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IN THE INCOMETAX APPELATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI D.R.SINGH, JUDICIAL MEMBER  
& SHRI G.S. PANNU, ACCOUNTANT MEMBER

**ITA No. 905/Del/2002**

**Assessment Year : --**

Shri Sain Ji Dharmarth Trust,  
17-R, Model Town,  
Sonepat (Haryana).

Commissioner of Income Tax,  
Aayakar Bhawan,  
Opp, Mansarover Park,  
Rohtak.

(Appellant)

(Respondent)

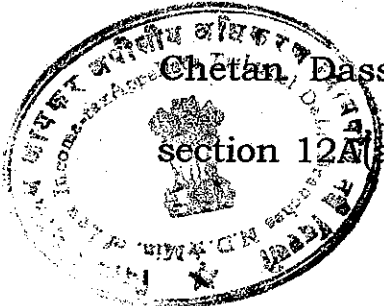
Appellant By : Shri Ved Jain, CA  
Respondent By : Shri Avinash Mishra, Sr. DR

**ORDER**

**PER D.R.SINGH, JM:**

The assessee has filed this appeal against the order of the Commissioner of Income Tax dated 28<sup>th</sup> January 2002 under Section 12AA of the Income Tax Act, 1961 [hereinafter referred to as the Act] rejecting the application of the assessee under Section 12A(1) of the Act in Form No. 10-A in July, 2001, for granting registration to the assessee trust.

2. Stated briefly, the facts relevant for the disposal of this appeal are that the assessee trust was created on 22.11.2001. Shri Chetan Dass on behalf of the trust filed an application under section 12A(a) of the Act in Form No. 10A in accordance with Rule



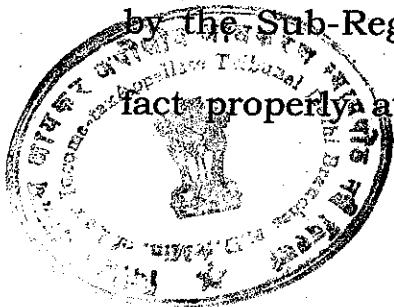
17A

17A of the Income Tax Rules in the month of July 2001. The assessee has enclosed a copy of the trust deed, which was duly certified and authenticated by the seal of the Sub-Registrar along with a copy of Annexure-A. Alongwith this application the assessee trust filed its Statement of Affairs, Balance Sheet and Income & Expenditure Statement Account for the year ending 31.3.2001. In Annexure-A, the organizational set-up, powers and duties of office bearers were defined.

3. The Commissioner declined to grant the registration to the trust; firstly on the reasoning that Annexure-A was not registered and authenticated by the Sub-registrar and so no reliance could be placed upon the aims and objects mentioned on the papers, which were submitted subsequently and which were not authenticated by Sub-Registrar, Sonapat, at the time of incorporation of certificate on 22.1.2001 and, therefore, the nature of trust remains in determinative. In view of these facts, registration under section 12AA could not be allowed; secondly on the reasoning that though this trust has been created to fulfill the wishes of Late Shri Ram Manohar Dass Ji as per his written will dated 22.11.2000 wherein it was mentioned that the trust will become the proprietor of all the moveable and immovable properties left by him and as per the cash

book a sum of Rs. 14,08,500/= has been found after the death of Shri Ram Manohar Dass Ji, which means that the cash and property and FDRs belonging to Shri Ram Manohar Dass Ji should have formed a part of the corpus of the trust where as <sup>as</sup> per the trust deed, only a sum of Rs. 5,000/= out of the funds left by him forms the part of the corpus of the trust; thirdly on the reasoning that the cash book maintained by the trust show receipts and payments w.e.f. 24.1.2000 and, therefore, audited accounts do not reflect the picture of receipts and payments w.e.f. 22.11.2000 i.e. the date of the last Will of Shri Ram Manohar Dasji, so according to him, to that extent, the conditions laid down in Rule 17A have not been satisfied and hence the application for registration of trust under Section 12A (a) of Income Tax Act was incomplete because the audited statements do not reflect the correct state of financial affairs of the trust.

4. Before us, firstly, the learned authorized representative for the assessee, produced the original trust deed, accompanied by Annexure-A to show that the observations of the Commissioner of Income Tax that Annexure-A was not registered and authenticated by the Sub-Registrar was incorrect, because this document is in fact properly authenticated and registered by the Sub-Registrar.



