IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI
(Through Video Conferencing)

BEFORE
SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.8338/Del/2019
(ASSESSMENT YEAR-Nil)

The South India Club, Mandir Marg, (Near Hindu Maha Sabha), New Delhi-110 001. PAN:AAAJT 2351B	Vs.	CIT(Exemptions), New Delhi.
(Appellant)		**(Respondent)**

Appellant By	**Sh. Rama Krishna Bande Pali, Adv. & Sh. Raghav Rajeev Menon, Adv.**
Respondent by	**Sh. H.K. Choudhary, CIT-DR**
Date of Hearing	**10.08.2020**
Date of Pronouncement	**13.08.2020**

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee society against order dated 30.09.2019 passed by the Learned Commissioner of Income Tax (Exemptions), New Delhi {CIT(E)} rejecting the assessee's application for registration u/s 12AA of the Income Tax Act, 1961 (hereinafter called as the 'Act').

2.0 The brief facts of the case are that the assessee Society was formally registered in the year 1941 as a Society under the Society Registration Act, 1860. It was allotted a land measuring 0.75 acres at Reading Road, New Delhi on perpetual lease by the then Government in the year 1934. A part of the said land was sub-leased by the assessee society to Delhi Tamil Education Association (DTEA) formerly called (Madrasi Education Association) in 1945 for running a school.

2.1 The objects of the assessee society as per the memorandum of objectives *inter alia* include:

i) to pioneer, cultivate and encourage activities in educational, social, cultural and recreational fields
ii) to cultivate literary and artistic talents
iii) to provide a common meeting place with a reading room and attached library, and
iv) to promote fine arts

2.2 In July, 2010, Shriram Group based at Chennai decided to take over the management/running of the society in order to fulfill the objects of the Society and introduced funds for the purpose of the same. The Society wanted to construct building/s for the furtherance of its objects after demolition of the old dilapidated building on the site. The Society already held a license in the form of No Objection Certificate (NOC) from the Land and Development Office but there were no building approval plans. The Society requested the New Delhi Municipal Corporation for the same and obtained the building approval plan in the year 2013. Thereafter, the Shriram Group introduced funding to the tune of Rs.6.59 Crores till the year ended 31st March, 2017. Meanwhile, the Land Development Office and the New Delhi Municipal Corporation cancelled the no objection certificate and the approval for building plans respectively and the Society had to approach the Hon'ble Delhi High Court for relief. The Hon'ble Delhi High Court directed the Land Development Office and the New Delhi Municipal Corporation to reconsider the assessee's request for no objection certificate and approval of building plans vide order dated 03.06.2016.

2.3 Thereafter, the assessee society filed application in Form No.10A on 27.03.2019 seeking registration u/s 12AA of the Act. The Ld. CIT (E) required the assessee society to file various documents and a number of hearings were held. The Society complied with the requirements and replied to the questionnaire. However, the Ld. CIT (E) observed that on a perusal of Society Rules and Regulations, it is found that the subscription fee of Rs.3 and Rs.5 per month were very high for different categories of members considering that the Society was constituted in 1941. The Ld. CIT (E) also observed that the right to admission was subject to the approval of the managing committee and, therefore, the society was for the benefit of specific persons and not for public charitable purposes. It was also observed by the Ld. CIT (E) that the Society had not carried out any charitable activity during the past years and that the Society had utilized the amounts received from Shriram Group towards construction of building which was not in accordance with the objects of the Society. It was also observed by the Ld. CIT (E) that the audit/s of accounts the Society for the period 31.03.2006 to 31.03.2010 were carried out belatedly and that the auditor has observed that the Executive Committee had not followed the directions prescribed under the Rules regarding the maintenance of accounts.

2.4 With the above observations, the Ld. CIT (E) concluded that the assessee society had not carried any charitable activity although it had been created in the year 1941 and, therefore, the conditions for granting registration u/s 12AA of the Act were not satisfied. The assessee's application for grant of registration was rejected by the Ld. CIT (E).

