

No Sec. 12A registration as trust intended to distribute properties acquired from Grants amongst private members

Summary – The Chandigarh ITAT in a recent case of Sri Dashmesh Academy Trust., (the Assessee) held that where Commissioner (Exemptions) had a valid and reasonable apprehension that in case of dissolution, properties of trust created and constituted out of 100 per cent grants given by Government, may be distributed amongst private individual members of trust, application of trust for registration under section 12A had been rightly rejected

Facts

- The assessee was an ongoing entity and had been in operation for nearly 40 years. The aims and objects of the assessee-society were to set up and carry on the administration and management of an academic institution at Anandpur sahib to be known as 'Sri Dashmesh Academy' for imparting education of high standard in general and training for administrative service and armed forces in particular to the children of persons domiciled in Punjab
- The assessee-society filed application before the Commissioner (Exemptions) for registration under section 12A so as to be able to claim exemption under section 11.
- The Commissioner (Exemptions) observed that in absence of dissolution clause, there was a reasonable presumption that the assets and liability of society will be distributed amongst members of society in case society stops its operations or is dissolved. Thus, because of the absence of the dissolution clause in the Trust deed and finding the explanation from the assessee society to the queries raised, as not plausible, dismissed the application of the appellant for registration under section 12.
- On appeal to the Tribunal the assessee submitted that dissolution clause having now been added in the 'MOA' , the assessee Trust be granted registration under section 12A.

Held

- A perusal of the amended Memorandum of Association reveals that *vide* clause 4(a) of the MoA, whereby, four persons have been decided to be admitted as members of the trust and who have put their signatures against their names conveying their consent for admitting them to membership of Trust , are themselves signatory of the said amended resolution. The fact on the file reveals that the said resolution is not a valid resolution as the persons who were proposed to be admitted as members of the trust are themselves signatory of the amended 'MoA' making whole of the documents as invalid and illegal.
- Now coming to the original Memorandum of Association (MoA) dated 17-2-1978, clause 4 (e) of the 'MoA', speaks about the first members of the Governing Body to whom the management of the

affairs of the trust is entrusted. Along with the said 'MoA' of 1978, there is attached amended Regulation.

- It is pertinent to mention that the said clause 4 (e) till date has not been amended as the similar clause 4(e) has also been found mentioned in the alleged amended 'MoA', as reproduced in earlier para of this order. A perusal of the above clause reveals that the Chief Minister Punjab is the ex officio Chairman of the Governing Body, which means that the Chairman of the Governing Body / Board of Governors has to be a person who is the serving / present Chief Minister of Punjab and not to be a private person in his individual name or capacity.
- Even as per amended regulation attached with the original Memorandum of Association 1978, it has been resolved that the management of the affairs of 'Sri Dashmesh Academy Trust' shall be entrusted to Board of Governors whose Chairman will be the Chief Minister of Punjab and further that other ex officio officers of the Government as mentioned above, will also be part of the Board of Governors. However, a perusal of the letter dated 5-2-2018 addressed to the Registrar of Firms and Societies, Punjab (as reproduced in earlier para) reveals that the last Meeting of the Board of Governors was held on 15-5-2017 and that the term of Board of Governors was not extended further by Members of 'Sri Dashmesh Academy Trust', which means that the members of the assessee trust have conveniently stepped back and stopped entrusting the management affairs of the trust to the Governing body as against object clause mentioned in the original 'MoA' as well as alleged amended 'MoA' of the year 2017 attached with the aforesaid letter dated 5-2-2018. It is pertinent to mention here that the date on which the said amended 'MoA' was passed, as is revealed from the 'MoA', is mentioned as 'on the day of August in the year 2017 at Chandigarh'. The relevant date only finds mention in the letter dated 5-2-2017 addressed to the Registrar of Firms and Societies i.e. dated 17-7-2017. Even the month mentioned in the letter is July 2017, whereas, the month mentioned in 'MoA' is that of August 2017. Why the members have not mentioned the date while signing and adopting the amended 'MoA' has remained unexplained. It is pertinent to mention here that though the assessee trust (in its letter dated 12-6-2017) addressed to the ACIT (Exemptions) has claimed that it was formed by Ministry of Defence and Government of Punjab and further that it owned land and building allotted by the Government of Punjab/constructed from the 100 per cent finances obtained from the Government of Punjab and Ministry of Defence, Government of India. Even it has been further mentioned that the corpus fund was contributed initially at the time of incorporation by the Punjab Government to the tune of Rs. 2 crores and by the Punjab Defence and Security Relief Fund Committee of Rs. 70 lakhs. It has been further claimed that the trust has been 100 per cent financed by the Government. Further , in the letter dated 16-2-2017 addressed to the ACIT (Exemptions) it has been further claimed by the assessee society that the entire capital cost (100 per cent) of the school / academy met by the Ministry of Defence and the Government of Punjab and further they send regularly the grants for all specific needs to meet capital or revenue expenditure of the trust . That since the 'said trust is baby of the Central and State Government' and most of the governing body members are ex officio members viz. Chief

Ministers of Punjab, one Member of Punjab Defence and Security Committee, three Administrative Secretaries of Punjab Government (Education, Finance & Defence) *etc*, and, therefore, it has been claimed that the trust is being run by the Government and that in case of dissolution, nobody shall draw any share or benefit from the Trust /society.

