

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT  
AND MS. RANO JAIN, ACCOUNTANT MEMBER

**ITA No.692/Chd/2015**  
(Under Section 12AA of the Act)

Shri Shirdi Sai Darbar Charitable Trust (Dharamshala), Barnala.	Vs.	The C.I.T.(Exemptions), Chandigarh.
PAN: AALAS3713Q (Appellant)		(Respondent)

Appellant by	:	Shri Tej Mohan Singh
Respondent by	:	Shri Sushil Kumar, DR
Date of hearing	:	03.05.2016
Date of Pronouncement	:	08.06.2016

**ORDER**

**PER RANO JAIN, A.M. :**

The appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Exemptions), Chandigarh dated 26.6.2015, rejecting the registration to the assessee under section 12AA of the Income Tax Act, 1961 (in short 'the Act'),

2. Briefly, the facts are that an application under section 12A of the Act was filed by the assessee as on 9.12.2014 before the Commissioner of Income Tax (Exemptions), Chandigarh. After giving an opportunity of being heard the Commissioner of Income Tax (Exemptions)

denied the assessee the registration under section 12AA of the Act vide his order dated 26.6.2015.

3. Against this, the assessee has come up in appeal before us, raising the following grounds :

- “1. That the Ld. Commissioner of Income Tax has erred in law as well as on facts in rejecting registration under section 12AA of the Act which is arbitrary & unjustified.
2. That the registration has been refused only on the basis of suspicion, conjectures and surmises which is not permitted under the Law and as such the order refusing registration is illegal, arbitrary and unjustified.
3. That the Ld. Commissioner of Income Tax has further erred in holding that clause 12 of the memorandum gives absolute powers to the trustees to manage the property of the trust which is unfounded, without any basis and as such the order is arbitrary and unjustified.
4. That the order of the Ld. Commissioner of Income Tax is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.”

4. The learned counsel for the assessee submitted before us that the Commissioner of Income Tax (Exemptions) in his order has given two reasons for declining the registration under section 12A of the Act. The first is that the assessee trust has not filed any return of income for the earlier years. Therefore, the accounts of the trust are not reliable and, therefore, not genuine. Another reason given by the Commissioner of Income Tax (Exemptions) is that as per clause-12 of the

Memorandum of the trust, absolute powers were given to the trustees to manage the property of the trust which may attract the provisions of section 13(1)(c) of the Act. With regards to the first contention of the Commissioner of Income Tax (Exemptions) that the assessee has not filed return of income of earlier years, the learned counsel for the assessee stated that it is not the good reason to reject the application for registration under section 12A of the Act. For this, reliance was placed on the judgment of the Allahabad High Court in the case of CIT Vs. Shri Advait Ashram Society (2013) 50(I) ITCL 209 (All-HC) and that of Chennai Bench of the Tribunal in the case of Shine Educational & Social Welfare Trust Vs. Commissioner of Income-tax, 60 taxmann.com 183 (Chennai - Trib.).

5. With regard to second contention of Commissioner of Income Tax (Exemptions), as far as the applicability of provisions of section 13(1)(c) of the Act, reliance was placed on the order of the I.T.A.T., Chandigarh Bench in the case of Sri Guru Har Raj Ji Religious and Charitable Trust Vs. CIT(Exemptions) in ITA No.323/Chd/2015 dated 27.4.2016 and another order of I.T.A.T., Chandigarh Bench in the case of Bhai Mansa Singh Ji Welfare Society (Regd.) Vs. CIT (2015) 62 Taxmann. 299 (Chandigarh Trib.). It was stated that for the purpose of granting registration under section 12A of the Act, the Commissioner of Income Tax (Exemptions) has to look only into the charitable nature of the objects of the assessee trust and genuineness of its activities and

the objections raised by the Commissioner of Income Tax (Exemptions) in the present case are not related to any of these two conditions, therefore, the assessee may be granted registration under section 12A of the Act.

6. The learned D.R. relied on the order of the Commissioner of Income Tax (Exemptions).

7. We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. The first reason on the basis of which the Commissioner of Income Tax (Exemptions) has refused to grant registration to the assessee is that the assessee has not been filing its income-tax returns in the earlier years. We do not find that it is a good reason to reject the application for registration since the two conditions which the Commissioner of Income Tax (Exemptions) has to satisfy while granting the registration under section 12A of the Act, are that the objects of the assessee are charitable in nature and the activities are genuine. Just because the assessee has not filed its income tax returns in earlier years, it can not be said that the activities of the assessee are not genuine. Reliance placed by the learned counsel for the assessee on the judgment of the Allahabad High Court as well as the order of the Chennai Bench of the Tribunal are not out of place, whereby it has been held that non-filing of return cannot be one of the reasons for denying registration under section 12A of the

Act. With regard to the second objection raised by the Commissioner of Income Tax (Exemptions) that as per clause-12 of the Memorandum of trust, the trustees have been given absolute powers to manage the property. We have perused the clause-12 of the Memorandum of the trust, whereby the trustees are authorized to demise the immovable property or properties of the trust either from year to year or for any fixed term or for any term of years or no monthly basis at such rent and subject to such conditions as they deem fit and proper and also accept surrender of lease and may manage the property as they think proper. From the perusal of this clause, we observe that the trustees have been given powers to give property of the trust on lease or on rent. We do not find anything wrong in this clause so as to deny the assessee the registration under section 12A of the Act. As regards the apprehension of the Commissioner of Income Tax (Exemptions) that his clause may attract the provisions of section 13(1)(c) of the Act, we are of the view that the conditions as provided in section 13 or elsewhere are to be seen by the Assessing Officer at the time of assessment proceedings on yearly basis and not by the CIT (Appeals) while granting registration under section 12A of the Act.

8. Section 13 comes into play at the time of granting exemption under section 11 of the Act and not at the time of granting registration under section 12A of the Act. The only two requirements as stated hereinabove while granting registration under section 12A of the Act,

are with respect to the charitable nature of the objects of the assessee and genuineness of the activities. Since we observe that no adverse remarks have been made by the Commissioner of Income Tax (Exemptions) with regard to the objects contained in Memorandum and as stated hereinabove that the observations of the Commissioner of Income Tax (Exemptions) do not lead to the conclusion that the activities of the assessee are not genuine, we here by direct the Commissioner of Income Tax (Exemptions) to grant registration under section 12A of the Act to the assessee.

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

Order pronounced in the open court on this 8<sup>th</sup> day of June, 2016.

Sd/-  
**(H.L.KARWA)**  
**VICE PRESIDENT**

Sd/-  
**(RANO JAIN)**  
**ACCOUNTANT MEMBER**

Dated : 8<sup>th</sup> June, 2016

\*Rati\*

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,  
ITAT, Chandigarh