2.5 The assessee has now approached the Tribunal challenging the rejection of the assessee's application for grant of registration by raising the following grounds:

> 1. *The order of the CIT (Exemption) rejecting the appellant's application for grant of registration u/s.12A of the Income tax Act is erroneous both on facts and in law.*
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> 2. *The CIT (E) erred in concluding that the appellant society has not carried out any charitable activities though the same was created in the year 1941 and also has not complied with its rules and regulations.*

3. *The CIT (E) failed to appreciate that the objects of the appellant society are charitable in nature as evidenced by its charter and the activities of the society have always been genuine.*

4. *The conclusion of CIT (E) that the society has not carried out any charitable activities though the same was created in the year 1941 is contrary to his own finding in para 9 of his order that "the appellant society in past few years has not carried out any charitable activities".*

5. *The CIT (E) failed to appreciate construction of building for use as auditorium, reading room etc., is for the purpose of promotion and development of art and culture and constitutes an integral part of charitable purpose.*

6. *The CIT (E) failed to appreciate that the alleged non adherence by the Executive Committee/Managing Committee/ Honorary Secretary to certain rules of the society regarding accounts/cessation of membership/cash expenses none of which were fraudulent or serious violations did not militate against the genuine nature of the activities of the appellant society and grant of registration u/s.12A.*

7. *The CIT (E) over looked the fact that the appellant was registered under the Societies Registration Act 1860 (Act XX1 of 1860) way back in 1941 and the society had its origins prior to that as well, that the society got a plot of land from the Government in November 1934 on perpetual lease and a part of the lands was subleased to Delhi Tamil Education Association in 1945 for running a school and that school exists.*

8. *The CIT (E) failed to appreciate the fact that during more than six decades of its existence since its inception, the appellant society was managed by different governing bodies from time to time and that during some part of the period the old building from where the activities were being carried out became dilapidated and unsafe and dangerous for occupation and was also sealed as mentioned in the Auditors Report for the period 2006 to 2010 referred to by the CIT(E) in his order which caused interruption in the activities of the appellant Society.*

9. *The CIT (E) failed to appreciate that the present governing body as soon as taking over the management of the appellant society in the year 2010, took steps in right earnest to revive and continue the activities of the appellant society.*

10. *The CIT (E) failed to appreciate that the governing body which took over the management in the year 2010 put in lot of efforts to continue the activities of the society.*

11. *The CIT (E) failed to appreciate that the new management mobilised resources internally, obtained the requisite statutory license and approval for construction of a new auditorium building with reading room etc., and also successfully fought the case in the Delhi High Court when the approvals granted by the authorities were withdrawn abruptly owing to encroachments by another party and not due to any violation by the appellant society.*

12. *The CIT (E) failed to appreciate the fact that the interruption in the activities of the society was due to reasons and circumstances beyond the control of the appellant society especially the new governing body*

which took over the management in the year 2010 and such temporary interruption or cessation cannot be held against the appellant society as a valid reason to refuse grant of registration u/s.12A of the Income tax Act.

13. *The CIT (E) failed to appreciate that during the period when the regular activities were interrupted because of the unsafe nature of the building then governing body could not carry out its normal functions and that cannot be a valid ground for refusing registration u/s.12A.*

14. *The CIT (E) failed to appreciate that non-compliance by the Executive Committee non compliance with some of the rules and regulations of the appellant society as pointed out in the Auditors Report for the years 2006 to 2010 was caused by closure and sealing of the building as unsafe and that was only a temporary cessation prior to the new governing body taking over the management in the year 2010 and those deviations, if any, were not valid material for rejecting registration u/s.12A.*

15. *The CIT (E) erred in concluding that the appellant society is not for public charitable purposes because right of admission to membership is subject to approval by Managing Committee. He erred also in holding the membership fee is high.*

16. *The CIT (E) failed to appreciate that the appellant society fully satisfied the conditions (i) & (ii) mentioned in para 12 of his own order and hence his rejection of the application for grant of registration is untenable.*

For these and other grounds that may be urged at the time of hearing it is prayed the Appellant Tribunal may be pleased to set aside the order of CIT (E) refusing registration and direct him to grant registration.

3.0 The Ld. Authorized Representative submitted that the Ld. CIT (E) had failed to appreciate that the objectives of the assessee society were charitable in nature. It was submitted that the Ld. CIT (E) had failed to appreciate that a part of the land had been let out to the Delhi Tamil Education Association which was running a school from premises and that since the building had become very old and was unfit for habitation, construction of new building after demolition of the old building was an activity in furtherance of the object of the society *inter alia* being promotion and development of art and culture. It was also submitted that the temporary inactivity or suspension of activities for a limited period due to unforeseen circumstances would not make the society as non-charitable because the objects continued to remain the same which were, undisputedly, charitable. It was also submitted that the Ld. CIT (E) had made irrelevant observation like subscription fee of Rs.3 and 5 being too high a fee for a charitable society. The Ld. Authorized Representative placed reliance on numerous judicial precedents in the form of orders of the ITAT and Judgments of the Hon'ble Courts to buttress assessee's claim that the Ld. CIT (E) had wrongly refused the grant of registration.

