IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI

BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 3514/Del/2015
Assessment Year: --------

M/s Maa Saraswati Mandir Nyas, C/o M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	**vs**	**CIT(E), C.R. Building, 4th Floor, Sector-17E, Chandigarh-160017**
(Appellant)		**(Respondent)**

Appellant by: Dr. Rakesh Gupta, Adv.
Shri Somil Aggarwal, Adv.
Shri Deepesh Garg, Adv.
Respondent by : Shri Vijay Varma, CIT DR

Date of Hearing: 26.04.2018
Date of Pronouncement: 24.07.2018

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been filed by the assessee against the order dated 23.04.2015 passed by the Ld. CIT (Exemption), Chandigarh wherein vide impugned order, the Ld. Commissioner of Income Tax (E) has rejected the assessee's application for grant of registration u/s 12AA of the Income Tax Act, 1961 (hereinafter called 'the Act').

2. Brief facts of the case are that the assessee is a religious trust and the objectives, as set out in the objective clause of the trust deed, are religious. The trust was duly registered vide Sl. No. 8383 dated 6.3.2013. The assessee constructed Maa Saraswati "Goddess of Education" Mandir at Hansi, District Hisar on land which had been taken by the assessee trust on lease vide lease deed no. 2173 dated 19.06.2013. The assessee trust applied for registration u/s 12AA of the Act, vide application in Form No. 10A, before the Ld. C.I.T. (E), Hisar on 28.10.2014. The Ld. C.I.T. (E), while examining the assessee's application, noted that as per the Trust deed, there were only five trustees and, further, as per clauses 11(d) and 11(e) of the Trust Deed, Shri Pritam Kumar Goyal, the Founder and President Trustee was to be the lifetime President Trustee. Further, Shri Sajjan Kumar, another trustee, was to be the life time Managing Trustee. Ld. Commissioner of Income Tax (E) also noted that the President and Managing Trustee were to be elected from the inheritors of late Shri Moti Ram Ghiraiya and late Shri Lala Dhanik Ram Ghiraiya. Ld. Commissioner of Income Tax (E) noted that, thus, in view of the trust deed, the position of the President and the Managing Trustee had been reserved only for

the descendents of the two families. It was further noted that since the overall control of the trust was in the hands of the two families, it was practically not possible to ascertain the genuineness of the activities of the Trust. The Ld. CIT (E) also noted that this provision in the Trust Deed made it a revocable transfer in terms of section 63 of the Act. The Ld. Commissioner of Income Tax (E) proceeded to deny the benefit of registration to the assessee Trust.

2.1 Now, the Trust has approached the ITAT and has challenged the denial of benefit of registration to the trust by raising the following grounds of appeal:-

> *"1. That having regard to the facts and circumstances of the case Ld. CIT(E) has erred in law and on facts in denying the registration u/s 12AA to the applicant society by making the following observations:-*
> *• That the overall control of the trust is in the hands of two families only and in that eventuality, the trust cannot be considered as "Public Charitable Trust".*
> *• That the two important posts of the trust i.e. President Trustee and Manager Trustee are reserved forever only for two families alternatively, as such these conditions makes the trust a private discretionary trust and not a public charitable trust.*
> *2. That in any view of the matter and in any case, action of Ld. CIT(E) in denying the registration under section 12AA to the appellant society is bad in law and against the facts and circumstances of the case and is contrary to the principles of natural justice as the impugned order has been passed without granting adequate opportunity of hearing and by recording incorrect facts and findings and the appellant society*

ought to have been granted the benefit of registration under the law."

3. The Ld. AR submitted that the observation of the Ld. C.I.T. (E) that by reserving the office of the President and the Managing Trustee to the descendents of two families made it a revocable transfer was incorrect. The Ld. AR also submitted that there was no adverse inference drawn by the Ld. C.I.T. (E) with respect to the genuineness of the objects of the Trust. It was further submitted that the Jodhpur Bench of the ITAT had held that the registration u/s 12AA of the Act could not be rejected only for the reason that the Board of trustees was constituted of family members and there was a clause in the Trust Deed that in case of a vacancy in the Board of trustees, the remaining trustees were to co-opt another person from the very family of the outgoing trustee. Reliance was placed on the order of the ITAT Jodhpur Bench in the case of Smt. Mansukhi Devi Bihani Jan Hitkari Trust vs C.I.T. reported in 94 ITD 0001 (Jodh) in this regard. It was prayed that suitable directions may be given to the Ld. C.I.T. (E) to grant registration u/s 12AA to the assessee trust.

4. In response, the Ld. C.I.T. DR placed extensive reliance on the findings of the Ld. C.I.T. (E) and submitted that since the

Trust Deed provided that the linear descendents of the two families were to be the Managing Trustee and the President, the same was a private discretionary trust and not a public charitable trust. It was also submitted that since all the powers of governance and financial matters were vested with the President and the Managing Trustee who were to be appointed from two families, the same became a private trust and, therefore, the denial of registration u/s 12AA of the Act was perfectly justified. The Ld. C.I.T. DR submitted that this private discretionary trust was more in the nature of an AOP where two or more persons had joined for a common purpose.

5. We have heard the rival submissions and perused the material available on record. A perusal of the impugned order shows that the Ld. C.I.T. (E) has denied the benefit of registration u/s 12AA of the Act on the sole ground that the President and the Managing Trustee were to be chosen from the two families viz. family of late Shri Moti Ram Ghiraiya and late Shri Lala Dhanik Ram Ghiraiya. As per the Ld. C.I.T. (E), this was in the nature of revocable transfer which was not permissible in view of section 63 of the Act. However, it is seen that the Ld. C.I.T. (E) has not examined the objects of the trust *vis-a-vis* they being

charitable in nature, nor has the Ld. C.I.T. (E) recorded any finding regarding the genuineness of the objects of the Trust. The ITAT Jodhpur Bench in the case of Smt. Mansukhi Devi Bihani Jan Hitkari Trust (supra) had an occasion to examine an identical issue where the registration u/s 12AA of the Act was rejected solely on the ground that the Board of trustees was constituted of family members and there was a clause in the deed of Trust that in the case of vacancy in the Board of trustees, the remaining trustees were to co-opt another person from the very family of the outgoing trustee. The ITAT Jodhpur Bench went on to hold that this cannot be a valid reason for refusing registration to a Trust which was created having the main objective of charitable purpose. The relevant observations of the ITAT are contained in Para 8 of the aforesaid order and the same are being reproduced hereunder for a ready reference:-

> *"8. In the present case, it is not in dispute that the application had been furnished in the prescribed Form No. 10A within the time allowed under s. 12A of the IT Act, 1961 r/w r. 17A of the IT Rules, 1962. It is also not in dispute that the documents evidencing the creation of the trust was filed along with Form No. 10A. The learned CIT has also not doubted the objects I of the trust and also has not stated that the trust was not created for public charity and its income had not been utilised for that purpose or the property held by it was used for the benefit of the trustees or their families but the only objection of the learned CIT was that in the*

> *event of vacancy, the trustees shall co-opt another person out of the family members of that person to fill up the vacancy. That reason cannot be a valid ground for refusing registration to a trust which is created having the main object of charitable purpose. In view of clear provisions of law referred to above, we are of the considered view that registration under s. 12AA of the IT Act, 1961 cannot be refused to trust on the basis that there is a clause in the trust deed that in the event of a vacancy in the board of trustees, another family member of the trustee can be co-opted from the very family of the outgoing trustee. While taking such a view, we are fortified by the judgment of Hon'ble Allahabad High Court in the case of Fifth Generation Education Society vs. CIT (supra), wherein it has been held that the CIT was required to see as to whether the objects of the trust were charitable or not. He was further required to see as to whether the application was made in accordance with the requirements of s. 12AA of the IT Act, 1961 r/w r. 17 of the IT Rules, 1962. Furthermore, it has been held in the said case that the CIT was not required to examine the application of income."*

5.1 Thus, in the above case, it has been held that the Trust could not be denied registration u/s 12AA of the Act merely on the ground that the Board of trustees was to be constituted of family members. As we have already noted, the Ld. Commissioner of Income Tax (E) has not examined the assessee's application for registration in light of the genuineness of the objects of the Trust. Accordingly, we deem it fit to restore the issue to the file of the Ld. C.I.T. (E) with a direction to re-examine and reconsider the assessee's application for registration after duly examining the objects of the assessee trust and also after duly considering the order of the ITAT Jodhpur Bench in the case of Smt. Mansukhi Devi Bihani Jan Hitkari Trust (supra) and pass appropriate orders in accordance with law, after giving proper opportunity to the assessee to present its case. Thus, the grounds stand allowed for statistical purposes.

6. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 24th July, 2018.

Sd/-	Sd/-
(G.D. AGRAWAL) **PRESIDENT**	**(SUDHANSHU SRIVASTAVA)** **JUDICIAL MEMBER**

Dated: 24th JULY, 2018
'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	1