

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

**ITA No.08 /Lkw/2021
Assessment Year N.A**

GKG Foundation Trust, 13, Gandhi Gram, G.T. Road, Kanpur – 208007 U.P. PAN AACTG 2034L	Vs.	CIT(Exemptions), Lucknow
(Appellant)		(Respondent)

Appellant by	Shri P.K. Kapoor, CA
Respondent by	Smt. Sheela Chopra, CIT, DR
Date of hearing	02/09/2021
Date of pronouncement	12/10/2021

ORDER

PER T.S. KAPOOR, A.M:

This is an appeal filed by the assessee against the order of Id. CIT(Exemption), Lucknow dated 09.12.2020. The assessee has taken various grounds of appeal, however, the crux of grounds of appeal is the action of Id. CIT(E) whereby he has rejected the application made by the assessee for registration u/s. 12AA of the Act.

2. The Id. AR at the outset submitted that the first date of hearing was fixed by Id. CIT(E) as 23.06.2020 but on that date the assessee filed application for adjournment and in this respect our attention was invited to

P.B. pg. 47 where a copy of such adjournment application was placed and our attention was also invited to pg. 48 where the Id. CIT(E) had himself fixed the next date of hearing for 09.07.2020. The Id. AR submitted that instead of waiting for 09.07.2020 the assessee on 26.06.2020 itself filed complete reply to the query raised through questionnaire and in this respect our attention was invited to P.B. pgs. 65 to 299 wherein the various annexures including copy of PAN card, Form-10A, note on activities, copy of ITR for three years along with their audit reports and copy of trust deed along with list of trustees and note on activities conducted during last three years was placed. The Id. AR then took us to PB pg. 300 where confirmation regarding the detailed reply submitted through online on 26.06.2020 was placed. The Id. AR further took us to PB, pg. 301 where the assessee had sought time for making further submissions and for making changes in the trust deed through supplementary trust deed. The Id. AR then took us to PB pgs. 306 to 326 where a copy of reply dated 17.08.2020 filed through email with the Id. CIT(E) and enclosing proof of submission of earlier reply dated 26.06.2020 was placed and also copy of books of accounts submitted to the Id. CIT(E) was placed. The Id. AR also took us to PB pg. 327 where a copy of reply placed dated 17.08.2020 filed in hard copy on 18.08.2020 was placed. Ld. AR stated that the Id. CIT(E) in his order is talking about this reply only which he had received through DAK on 20.08.2020. It was submitted that while holding so he has ignored all the replies and all the documentary evidences which assessee had filed online on the portal of department and a copy of which was earlier referred to be placed at pgs. 49 to 299 of the paper book. It was submitted that the only objection of Id. CIT(E) is that assessee had not incurred expenditure on charitable activities during those years whereas the fact remains that during the F.Y. 2019-20 the assessee started spending on the charitable

activities for which the Id. AR filed certain evidences and submitted that though he will not insist upon the Bench to accept these additional evidences but these are just to demonstrate that assessee did carry out the charitable activities during the F.Y. 2019-2020 but since the time to file return of income for AY 2020-21 was not due and such accounts had not been audited during that period of proceedings therefore these were not filed with Id. CIT(E) and neither these were required to be filed. It was submitted that note on activities of the assessee were already there before Id. CIT(E) and our attention was invited to pgs. 285 to 287 where a copy of such note was placed and it was argued that Hon'ble Supreme Court in the case of Ananda Social & Educational Trust vs. CIT, [2020], 114 taxmann.com 693 (SC) has clearly held that activities includes the proposed activities also and has held that for granting registration u/s 12AA of the Act, the Id. CIT(E) has to examine the activities including proposed activities. It was submitted that the nature of activities being proposed by the assessee are definitely charitable in nature which included running of school and other educational institutions and for promotion of culture etc. and the objects also included hunger, poverty malnutrition and promoting healthcare and sanitation and making available drinking water besides a lot of other charitable activities which necessarily fall into the definition of charitable activities as defined u/s. 2(15) of the Act and it was submitted that Id. CIT(E) had not raised any objection to the nature of charitable activities as mentioned in the trust deed and therefore it was prayed that Id. CIT(E) be directed to grant registration to the assessee forthwith.

3. The Id. CIT, DR on the other hand, heavily placed reliance on the order of Id. CIT(E) and submitted that while granting registration u/s. 12AA of the Act. Id. CIT(E) is empowered to require the assessee to demonstrate the activities carried out by it and Id. CIT(E) has clearly held that other than

routine expenses no significant charitable activities was carried out as was apparent from the copy of Income and Expenditure Account submitted to him and therefore it was prayed that the appeal filed by the assessee may be dismissed.

4. We have heard the rival parties and have perused the material placed on record. We find that assessee filed application for registration u/s. 12A of the Act on 22.01.2020 and first date of hearing was fixed on 23.06.2020 but on that date the assessee filed adjournment application a copy of which is placed at PB pgs. 47 and the Id. CIT(E) fixed next date of compliance on 09.07.2020. Copy fixing such date is placed in PB 48. However, before the date of 09.07.2020 the assessee filed reply to all the queries raised by Id. CIT(E) a copy of which is placed in PB pg. 49 to 299. Such reply includes copies of ITR for earlier three years along with copy of audit reports, certified copy of trust deed, copy of PAN card of assessee along with its main trustees, note on activities conducted during last three years, copy of bank account of last three years along with copy of Form-10A. On the date fixed date of 09.07.2020, the assessee sought **fortnight's** time for filing further submission. On 17.08.2020 the assessee submitted proof of submissions of earlier reply dated 26.06.2020 and also uploaded the complete books of accounts and a hard copy was filed on 18.08.2020. Then on 17.10.2020 supplementary written submissions were filed along with certified copy of supplementary deed dated 13.10.2020. The evidence of all such replies is placed in paper book at pages 306 to 340. The Id. CIT, DR was asked to verify as to whether all these submissions were there in the file of Id. CIT(E) to which she replied in affirmative. Even the order of Id. CIT(E) also does not state that assessee did not file sufficient documents. His objections is on two counts. Firstly he states that assessee had not carried out any charitable activities and secondly he states that trust deed

does not contain the irrevocability clause. We find that as regards his objection with respect to irrevocability clause, he has ignored the fact that assessee had got executed the supplementary trust deed and which was also filed before him. A copy of which is placed in P.B. pgs. 333 to 340 and wherein a clause with respect to irrevocability has been added. The Id. CIT(E) in his order has not mentioned about the supplementary trust deed and has only discussed the original trust deed and held that the irrevocability clause is not there whereas he should have taken into account the supplementary trust deed also which was available with him before the date of passing order on 09.12.2020. Therefore, this argument of Id. CIT(E) is not valid. As regards the other objection regarding not carrying out of charitable activities, we find that the note on activities conducted during last three years is placed at pgs. 283 to 287 which was also before him and coupled with the objects stated in the trust deed the Id. CIT(E) should have granted registration to the assessee which he has not done and rejected the application on flimsy grounds of not having undertaken any charitable activity during the earlier years whereas the fact remains that the examination of note on activities clearly demonstrate that assessee did carry out the charitable activities. Before us in the form of additional evidences, the assessee has filed the Income and Expenditure Account and balance sheet for the FY 2019-20 along with the expenditure on charitable activities undertaken during that year but which we do not deem it necessary to take on record for the purpose of considering registration to the assessee as Hon'ble Supreme Court in the case of Ananda Social & Educational Trust (Supra) has clearly held that the charitable activities includes the proposed activities also and while granting registration to the assessee u/s. 12AA of the Act, the Id. CIT(E) is required to examine the genuineness of activities including the proposed activities.

The findings of Hon'ble Supreme Court in the case of Ananda Social & Educational Trust (Supra) are reproduced below:

“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.

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 object 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.

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

14. 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.

15. *Apparently, a contrary view has been taken by the Kerala High Court in the case of Self Employers Service Society vs. Commissioner of Income Tax (2001) Vol.247 ITR 18. That view however does not commend itself. However, the facts in Self Employers Service Society (Supra) suggest that the Commissioner of Income Tax had observed that the applicant for registration as a Trust had undertaken activities which were contrary to the objects of the Trust.*

16. *In the result, we find that there is no reason to interfere with the impugned judgment of the High Court of Delhi. The appeal is, accordingly, dismissed.*

CIVIL APPEAL NO.1727/2020 (@SLP(C) NO.25761/2015)

17. *Leave granted*

18. *In this case, the Trust which applied for registration under section 12AA of the Income Tax Act, 1961, was found not to have spent any part of its income on charitable activities. The Commissioner of Income Tax, therefore, refused the registration of Trust.*

19. *The Income Tax Appellate Tribunal reversed the decision of the Commissioner of income Tax on the basis of the judgment of the Delhi High Court in matters referred to above.*

20. *For the reasons stated earlier, we are of the view that the object of the provision in question is to ensure that the activities undertaken by the Trust are not contrary to its objects and that a Commissioner is entitled to refuse registration if the activities are found contrary to the objects of the Trust.*

21. *In the present case, what has been found is that the Trust had not spent any amount of its income for charitable purposes. This is a case of not carrying out the objects of the Trust and not carrying on activities contrary to its object. These circumstances may arise for many reasons including not finding suitable circumstances for carrying on activities. Undoubtedly the inaction in carrying out charitable purposes might also become actionable depending on other circumstances; but we are not concerned with such a case here.*

22. *In these circumstances, we leave it upon the Commissioner of Income Tax to consider the issue by exercising his powers under sub-section (3) of section 12AA, if the facts justify such actions.*

23. *The appeal is, however, dismissed.”*

5. In view of above facts and circumstances and in view of judicial precedents we hold that the objects of the assessee are charitable in

nature and though assessee had undertaken small expenditures towards charitable activities but the fact remains that such activities are genuine activities when considered in the context of objects clause of the trust deed. Therefore, keeping in view the spirit of judgment of the Hon'ble Supreme Court in the case of Ananda Social & Educational Trust (Supra) where your lordships have held that activities includes proposed activities also. We hold that assessee's activities are genuine when examined in relation of objects clause of the trust deed and therefore we direct the Id. CIT(E) to grant registration to the assessee forthwith.

6. In the result, appeal of the assessee is allowed.

(Order pronounced in the open court on 12/10/2021)

Sd/-
(A.D. Jain)
Vice President

Sd/-
(T.S. Kapoor)
Accountant Member

Aks –
Dtd. 12/10/2021

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order
Assistant Registrar