IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA Nos. 20 and 19 of 2019

Evangelical Missionary Society	....	***Appellant***
Mission House, Baripada		

M/s. J. M. Pattanaik and associates, Advocates

-versus-

The Principal Chief Commissioner of Income Tax, Odisha Region Bhubaneswar and others	....	***Respondents***

Mr. R. Chimanka, Senior Standing Counsel assisted by
Mr. A. Kedia, Junior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
15.12.2022

Order No.

24. 1. On 18th December 2019, while admitting both these appeals, the following question was framed for consideration by this Court:

> "Whether institution of a trust in India for grant of registration u/s.12AA of the Income Tax Act is a precondition when the institution is an income tax assessee and filing its return which has been accepted by the Department without any demur?"

2. It is pointed out by the Appellant that in respect of the "Indian Evangelical Mission" Bangalore, which is similarly placed as the present Appellant, it has been granted registration under Section

12AA of the Income Tax Act, 1961 (Act) although it is not registered as a turst in India and is not governed by the Indian Law.

3. The above fact has not been disputed by Mr. Radheshyam Chimanka, learned Senior Standing Counsel for the Revenue Department. It appears that the Tribunal did not notice the above fact, but proceeded to uphold the denial of the registration under Section 12AA of the Act on the ground that the Assessee was not a trust registered in India and had income from sale of literature as well as sale of agricultural products and that the these activities are accordingly in the nature of "trade, commerce or business."

4. Learned counsel for the Appellant points out that the main activity of the Appellant is to look after people affected by leprosy and incidental to that main activity it might earn some income from sale of literature and agricultural products.

5. In the considered view of the Court, this could hardly be the ground on which the Appellant's request for registration under Section 12AA of the Act could have been refused. Admittedly the Appellant is filing its returns under the Act and is being regularly assessed all these years without any objection being raised by the Department.

6. For the aforementioned reasons, the question framed is answered in the negative by holding that it is not necessary for the Appellant-Assessee to be a trust registered in India for the purposes of grant of

registration under Section 12AA of the Act particularly when it is an income tax Assessee and is filing its return, which have been accepted by the Department without demur. The impugned order of the Tribunal and the corresponding order of the CIT in rejecting application of the Appellant under Section 12AA of the Act are hereby set aside.

7. The necessary orders granting the Appellant-Assessee the registration be issued within a period of eight weeks from today.

8. The appeals are disposed of in the above terms.

9. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. K. Guin