4.0 Per contra, the Ld. CIT-DR submitted that the Ld. CIT (E) had rightly refused the grant of registration in as much as the assessee had approached the Ld. CIT (E) for grant of registration in the year 2019 although during the financial years ending 31st March, 2015, 2016 & 2017, the amount/s raised through loans exceeded Rs.6 Crores and, therefore, the society was under an obligation to file its return of income which was not done. The Ld. CIT-DR also submitted that the no objection certificate from the Land Development Office was cancelled because there was unauthorized construction on the land allotted by the Government to the Society. The Ld. CIT-DR also submitted that the objects clause restricted the benefit of the society's activities to its members and that the approval of Managing Committee was necessary for the purpose of becoming a member of society. It was also submitted by the Ld. CIT-DR that only a portion of the land so allotted by the Government on perpetual lease was being utilized for running a school and the remaining portion was being used to run a club-house which could not be considered a charitable activity by any stretch to imagination. The Ld. CIT-DR also submitted that the various judgments relied upon by the Ld. Authorized Representative were distinguishable on the factual matrix of the case. The Ld. CIT-DR supported the order of the Ld. CIT (E) vehemently and submitted that the registration had been rightly refused.

5.0 We have heard the rival submissions and have also perused the material on record. We have also carefully gone through the impugned order. A perusal of the impugned order shows that one of the reason specified by the Ld. CIT (E) for rejecting the assessee's application for registration u/s 12AA of the Act is that since no activities had been undertaken by the society, it was not possible to register it presumably because it was not possible to form satisfaction about whether the activities of the society were genuine, we find that this issue has been settled by the Hon'ble Apex Court in the case of *Ananda Social & Educational Trust vs. CIT vide order dated 19.02.2020 reported in*

[2020] 114 taxmann.com 693 (SC). The relevant observations of the Hon'ble Apex Court are contained in paragraphs 9 to 12 of the said order and the same are being reproduced herein under for a ready reference:

> *"9. Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.*
>
> *10. It was argued before us that the Commissioner is required to be satisfied about two things - firstly that the objects of the trust and secondly, its activities are genuine. If there have been no activities undertaken by the trust then the Commissioner cannot assess whether such activities are genuine and therefore, the Commissioner is bound to refuse the registration of such a trust.*
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> *11. We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant -*

Director of Income-tax and find that it is not possible to agree with the same. The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the objects of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

12. 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. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust."

5.1 Undisputedly, in the present case, the Ld. CIT (E) has not recorded a finding that the activities of the Society were not genuine or were not in accordance with the objects of the Society. Rather, it is the observation of the Ld. CIT (E) that no activities had been carried out by the assessee society. Therefore, it is our considered opinion that the Ld. CIT (E) has unnecessarily enlarged the scope of the mandate to be exercised by him at the time of grant of registration u/s 12AA of the Act. He has gone into an all together different consideration for grant of registration whereas he was only to consider whether the objects and the activities were genuine were not. Thus, the observation of the Ld. CIT (E) that since no activities were carried out, the registration cannot be granted, does not hold good.

5.2 We also note that the Ld. CIT (E) went on to make an irrelevant observation that the subscription fee of Rs. 3 & Rs. 5 to be charged from various categories of members was high and, therefore, the activity of the society could not be considered charitable. We find ourselves unable to be in agreement with the Ld. CIT (E) as this being a valid reason for refusal to grant of registration u/s 12AA of the Act. The quantum of fee/subscription only without any other corroborating finding establishing that the activities are not charitable cannot be a ground for refusal for grant of registration and we hold that registration could not have been denied on this ground also.

5.3 Thus, the Ld. CIT (E) has given altogether invalid reasons for refusing the grant of registration u/s 12AA of the Act. He has also chosen not to comment adversely on the nature of the objects which strengthens the cause of the assessee society. Therefore, we set aside the order of the Ld. CIT (E) by holding that the Ld. CIT (E) has dismissed the application for registration without any justifiable reason and by considering completely irrelevant factors. The Ld. CIT (E) has also not recorded any adverse finding that the objects of the society were not charitable or were non-genuine. Under such circumstances, we have no option but to set aside the order of the Ld. CIT (E). The Ld. CIT (E) is directed to grant of registration u/s 12AA of the Act to the assessee Society.

6.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 13/08/2020.

Sd/-	Sd/-
(G.S.PANNU)	**(SUDHANSHU SRIVASTAVA)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated:13/08/2020
PK/Ps
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI