



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

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

ITA No.305/CTK/2015

M/s. Evangelical Missionary Society Mission House, Baripada, Dist: Mayurbhanj	Vs.	CIT (Exemptions), Hyderabad
PAN/GIR No.AAATE 3316 M		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M.Patnaik, AR
Revenue by : Shri M.K. Gautam, CIT DR

Date of Hearing : 25 /11/ 2020
Date of Pronouncement : 10/12/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order of the CIT(E), Hyderabad u/s.12A(a) of the Income Tax Act, 1961.

2. The facts in brief are that the assessee is a missionary society conducted its operation in the district of Mayurbhanj. It had filed application filed under section 12AA and 80G of the Act for grant of registration, which was rejected. Thereafter, pursuant to the direction of Hon'ble Jurisdictional High Court, the Id CIT (Exemptions) took up the matter for grant of registration and finally rejected the same. Hence, the assessee trust has filed appeal before the Tribunal.

3. The assessee filed application in Form 10A for registration on 29.6.1973 before the CIT, Bhubaneswar and the assessee had furnished all the documents/ The assessee society was established in the State of Odisha to preach and teach the Gospel to the people of the District of Mayurbhanj by means of itineration and settled work at the Mission Stations. The constitution of the assessee society contains the objectives in the nature of religious as well as charitable purposes. On going through the amended constitution, the Id CIT(E) noted that the trust is basically a religious trust confined to the development, nourishment and extended Christianity in and around the district of Mayurbhanj as well as the State of Odisha. The CIT (E) noted that the trust constituted with an object to educate, treat and rehabilitate the leprose patients. He noted that from the constitution of the trust, it is noticed that the objects are entirely for religious purposes, which is as under:

"To preach and teach the Gospel to the people of this district by means of itineration and settled work at Mission Stations within the district of Mayurbhanj and to establish indigenous churches."

After considering the documents filed by the assessee trust, the CIT (E) noted that the entire such activities that were carried on and also being carried on by the assessee society, are strictly not in accordance with the original objects mentioned that document, which are fully religious nature,

therefore, the assessee society is not eligible for certificate sought u/s.12A(a) of the Act.

4. Even on perusal of copies of receipts & payments account for the year ended on 30.6.1970, 30.6.1971 & 30.6.1973, the CIT(E) noticed that the expenditure are not in accordance with original objects mentioned in the constitution of the society, therefore, on this ground also, the assessee is not eligible for registration u/s.12A(a) of the Act.

5. Further, the CIT (E) noted that the assessee society has been established and also registered abroad under the said Act 'The Religious Educational and Charitable Institution Act of 1861'. He noted that since the trust is registered in Australia and not in India, having regard to the provisions of section 11(1) r.w.s 12A(a) of the Income tax Act, 1961 and read with Rule 17A of the income tax Rules, 1962, the society is not eligible for registration u./s.12A(a) of the Act.

6. It was in this backdrop that the Id CIT (E) refused to grant registration u/s.12A(a) of the Act to the assessee society and consequently, approval u/s.80G of the Act.

7. At the time of hearing, Id A.R. of the assessee society submitted that though the assessee trust is registered in Australia but the area of operation is in the Mayurbhanj district of Odisha and also nearby districts. He submitted that the assessee society is created for rehabilitation of the

persons affected by leprosy and downtrodden in a charitable and holistic purposes. He submitted that the CIT(E) be directed to grant registration u/s.12A(a) of the Act.

8. Replying to above, Id CIT DR submitted that supported the order of the Id CIT(E). He submitted that the society is registered u/s.6(1)(g) of the Foreign Contribution (Regulation) Act, 1976 vide Registration No.104990006 to preach and teach the Gospel to the people of the district by means of itineration and settled work at the Mission Stations within the district of Mayurbhanj and society is fully religious. He submitted that since the society is registered in Australia and not in India, it cannot be allowed to grant registration u./s.12A(a) of the Act. Ld CIT DR drew our attention towards Annexure-6 and Annexure-7 of APB (pages 73 to 75 and 76 to 81) and submitted that under similar facts and circumstances, the appellant previously filed an application vide dated 23.3.2013 seeking registration u/s.12A of the Act, which was dismissed by the CIT (Exemptions) by passing order dated 27.9.2013. Id CIT DR further explained that against said order, the assessee filed appeal before the Tribunal vide ITA No.533/CTK/2013 , which was also dismissed by order dated 13.6.2014 and there is no change in the objects of the applicant society and no changes in the activities of the society, therefore, the issue is squarely covered in favour of the Revenue by the order dated 13.6.2014 of the Tribunal (supra).

9. In rejoinder, no other arguments have been placed by Id counsel for the assessee.

10. We have heard the rival submissions and perused the record of the case. It is not in dispute that the assessee society is registered in Australia and not in India. In the amended constitution, it is stated that the work of society is to run the leprosy home and leprosy rehabilitation farm at Rajabasa in Mayurbhanj district. For the functioning of the society, funds came from Australia. From the relevant paras of the impugned order of the Id CIT(E), we observe that the assessee society has been denying registration u/s.12A of the Act by observing that applicant society has been established and registered abroad under the religious educational and charitable institution Act of 1861 in Australia and has not been registered in India. It was also observed that the applicant society is controlled by head office located abroad and thus, having regard to the provisions of section 11(1) r.w.s 12A(a) of the Income tax Act, 1961 read with Rule 17A of the income tax Rules, 1962, the society is not eligible for desired certificate of registration u/s.12A(a) of the Act. Ld CIT (E) observed that since the applicant society is governed not in Indian Regulation and is subject to regulations under that of foreign Act in Australia, therefore, it is not permissible to grant necessary certificate sought u/s.12A(a) of the Act. From the copy of previous order dated 27.9.2013 passed by Id CIT (E) denying registration u/s.12A of the Act to the assessee society, it is ample

clear that the assessee society was denied registration as application for grant of registration u/s.12A(a) was rejected. From the copy of order of the Tribunal dated 13.6.2014 (supra), we observe that the appeal of the society was dismissed with the following observations and findings:

"2. The brief facts of the case are that an application for registration u/s 12AA of the Income Tax Act was filed with CIT by the Assessee on 20.3.2013 alongwith the documents prescribed under Rule 17 of the Income Tax Rules, 1962. The Assessee is incorporated in the State of Queensland, Australia and registered with the Australian Charities and Not-profit-Commission. The CIT noted that as per the document filed by the Assessee, the Assessee is stated to have been established on 21.1.1926. The Constitution as amended on 30.4.2012, contains the objectives in the nature of religious as well as charitable purposes. CIT noted that the objectives mentioned in the Constitution of the trust amended on 30.4.2012 states as under:

"Objects - to preach and practice, teach and educate the tenants of Christianity in the district of Mayurbhanj, neighboring districts and States. To rehabilitate persons affected by Leprosy and down-trodden in a charitable and holistic manner.

- Adherents : *Christians of all denominations who contribute towards the support of the Mission are looked upon such as ...*
-
- Finance : The Mission is supported by the freewill offerings and gifts of the Lord's people and no personal solicitations or collections are authorised.

CIT noted that as per the objectives stated in the amended constitutions, the prime object of the Assessee is to preach and practice, teach and educate the tenets of Christianity in the district of Mayurbhanj., neighboring districts and states. Therefore, the Trust is basically a religious trust confined to the development, nourishment and Christianity in and around the district of Mayurbhanj as well as the State of Odisha. To rehabilitate leprosy sufferers was the secondary object. He also noted that according to the statement of faith annexed to the Constitution dt.30.4.2012 clearly establishes the manner in which the gist of essence of holy book Bible are being spread and extended among the common man. CIT, therefore, took the view that the Trust is not genuine and not created for charitable purposes. It is an institution created for the benefit of particular religious community or case and in view of the decision of the Hon'ble Supreme Court in the case of Palghat Shadi Mahal Trust, 254

ITR 212 where the benefit under the Trust were available only to Muslim from all over the world, none of whom except those in Kerala are of backward classes, the Hon'ble Supreme Court took the view that this trust is not entitled for exemption u/s.11.

2.1 Id. AR before us filed the bye-laws signed by the Secretary with the nomenclature 'Recent Revised'. "These bye-laws disclose the name of the society and mentions that it is registered with the Australian Charities and not-for profit commission and is incorporated in the State of Queensland, Australia and on the basis of these bye-laws, it was contended that the society is created for care and rehabilitation of the persons affected by leprosy and downtrodden in a charitable and holistic manner in Mayurbhanj and neighboring districts in India The assessee is thus established for charitable purposes. The audited report as well as audited income and expenditure account was also filed and it was contended that the Assessee is a genuine charitable trust. CIT was not correct in law in rejecting the registration.

2.2 The Id, DR. on the other hand, relied on the order of GIT and vehemently contended that before CIT, the Society has submitted different Constitution, which talks that, the Assessee came into existence in the year 1926 by the Religious Educational and Charitable Act, 1861 of State of Queensland, Australia,. The objects stated-in the constitution before the CUT are different from the objects in the Constitution, filed before the Bench. This Constitution does not talk of date of registration and referred to the compliance of Sec. 23 of the Income Tax Assessment Act, 1936, which is not applicable in India. For the purpose of registration u/s.12A, the Society Trust has to be registered under the Indian Act. A trust/society which is registered outside India cannot be regarded to be a genuine one. Our attention was drawn towards the income and expenditure account dt.17.6.2009 and it was stated that it is apparent that proviso to Sec.2(15) is clearly applicable in the case of the Assessee and. therefore, the assessee cannot be regarded to have been engaged for charitable purposes.