We have also shown this document to the learned Departmental Representative for the Revenue and on examining Annexure-A, he found these submissions of the learned authorized representative for the assessee to be correct and those of the Commissioner of Income-Tax to be wrong. Hence, we are of the opinion that the CIT in his order committed a grave error in not placing reliance on Annexure-A for considering the aims and objects of the trust for the purposes of granting registration under Section 12AA of the Act on the basis of factually incorrect observations. Consequently, his order in refusing to grant registration to the assessee under Section 12AA of the Act without considering Annexure-A is not in accordance with law and so the order of the Commissioner of Income Tax to this extent is quashed.

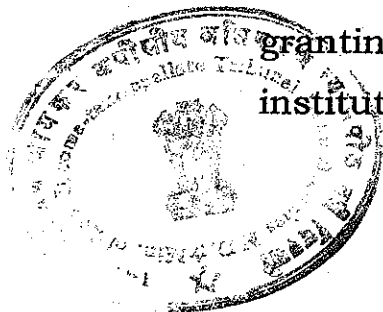
5. Now, we shall consider the other two objections of Commissioner of Income Tax for not granting the registration to the assessee on its application moved under Section 12(A)(a) of the Act wherein he observed that the compliance of Rule 17A of Income Tax Rules have not been done by the assessee and that the application of registration of trust under Section 12A(a) of the Income Tax Act was incomplete.

In order to appreciate the validity of this objection of learned Commissioner of Income Tax we have to go through the scope and effect of the newly inserted section 12AA (w.e.f. 1.4.1997) by referring to the Departmental Circular and the relevant provisions of Section 12AA (1) of the Income Tax as well as Rule 17A of Income Tax Rules.

The scope and effect of the newly inserted Section 12AA, as well as the amended Section 12A (w.e.f. 1.4.1997), by the Finance (No. 2) 1996, have been elaborated in the following portion of the Departmental Circular No. 762 dated 18th February 1998 as follows:

*“Registration of charitable and religious trusts - 19.1*

Under the existing provision of the Income-tax Act, exemption from income-tax in respect of the income of a charitable or religious trust or institution is available only if the conditions specified in that section are satisfied. One of these conditions is that the person in receipt of the income shall make an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Chief Commissioner or the Commissioner of Income-tax within the specified time. However, there was no provision in the Income-tax Act for processing of such an application and granting or refusal of registration to the concerned trust or institution.



**19.2** Hence the Finance (No.2) Act, 1996, now provides for a procedure to be followed for grant of registration to a trust or institution. According to this procedure, the Chief Commissioner or commissioner shall call for documents and information and conduct enquiries to satisfy about the genuineness of the trust or institution. After he is satisfied about the charitable or religious nature of the objects and genuineness of the activities of the trust or institution, he will pass an order granting registration. If he is not so satisfied, he will pass an order refusing registration. However, an opportunity of being heard shall have to be provided to the applicant before an order of refusal to grant registration is passed by the Chief Commissioner or the Commissioner. The reasons for refusal of registration shall also have to be mentioned in that order. The order granting or refusing registration has to be passed within six months from the end of the month in which the application for registration is received by the Chief Commissioner or the Commissioner and a copy of such order, shall be sent to the applicant.”

On reading Section 12AA we find that under Clause (a) of Section 12AA(1), the Chief Commissioner or Commissioner has been empowered, on receipt of an application for registration of a trust or institution made under section 12A(a) to –

- call for such documents or information from the trust or institution as he thinks necessary in order to satisfy

himself about the genuineness of activities of the trust or institution.

Further, such authority has also been empowered to make such inquiries, as he may deem necessary in this behalf.

As per Clause (b) of Section 12AA(1), after the authority concerned is satisfied about the objects of the trust or institution and the genuineness of its activities, he shall pass an order in writing granting registration to the trust or institution.

However, if such authority is not so satisfied, he shall pass an order in writing refusing registration to the trust or institution.

