

ARARE FOUNDATION vs. COMMISSIONER OF INCOME TAX (EXEMPTION)

IN THE ITAT PUNE BENCH 'A'

INTURI RAMA RAO, AM & PARTHA SARATHI CHAUDHURY, JM.

ITA No. 132/PUN/2021

Aug 16, 2021

(2021) 62 CCH 0432 PuneTrib

Legislation Referred to

Section 12AA

Case pertains to

Asst. Year-

Decision in favour of:

Matter remanded

Charitable trusts—Grant of registration— Assessee/applicant has made an online application for approval of Trust/Institution u/s.12AA under category of Charitable Trust/Institution — CIT(Exemption) held that satisfaction about genuinenessivities of assessee/applicant trust could not be arrived at by CIT(Exemption) and hence, application for granting registration u/s.12AA was rejected — Held, Commissioner is bound to consider whether objects of trust are genuinely charitable in nature and whether activities which trust proposed to carry on are genuine in sense that they are in line with charitable objects of Trust —R equirements of Section 12AA are categorically clear and time of granting registration u/s.12AA, Commissioner is supposed to look into objects of trust whether they are charitable or not or whether activities of trust are genuine and such activities may also include 'proposed activities' of assessee trust and it should be in line with charitable objects of assessee trust — In this case, satisfaction regarding objects and activities performed or proposed to be performed could not be arrived at by CIT(Exemption) since requisite details/evidences were not filed by assessee — Matter may be remanded back to file of CIT(Exemption) to adjudicate as per law —Matter remanded .

Held

Apex Court in the case of Ananda Social and Educational Trust Vs. CIT, held that 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 charitable objects of the Trust. The requirements of Section 12AA are categorically clear and time of granting registration u/s.12AA, the Commissioner is supposed to look into the objects of the trust whether they are charitable or not or whether the activities of the trust are genuine and such activities may also include 'proposed activities' of the assessee trust and it should be in line with the charitable objects of the assessee trust. In this case, the satisfaction regarding objects and the activities performed or proposed to be performed could not be arrived at by the CIT(Exemption) since requisite details/evidences were not filed by the assessee. Matter may be remanded back to the file of the CIT(Exemption) to adjudicate as per law.

(para 9)

Ananda Social and Educational Trust Vs. CIT, relied.

Conclusion

R requirements of Section 12AA are categorically clear and time of granting registration u/s.12AA, Commissioner is supposed to look into objects of trust whether they are charitable or not or whether activities of trust are genuine and such activities may also include 'proposed activities' of assessee trust and it should be in line with charitable objects of assessee trust.

In favour of

Matter remanded

Counsel appeared:

Sharad Shah for the Assessee.: Deepak Garg for the Revenue

PARTHA SARATHI CHAUDHURY, JM.

1. This appeal preferred by the assessee emanates from the order of the Ld. CIT (Exemption) Pune dated 23.02.2021 passed u/s.12AA(1)(b)(ii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') as per the following grounds of appeal on record:

- "1. The Ld.CIT(Exemption) erred in not granting Registration u/s. 12A/12AA of the I. T Act.*
- 2. The Ld. CIT(Exemption) erred in not appreciating the fact that assessee is engaged in providing skills of art to lesser privileged children and women.*
- 3. The Ld. CIT(Exemption) erred in not appreciating the fact that the objects of the trust on charitable activities cannot be the issue in the first year for registration u/s. 12A/12AA.*
- 4. The appellant craves its right to add or to alter the grounds of appeal at any time before or during the course of hearing of the case."*

