आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री वी दुर्गा राव,न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 3197/Chny/2018**

M/s. Environmental and Social Research Organisation, No. 52A/1, Oragadam Road, Ambattur, Chennai – 600 053. **[PAN: AAAAE 6275E]**	v.	Commissioner of Income Tax (Exemptions), Ayakar Bhavan, III Floor, 121 MG Road, Nungambakkam, Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Shri. V. Swaminathan, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri. S. Palani Kumar, CIT

सुनवाई की तारीख/Date of Hearing	:	20.11.2021
घोषणा की तारीख/Date of Pronouncement	:	03.12.2021

आदेश /O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Exemptions), Chennai, dated 28.09.2018 passed u/s. 12AA(1) of the Income Tax Act, 1961 (herein after 'the Act').

2. The brief facts of the case are that the assessee is a company incorporated under section 25 of the Companies Act, 1956 vide registration certificate dated 25.09.2012. The main objects of the assessee company are as under:

> *"1. To conduct proactive research and investigative programmes to conserve, preserve, and enhance the integrity of the natural environment and biodiversity so as to derive sustainable benefits for the human kind from the mother nature.*
>
> *2. To organize and establish Research Labs and Centres to investigate and analyse the impact on various environmental and social parameters by the activities of Industries and other Developmental Establishments of public and private sectors.*
>
> *3. To generate collaborative endeavours in research and human resource development programmes with National and International Institutions/Universities in the field of environmental and social studies."*

3. The assessee has filed an application in Form no. 10A for Registration u/s. 12AA of the Act on 28.03.2018. The CIT(Exemptions) while processing the application noticed that certain ancillary objects incidental to main objects are in the nature of commercial activities like construction and maintenance of roads etc, acquiring land, manufacturing, building etc., developing patents and obtaining license and hence, called upon the assessee to explain as to why application filed for registration u/s. 12AA of the Act, cannot

be rejected. In response, the assessee submitted that it has registered u/s. 25 of the Companies Act, 1956 as a non-profit organization and as per the provisions of section 25 of the Companies Act, 1956, if any company registered u/s. 25 of the Act, is restricted from distributing any dividend to its members and also company once registered cannot be irrevocable and thus, if any ancillary objects are in the nature of commercial activities, but the main objects of the company are charitable in nature, and falls under preservation of environment and preservation of monuments or places or objects of artistic or historic interest as defined u/s. 2(15) of the Act, and thus, the assessee is eligible for registration u/s. 12AA of the Act.

4. The Ld. CIT(E), after considering submissions of the assessee observed that although main objects of the assessee company are charitable in nature, but several objects incidental and ancillary to main objects are commercial in nature and hence, the objects of the assessee cannot be considered as charitable in nature. The Ld. CIT(E), further noted that as regards activities intended to be carried out by trust, it has intended to carry out its activities outside India, contrary to provisions of section 11(1)(a) of the Act. He,

further noted that even if, assessee wants to extend its activities outside India, it needs to obtain a general or special order from CBDT. However, such order was not obtained from the concerned authority. He further noted that the assessee listed out other objects which are commercial in nature for which it needs to pay salaries/remunerations to persons referred to u/s. 13(3) of the Act, and hence, he opined that objects of the trust are not charitable in nature and its activities are predominantly commercial in nature and also violating the provision of section 13(1)(c) and 11(1)(a) of the Act. Hence, rejected application filed by the assessee for registration u/s. 12AA of the Act. Aggrieved by the CIT(E) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld. CIT(E) erred in not appreciating fact that main objects of the assessee are charitable in nature which falls under preservation of environment as defined u/s. 2(15) of the Act and hence, any objects ancillary or incidental to main objects are in commercial in nature, but said objects are not independent in nature and they meant for attainment of main objects of the institution. Accordingly, for the reason that

certain ancillary objects are commercial in nature, the trust which has incorporated for the purpose of rendering charitable activities cannot be denied for the benefit of registration u/s. 12AA of the Act. The Ld. AR for the assessee further submitted that, although, the Ld. CIT(E) have apprehended that the assessee may violate provisions of section 11(1)(a) and 13(1)(c) of the Act, but such apprehension is only an assumption without there being any factual verification of facts of actual violation of said provisions. The CIT(E) at the time of registration, has required to verify whether the objects of the trust are charitable in nature or not and its activities are carried out in accordance with its main objects. But, the Ld. CIT(E) on assumptions have expressed some apprehensions that the assessee may violate provisions of section 13(1)(c) and 11(1)(a) of the Act. He further submitted that the trust has incorporated with the object of carrying out charitable activities and thus, while granting registration, it has to be seen whether the trust objects are charitable or not and its activities are genuine. Unless, the assessee trust carry out its activities it cannot be concluded that the trust activities are not genuine in nature. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of M/s. Ananda

Social and Educational Trust vs CIT (2020) 114 taxmann.com 693.

