

## **Trust to be taxed at maximum marginal rate if it wasn't registered u/s 12A: ITAT**

**Summary – The Bangalore ITAT in a recent case of Basil Mendes Memorial Educational & Charitable Trust., (the Assessee) held that where assessee-trust was not registered under sec. 12A and its trustees were filing their own returns also showing taxable income, AO rightly concluded that assessee-trust was to be treated as an AOP and its income would be brought to tax at Maximum Marginal rate as per provisions of section 164(1)**

### **Facts**

- For relevant year, the assessee filed return of income in ITR-5 claiming the status of AOP. The assessee thus declared its income under head 'Profits and gains of business or profession'.
- In course of assessment, the Assessing Officer opined that since status of assessee was AOP, income would be brought to tax at Maximum Marginal Rate by applying provisions of section 164(1).
- Subsequently, the assessee filed a rectification of application under section 154 contending that it was a 'Public Charitable Trust' and not a 'Private Trust' and the rate applicable was normal tax rates with basic exemption.
- The Assessing Officer rejected rectification application.
- The Commissioner (Appeals) upheld the order of the Assessing Officer.
- The assessee filed instant appeal submitting that it being a public charitable trust, provisions of section 164(1) would not apply to its case. The assessee further submitted that provisions of section 167B would also not be applicable in respect of assessee as it was a charitable trust.

### **Held**

- On going through the assessee's application for rectification under section 154, it is found that this is the claim of the assessee that the assessee is a public charitable trust and not a private trust and therefore, maximum marginal rate is not applicable in the case of the assessee. As per the order passed by the Assessing Officer under section 154, it is seen that the Assessing Officer has stated in this order that to rectify as per the assessee's claim, the assessee was requested to furnish the copy of 12A certificate and details of trustees with their PAN and income details and thereafter, the Assessing Officer has stated in the said order that these details have not been submitted by the assessee till the order was passed by him. He also noted that on verification of 12A registration in Office of the Commissioner, it is confirmed that the assessee is not registered under section 12A. He further noted that from the verification of the trustee's assessment details, it is seen that the trustees are having PAN and filing their income tax returns and are also having taxable income. The Assessing Officer has also stated in his order passed by him under section 154 that further verification of the return of income of the assessee shows that the assessee has declared the income under the head 'Profits & Gains from Business & Profession' and the return of income was

filed in ITR 5 which is meant for assessee declaring income under the head "Income from Business & Profession". The Assessing Officer has also noted that the assessee has claimed status of AOP and not of trust in the return of income filed by the assessee for the present year. The Assessing Officer has concluded on this basis that as the status of assessee is treated as 'AOP' for tax purpose, the section applicable is section 164(1) and therefore, maximum marginal rate of tax is proper in the present case. This is admitted position that section 167B is applicable in case of AOP and BOI because this is the stand taken by the assessee before Commissioner (Appeals).

- This is the second argument of assessee that section 167B is not applicable in respect of charitable trust/institutions. But there is no merit in this contention of assessee because there is no mention in the provisions of section 167B as per which charitable trust, institutions were excluded from its applicability. As per the explanation to section 167B, it is provided that for the purpose of this section, if the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown and if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or BOI or at any time thereafter, MMR is applicable. In the present case, it is stated as per clause 3(h) of the trust deed, the funds and income of the Trust shall be solely utilized for the achievement of the objects of the trust but as per para no. 12 of the same trust deed, the trust shall be irrevocable but the trustees at any time in their discretion and for the better fulfilment of the objects of the trust may dissolve the trust and distribute the funds and properties of the trust to such institution or persons, as they may decide and approved by the objects of the trust.
- When both these clauses are read simultaneously, it comes out that during the lifetime of assessee trust, the income/funds of the trust could not be utilized by the trustees but if at any point of time, the trustees decided to dissolve the trust, the funds and properties of the trust could be distributed to any person as the trustees might decide and therefore, it could not be said that the trust fund cannot be used by the trustees at all. Under these facts, the share of the trustees in assessee trust fund was not known and it was indeterminate and therefore, there was no infirmity in the orders of the lower authorities as per which, they applied provisions of section 164(1) of IT Act. Hence the order of Commissioner (Appeals) on this issue cannot be interfered with.
- In the result, the appeal filed by the assessee is dismissed.