Registration of Charitable Trusts.

Conditions For Registration U/s 12A

Analysis

- All Voluntary organisation, irrespective of whether a trust, society, company or AOP are required to get themselves registered with the CIT.

- Registration under the Act is a mandatory requirement to claim exemption from income tax.

Case law : CIT v. U.P. Forest Corpn. [1998] 230 ITR 945 (SC), New Life in Christ Evangelistic Association v. CIT [2000] 246 ITR 532 (Mad.)

Analysis

- Registration does not entitle organisation to claim exemption however it is a precondition for exemption.

Case law : M. Visvesvaraya Industrial Industrial Research and Development Centre v. ITAT. [2001] 251 ITR 852 (Bom.), New Life in Christ Evangelistic Association v. CIT [2000] 246 ITR 532 (Mad.)

- S.12(A)(a) requires the organisation to get itself registered.

- S.12A(b) requires the organisation to obtain an audit report, where the income of the organisation exceeds the maximum amount which is not chargeable to income tax in any previous year.

Procedure of Registration – S. 12AA.

Procedure for Applying for Registration.

- Application in Form 10A as per Rule 17 A of Income Tax Rules in duplicate.
- Original Instrument along with certified true copy under which it is created.
- In case of registered society, the registration certificate along with the objects and bye laws should be enclosed.
- In case of company, the Certificate of Incorporation and the MOA and AOA should be enclosed.
- Documents evidencing the creation of the trust/ institution, with one copy thereof.
- Two copies of statement of accounts of three previous years, where the Voluntary organisation was not in existence in any of three prior years, copies of the accounts of lesser numbers of years may be submitted.

Note : In case the original instrument is not available or cannot be conveniently produced then CIT may accept certified true copy of such documents and in case of oral trusts or trusts without any trust deed the applicant has to provide sufficient evidence of creation of trusts

Analysis - Documents

- The evidential documents could not be limited to documents which directly proved the creation of the trust but they would include all documents which provided a logical basis of inferring creation of the trust.

Case law : Laxminarayan Maharaj v. CIT [1984] 150 ITR 465 (MP).

- Where the charitable or religious trust have income from agriculture only, it does not require to get itself registered under the relevant provision of the Income Tax Act for claiming exemption.

Case law : Sri Thirukkarai Eswarar Temple Devastanam v. State of Tamil Nadu [1997] 234 ITR 120 (Mad.).

Analysis – Jurisdiction & Time Limit

- The application is to be submitted to CIT in whose jurisdiction the organisation is located , however in case of four Metropolitan cities of Kolkata, Chennai, Delhi and Mumbai, the applications are to be made to the Director of Income Tax (Exemption.).

- Time Limit : the application for registration should be made before expiry of one year from the date of creation of the trust. Charitable organisation which make a delayed application are allowed exemption with effect from 1st day of the financial year in which application is made, however in case of delayed application Commissioner of Income Tax may grant the registration since inception if he is satisfied in writing that the person in receipt of the income was prevented from making the application before the expiry of aforesaid period for sufficient reasons [Applicable for application made before 01/06/2007] .

Power of Condonation of Delay

Commissioner of Income tax has power to condone the delay in filling the application, where application is filed up to 01/06/2007, however power of commissioner to condone delay in filling of application and granting registration since inception has been removed by Finance Act 2007 in relation to applications being filed after 01/06/2007 and S. 12(2) is inserted which provides that a trust or institution will no longer be required to file an application for registration with in one year from the date of its creation or establishment. However in cases where application for registration is filed after 01/06/2007, registration u/s 12AA shall be granted from the assessment year immediately following the financial year in which such application is made.

Processing of Application

Analysis – Processing of Application

- On receipt of an application for registration the commissioner shall call for such documents and information as he thinks necessary to satisfy the genuineness of the organisation.

- Once the genuineness of the activities and creation is established then it is incumbent upon the authority to make an order in writing with in six months from the end of the month in which the application was made.

- By virtue of section 12AA, the procedure and the time limit for processing an application was provided. Now an application has to be processed within six months from the end of month in which the application is made In case the CIT failed to pass an order within 6 months, then it must be deemed to have been allowed.

Case law : Bhagwad Swarup Shri Shri Devraha Baba Memorial Shri Hari Parmarth Dham trust v. CIT [2007] 111 TTJ (Delhi) (SB) 424, question referred to special Bench whether in cases where CIT does not passes order refusing registration with in time limit specified, registration would be deemed to have been granted to the trust or institution automatically on expiry of the period specified in S. 12AA(2) of the Act?", Sahitya Sadawart Samiti v. CIT [2008] 23 SOT 49 (JP) (URO).

Analysis – Refusal of Application

- Commissioner is empowered to refuse the grant of registration however, before such refusal assessee should be granted an opportunity of being heard and order of refusal should be speaking order.
- Facts of refusal collected at the back of assessee should be confronted to assessee i.e. Report from Jurisdictional AO.

Case Law : Adarsha Vidhyanidhi Trust vs. CIT [2007] 292 ITR 0465 (Kerela)

- Remedy of Appeal is available in case of refusal to registration, Appeal May be filed before the Hon'ble Income Tax Appellate Tribunal.

Analysis – Application of income should not be considered.

- Commissioner while processing the application for granting registration should not go in to the details of application of the income but should rather see whether the objects of the trust are charitable and whether the Form No.10A has been properly filled up.

Case law : Fifth Generation Education Society V. CIT [1990] 185 ITR 634(All.), Modern Defence Shikshan Sansthan V. CIT [2007] 108 TTI (Jd.) 732, Mormugaon Port Trust Vs. Commissioner of Income-tax [2008] 301 ITR (A.T.) 380 (ITAT –Panji), Dream Land Educational Trust vs. Commissioner of Income Tax [2008] 166 Taxman 27 (Asr.) (Mag).

- Commencement of admissible activities is a precondition and only an intent to do charitable activities expressed in the deed or bye laws would not be enough to grant registration.

Case law : Self Employees Service Society v. CIT [2001] 247 ITR 18 (Ker.)

Analysis – Application of income should not be considered.

- While considering application for registration CIT may call for such documents as may be required, however while refusing application u/s 12A, *CIT has to examine only two Aspects* i.e. Genuineness of the activities of Trust / Institution and their objects, the commissioner cannot take shelter of any other outer source for refusing registration.

Case law : Shri Haridevji Gaushala Trust vs. CIT – I, [2008] 24 SOT 14 (ITAT – Agra), M.K. Nambyar Saare Law Charitable Trust Vs. Union of India (Delhi.) [2004] 269 ITR 0556.

Analysis – Application of income should not be considered.

- At the time of granting registration violation of S. 13 has not to be taken in to account.

Case law : Aggarwal Mitra Mandal Trust vs. Director of Income Tax (Exemption) (ITAT – Delhi), Modern Defence Shikshan Sansthan v. CIT [2007] 108 TTJ (Jodh) 732.

- At the time of granting Registeration, Commissioner is only required to examine from the application filed by the assessee with the documents whether the application is made in accordance with the requirements of S. 12AA read with rule 17A.

Case Law : Sh. Sain Ji Dharmarth Trust v. CIT [2006] 8 SOT 446 (Delhi), Malli Ram Charitable Trust Vs. CIT [2003] 260 ITR 0118 (ITAT – Amritsar), People Education and Economic Development Society (Peeds) vs. ITO [2008] 296 ITR 36 [ITAT – Chennai]

Other Miscellaneous Issues

SECTION 12AA which lays down the procedure for registration does not speak anywhere that the CIT while considering the application for registration shall also see that the income derived by the trust or the institution is either not being spent for a charitable purpose or such institution is earning profit; once it was established that the educational institution was set up by the assessee-trust for imparting education which by itself was a charitable activity, it was not required from the assessee to provide for any concession in fees or other charges and the absence of such provision would not make its activity of imparting education as non-charitable.

Case Law : Shri Krishna Education & Welfare Trust v. CIT[ITA NO. 1089/DELHI - ITAT/2005,DATED 28-11-2008], Sanjeevamma Hanumanthe Gowda Charitable Trust Vs. Director of Income-tax (Exemptions) [2006] 285 ITR 0327 (Kar).

Other Miscellaneous Issues

It was found that allegation of Commissioner about unverifiable nature of source of funds contributed by settlers as well as investment made by said settlers in properties which were mortgaged for securing a bank guarantee in favour of trust had no relation whatsoever with charitable nature of objects of assessee-trust or genuineness of its activities and, moreover, said allegation was based merely on suspicion and surmises and there was no evidence to support and substantiate same, Whether in view of said facts it could be said that adverse observations recorded by Commissioner were neither relevant nor material to dispute or to doubt charitable nature of objects of assessee-trust or genuineness of its activities and his action in denying assessee-trust registration under section 12A on basis of said observations was totally unjustified- Held, yes

Case Law : Shri Krishna Education and Welfare Trust v. CIT, Hissar [2009] 27 SOT 331 (DELHI)

Other Miscellaneous Issues

Objects of the trust should not be doubted once the registration u/s 12A is granted.

The registration of a trust under section 12A of the Income-tax Act, 1961, once done is a fait accompli and the Assessing Officer cannot thereafter make further probe into the objects of the trust.

Case law : Assistant Commissioner of Income-tax Vs. Surat City Gymkhana [2008] 300 ITR 214 (SC).

Cancellation of Registeration.

Analysis – Cancellation of Registeration.

- The Finance (No. 2) Act, 2004 has inserted a new subsection to section 12AA. By virtue of this newly inserted sub – section (3) the CIT shall have the power to cancel the registration, if he is satisfied that the activities of the trust are not genuine and are not being carried out in accordance with objects of the trust or institution. Before such cancellation the commissioner has to provide a reasonable opportunity of being heard and an order in writing has to be passed for such cancellation.

- Commissioner of Income Tax cannot utilize his power u/s 12AA(3) on account of search and seizure proceedings against the assessee.

Case Law : Kalinga Institute of Industrial Technology V. CIT [2008] 1 DTR (Ctk.) (Trib.) 273.

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