6. The Ld. DR on the other hand submitted that at the time of registration of trust u/s. 12AA of the Act, the Ld. CIT(E) on receipt of application shall call for such documents or information as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institutions and may also makes such enquires as he may deem necessary. In this case, the Ld. CIT(E) after carefully considering objects of the trust has recorded categorical findings that the assessee is having several ancillary objects which are commercial in nature and further, the activities of the trust are extended outside the India in violations of provisions of section 11(1)(a) and 13(1)(c) and thus, opined that trust is not entitled for registration u/s. 12AA of the Act. Therefore, there is no reason to allow benefit to the assessee.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The provisions of section 12AA deals with registration of a trust, and as per said provisions, the CIT(E) on receipt of application for registration of a trust, call for such documents

or information from the trust as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust. The concept of enquiry of the Commissioner while granting registration u/s. 12AA has been examined by various courts, including Hon'ble Supreme Court in the case of M/s. Ananda Social and Educational Trust vs CIT, (supra), where the Hon'ble Supreme Court very clearly explained the power of Commissioner while granting registration, as per which the CIT(E) must consider whether 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. However, he cannot refuse registration on the ground that no activities are carried out. The Hon'ble Karnataka High Court in the case of Sanjeevamma Hanumanth Gowda Charitable Trust vs Director of Income Tax (Exemptions) (2006) 285 ITR 327 has also considered identical issue and held that for the purpose of registration u/s. 122AA of the Act what the authorities have to satisfy is the genuineness of activities of the trust or institution and how income derived from the trust property is applied to charitable or religious purpose and not nature of the activity by which income was derived to the trust. The sum and substance of ratio laid down by the Hon'ble Supreme Court and Hon'ble Karnataka High Court (supra) is that at the time of registration the CIT(E) shall satisfy himself about the objects of the trust and its activities, but he cannot go beyond to verify the violation if any referred to u/s. 11(1)(a) and 13(1)(c) of the Act. If at all any violations are there, the AO is empowered to look into all violation while granting exemption u/s. 11 of the Act.

8. In this case, on perusal of main objects of the assessee, there is no doubt whatsoever with regard to nature of objects of the assessee, because main object of the assessee is to conserve and enhance the natural environment and bio-diversity so as to derive sustainable benefits for human kind from the mother nature, and said objects are falls under 5th limb of definition of charitable purpose, preservation of environment as defined u/s. 2(15) of the Act. As regard other observations of the ld. CIT(E) with regard to extending activities of the trust outside India, we find that there is no restriction under the Act to carry out charitable activities beyond the boundaries of India, but such activities can be carried out with special or general approval of the CBDT.

Since, the assessee has not started its activities, the question of looking into the violation of section 11(1)(a) and necessary approval, if any required for that purpose does not arise. Further, if at all any violation is reported, then the AO is very much empowered to reject exemption claimed u/s. 11 of the Act. As regards other observations made with regard to ancillary objects and they are in commercial nature, we find that predominant objects of the assessee is preservation of environment. The ancillary objects are provided to achieve the main objects and no commercial stamp shall be made, if such objects are achieved by carrying out certain activities. If at all the assessee carry out some objects which are commercial in nature, then the AO shall verify such activities in light of provisions of section 2(15) of the Act and examine entitlement of benefit of exemption u/s. 11A of the Act. But, for this reason registration u/s. 12AA cannot be denied to the assessee. Once, the objects of the assessee are charitable in nature, and it is proposed to carry out its activities in accordance to its objects, then the CIT(E) cannot reject application filed by the assessee for registration of the trust u/s. 12AA of the Act.

9. In this view of the matter and considering facts and circumstances of this case and also by following ratio of decisions discussed herein above, we are of the considered view that objects of the assessee are charitable in nature and the assessee is proposed to carry out its activities in accordance with its objects and thus, the assessee is entitled for registration u/s. 12AA of the Act. Hence, we direct the CIT(E) to grant registration u/s. 12AA of the Act, to the assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 03rd December, 2021 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गा राव)	**(जी. मंजुनाथ)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 03rd December, 2021
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF