

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 166 of 2017

- Commissioner Of Income Tax Central Revenue Building, Civil Lines, Raipur Chhattisgarh.

---- Petitioner

Versus

- Rishabh Foundation Trust C/o Basant Kumar Jain, D- 277/278, Tagore Nagar, Raipur Chhattisgarh.

---- Respondent

For Petitioner	Ms Naushina Afrin Ali, Advocate.
For Respondent	None.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

by Hon'ble Prashant Kumar Mishra J.

06.02.2018

1. Heard.
2. Revenue has preferred this appeal under Section 260-A of the Income Tax Act, 1961 (henceforth 'the Act, 1961') assailing the legality and validity of the order passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur, whereby the appeal preferred by the respondent has been allowed and consequently the respondent has been directed to be registered under Section 12A of the Act, 1961 for the applicability of Sections 11 and 12 thereof.

3. The short question arising in this appeal is whether the Appellate Tribunal has rightly allowed the respondent's appeal to grant registration under Section 12A of the Act despite the fact that before the Commissioner of Income Tax (CIT), the respondent has failed to produce the details of donation received in FY 2012-2013 and from 01.04.2013 till the date of order; details of charitable activities done in FY 2012/2013 and; details of activities done from 01.04.2013 till the date of order.
4. A perusal of the record would indicate that the respondent moved an application for grant of approval under Section 12A of the Act, 1961 on 29.10.2013. On scrutiny of the application and for its further processing the CIT issued notice to the respondent to produce documents concerning the details of donation received in FY 2012-2013 and from 01.04.2013 till the date of order; details of charitable activities done in FY 2012/2013 and; details of activities done from 01.04.2013 till the date of order.
5. The trust failed to submit the documents sought for by the CIT, therefore, the CIT proceeded to examine the application on the basis of the information supplied in the application for registration. The CIT eventually rejected the application under Section 12A of the Act for the reason that the trust has not submitted the details as called for under the notice. Thus, impliedly finding that in the absence of the details of donation,

details of charitable activities, the registration application does not deserve to be approved.

6. The Appellate Tribunal has allowed the appeal on the ground that it was not open to the CIT to demand the details of donations and details of charitable activities because at the stage of Section 12A the CIT is not required to examine the application of income or donation or carrying on any charitable activity by the trust.
7. It is argued that even if the details of donation or the income is not to be seen at this stage, the details of charitable activity was germane for the issue because such details would furnish information about the charities extended by the trust. It is further argued that such documents were absolutely relevant to determine as to whether the application is genuinely filed or the object of the trust is infact charitable or not. The Tribunal has thus not appreciated the issue vis-a-vis the requirement under Section 12A of the Act, 1961.
8. Sections 11 and 12 of the Act, 1961 provides for exemption of income of charitable trust for the purpose of levy of income tax. Section 12A makes provision for conditions for applicability of Sections 11 and 12 further prescribing the mode and manner in which such application for registration can be moved. The registration under Section 12A is a pre-condition for availing all the benefit under Sections 11 and 12. The application for registration under Section 12A has to be made in Form No.10A

of the Act before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later, and such trust or institution is registered under Section 12AA.

9. Indisputably, the respondent trust has moved an application before the expiry of one year from the date of its creation. In course of processing of the application, the trust was noticed to submit the details of donation and details of charitable activities. While rejecting the application the CIT has opined that the trust having failed to submit the required information, it is not entitled for registration.

10. In the order passed by the CIT, there is no reference to the objects of the trust. The rejection is only on the ground of non-furnishing of details of donation. However, the Appellate Tribunal has referred in paragraph 4 of the impugned order, the details of aims and objects of the trust for which the trust is established. The same is reproduced hereunder for ready reference:

- “1. To offer monetary assistance/grant for its utilization for the welfare of general public like providing education to the poor and deserving people, spreading awareness among people for the advancement of education, health and hygiene.
2. To establish and promote social, spiritual, health and education tendency among people.

3. To provide help and relief of the people suffering from unforeseen situations during emergency.
4. To establish and promote the tendency of human welfare among people.
5. To work for promotion and development of children, women and youth.
6. To establish, maintain and promote school, hospital, museum, medical and education institutions.
7. To provide monetary assistance/grant, support and care of aged orphans, physically and mentally challenge children and take care of their daily needs.
8. To organize health checkup camps for economically underprivileged and backward people and providing them financial and other help for medical treatments.
9. To establish and run medical institution, education institution or building devoted to religious or charitable purposes (Dharamshala).
10. To provide financial and other support and to organize workshops for poverty alleviation, skill development, employment opportunities for poor and underprivileged people and to help them by distributing cloth, medicine etc..
11. To provide financial support to other trusts, organizations which are running with the same objects as of this trust.
12. Trustees are empowered to do all kinds of welfare work at their own discretion, subject to the object clause of this trust.

13. To grant scholarships, stipends, prizes, rewards, allowances or other financial support to talented or poor students.

14. To provide donation of temples and other religious institutions, which are working with the same object as of this trust but trust will not organize any function of religious nature.”

11. The provision contained under Section 12A nowhere empowers the CIT to assess the objects vis-a-vis the donation received in the first year of its establishment. In a given case it may happen that the trust is not able to commence the charitable activities for various reasons, however, that may not be conclusive of the fact that the trust does not intend to carry on the aims and objects for which it is established. If the aims and objects clearly project the activities of the trust to be charitable in nature, it is not the stage for lifting the veil and assessing whether those activities are actually carried on at the first year of establishment of the trust.

12. In the matters of **Commissioner of Income Tax vs Vijay Vargiya Vani Charitable Trust**¹ and **Fifth Generation Education vs Commissioner Income Tax**², it is held that at the stage of Section 12A, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of Section 12A read with Rule 17A and whether Form No.10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this Stage, it is not proper to examine the application of income.

¹ (2014) 271 CTR 0698 (Raj)

² (1990) 185 ITR 634 All

13. In the present case, the order passed by the Tribunal has discussed the matter in detail and has assigned justifiable reason as to how the CIT has failed to exercise jurisdiction vested in it at the stage of examining the application under Section 12A. As earlier discussed, the list of donations and the list of charitable activities are not to be looked into at this stage.

14. Accordingly, we are satisfied that the Appellate Tribunal has rightly interfered with the order passed by the CIT. No substantial question of law arises for determination in view of the plain language of Section 12A of the Act, 1961. The appeal being sans substance, it deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Akhilesh