- However , in the letter dated 5-2-2018 addressed to the Registrar of Firms and Societies, it has been mentioned that the last meeting of the Board of Governors was held on 15-5-2007 and thereafter the term of Board of Governors was not extended further by the members of 'Sri Dashmesh Academy Trust'. The above contents of the letter dated 5-2-2018 reveals that there is no Board of Governors formed after 15-5-2007 and even the intimation regarding the above is given to the Registrar , Firms and Societies after 11 years *i.e. vide* letter dated 5-2-2018, only when the Trustees got awoken up to add the dissolution clause, when pointed out by the Commissioner (Exemptions) in the impugned order .The facts on the file clearly reveals that originally the trust was formed with 100 per cent aid and finances from the Government of Punjab as well as from the Union Government and that it was taken as a baby of the Government (as itself pleaded by the trust itself) and further that its management and affairs were supposed to be entrusted to the governing body, the chairman of which was supposed to be the Chief Minister of Punjab, apart from that, one member of Punjab Defence and Security Committee and other ex officio members who are government officials of high rank of Secretary to the government of Punjab like, three Administrative Secretaries of Punjab Government (Education, Finance & Defence) *etc*. It had always been represented as a Government organization however, after accumulating land and building and funds from the State and Central Government , the members of the trust conveniently captured the control of the trust by not further extending the term of Board of Governors, clearly against the objects of 'MoA' of 1978 as well as the amended regulation attached with it and even against the alleged amended 'MoA' of 2017.
- It is pertinent to mention here that as on the date, Sardar Parkash Singh Badal is not the Chief Minister of Punjab. In fact Caption Amrinder Singh has assumed the office of Chief Minister of Punjab on 16-3-2017 and he is supposed to preside over the meeting of the Board of Governors. Further, as per clause 4(e) of the original' MoA' as well as amended 'MoA', the governing body to which management of the affairs of the trust are entrusted has to be constituted has to include one member to be nominated by Punjab Defence and Security Relief Fund Committee, three Administrative Secretaries of Punjab Government (Education, Finance and Defence Services Welfare Deptt.) as ex officio Members, two eminent educationists to be nominated by the Trust besides Secretary of the Trust and the Director of the Academy. However, a perusal of letter dated 5-2-2018 reveals that Members of the Trust have conveniently by not further extending the term of Board of Governors have entrusted unto themselves the control and management of the Trust .
- When the aforesaid 'MoA' and letter dated 5-2-2018 are read together with the 'Original MoA' of the trust, the facts speak that the trust has been supposed to be governed by the officials of the Government under the Chairmanship of Chief Minister of Punjab as pleaded by the assessee-society,

itself, before the Commissioner (Exemptions) but has now given its control to the private persons who are no more in the Government. This fact has been conveniently concealed from the Commissioner (Exemptions) that the term of Board of Governors has not been extended since 15-5-2007 and that after year 2007, there is no control of the Government or any official of the Government on the trust after the year 2007 and that the Members of the trust, who are private persons, themselves have established control over the Trust . A totally false and wrong pleadings have been made by the assessee Trust before the Income Tax Authorities that it is a Government controlled organization . The facts on the file speaks that the trustees in violation of the 'MoA' and 'Regulations' of the trust have shifted control & management of the Trust from the state and central government officials unto themselves. Under the circumstances, the Commissioner (Exemptions) had a valid and reasonable apprehension that in case of dissolution, the properties of the trust, which admittedly have been created and constituted out of 100 per cent grants given by the State and Central Government and have now been attempted to be shifted in the hands of the private management, may be distributed amongst the private individual members of the trust. The above facts and circumstances also cast doubt about the functioning and genuineness of the objects of the trust. In view of this, there is no infirmity in the order of the Commissioner (Exemptions) in rejecting the application of the trust for registration under section 12A.

- Further, it is noted here that identical contentions as were raised by the Trust before the lower authorities that the Trust is controlled and managed by the Government or that its funds and properties otherwise belong to the Government, have been raised by the assessee Trust here also and further that even otherwise, dissolution clause has been added *vide* the amended resolution. This is a clear and visible attempt on behalf of the trust to mislead this Bench of the Tribunal by way of concealing the real and true facts that the Members of the Trust have, by not extending the term of Board of Governors, conveniently entrusted unto themselves the control and management of the Trust. Had the case of the Trust been not carefully examined, these important and relevant facts would have remained wrapped under the carpet, and the Trust could have managed to get the relief of exemption from taxation by presenting wrong and false facts. This is a clear case of an attempt to play fraud not only with the lower Income Tax authorities, but also upon instant Tribunal , which is deemed to be a Civil Court for the purpose of discharging its functions and the proceedings before this Appellate Tribunal are deemed to be judicial proceedings within the meaning of sections 193 and 228 for the purpose of section 196 of Indian Penal Code. In view of this, any attempt to play fraud on the Court by way of conveying wrong and false facts and pleadings is required to be strictly dealt with. Hence, the appeal of the assessee is hereby dismissed.