2.3 We have, heard the rival submissions and carefully considered the same alongwith the order of the tax authorities below. Sec. 12A of the Income Tax Act lays down the provisions of Sec,11 & 12 shall not apply in relation to the income of any trust or institution unless the condition stated therein are fulfilled. The first condition for allowing the exemption u/s.11 is that the person who is in receipt of the income must have made application for registration of the trust/institution in the prescribed form as well as in the prescribed manner to the Commissioner and such trust/institution is registered u/s 12AA. Section 12AA empowers the CIT to call for such documents or information from the trust/institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust/institution and for that he has to make such inquiries as he may think necessary. We noted that the assessee, before the CIT, as

is apparent from the order passed u/s.12AA, submitted the document that the trust/institution was established on 21.1.1926 and the application for registration u/s.12AA was made on 20.3.2013. Before CIT the assessee submitted constitution as amended on 30.4.2012. The assessee submitted before us the Constitution marked as 'Recent Revised'. The constitution before us nowhere mentions when it has been revised, whether it is the same which has been filed before the CIT. Objects in the Constitution filed before us appear to be different from the objects as has been incorporated by CIT in his order. In the Constitution submitted before us, we noted that the Constitution does not talk of Indian Income tax act but only recognizes the Australian Income tax Act, 1936, in respect of winding up and amalgamation also, the Assessee society is governed by those provisions. The foremost question before us is whether a society or trust registered outside India can be granted registration u/s.12AA if the trust/institution is not registered in India and is not governed by the Indian Law. In our opinion, the revenue will not be able to satisfy itself about the genuineness of the activities of trust/institution as in that case it will always take shelter of the Act and Rules by which it is governed. Therefore, for getting registration u/s.12AA, the Trust has to be governed by the Indian Income tax Act and the necessary provision must be in the bye-laws. The Constitution, as submitted before us, even does not contain any certificate of registration. Even the name and address of the office bearers are not in existence. If the identity of trust/institution cannot be established, the genuineness of the activities of such trust/institution, in our opinion, cannot be established. The assessee claims that it is created for charitable purposes i.e. advancement of any other objects of general public utility. We noted that in view of the proviso to Sec, 2(15), which was inserted w.e.f. 1.4.2009, the assessee cannot be said to have been engaged in charitable purposes if the assessee is involved in carrying on any activity in the nature of trade, commerce or business or any activity of running any service in relation to any trade, commerce or business. From the income and expenditure account, a copy of which was filed before us, we noted that the assessee has income from sale of literature as well as sale of agricultural product. These income clearly show that the activities of the assessee are in the nature of trade, commerce or business. The words used in proviso to Sec.2(15) are "any activity in the nature of trade, commerce or business". This denotes that the assessee need not actually be engaged in trade, commerce or business but the activities are such which can be in the nature of trade, commerce or business. The words activity in the nature, in our opinion, has been used by the-legislature as the legislature is fully aware that for carrying out trade, commerce or business there should be a profit motive, A trust or society which is created for charitable purposes does not have profit motive in carrying out its activities. Therefore, wherever the activities are of the nature of trade, commerce or business, it cannot be said that the trust/institution is engaged in charitable purposes. As the assessee has income from sale of literature as well as sale of agricultural product, the aforesaid discussion proves, that the activities of the trust/institution are not genuine. Even the

assessee could not prove the genuineness of the trust/institution. We, therefore, do not find any illegality or infirmity in the order of the CIT, as in our opinion, any trust/institution seeking registration u/s.12AA has to be governed by the Indian Income tax Act. We, accordingly, dismiss the appeal filed by the assessee."

11. On a specific query from the Bench, Id counsel for the assessee could not and have not controverted the findings recorded by the Id CIT (E) in the previous order dated 27.9.2013 and impugned order dated 31.3.2015. Ld counsel for the assessee could not show any change in the objects of the society, any change in the source of establishment of the society and also could not controvert that the activities of the society are still being controlled by the head office located at abroad in Australia. We also clearly observed that issue is covered by the decision of the Tribunal dated 13.6.2014 (supra) in favour of the revenue. Therefore, we have no alternative but to uphold the order of the Id CIT(E) denying registration u/s.12A of the Act.

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

Order pronounced on 10/12/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 10 /12/2020
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s. Evangelical Missionary Society Mission House, Baripada, Dist: Mayurbhanj
2. The Respondent. CIT(Exemptions), Hyderabad
3. Pr.CIT- , Bhubaneswar
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack