



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.407/CTK/2019**  
Assessment Year : 2019-2020

OMS Power Training & Research Institute, Plot No.3D/1266/10, Sector-11, CDA Market Nagar, Cuttack	Vs.	CIT (Exemptions), Hyderabad
PAN/GIR No.AAATO 2735 Q		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.K.Sarangi, AR  
Revenue by : Shri M.K.Gautam, CIT DR

**Date of Hearing : 10 /12/ 2020**  
**Date of Pronouncement : 14/12/2020**

**ORDER**

**Per C.M.Garg,JM**

This is an appeal filed by the assessee against the order u/s.12AA(1)(b)(ii) of the Income tax Act, 1961 of the CIT(E), Hyderabad dated 30.9.2019.

2. In the grounds of appeal, the grievance of the assessee is that the Id CIT(E) is not justified in rejecting the application of registration u/s.12AA of the Act without providing proper opportunity of hearing to the assessee and on the ground that the activities are commercial in nature.

3. Facts in brief are that the assessee e filed an application in Form No.10A seeking registration u/s.12A of the Income tax Act, 1961 on 31.3.2019. The CIT (E) observed that the assessee trust is conducting the following activities:

- (i) imparting long term training of 30 weeks duration to fresh degree/diploma engineers on operation and maintenance of thermal power plants as per syllabus specified by Central Electricity Authority, Ministry of Power, Govt. of India.
- (ii) Vocational training to engineering students on power plants.
- (iii) Simulator training to fresh/experienced engineers.
- (iv) Training on solar power to ITI pass out and unemployed youths.
- v) Skill based trainings.

4. The CIT(E) on perusal of details submitted by the assessee observed that the activities of the trust are not charitable but are commercial in nature on the following grounds;

- i) The assessee trust is collecting fees for conducting training programme to fresh engineers, ITI pass outs and industries like GAIL, NALCO, Tata Power, OHPC, D.B.Power Tata Sponge, etc.
- ii) The trust has given a portion of its premises to M/s. O & M Solutions Pvt Ltd., for a rent of Rs.23,30,000/-.

5. He also observed that the activities of the assessee trust is not in accordance with the objects mentioned in the trust deed. Therefore, he rejected the application of registration u/s.12A of the Act.

6. At the time of hearing, Id A.R. of the assessee submitted that the Id CIT(E) has not afforded reasonable opportunity of hearing to the assessee trust before rejecting the application for grant of registration u/s.12AA of the Act. He also submitted that the Id CIT(E) is also not justified in observing that the activities of the trust are not charitable in nature although it imparts training programmes as per syllabus prescribed by Government for Electrical and instrumentation branches to the Engineers sponsored by various Companies/Organisations. He submitted that the trust is collecting nominal fees from the sponsors for organizing the training programme. He submitted that the Id CIT(E) without analysing the above facts, rejected the application for grant of registration u/s.12AA of the Act, hence, the matter may be restored to the file of Id CIT(E) to decide the issue afresh.

7. Replying to above, Id CIT DR submitted that several opportunities have been provided to the assessee as is evident from the order of Id CIT(E) and the Id A.R. of the assessee has appeared before the Id CIT(E) and produced the relevant materials required for adjudicating the issue. Hence, he cannot be said that opportunities have not been provided. He also submitted that the assessee trust is collecting fees from various organization for conducting the training, therefore, the objects of the trust are not charitable in nature. Hence, his contention was to reject the appeal of the assessee.

8. On consideration of rival submissions, we observe that the assessee filed application in Form No.10A, for registration u/s.12AA of the Act. Thereafter, the Id CIT(E) has issued notices to the assessee to produce its original memorandum of association/trust deed for verification, in response to which, the assessee has filed reply on 3.9.2019. Later on also the case was posted for hearing on 11.9.2019 and Id A.R. of the assessee attended the hearing and the matter was discussed. From the above, it cannot be inferred that the assessee was not provided proper opportunity of hearing.

9. As regards to merits of the case, Id CIT (E) has discussed the activities of the trust and rejected the registration, by observing as under:

"3. Activities are commercial in nature: As seen from the "Brief Note on Activities" submitted by the assessee:

- 1) Imparting long term training of 30 weeks duration to fresh degree/diploma engineers on operation and maintenance of thermal power plants as per syllabus specified by Central Electricity Authority, Ministry of Power, Govt, of India.
- 2) Vocational training to engineering students on power plants.
- 3) Simulator training to fresh/experienced engineers,
- 4) Training on solar power to ITI pass out and unemployed youths.
- 5) Skill based trainings.

As seen from the above, the objects are framed to suit the needs of particular commercial companies / entities. The trustee explained that they are conducting training programs as per syllabus prescribed by Govt, for Electrical, Mechanical and Instrumentation branches for Engineers, Supervisors and Technicians. Further, the assessee is collecting fees for such training programs. Thus, they are not charitable objects as defined u/s. 2(15) of the Act. Hence, the objects are commercial in nature.

4. Activities favoring trustees: During the course of hearing on 03.09.2019, the AR submitted that Mr. Debjeet Swain, the Managing Trustee owns a company called M/s. O & M Solutions Pvt. Ltd. and Mr. Bishrajyothi Patnaik, CA is auditing the accounts of the said company and assessee trust. The assessee was asked to explain about the relationship between the company and the assessee trust. The assessee submitted as under:

*M/\$. O & M Solutions Pvt. Ltd. is a multinational technical services provider company working in power sector in India and other neighboring countries. O & M Solutions provides Operation and Maintenance services to different thermal power plants with a vast pool of skilled and experienced manpower resources. O & M Solutions regularly requires fresh engineers who are trained on Thermal Power plant technology as part of its long-term manpower development strategy. O & M Solutions wanted to develop a training associate not only to meet its captive needs but to develop more skilled manpower resources for the industry. One of the Directors of O & M Solutions Sri Debjeet Swain is overseeing day to day management of the training institute. O&M Solutions assisted OMS Power Training and Research Institute in identifying a competent US vendor to design, supply and commission a high-fidelity power plant simulator at the training Institute, which la first of its kind In India."*

Thus, the assessee trust Is created only for the purpose of favoring the company owned by the trustee in pooling the manpower resources.

4.1 Rental Receipts: The assessee trust has given a portion of its premises to M/s. O & M Solutions Pvt. Ltd. and received rent of Rs. 23,30,000/- from the said company during the FY 2018-19. Thus, the said activity is commercial in nature.

4.2 Objects of the Trust: The objects of the assessee trust are mentioned in Clause-4 of the Trust deed. The relevant portion is reproduced as under:

*4. The purpose and objects for which this Trust has been established are for providing relief help and assistance to the general public and those in the lower strata of the Society particularly those who are economically and educationally backward in matters of higher education, medical, Technical,*

*professional or other fields of economic activity or in any other matter of public utility and charity not involving any activity for personal profit. For the purpose of these objects and without prejudice to the generally and width thereof the object shall include:*

- i. To work for the improvement of the standards of social welfare activities through various educational or other types of institutions to be set up by the Trust or otherwise taken over.*
- ii. To carry on all its activities as enumerated hereinafter generally by itself or through its institutions.*
- iii.....*

However, on perusal of the details of activities submitted by the assessee, it was observed that the assessee has conducting various trainings to Fresh Engineers, ITI pass outs and in industries like GAIL, NALCO, Tata Power,<sup>1</sup> Orissa Hydro Power Corporation, D.B.Power, Tata Sponge etc. For the sake of brevity, few correspondence made by the assessee / company has been discussed below.

4.2.1 As seen from the correspondence received from GAIL (India) Ltd. dated 29.06.2016, it was clearly mentioned that Rs. 2,85,000/- will be paid by GAIL as professional charges for a batch of 15 participants of GAIL Executives on "Operation and Maintenance of Steam Turbine".

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4.3 Thus, the activities of the assessee are taken up according to the needs of the said companies on commercial basis. The assessee has submitted various documents in the form of e-mail correspondence etc. from various other companies requesting the assessee trust to provide faculty assistance etc. On perusal of the said documents, the assessee has been conducting various training programmes to suit the particular needs of the said companies. For such work, the assessee is charging certain amount from the companies. Thus, the activity is nothing but a contract. Thus, there is no charitable element Involved In the said activity, Thus, the activities art commercial In nature, Further, the assessee's activities are not In accordance with the objects mentioned In the trust deed. Thus, assessee is pursuing objects which are not Included In the trust deed. Thus, the assessee is not eligible for registration u/s. 12A of the Act.

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,1QA filed by the above applicant Is hereby rejected.”

10. We also find that the Id CIT(E) has reproduced the correspondence with different organisations regarding training programme and payment terms in the impugned order to substantiate that the assessee has collected fees for imparting training to various participants in lieu of payments. Also, the assessee trust has received 23,30,000/- from renting the part premises.

11. Section 2(15) of the Income-tax Act defines charitable purpose for the purpose of the Act and includes relief of the poor education, medical relief and the advancement of any other object of general public utility. But in the present case, the assessee trust is collecting fees from different organisations towards training programme and also received rent for letting out the part premises. Nowhere, the assessee has done the work, which can be treated as charitable purposes. Hence, we dismiss the appeal of the assessee.

12. In the result, appeal of the assessee is dismissed.

Order pronounced on 14/12/2020.

Sd/-  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 14/12/2020  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : OMS Power Training & Research Institute, Plot No.3D/1266/10, Sector-11, CDA Market Nagar, Cuttack
2. The Respondent. CIT (Exemptions), Hyderabad
3. The CIT(A)-, Bhubaneswar
4. DR, ITAT, Cuttack
5. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**