

आयकर अपीलीय अधिकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य  
 [Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

**ITA No.328/Kol/2018**

**Assessment Year: -**

Sree Gurudham Yogoda Satsanga Kadamtala (PAN: AADTS8921P)	Vs.	Commissioner of Income-tax (Exemption), Kolkata
Appellant		Respondent
Date of Hearing		23.01.2020
Date of Pronouncement		18.03.2020
For the Appellant		ShriS. N. Khan, FCA
For the Respondent		Shri Imokaba Jamir, CIT, DR

**ORDER**

**Per A. T. Varkey, JM:**

This is an appeal preferred by the assessee-AOP against the order of Ld. CIT(E), Kolkata dated 22-09-2017 wherein he rejected the application for grant of registration u/s. 12AA of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. Brief facts of the case as noted by the Ld. CIT(E) is that the assessee claimed to have come into existence as a society vide an unregistered MOA and ROA on 27.12.2012. According to Ld. CIT(E) the assessee society filed an application in Form 10A on 30.03.2017 for grant of registration u/s. 12AA of the Act. The Ld. CIT(E) notes that assessee though claimed itself to be a society did not register itself under West Bengal Societies Registration Act, 1961. According to him, section 12A of the Act deals with the conditions for applicability of sections 11 and 12 of the Act and according to him, the Act clearly states that applicant has to make an application in the prescribed manner. Thereafter, he reproduces section 12A(1), sub clause (a) and thereafter he noticed that the manner of application is prescribed under Rule 17A of the Income-tax Rules, 1962 (hereinafter referred to as the “Rules”) and he reproduced Rule 17A. According to Ld. CIT(E), from a plain reading of section 12A(1) of the Act and Rule 17A of the Rules it is clear that where a trust has been created by an instrument then such instrument needs to be

produced in original. And according to him, in the instant case, assessee claimed to be a society under the West Bengal Societies Registration Act, 1961 but is not registered with the Registrar of Societies and, therefore, this document cannot be treated as an instrument of creation. Further, according to him, the date of establishment was no where mentioned in the instrument of creation. Though the Ld. CIT(E) acknowledges that the PAN card showed a date of 22.09.2003 as date of establishment of the organization, the assessee failed to provide any documentary evidence to explain that the date of establishment was 22.09.2003. Thus, according to Ld. CIT(E) in the absence of any documentary evidence, the genuineness of the claim of establishment of that particular date could not be verified and, therefore, according to him, the assessee failed to satisfy the condition laid down in Rule 17A(1) and, therefore, the application for grant of registration u/s. 12AA of the Act was rejected. Aggrieved, the assessee is before us.

3. We have heard both the sides and have perused the material available on record. We note that the Ld. CIT(E) has found fault with the application filed by the assessee firstly, on the ground that the instrument of creation has not been registered under the West Bengal Societies Registration Act, 1961. Secondly, the instrument of creation has not been produced in original. Thirdly, the date of establishment of the assessee/organisation has not been mentioned in the instrument of creation. We note that assessee is an AOP viz., Sree Gurudham Yogo Satsanga Kadamtala an organization formed with the following objective as mentioned infra:

- a) To arrange and organize education, training and practice of Yoga including Raj Yoga and Kriya Yoga to all men and women irrespective of nationality, caste, creed and religion.*
- b) To help the needy students of all communities for the prosecution of studies.*
- c) To open charitable dispensaries-and first aid centers.*
- d) To help the aged, sick, helpless and indigent persons.*
- e) To establish, start, run, maintain or manage libraries for benefit of the members.*
- f) To engage and assist in such other philanthropic activities as may be deemed appropriate by the Governing Body of the society.*
- g) To collect donation and Subscription for the purpose of the activities of the society.*
- h) To do all such acts, deeds, matters and things as may be deemed incidental or conducive to the foregoing objects.”*

4. On a perusal of the MOA placed at pages 5 to 7 of the paper book, we note that the association has been formed on 22<sup>nd</sup> September, 2003 which is evident from the last page of the MOA which is the 3<sup>rd</sup> page of the Memorandum of Association (page 7 of paper book) where we note the date of 22<sup>nd</sup> September, 2003 is quite evident i.e. the date on which the

fifteen members of the governing body has signed the MOA and other seven members have joined the organization/association and have affixed their signatures. Therefore, the fault no. 3 which was the one of the fault pointed out by the Ld. CIT(E) fails. The other fault which has been pointed out by the Ld. CIT(E) is that assessee has not filed the copy of the Memorandum of Association in original. The Ld. AR undertakes to produce the original document before the Ld. CIT(E). Now coming to the next fault of non-registration of the AOP under the West Bengal Societies Registration Act, 1961 is concerned, we note that assessee at the time when it applied for registration u/s. 12A of the Act had not got itself registered with the West Bengal Societies Registration Act, 1961 and the mentioning of societies registration Act according to it was that it adopted the format given in the W.B. Societies Registration Act. However, we note that there was some developments later. The assessee vide letter dated 20.07.2017 has *applied for registration of society* addressed to “The Registrar of Firms, Societies & Non-trading Corporation West Bengal and annexed along with it challan for Rs.150/- and documents mentioned therein and also the MOA & Registration of assessee and it was mentioned therein that it was established/formed on 22.09.2003 . We note that as per the W.B. Societies Registration Act there is no specific format for applying for registration Registration is done as stipulated in sec. 4 and after successful registration the Registrar shall certify as per sec. 7 of the W. B. societies Registration Act. Further the question as to what documents to be produced by the assessee for registration u/s. 12A of the Act has been clearly spelled out by the Hon’ble Madhya Pradesh High Court in Laxminarayan Mahajan (infra) wherein it has been laid down that where a Trust or institution is created under an instrument, then Rule 17 requires filing of the instrument in original. However, when the assessee is created ‘*otherwise*’ (than by an instrument) then assessee has to produce constitutive and evidential documents which embraces within its fold all documents which afford a logical basis of inferring creation of the trust/assessee. We rely for this proposition the decisions in CIT Vs. M/s. Ambala Public Educational Society, ITA No. 118 of 2016 (P&H High court) and the Hon’ble MP High court decision in Lakshmi Narayan Maharaj Vs. CIT (1984) 150 ITR 465 (MP) wherein the Hon’ble Madhya Pradesh High court has held as under:

*“Section 12A was introduced with effect from April 1, 1973. It is not in dispute that the benefit of Sections 11 and 12 were available to all charitable or religious trusts irrespective of whether they were created under an instrument or created otherwise. It is obvious that the intention behind Section 12A was not to take away the benefit available to the trusts which*

*were created otherwise than under an instrument. It is in this background that Rule 17A has to be construed.*

*6. When the trust is a trust created under an instrument, Rule 17 requires filing of "the instrument in original" and when the trust is created otherwise than under an instrument, "the document evidencing the creation of the trust" has to be filed. An analysis of Section 12A(a) and Rule 17A(a) will show that the fact to be established is the creation of the trust and this fact is required to be established by producing constitutive and evidential documents. When the trust is created under an instrument, the rule requires the production of the constitutive document itself, i.e., the instrument which created the trust. When the trust is not created under an instrument, it is impossible to produce any constitutive document and, hence, the rule requires production of evidential documents, i.e., the documents evidencing the creation of the trust. The evidential documents cannot be limited to documents which directly prove the creation of the trust, they will embrace all documents which afford a logical basis of inferring creation of the trust and all such documents can be described to be "documents evidencing the creation of the trust" within the meaning of Rule 17A(c). A document directly evidencing the creation of the trust is normally the constitutive document which cannot be produced when the trust is not created by an instrument and if the words "documents evidencing the creation of the trust" are construed as limited to documents directly evidencing the creation of the trust, it will be nearly impossible to have a trust registered which was not created under an instrument. This could never have been the intention of the framers of the rule. In our opinion, these words embrace all evidential documents, i.e., all documents which afford a logical basis for inferring the creation of a trust. The Revenue papers produced by the petitioners consisted of Jamabandis of 1910-11, 1929-30, patta issued in 1931 and Jamabandi of 1954-55. In all these documents, the petitioner-trust is entered as a tenant or Bhumiswami and the name of the Sarbarakhar is also mentioned. The assessment orders relating to property tax for 1967-68 to 1974-75 were filed. All these documents, though not directly evidencing the creation of the trust, afford a logical basis for inferring the creation of the trust prior to 1910-11 and can be described as documents evidencing the creation of the trust for purposes of Rule 17A. In our opinion, the Commissioner was not right in taking a very narrow view of Rule 17A and in holding that the petitioner-trust has not complied with that rule.*

*7. The petition is allowed. The Commissioner's order dated February 6, 1979, is quashed and he is directed to reconsider the application of the trust in the light of the observations made above. There will be no order as to costs. The security amount be refunded to the petitioners."*

5. As noted supra, the assessee has applied on 20.07.2017 for registration of AOP under the W. B. Societies Registration Act, 1961, the outcome of it must be in the knowledge of assessee, which may be shared with the Ld. CIT(E) and the Ld. CIT(E) to consider the application of assessee for exemption u/s. 12A of the Act afresh as per the ratio laid down by the Hon'ble P&H and M.P. High Courts (supra) on the issue. Before we part, we would like to remind the Ld. CIT(E) that the Ld. CIT(E)'s jurisdiction is to verify the objects of the assessee and the genuineness of the activities meaning thereby that he had to satisfy himself that the objectives of the Trust are charitable in nature and activities have been carried on or to be carried on are genuine, meaning thereby that they are in consonance for achieving of charitable objects and nothing else. With the aforesaid observation, we set

aside the impugned order of Ld. CIT(E) and remand the application of the assessee back to the file of the Ld. CIT(E) for de novo consideration in the light of the aforesaid discussion (supra).

6. In the result, the appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court on 18th March, 2020.

Sd/-

(P. M. Jagtap)  
Vice President

Dated : 18th March, 2020

Sd/

(Aby T. Varkey)  
Judicial Member

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Sree Gurudham Yogoda Satsanga Kadmtala, 29, Kuchil Sarkar Lane, Kadamtala, Howrah-711101.
2. Respondent – CIT(Exemption) Kolkata.
3. CIT- , Kolkata.
4. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar