

आयकर अपीलिय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI WASEEM AHMED, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.1641/PUN/2019

Aashray Maze Ghar,
C/o. Amit Suresh Pathak,
Plot No.18, Nageshwar Colony,
Jalgaon – 425001,
Maharashtra.

.....अपीलार्थी / Appellant

PAN : AAGTA3053M.

बनाम / V/s.

The Commissioner of Income Tax,
(Exemption), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Mrs. Deepa Khare.

Revenue by : Shri Deepak Garg.

सुनवाई की तारीख / Date of Hearing : 12.02.2021

घोषणा की तारीख / Date of Pronouncement : 15.02.2021

आदेश / ORDER

PER WASEEM AHMED, AM:

In the instant case, the appeal was filed by the assessee against the order passed by the learned Commissioner of Income Tax (Exemptions), Pune dated 31.08.2019 rejecting the application for registration under section 12AA(1)(b)(ii) of the Income Tax Act, 1961 (hereinafter referred as “the Act”)

2. The assessee has raised the following grounds of appeal:

“1. The ld.CIT erred in law and on facts in rejecting the registration u/s 12AA(1)(b)(ii) to the appellant Trust without giving any opportunity of being heard.

2. The ld. CIT erred in law and on facts in holding that genuineness of activities is not established.”

3. The assessee, a trust registered under the Bombay Public Trust Act, 1950, established on 10-03-2016 bearing no. F-18232/JALGAON, filed an online application for registration under section 12AA(1)(b)(ii) of the Act on 12-02-2019 with the ld. CIT (Exemptions). The ld. CIT (Exemptions) issued a letter to the assessee calling for certain queries regarding its application for registration under section 12AA of the Act vide letter dated 06-03-2019 which was not complied in full by the assessee. Precisely, the necessary details were not furnished by the assessee as given here under:

“Point No. 15: *Your Deed/Memorandum of Association does not have a clause that the beneficiaries are a section of the public and not specific individuals. Please include this clause in your Trust Deed/Memorandum of Association and file a certified copy of the amended Trust Deed/Memorandum of Association.*

Point No. 16: *Your Trust Deed/Memorandum of Association does not have any clause providing that in the event of dissolution of Trust/Society/Non Profit Company, the funds/assets of the Trust/Society/Non Profit Company will be transferred only to some other Trust/Society/Non Profit Company having similar objectives. Please include this clause in your Trust Deed/ Memorandum of Association and file a certified copy of the amended Trust Deed/Memorandum of Association.”*

4. In view of the above, the ld. CIT (Exemption) rejected the application moved by the assessee for registration under section 12AA of the Act by observing that the activities of the assessee are not charitable.

5. Being aggrieved by the order of the ld. CIT (Exemptions), the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 97 and submitted that the beneficiaries of the trust are a section of the public and not the specific individuals as alleged by the ld. CIT (Exemptions). The learned AR in support of her contention drew our attention on the back side

of page 11 of the paper book where clause 18 of the trust was exhibiting the beneficiaries. However, the learned AR at the time of hearing fairly agreed that the assessee in the letter dated 03.04.2019 to the ld. CIT (Exemptions) has wrongly mentioned clause 2 of the Memorandum of Association showing the beneficiaries. As such, beneficiaries are appearing in clause 18 of the trust deed wherein it was clearly mentioned that the funds and the properties of the trust shall be used towards the fulfillment of the objects of the trust. As per the learned AR it was the typographical error which should have been ignored and the entire trust deed should have been considered by the ld. CIT (Exemptions) while seeing the application for registration under section 12 AA of the Act.

7. The learned AR further contended that in the event of winding up of the activities of the trust, the properties of the trust can be donated to other trust as per clause 26 of the memorandum of association. The learned AR in support of her contention drew our attention on the back side of page 12 of the paper book where clause 26 was containing such information. However, the learned AR at the time of hearing further fairly agreed that the assessee in the letter dated 03.04.2019 to the ld. CIT (Exemptions) has wrongly mentioned clause 2 of the trust deed showing the 'winding up' clause. As such, winding up clause is appearing in clause 26 of the trust deed wherein it was clearly mentioned that the properties of the trust can be donated to other trust in pursuance to the procedure for winding up as per sections 13 and 14 of the Societies Registration Act, 1860. As per the learned AR, it was the typographical error which should have been ignored and the entire trust deed should have been considered by the ld. CIT (Exemptions) while seeing the application for registration under section 12 AA of the Act.

8. The learned AR without prejudice to the above also contended that the ld. CIT (Exemptions) cannot reject the application in the absence of winding

up clause in the deed of trust as there is no such requirement under the provisions of section 12AA of the Act. The learned AR in support of her contention relied on the judgment of Hon'ble Bombay High Court in the case of CIT (Exemptions) Vs. Setco Foundation in Income Tax Appeal No. 926 of 2016 dated 21.01.2019.

9. The learned AR further brought to our notice that the necessary changes as suggested by the ld. CIT (Exemptions), though not required, have been made in the trust deed and accordingly, filed the changed memorandum which are placed on pages 48 to 89 of the paper book.

10. On the other hand, the learned DR submitted that the assessee in its letter dated 03.04.2019 to the ld. CIT (Exemptions) has mentioned that that the assessee is the educational and charitable trust and running primary, high school and college whereas the assessee in the submission to the tribunal vide letter dated 12.02.2020 has submitted that it is providing education to the children who are not intellectually capable and mentally handicapped. Accordingly, the learned AR submitted that there is a mismatch in the submission of the assessee before the ITAT vis-a-vis before the learned ld. CIT (Exemptions). Therefore, the same requires verification by the learned CIT (Exemptions). Accordingly, the learned AR pleaded before us to restore the matter to the ld. CIT (Exemptions) for the verification.

11. The learned DR also submitted that the assessee has filed the amended Memorandum of Association of the Society after making the necessary changes which requires to be examined by the ld. CIT (Exemptions). Accordingly, it was prayed by the learned DR to set aside the issue to the file of the ld. CIT (Exemptions).

12. The learned AR in her rejoinder submitted that all the necessary details are already appearing in the trust deed and therefore, the same should not be

set aside to the file of Id. CIT (Exemptions). However, in the event, the bench set asides the issue to the file of the Id. CIT (Exemptions) then some direction for completing the formalities within the specified time can be given to the Id. CIT (Exemptions).

13. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we find that the Id. CIT (Exemptions) had not doubted on the objects of the society whether the society was formed to undertake charitable activities or not.

14. Moving further, we note that the Id. CIT (Exemptions) has rejected the application under section 12AA of the Act due to two reasons. Firstly, there was no clause in the trust deed / memorandum of association that the beneficiaries are the class / section of public and not the specific individuals. Secondly, there was no specific clause in the trust deed / memorandum of association that the properties of the trust shall be transferred to another trust having similar objectives in the event of winding up of its activities.

15. Regarding the specific clause of the beneficiaries in the trust deed / memorandum of association, we find important to refer the objects of the trust as mentioned in clause 18 which reads as under:

“18. Fund Property of the Trust: The fund of trust can be raised by accepting and collecting Government and Semi Government grants. The funds and properties of trust shall be used towards fulfillment of object of trust.”

16. On perusal of the objects of the trust, it is transpired that the activities of the trust are for the purpose of the education which comes within the definition of charitable activity as provided under section 2(15) of the Act. Furthermore, the activities /objects of the society have nowhere been doubted by the Id. CIT (Exemptions) which are appearing in clause 3 of the trust deed.

Thus, from the cumulative reading of the objects of the trust and fund property of the trust as appearing in clauses 3 and 18 of the trust deed, it is transpired that the beneficiaries are not the specific individuals rather than the beneficiaries represent a section of people.

17. We also find that there was specific clause in the Memorandum of Association specifying that in the event of winding up of the activities of the trust, the properties held by the trust shall be transferred to other trust having similar objects. The relevant clause 26 of the trust deed reads as under:

***“26. Winding up: Resolution by 3/5th majority in annual general meeting shall be necessary for winding of work of trust. The property of trust can be donated to other trust. It is necessary to comply with the procedure for winding up as per Section 13 and 14 of Society Registration Act, 1860.*”**

18. Thus, what is transpired that necessary clauses are very much appearing in the memorandum of association as highlighted by the Id. CIT (Exemptions) in his order. Thus, it can be inferred that all the compliances as required by the Id. CIT (Exemptions) have been duly complied by the assessee.

19. A question/aspect also arises whether the Id. CIT (Exemptions) has verified the clauses as discussed above. From the finding of the Id. CIT (Exemptions), it is transpired that he has not verified the above clauses. However, we find that the assessee has made the reply to the queries referred by the Id. CIT (Exemptions) vide letter dated 03.04.2019 which is placed on record. It is also important to note that the Id. CIT (Exemptions) in his order has also made reference to such letter of the assessee dated 03.04.2019 which can be verified from the order of the Id. CIT (Exemptions). For better understanding, the same is reproduced as under:

“5.2 In response to the above, the applicant has not uploaded any copy of change report of the amended Trust Deed/MoA with a proof of submission of the same to the Charity Commissioner till date. However, as per letter dated 03/04/2019 from the assessee, the latter wrongly stated that the Irrevocable, Beneficiary and Dissolution clause are present in Clause 2 of the MoA”.

20. Thus, it cannot be said that the assessee failed to furnish the details as desired by the assessee during the proceedings before him. Accordingly, we are of the view that inaction by the Revenue on the details furnished by the assessee should not cause any prejudice to the assessee.

21. In addition to the above, we also note that the Hon'ble Bombay High Court in the case of CIT (Exemptions) Vs. Setco Foundation (supra) has held that it is not necessary to have the winding up clause in the trust deed. The relevant extract of the order reads as under :

“4. The impugned order of the Tribunal allowed the respondent's assessee's appeal by interalia holding that the absence of dissolution clause in the trust deed would not bar the registration of the Trust under Section 12AA of the Act. The issue to be considered for registration is the object of the Trust and genuineness of its activities. The impugned order also makes reference to Section 55 of the Bombay Public Trust Act 1950 which provides for the contingency of absence of dissolution clause in the trust deed.

5. Mr. Kotangale, the learned counsel for the Revenue very fairly states that the identical issue had arisen before this Court in Income Tax Appeal No. 247 of 2015 (CIT 2 of 3

8. os itxa 926-16.doc [Exemptions]) Vs. Tara Educational & Charitable Trust. The said appeal was dismissed as not giving rise to any substantial question of law.

6. In the above view, for the reasons indicated in our order in Tara Educational & Charitable Trust (supra), the proposed question does not give rise to any substantial question of law. Thus, not entertained. The appeal is dismissed.”

22. In view of the above, we find that the finding of the ld. CIT (Exemptions) is contrary to the facts available on record. Accordingly, it is inferred that the assessee has complied the conditions imposed under the provisions of section 12AA of the Act for granting the registration. Accordingly, in view of the above and after considering the facts in totality, we set aside the issue to the file of the ld. CIT (Exemptions) with the direction to grant registration to the

assessee under section 12AA of the Act as per the provisions of law. Hence, the grounds of appeal of the assessee are allowed for the statistical purposes.

23. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced on this the 15th day of February, 2021.

Sd/-
(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th February, 2021.
Dragon

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Exemptions), Pune.
4. The Addl/JCIT, Exemption Range, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.