should not have rejected the application of the assessee for registration u/s 12AA of the Act on this reason. Commenting on the Honourable Gujarat High Court decision, the DIT(E) has observed that the Hon’ble High Court has introduced a new concept known as “charitable religious trust.” According to him, trust has to be either wholly religious or wholly charitable. Otherwise, it is not entitled for registration and the Hon’ble Gujarat High Court did not consider the word “or” which has been employed u/s 11(1)(a) and sec.12 of the

Act and the Hon'ble High Court has interpreted sec.13(1)(b) of the Act. We are unable to agree with the DIT(E) as to how and why the judgement of the Hon'ble Gujarat High Court is not applicable to the facts of the present case. There is no such bar since there is no jurisdictional High Court's judgement on this issue, to the contrary and this observation of the DIT(E) is unwarranted. Consequently, we direct the DIT(E) to grant registration to the assessee society subject to fulfilment of other conditions, if any."

5.3 Even the Hon'ble Jurisdictional High Court in the case of CIT Vs. Social Service Centre [(2001) 250 ITR 39] while considering the issue qua mixed activities held as under:-

"5. Once an exemption is granted for charitable activities, the religious activities are also included. Two judgments of the Supreme Court, although they were pronounced before the amendment of the definition of "charitable purpose" are still relevant. The Supreme Court held that, if the primary or dominant purpose of an institution was charitable any other object which by itself might not be charitable but was merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. This principle had been laid down by the Supreme Court in CIT Vs. Andhra Chamber of Commerce (1965) 55 ITR 722 (SC) : TC 23R.301, then it was reiterated in CIT Vs. Bar Council of Maharashtra (1981) 22 CTR (SC) 106 : (1981) 130 ITR 28 (SC) : TC 23R.253. Considering these judgments we are of the view that the Tribunal was right. Therefore, this appeal is dismissed."

5.4 From the judgment of the Hon'ble Jurisdictional High Court, it is clear that if the primary or dominant purpose of an institution is charitable than any other object which by itself might not be charitable but just merely ancillary or incidental to the primary or dominant purpose, would not prevent the trust or institution from being a valid charity.

5.5 While coming to the instant appeal, the observations and conclusion of the Id.CIT(E) having no strength of law. There is no bar for grant of registration to the Trust/Institution which is having mixed activities i.e. charitable and religious in nature as held by the ITAT,

Hyderabad Bench in the case of Rehoboth Mission case (supra), and though we did not find any fault in the objects of the Assessee, however the Ld. CIT(E) is empowered and at liberty to restrict the activities of the trust in consonance with the objects only , hence on the aforesaid analyzations and respectfully following the judgment of the Hon'ble Jurisdictional High Court and Co-ordinate bench of the Tribunal, we are unable to substantiate the 1st ground for rejection of registration by the Id.CIT(E).

6. 2nd Ground of rejection:-

The Id.CIT(E) also observed *that Assessee –trust has been formed in the year 2015. However, as seen from the Income & Expenditure account of the assessee filed for various years, the charitable activities carried out are either meagre or nil. Hence, it is premature to grant registration u/sec. 12A of the Act to the assessee.*

6.1 Section 12A of the Act specifies that the provisions of sections 11 & 12 shall not apply in relation to the income of any trust or institution unless the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form to the Pr.CIT. Further, section 12AA specifies that the Pr.CIT or Commissioner on receipt of an application for registration, call for such documents or information as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects.

The Id. Commissioner may also make such inquiries as he may deem necessary in this behalf and after satisfying himself about the

objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing registering the trust or institution and if he is not so satisfied, pass an order in writing refusing to register the trust or institution.

6.2 The object of Section 12AA of the Act, is to examine the genuineness of the objects of the Trust, but not the income of the Trust.

6.3 As the Ld. Commissioner held that the charitable activities carried out by the Assessee are either meagre or nil, therefore the question arise as to whether carrying out the activities before applying and grant of registration u/s 12 of The Act is mandatory and /or essential requirement.

6.4 The Apex Court in the case of *M/s. Ananda Social and Educational Trust Versus The Commissioner Of Income Tax & Anr. (Civil Appeal No(S).5437-5438/2012 decided on 19th Feb. 2020)* recently held as under:-

The above section (Section 12 of the Act {emphasis by us}) provides for registration of a trust. Such registration can be applied for by a trust which has been in existence for some time and also by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration.

Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.

6.5 The Hon'ble Apex Court in the aforesaid case reminded *that carrying out of any activities is not a stipulation for grant of registration u/s 12A of the Act and even section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done and the term 'activities' in the provision includes 'proposed activities'*.

6.6 On the aforesaid analyzations, there is no such bar as held and observed by the Id.CIT(E) *that the charitable activities carried out by the Assessee are either meagre or nil, hence, it is premature to grant registration u/sec. 12A to the Assessee.* In our considered view, 2nd ground of rejection is also contrary to the law as the law has not specified any earmark as such observed by the Ld.CIT(E), for grant of registration u/sec. 12A of the Act. Registration can be sought at the nascent stage and/or after carrying out any activities. Hence we are unable to sustain the 2nd ground of rejection as well.

6.7 On the aforesaid analyzations, the order of the Id. CIT(A) is set aside and the Ld. CIT(E) is directed to grant the registration to the Assessee forthwith, suffice to say that the Ld. CIT(E) would be at liberty to impose any condition(s) as he deems fit, as per law.

7. In the result, appeal filed by the Assessee is allowed.

Order Pronounced in open Court on this 24th day of March, 2021.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 24th March, 2021.

vr/-

Copy to:

1. *The Assessee-Dhatri Foundation, D.No. 50-113-9, Balayyasastry Lay Out, Visakhapatnam (Urban).*
2. *The Revenue – CIT (Exemption), Hyderabad.*
3. *The D.R., Visakhapatnam.*
4. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.