Under Rule 17A of Income Tax Rules, an application under clause (a) of Section 12A for registration of a charitable or religious trust or institution shall be made in duplicate in Form No. 10A and shall be accompanied by the instrument in original, together with one copy thereof and in case the instrument or order in original cannot conveniently be produced, it shall be open to the Chief Commissioner or Commissioner to accept a certified copy in lieu of the original where the trust is created, or the institution is established under an instrument. Further, where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made,



two copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up.

6. We have considered the rival submissions of both the parties, perused the records and carefully gone through the orders of the tax authorities below.

7. From the combined reading of the amended provisions, as reproduced hereinabove in this order by us, we find that while disposing of an application moved by the assessee for registration as charitable or religious trust the Commissioner is only required to examine from the application filed by the assessee alongwith the documents whether the application is made in accordance with the requirements of Section 12AA read with Rule 17A of Income Tax Rules and whether the Form No. 10A has been properly filed by the assessee or not. In the instant case, the Commissioner<sup>4</sup> has not pointed out any defect in the order to indicate that the requirements of Section 12AA read with Rule 17A and the requirement of proper filing of Form No. 10A has not been met by the assessee. It is also important to mention here that while granting or refusing the registration to the trust the Commissioner



was required to examine whether the objects of the trust were for charitable purposes or a charitable institution or whether the activities of the trust or institution were genuine. For such purpose the Commissioner could have examined the documents or information supplied by the assessee alongwith the application or could have called such documents or information from the trust or institution as he thought necessary to satisfy himself regarding the objects and genuineness of the activities of the trust or the institution. In the instant case none of the above-mentioned aspects had been considered by the Commissioner while refusing the registration to the assessee by rejecting the application. From the reading of the relevant provisions we are further of the opinion that at the stage of granting or refusing the registration to the assessee, the Income Tax Commissioner is not required to examine as to what amount should form the corpus of the trust and as to what amount should appear in the balance sheet of the assessee and in what manner the accounts relating to period prior and post constitution of the trust should be maintained and filed before the Commissioner because the documents filed by the assessee in accordance with Section 12AA read with Rule 17A are merely required to be looked into by the CIT merely with a purpose of

satisfying himself as to whether the objects and genuineness of the activities of the trust are charitable or religious for which the application under section 12A(a) of Income Tax Act has been filed by the assessee for the registration of the trust.

8. In our opinion in the instant case the documents filed before the CIT, (copy of which has also been placed on record at Paper Book – Page 1-33 i.e. copy of audit report for assessment year 2001-02, Income and Expenditure Account and Statement of Affairs as on 31.3.2001 and copy of Income & Expenditure Account and Balance Sheet as on 21.11.2000, as well as, Income & Expenditure Account for the period from 22.11.2000 to 31.3.2001, copy of the Capital Account, copy of Trust Deed alongwith Annexure-A and copy of Will) were such documents which were sufficient enough to satisfy the Commissioner of Income Tax regarding the objects and genuineness of the activities of the assessee trust for religious and charitable purposes but failure on the part of Commissioner of Income Tax in examining the documents has resulted into wrong refusal of the grant of registration to the assessee trust and the rejection of the application of the assessee moved under Section 12A(a) of Income Tax Act. Hence, for the reasons stated hereinabove we hold that

the Commissioner of Income Tax has wrongly rejected the application for registration of the trust under Section 12A(a) moved by the assessee and, therefore, the impugned order of CIT is hereby quashed and the CIT is hereby directed to reconsider the application filed by the assessee under section 12A(a) of the Act as per the observations made hereinabove in this order by affording reasonable opportunity of being heard to the assessee.

9. In the result the appeal filed by the assessee stands allowed for statistical purposes.

Pronounced in the Open Court on 27<sup>th</sup> Jan, 2016

*sd/-*  
[G.S. PANNU]  
ACCOUNTANT MEMBER

*sd/-*  
[D.R. SINGH]  
JUDICIAL MEMBER

HKS

Copy forwarded to:  
1. Assessee *By hand.*  
2. ITO  
3. CIT  
4. CIT (A)  
5. DR, ITAT

TRUE COPY



*[Signature]*  
By Order,  
Assistant Registrar,  
Deputy Registrar,  
Income Tax Tribunal, Delhi Bench  
जलसद सदस्य, नई दिल्ली  
& Delhi Bench, N. Delhi  
दिल्ली आयकर नई दिल्ली

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