2. In this case, grounds pertains only to the grievance of the assessee i.e. rejection of application for granting registration u/s.12AA of the Act in respect of the assessee trust.
3. The brief facts in this case are that the assessee/applicant has made an online application in Form No.10A for approval of the Trust/Institution u/s.12AA of the Act on 31.07.2020 under the category of Charitable Trust/Institution as per CBDT Notification No.S.O.2033 (E) dated 24.06.2020 read with provisions of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020, No.2 of 2020 dated 31.03.2020. The assessee/applicant is registered under Companies Act, 2013.
4. That as evident from Para 3 of the Ld. CIT(Exemption)'s order dated 23.02.2021 that the assessee trust had come into existence on 16.07.2020. It was not clear from the submission of the assessee/applicant as to what charitable activities have been carried out by it since inception. Such details were specifically called for vide Point No.7 and 20 of the notice dated 28.08.2020. On perusal of the submissions uploaded on e-portal, the only transaction since inception, as per bank account was receipt of donation of Rs.4,00,000/- from the Director of the Company " United Crane Components Pvt. Ltd." and the amount of Rs.4,00,000/- was paid back to the said Director Company for purchasing of used sewing machines. The assessee/applicant was, therefore, once again requested vide notice dated 28.01.2021 to furnish the details of actual activities carried out since inception and as to how they are charitable in nature. However, the assessee/applicant had neither submitted any such details nor submitted any supporting credible evidence in this regard.
5. Thereafter, the Ld. CIT(Exemption) at Para 4 of his order held that the satisfaction about the genuineness of the activities of the assessee/applicant trust could not be arrived at by the Ld. CIT(Exemption) and hence, the application for granting registration u/s.12AA of the Act was rejected.
6. That it is the contention of the assessee that the required details were filed before the Ld. CIT(Exemption) which was also annexed before us in the paper book filed.
7. On the contrary, the Ld. DR suggested that since the evidences called for by the Ld. CIT(Exemption) were not filed or even if they had been filed, may have skipped the attention of the Ld. CIT(Exemption), therefore, in the interest of justice, the matter may be remanded to the file of the Ld. CIT(Exemption) to adjudicate as per law considering evidences filed before him once again.
8. The Ld. AR conceded to this suggestion put forth by the Ld. DR. The Ld. AR further relied on the decision of the Pune Bench of the Tribunal in the case of Balwant Medical Foundation Vs. CIT (Exemption), ITA No.11/PUN/2021 dated 17.05.2021 wherein in the identical set of facts and circumstances, the Pune Bench of the Tribunal had remanded the matter back to the file of the Ld. CIT(Exemption) for detailed examination as per evidences filed before him and as per law. The relevant findings of the Tribunal read as follows:

"7. We have perused the case records, heard the rival contentions and considered the entire facts and circumstances in this case. We find,, on one hand the assessee contends that the provisions of principles of natural justices were not followed by the Department and the opportunity of hearing was not properly accorded to the assessee in this case and on the other hand, the facts demonstrate as from the order of the Ld. CIT (Exemption) that he could not arrive at proper satisfaction as regards the genuineness of the activities of the trust since the relevant details as called for by the Ld. CIT (Exemption) were not uploaded in the ITBA portal by the assessee. The provision of section 12AA of the Act mandates that the satisfaction has to be arrived at by the Ld. CIT (Exemption) before granting any registration under the said provisions. The satisfaction can only be arrived at once all the relevant details are placed before him Taking the totality of facts and circumstances of the case into consideration, we are of the considered view that one more opportunity should be given to the assessee and accordingly, we set- aside the order of the Ld. CIT (Exemption) and restore the matter back to

his file for re-adjudication while complying with the principles of natural justice and at the same time, we direct the assessee to furnish all relevant details as called for by the Department so that the case can be represented on merits. We further find that the Hon'ble Apex Court in the case of Ananda Social and Educational Trust vs. CIT, 272 Taxman 7 has laid down the specific guidelines, which are as follows :-

"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 object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

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.

We therefore find that the view of the Delhi High Court in the impugned judgment is correct and liable to be upheld..

Ms. Bhati, learned Senior Counsel for the appellant, fairly drew our attention to a judgment of the Allahabad High Court in IT Appeal No.36 of 2013 titled as "Commissioner of Income Tax-II vs. R.S. Bajaj Society" which has taken the same view as that of the Delhi High Court in the impugned judgment. The Allahabad High Court has also referred to a similar view taken by the High Courts of Karnataka and Punjab & Haryana."

8. The Ld. CIT (Exemption) while re-adjudicating the matter should follow the said guidelines as laid down by the Hon'ble Apex Court in the aforesaid decision (supra).

9. In the result, the appeal of the assessee is allowed for statistical purposes."

In the above referred decision, the Pune Bench of the Tribunal had also referred the decision of the Hon'ble Apex Court in the case of Ananda Social and Educational Trust Vs. CIT, 272 Taxman 7 wherein it has been held that the Commissioner is bound to satisfy himself that the object of the trust are genuine and that its activities are in furtherance of the objects of the trust, that is equally genuine.

9. The legal principle enshrined in the decision of the Hon'ble Apex Court (supra.) is 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 charitable objects of the Trust. The requirements of Section 12AA of the Act are categorically clear and it is in that respect, the Hon'ble Apex Court had held that at the time of granting registration u/s.12AA, the

Commissioner is supposed to look into the objects of the trust whether they are charitable or not or whether the activities of the trust are genuine and such activities may also include 'proposed activities' of the assessee trust and it should be in line with the charitable objects of the assessee trust.

In this case, the satisfaction regarding objects and the activities performed or proposed to be performed could not be arrived at by the Ld. CIT(Exemption) since requisite details/evidences were not filed by the assessee.

10. Having heard the parties herein, we are of the considered view, in the interest of justice, the matter may be remanded back to the file of the Ld. CIT(Exemption) to adjudicate as per law considering the details/ evidences/documents to be filed before him or which may have been filed before him by the assessee while complying with the principles of natural justice. In view thereof, we set aside the order of the Ld. CIT(Exemption) and remand the matter back to his file as indicated hereinabove.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 16th day of August, 2021.

Customized Notes

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