

Trust intending to carry out charitable activities outside India entitled to sec. 12AA registration

Summary – The Hyderabad ITAT in a recent case of Foundation for Indo-German Studies., (the Assessee) held that Section 12AA refers to application of income for charitable purpose, not to activities whether in India or outside; institution carrying out charitable or religious activities outside India, would be registered under section 12AA

Facts

- The assessee an institution formed *vide* a trust deed. It sought registration under section 12AA.
- The DIT was of the opinion that assessee trust had not carried on charitable activity as per its objects. He noticed that the trust intended to carry out activities outside India. Further, the trust was stated to be irrevocable trust under one clause whereas another clause empowered the trustees to dissolve the trust. There was also no clarity in the trust deed about maximum number of trustees and foreign nationals were made members of the trust.
- On appeal to the Tribunal:

Held

- As can be seen from the order of the DIT, there is no comment/objection about the objects of the assessee-trust. Section 12AA prescribes the procedure of registration. Reading the section, it becomes clear that after the application is made, the officer has to call for documents or information from the trust to satisfy himself about the genuineness of the activities of the trust and objects of the trust. He can make further enquiry as he may deem it necessary. It is only after satisfying himself about the objects of the trust and genuineness of its activities that he has to pass an order in writing registering the trust or institution. This section does not refer to any other aspects which the DIT has undertaken in his order. Since there is no comment about the objects of the trust being not charitable in nature. It is presumed that DIT has no objection to the objects of the trust.
- Coming to the genuineness of the trust, there is no doubt that the trust is genuinely constituted and is active. If there are any violations in fulfilling the objects for which it is constituted, it is the Assessing Officer who has to examine while allowing the benefit under sections 11 and 12. While registration in accordance with the provisions of section 12AA is a condition precedent for claiming the benefits under sections 11 and 12, registration as per section 12AA by itself will not automatically confer the benefits of sections 11 and 12 of a trust, but the trust will get the benefit only on complying with the requirements of sections 11 & 12, which compliance can be examined by the assessing authority while processing the return filed by the trust. So long as the trust has objects which are charitable in nature, it satisfies for registration under section 12AA, unless there is a

finding that the trust is not genuine. Even if the objects are mixed in the sense, there are charitable and religious objects, still the trust is entitled for registration as held by various decisions of the judicial authorities. Here, there is no objection on the reason that the trust is a religious trust. So long as the objects are charitable in nature, assessee deserves registration under section 12AA. DIT has taken extraneous considerations in refusing to register the trust. There is no finding of any force in the arguments of the DIT considered in the order for rejection of the registration. Just because the reply is not given as desired by the DIT, it does not mean that the trust is not genuine. Moreover, various clauses of the trust operate independently and there is no confusion as made out by the DIT. In fact the DIT himself got confused in understanding the irrevocability of the trust and power of the trustees in dissolving the trust while administering the same. With reference to number of trustees also there is no confusion as trustees are empowered to enhance the initially constituted trust members to a maximum number of 18, which does not mean that there is no clarity at any given point of time. There can only be trustees as specified in the original trust deed or as enhanced by the Board keeping in view of the requirements. With reference to the foreign national being member of the trust, the revenue did not specify any of the law under which it is prohibited. So long as the trust objects are charitable in nature and trust activities/benefits claimed are within India, the trust can get the registration.

- In the case of *M.K. Nambyar Saarf Law Charitable Trust v. Union of India* [2004] 269 ITR 556/140 Taxman 616 (Delhi) it was held that section 12AA does not refer to the activities in India or outside India. It refers to application of income for charitable or religious purposes in India as also with direction or order of the Board for application of income outside India.
- Not only that the Co-ordinate Bench in the Bench in the case of *Manhattan Foundation v. CIT (Exemptions)* [IT Appeal No. 1353 (Hyd.) of 2015].
- In the case of *Critical Art & Media Practices v. DIT (Exemption)* [2015] 153 ITD 644/56 taxmann.com 118 (Mum.) had held that if the activities otherwise are charitable and fall in the definition of charitable purposes as defined under section 2(15) of the Act and further the property is held wholly and exclusively under trust for charitable and religious purposes as provided under section 11 of the Act, then such a trust subject to the fulfilment of other conditions as laid down by the different provisions of the Act, will be entitled to registration and it cannot be denied registration because of the fact that the activities of the trust are extended outside India. However, while computing the income as per the provisions of section 11 of the Act, the income which is applied on such an activities in India only, will be eligible 'for exemption and subject to the provisions of section 11(1)(c) wherein the income applied outside India is also eligible for exemption, if the activities tend to promote the international welfare in which India is interested and the approval has been granted by the Board for such application of income.
- Considering the principles laid down on the subject and the fact that assessee's objects are charitable in nature, the DIT is directed to grant registration under section 12AA. The Assessing

Officer is empowered to examine the accounts while granting benefits under sections 11 and 12. With these directions, DIT is directed to grant registration under section 12AA to the assessee-trust.