

**IN THE ITAT MUMBAI BENCH 'E'**  
**Shree Vile Parle Vardhman Sthanakvasi Jain Foundation**

v.

**Director of Income-tax (Exemption)\***

D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND AMIT SHUKLA, JUDICIAL MEMBER  
IT APPEAL NO. 7094 (MUM.) OF 2012  
[ASSESSMENT YEAR 2013-14]  
FEBRUARY 19, 2014

**ORDER**

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**D. Karunakara Rao, Accountant Member** - This appeal filed by the assessee against the order u/s 12AA(1)(b)(ii) r.w.s 12A of the Act passed by the DIT (E), Mumbai dated 28.9.2012

2. In this appeal, assessee raised the following grounds which read as under:

- "1. On the facts and in the circumstances of the case, Ld DIT (E) erred in rejecting the application for registration u/s 12A(a) of the Act, 1961 of the appellant Trust by holding that the objects of the Trust are mixed charitable and commercial, couples with lack of binding legal commitment on trustees regarding application of funds.
2. On the facts and in the circumstances of the case, the Ld DIT (E) failed to appreciate and or overlooked:
  - (a) That the appellant is a Public Charitable Trust registered under the provisions of the Bombay Public Trusts Act, 1950 vide certificate of registration dated 12.9.2011 under PTR No.E-28174 (Mumbai). that the objects of the Trust are public charitable objects including provision of free or subsidized food, water, clothing, housing, household goods, chattels, etc., spread and advancement of education including moral studies, better living etc., medical relief, relief of the poor, protection survival or sustenance of birds animals plants and living beings of all kinds. Preservation of environment and advancement of any other objects of general public utility as the Trustees may think fit and in such manner as the Trustees may think and for one or more of such public charitable purposes as aforesaid to the exclusion of one or more of them as the Trustees may think fit.
  - (b) That the office of the DIT (A) had orally communicated the objects raised by the DIT (E) in connection with the application for registration of the Trust u/s 12AA of the Act just few days before the expiry of the time limit specified under sub-section (2) of section 12AA for passing an order for granting or refusing registration u/s 12AA of the Income Tax Act, 1961 and thereby your appellant was not given adequate time to prepare and submit the reply to objections raised by Ld DIT (E).

- (c) That the Ld DIT (E) erred by choosing certain selected words, for reasons best known to him, of the educational, medical relief and rural development object clauses of the Trust and not considering the entire object clauses and thus erred in by holding that the objects of the Trust are essential commercial and not charitable in nature.
- (d) That your appellant trust had furnished a copy of Bank statement showing the receipt of donation and amount utilized for giving educational and medical help along with supporting vouchers and receipts which are on record.

Your appellant Trust most respectfully submits that the reasons assigned by the Ld DIT (E) that the objects of the appellant Trust are mixed, commercial and charitable are contrary to the facts and law and that the learned DIT (E) should have granted registration u/s 12AA of the Act."

3. Briefly stated relevant facts emanating from the record are that the assessee was constituted by Trust Deed dated 19.4.2011, which was registered with Charity Commissioner, Mumbai on 12.9.2011. Assessee sought a registration under 12A of the Income Tax Act, 1961 and filed relevant form No.10A on 2.3.2012. As per the procedure, notice was issued by the DIT (E) and heard the assessee before passing the impugned order dated 28.9.2012. On perusal of the submissions made by the assessee, DIT (E) found that assessee's objections include giving loans to needy students and runs coaching classes and set up of the pathological clinics, vocational training centres etc. He also noted that there is no legal obligation on the Trustees to apply the income of the Trust for the charitable purposes only. Accordingly, he relied on the judgment of the Hon'ble Supreme Court in the case of *Sole Trustee, Lok Shikshana Trust v. CIT* [\[1975\] 101 ITR 234](#) before coming to the conclusion that the assessee's objects are not charitable and as per DIT (E), essentially they are commercial in nature. Further, DIT (E) held that the assessee has not carried on any activity during the year barring spending of Rs. 5000/- on educational help and Rs. 6000/- on medical relief totaling to Rs. 11,000/-. He accordingly, denied the registration u/s 12AA of the Act as per the discussion given in para 5 of the DIT (E) order, which read as under:

"5. Thus, in view of mixed charitable and commercial objects couples with lack of binding legal commitment on trustees regarding application of funds, I am unable to satisfy myself about the genuine charitable character of objects of the trust which is a condition precedent for grant of registration. As the appellant trust has failed to comply with the mandatory requirements prescribed u/s 12AA read with Rule 17A, its application for grant of registration is rejected."

4. Aggrieved with the above, assessee is in appeal before us.

5. During the proceedings before us, Ld Counsel for the assessee brought our attention to the fact that the DIT (E) erroneously came to the conclusion that there is no binding legal commitment of trustees regarding application of the funds only for the objects of the Trust. In this regard, Ld Counsel brought our attention to the copy of the Trust Deed and demonstrated the mandatory provisions vide clause-10 of the Trust Deed in support of the assertion that the funds are to be applied only for public charitable purposes. Further, bringing our attention to the ground no.2, Ld Counsel mentioned that the DIT (E) erroneously picked up the objections for denying the exemption. He also mentioned that the prime object of the Trust is promotion of education and

the DIT (E) has applied the judgment of the Hon'ble Supreme Court in the case of *Sole Trustee, Lok Shikshana Trust (supra)* ignoring the provisions of proviso to section 2(15) of the Act. He also underlined the fact that it is premature for rejection of the registration when the assessee is yet to get into activity giving effect to the objects of the Trust. Spending merely Rs. 11,000/- was also demonstrated relying on the papers filed in the paper book. In support the claim for grant of registration, assessee relied on various decisions which are as under:

- (1) *Sole Trustee, Lok Shikshana Trust (supra)*
- (2) *Urban Improvement Trust v. CIT* [\[2013\] 142 ITD 313](#)
- (3) *A.V.S. Educational Trust v. ITO* [\[2013\] 140 ITD 681](#)
- (4) *DIT (E) v. Meenakshi Amma Endowment Trust* [\[2013\] 354 ITR 219](#)
- (5) *DIT v. Foundation of Ophthalmic and optometry Research Education Centre* [\[2013\] 355 ITR 361.](#)
- (6) *C.P. Vidya Niketan Inter College Shikshan Society v. UOI* [\[2013\] 359 ITR 322](#)
- (7) *Mormugaon Port Trust v. CIT* [\[2007\] 109 ITD 303 \(Panaji\)](#)

6. On the other hand, Ld. DR relied on the order of the DIT (E).

7. We have heard both the parties and perused the order of the DIT (E). On perusal of the relevant record placed before us, we have noticed that the main and generic objects of the Trust is 'education', being a charitable activity for the general public utility. Income and Expenditure statement filed before us does not indicate the spending of the same for the objects narrated by the DIT (E). In that case, we agree with the proposition that the it is a premature to deny the registration of the Trust u/s 12AA of the Act. The judgment of the Hon'ble Supreme Court cited above, which is relied upon by the DIT (E) belong to the period prior to the amendment brought in to section 2(15) of the Act. The same was discussed in detail by an order of the Tribunal in the case of *Samaria Charitable Trust v. DIT (E)* vide ITA No.7101/M/2012 in the context of another coordinate Bench decision in the case of *M. Star Charitable Society v. CIT* [\[2013\] 142 ITD 153.](#) In these decisions, there is a detailed discussion regarding the meaning of "education" in the context of "object of providing coaching classes". Providing tutorial or coaching classes to the working students does not amount to commercial activity. "Education" is a broad and generic term and the same should be understood in the context of the educational objects of the Trust. In the said orders of the Tribunal, there is a discussion about the non-rejection of the request for registration before the Trust really takes off. Substantively, the conclusion has given in para 11 of the said order of the Tribunal in the case of *Samaria Charitable Trust (supra)*, which reads as under:

"11. To conclude, we have hitherto discussed the (i) existing provisions relating to the 'charitable purposes'; (ii) analysed the educational object of the assessee in general and the object of conducting of 'tutorial or coaching' as an ancillary or included object of the trust; (iii) judgmental law on the meaning of the expression 'education' and the activities of a conducting the coaching centre/classes etc. It is noted that in the context of the provisions of section 2(15) of the Act, the expression 'education' should be understood as formal education by way of formal school or colleges or universities etc. The 'commercial centres'

are not be treated on par with such formally established educational methods/systems. We have also analysed as to how the amended provisions of the second proviso to section 2(15) of the Act were not considered in the said judgment and how the amended provisions differ substantially. These provision in present form accommodate commercial education if the aggregate of the receipts is less than Rs 25 lakhs. This makes lot of difference to the present assessee, who is make a beginning in translating the objects into reality. The trust, which is instituted vide the Trust Deed dated 29.12.2011 and recognized by the Charity Commissioner in March 2012, seeks registration u/s 12AA of the IT Act vide its application 21.3.2012, is yet to raise funds from the donors and therefore, yet to establish the requisite infrastructure ie construction of the school/college buildings, recruiting of the teaching personnel etc to be in tune with the educational objects of the trust. DIT(E) denied registration sole on the ground of extended and inclusive object of "tutorial or coaching classes". Therefore, in principle, the said denial of registration at this phase of the trust activities is not proper. Further, it is undisputed that the "education" should refers to a formal education by virtue of schools, colleges, universities and it is the core object of the assessee as seen from Clause 7 of the trust deed. Education has different shades and all kinds of education are not covered by the provisions of section 2(15) of the Act. The education for the purpose of earning profits, imparting knowledge, which is required for getting employment are not covered by the said provisions. Applying the said principles to the facts of the present case, we find that the assessee is yet to commence its activities. As on date, there is neither institution nor any coaching classes conducted by the assessee as stated by the Managing Trustee at Bar. These facts were not properly communicated by the assessee to the DIT (E), probably for this purpose, the assessee wanted an opportunity of being heard by the DIT (E) before the crucial decision was taken against the assessee ie by the rejection of registration u/s 12AA of the Act. Further, we do not have details of financial statements to know the donations pattern, fee structures, quantity of receipts if any, whether any institutions have commenced or not, any establishments are made, any schools are running etc. The application of the assessee and the order of DIT (E) are deficient to that extent. Therefore, we are of the opinion that the matter should re-visit the DIT (E) for examining the basic facts narrated above. Accordingly, the grounds raised before us in the appeal are set aside to the DIT (E) for examining the issues afresh in the light of the above discussion and the law in force."

**8.** Considering the above, we are of the opinion that the DIT (E) should examine the facts of the instant case once again in the light of the discussion given above and decide the issue afresh after granting a reasonable opportunity of being heard to the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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