

IN THE INCOME TAX APPELLATE TRIBUNAL, AMRITSAR BENCH, AMRITSAR

**BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT
(THIRD MEMBER)**

ITA No.53/ASR/2017

Assessment Year :

Shri Dhar Sabha Vaishno Devi, Katra	Vs	CIT(Exemptions) Chandigarh
PAN NO: AAGAS7658K		
Appellant		Respondent

Assessee by : Shri P.N. Arora, Advocate

Revenue by : Shri Charan Dass, Sr. DR

Date of Hearing : 14/10/2019

Date of Pronouncement : 08/01/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

On account of difference of opinion between the Ld. Accountant Member and Ld. Judicial Member of the ITAT, Amritsar Bench, this matter has been referred to me by the Hon'ble President ITAT for consideration and disposal under section 255(4) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). It may be noted that even while framing the point of difference there was a difference of opinion and different questions have been framed by both the Ld. Members. The Ld. Judicial Member formulated the following questions:

(i) Whether the Ld A.M. is justified in granted registration, while sidelining the observation of the Ld. CIT(E), (which is not denied by the Appellant Society) to the effect that the details furnished reveal that the Bank Accounts are in the name of Secretary of the Sabha and not the Society per se, which is clear indicator of the society's claimed finances not being in its control and susceptible to misuse. Whereas in view of the Hon'ble J.M., the same is not in-consonance with law and spirit of the objects of the society and creates the doubt qua genuineness of its activities.

(ii) Whether the Id. A.M. is justified in holding that from the copy of Bank account of Oriental Bank of Commerce, clearly indicates that the bank account was in the name of Assessee Society, therefore the objection of the Hon'ble J.M.

regarding bank account in the name of Secretary is not based upon the facts of the case. Whereas it is admitted fact that the appellant society has 03 bank accounts, however the Hon'ble A.M., sidelined the other 02 bank accounts.

(iii) Whether it is not mandatory for the Appellant Society to get registered, any change in composition of the Society, by The Registrar of the Societies. Whereas it is admitted fact that although it was claimed by the Appellant that the Composition of the Society has been changed by Resolution dated 06-02-2011 and same sent to the Registrar of Society for Registration, however the same was never produced by the Appellant society neither before the Ld. CIT (E) till passing of the impugned order dated 08-12-2016 nor before this Appellate Forum till hearing of the case as on 06-11-2017.

(iv) Whether the Ld. A.M. is justified in holding that there is no requirement in law for filling the incorporation of dissolution clause, before the Registrar of societies for its registration.

(v) Whether the restriction imposed in the Constitution of the Appellant Society that no other member of the Sabha will have any right to raise any objection, which severally impinges on the rights and say of other members of the Sabha, which not only amounts to restriction in the fair play of the Society but also amounts to in-genuineness of its activities.

2. On the other hand the Ld. Accountant Member formulated the following questions while referring the matter to the Hon'ble President.

"Whether in the facts and circumstances of the case, Learned Judicial Member was justified in dismissing the appeal of the assessee against refusal for registration u/s 12A of the Act specifically in view of the fact that he himself has held that objects of the assessee are in parlance with the mandate of definition u/s 2(15) of the Act.

3. From the aforesaid questions referred by both the Ld. Members it is clear that controversy to resolve, relates to the registration under section 12A of the Act denied by the Ld. CIT(E), Chandigarh.

4. Facts related to this issue has been discussed by both the Ld. Members in their respective orders, however for the clarity it is necessary to discuss the facts in brief as mentioned by the Ld. CIT(E) in his order dt. 28/12/2016.

5. Facts in brief are that the assessee filed an application in Form No. 10A seeking registration under section 12A of the Act which revealed that the assessee society was an ongoing entity and had been in operation since 20/10/1970. The aims and objects of the society are *inter alia* to develop the place of Devi Ji to remove curse present at the abode of God; renovation of houses for the benefit of travelers and to make efforts to avoid the suffering of travelers to make place of Shree Dhar Baba Ji memorable to establish the statute of Shree Dhar Baba Ji at Devi Ji to make an office of Shree Dhar Sabha at Katra and to establish free hospital and Dharamshala at Katra.

6. The Ld. CIT(E) issued a show cause letter dt. 15/11/2016 and asked the assessee to provide the following documents / clarifications :

- (i) Details of property vested in the society, as envisaged u/s 11 of the I.T. Act, income from which is sought to be exempted.
- (ii) Details of voluntary contributions received by the society, as envisaged u/s 12 of the I.T. Act and whether any specific directions have been received by the persons making voluntary contributions.
- (iii) Originals of MOA/Bye-laws of the society along with the Registration Certificate.
- (iv) Copies of Bank statements through which activities are being propagated highlighting the receipts and the different items of expenditure that are being claimed.
- (v) Details of grants received from the Government and whether the same are being utilized as per Government guidelines.
- (vi) Complete details of Donations received or intended to be received and documentary evidence as regards to Grants received.
- (vii) Copies of the I.T Returns filed (if any) along with a note regarding any kind of exemptions under I.T. Act having claimed earlier.
- (viii) Whether the applications for registration has been filed for the first time. The fate of the earlier application along with copy of the order.
- (ix) Donation received under FCRA along with relevant details such as copy of the return for FCRA and the copy of specified bank account (if any).
- (x) The details of corpus fund and whether the same are with any written specific directions.

(xi) Details regarding charitable activities being conducted by the society clarifying as to which specific limb under section u/s 2(15) of the I.T.Act is being pursued.

(xii) Financial statements of the society since inception or for last three years whichever is later.

6.1 The Ld. CIT(E) also asked the assessee to provide the rationale as to why registration should be granted in the absence of any apparent charitable activity being pursued. He also asked to provide copy of Income Tax Return for the A.Y. 2015-16 and copy of Bank Statement for the said year through which activities were being propagated.

6.2 The Ld. CIT(E) again on the basis of documents available on record issued a final show cause and raised the following queries:

(i) Proof of ownership of land, vesting with the society, on which building has been constructed.

(ii) Copies of all the three bank accounts for F.Y. 2015-16 and till date as the statement of affairs show balance in three bank accounts..

(iii) Evidence of expenses on establishment, powers/fuel and repair & maintenance for the F.Y. ending 31.03.2016.

(iv) Evidence for the payment of taxes u/s 115BBC of the Act on anonymous donations.

(v) In response to show cause about incorporation of new trustee/ manager of the society, vide response dated 08.12.2016, copy of a resolution dated 06.02.2011 has been furnished. It has been claimed that the same was sent to Registrar of Societies. It is presumed that since a substantial lime has elapsed after 2011, the change in composition must have been accepted and incorporated as such by the Registrar of Societies. Evidence of the same may be provided.

6.3 In response to the above, the assessee furnished the proof of ownership, copy of bank account etc vide letter dt. 19/12/2016.

6.4 The Ld. CIT(E) after considering the details furnished by the assessee society observed that the bank accounts were in the name of secretary and not

the society per se which was indicator of the society claimed finances not being in its control and susceptible to misuse.

6.5 The claim of the assessee was that a sizeable component of the receipts was in the shape of the anonymous donations, the Ld. CIT(E), therefore asked the assessee as to whether taxes were paid on the same under section 115BBC of the Act. In response the assessee claimed to be a religious trust / society. However the Ld. CIT(E) considered the said claim to be an afterthought by observing that nowhere in the application nor during the course of proceedings, the issue of assessee being a religious society had been flagged and that the assessee society had not been paying taxes in the past on the large amounts of anonymous donations.

6.6 The Ld. CIT(E) observed that financial statements of the assessee society revealed that the receipts were mainly being used for making the FDRs or kept as bank balances and that the claim of the assessee having its object of running a free hospital had not been pursued. The Ld. CIT(E) gave the details receipts and bank balances etc. as under:

<i>F.Y.</i>	<i>Gross Receipt</i>	<i>Net Surplus</i>	<i>FDRs</i>	<i>Bank Balance</i>
2013-14	50,15,145/-	4,93,524/-	16,19,304/-	44,25,698/-
2014-15	58,01,024/-	15,53,898/-	17,56,050/-	59,15,844/-
2015-16	53,21,433/-	10,51,522/-	19,04,284/-	70,75,664/-

6.7 The Ld. CIT(E) also observed that the assessee had incurred total expenditure amounting to Rs. 36,95,971/- in the form of establishment expenditure, Power/Fuel expenditure, Repair & Maintenance, Depreciation, Water Tax and Vehicle maintenance which was 69.45% of the gross receipt for the F.Y. 2015-16 which shows that the expenditure did not get covered under the activities "charitable purpose" as claimed by the assessee. He also observed

that it had been projected that the change in composition etc had been effectuated in 2011 but no evidence had been filed regarding acceptance of the change in composition of the society by Registrar of society. The explanation of the assessee in that regard was that the office of Sub Registrar moved to Sri Nagar, so it was not possible to get the record.

6.8 Ld. CIT(E) observed that the regulation of the assessee society did not include the dissolution clause in the absence of which there is always a scope of violation of section 13(1) of the Act. He also observed that the regulations of the society at page no. 3 mentioned that the head of the society is restricted to be from " Shri Dhar Vansh" and no other member of the Sabha will have any right to raise any objection which makes the clause of selecting the head restrictive in nature and was seemingly an arrangements that retain control of the Sabha within closed group. Therefore he was of the view that the assessee society did not ensure to the benefit of general public. He also mentioned that no evidence of any effort being made towards the opening of the free dispensary, had been adduced by the assessee and that nothing was on record which could corroborate the expenditure were incurred for extending free medical facilities. The Ld. CIT(E) denied the registration to the assessee under section 12AA of the Act.

7. Being aggrieved the assessee carried the matter to the ITAT wherein diversant view had been taken by both the Ld. Members.

8. The Ld. Judicial Member confirmed the action of the Ld. CIT(E) in refusing the registration under section 12AA of the Act to the assessee by observing that the account in the name of the Secretary was not inconsonance with law and sprit of objects of the society and created the doubt in the genuineness of its activities and that any other member of Sabha having no right to raise any objection amounts to restriction in the fair play of society. He also observed that

the reasons given by the Ld. CIT(E) created doubt about the genuineness of the activity and that the assessee society failed to produce change in composition as well as the dissolution clause. Accordingly, the view taken by the Ld. CIT(E) was confirmed.

9. On the contrary the Ld. Accountant Member in his dissenting order directed the Ld. CIT(A) to grant the Registration under section 12AA of the Act by observing that although the Ld. Judicial Member held that objection of the assessee were in parlance with the amended definition of charitable objects as contained in section 2(15) of the Act but he had upheld the order of the Ld. CIT(E). He observed that the assessee had declared three bank accounts in its balance sheet as on 31/03/2016 which were duly audited by the Chartered Accountant and it was not possible that auditor would have ignored this aspect. Therefore, it cannot be said that the bank accounts were in the name of secretary. He also mentioned that the copy of bank account of Oriental Bank of Commerce placed at page no. 15 of the paper book indicated that the bank account was in the name of the assessee society. He accordingly held that these observations / objections regarding the bank account in the name of Secretary were not based upon the facts of this case.

10. As regards to the objections of the Ld. CIT(E) that the assessee had not filed evidence for change in composition and inclusion of dissolution clause before registrar of society. The Ld. Accountant Member observed that the assessee vide resolution passed on 16/09/2016 incorporated the dissolution clause whereby it had been resolved that in the case of dissolution of the society, the assets of the assessee society would be transferred to society engaged in similar services, the reference was made to page no. 95 of the Paper Book which is the copy of the aforesaid resolution.

11. The Ld. Accountant Member was of the view that there was no requirement for filing the aforesaid resolution with the registrar of society for getting registration under section 12AA of the Act. The reliance was placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT(E) Vs. Shri Mahavir Jain Society, wherein by following the judgment of Hon'ble Madras High Court in the case of CIT Vs. R.M. S Trust it had had been held that for considering the application for registration under section 12A of the Act only inquiry which would possibly be made would be whether the assessee trust had made application and whether the accounts were maintained in the manner as suggested in the said section and that the Ld. CIT(E) was not justified in rejecting the application for registration for want of amended trust deed since it was not a prerequisite condition for registering the applicant as a trust.

12. As regards to the third objection that the head of the society could not be from other than Shri Dhar Vansh, the Ld. Accountant Member observed that it was not a hurdle. According to him, the Ld. CIT(E) while granting the registration was required to examine the nature of objects and genuineness of the activities in respect of the object and that the Ld. Judicial Member had already held that activity of the assessee were charitable in nature as per the provisions of Section 2(15) of the Act. Accordingly the direction was given to the Ld. CIT(E) to grant the registration under section 12AA of the Act.

13. As there was difference in the views taken by both the Ld. Members the Hon'ble President nominated me as Third Member under section 255(4) of the Act to resolve the controversy.

14. Ld. Counsel for the Assessee reiterated the submissions made before the Ld. CIT(E) and further submitted that the accounts of the assessee were duly audited and all the three bank accounts were appearing in the books of accounts and reflected in the Balance Sheet. It was stated that copy of bank

account of the OBC placed at page no. 15 of the assessee's Paper Book clearly revealed that the bank account was opened in the name of the society and not in the name of the Secretary, the same was the position of the bank account maintained with UCO Bank, Jammu copy of which is placed at page no. 192 of the assessee's paper book.

15. As regards to the third bank account maintained with Jammu & Kashmir Bank, copy of which is placed at page no. 194 to 196 of the assessee's paper book, it was stated that the account was in the name of the society and not the Secretary. It was stated that all the accounts were in the name of the assessee society, therefore the objection was baseless.

16. As regards to the objection relating to the dissolution clause, it was stated that the resolution was passed for incorporating the dissolution clause (reference was made to page no. 95 of the assessee's Paper Book) which was duly signed by the Secretary and President alongwith other Members. It was also stated that there was no need to bring the aforesaid change to the notice of Registrar of Society.

17. As regards to the objection that no other member of the Sabha will have right to raise any objection amounts to restriction in the fair play of the society. Ld. Counsel for the assessee submitted that the appointment of the head of the office from Shri Dhar Vansh did not have any connection with the objects of the assessee society which definitely remains charitable. The reliance was placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Shirdi Sai Darbar Charitable Trust (Dharamshala) copy of which is placed at page no. 197 to 202 of the assessee's paper book. It was submitted that the objects of the assessee society were charitable in nature. Therefore the Ld. CIT(E) was required to grant the registration under section 12AA of the Act. The reliance was also placed on the following case laws:

- * CIT(E) Chandigarh Vs. Shri Mahavir Jain Society, Ludhiana in ITA No. 231 of 2016 dt. 11/09/2017(P&H)
- * CIT Vs. R.M.S Trust reported at [2010] 326 ITR 310 (Mad)
- * Tara Educational and Charitable Trust Vs. DIT(E) in ITA No. 1247/Mum/2013 dt. 18/07/2014 (Mum Trib)
- * CIT Vs. Paramhans Ashram Trust reported at [2009] 315 ITR 220
- * Smt. Ganesh Devi Rami Devi Charity Trust Vs. CIT reported at 71 ITR 696
- *

18. In his rival submissions the Ld. DR reiterated the observations made by the Ld. CIT(E) and the Ld. Judicial Member in their respective orders and strongly supported the said orders. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Cit Vs. Jagannath Gupta Family Trust in Civil Appeal No. 1381 of 2019 order dt. 01/02/2019 copy of which was furnished during the course of hearing which is placed on record.

19. I have considered the submissions of both the parties and perused the orders passed by both the Ld. Members alongwith the material available on the record. In the present case it is noticed that the Ld. CIT(E) himself admitted in his order that the aims and objectives of the assessee were to develop the place of Deviji renovation of house for the benefit of traveler to make efforts to avoid the suffering of travelers. He was of the view that the objects of the assessee society to establish free hospital and dharamshala at Katra qualified for the level of charitable purposes. However the registration under section 12A of the Act was not granted to the assessee by stating that the bank account were in the name of secretary of the Sabha and not the society. On the contrary the assessee furnished the copy of bank accounts which reveal that the bank accounts were in the name of the assessee society. Copy of the bank account maintained with OBC, Katra is placed at page no. 15 of the assessee's paper book which shows that the account no. 01932010000360 was in the name of the

assessee. The another bank account was maintained with UCO Bank, Katra copy of which is placed at page no. 192 of the assessee's paper book which also mentioned that the primary holder of the bank account was Shree Dhar Sabha. Another bank account was maintained with J&K Bank copy of which is placed at page no. 195 of the assessee's paper book, the said account maintained was in the name of Secretary Shree Dhar Sabha so it cannot be said that the said account was in the name of individual person rather it was in the name of the office bearer of the assessee society. Therefore, the objection of the Ld. CIT(E) while rejecting the application moved by the assessee on this basis that bank accounts were in the name of Secretary and not in the name of society, was against the facts on record.

20. In the present case, the another objection of the Ld. CIT(E) was that the dissolution clause was not there and no evidence had been filed regarding the acceptance of change in composition of the society by the Registrar of the Society. In this regard the assessee had furnished the copy of the resolution in corroborating the dissolution clause, which is placed at page no. 25 of the assessee's paper book. Therefore the objection raised by the Ld. CIT(E) is not maintainable. In the instant case, the Ld. CIT(E) while refusing the registration under section 12A of the Act to the assessee, observed that no evidence had been filed regarding acceptance of change of composition of the society by Registrar of the Society. In my opinion it cannot be a ground to deny the registration under section 12A of the Act. On a similar issue the Hon'ble Jurisdictional High Court in the case of CIT(E) Chandigarh Vs. Shri Mahavir Jain Society, Ludhiana in ITA No. 231 of 2016 order dt. 11/09/2017 by following the judgment of the Hon'ble Madras High Court in the case of CIT Vs. R.M.S Trust reported at [2010] 326 ITR 310 upheld the view of the ITAT wherein it was held that the CIT was not right in refusing the registration to the assessee society for non furnishing of explanation regarding registration of the assessee society twice

with the Registrar of the Firm and Society Chandigarh. In other words, the registration with the Registrar of the Society is not a precondition for granting the registration under section 12A of the Act. The only requirement for granting the registration is that the object of the society should be charitable in nature and its activities are genuine. Therefore merely on this basis that the registrar of the society had not informed about the change in the composition, cannot be a ground to refuse the registration under section 12A of the Act.

21. In the present case, the another reason given by the Ld. CIT(E) while refusing the registration under section 12A of the Act, was that the assessee society had not included the resolution clause. On a similar issue the Coordinate Bench at Mumbai i.e; ITAT "E" Bench Mumbai in the case of Tara Educational and Charitable Trust Vs. DIT(E), Piramal Chambers, Mumbai in ITA No. 1247/Mum/2013 for the A.Y. 2012-13 vide order dt. 18/07/2014 held as under:

"A perusal of the impugned order of the Id. DIT (Exemptions), however, shows that he has not recorded any adverse comment or dis-satisfaction about the object of the Trust or genuineness of the Trust activities. He has refused to grant the registration u/s 12A of the Act on the ground that its Trust Deed does not contain "dissolution clause". In our opinion, the Id. DIT (Exemptions) thus has clearly gone beyond the scope of enquiry contemplated u/s 12A of the Act and has refused to grant the registration u/s 12A of the Act to the assessee Trust on a totally irrelevant ground without pointing out as to how he was not satisfied either about the object of the Trust or the genuineness of its activities. We therefore set aside the impugned order of the Id. DIT (Exemptions) and direct that the registration u/s 12A of the Act as applied by the assessee Trust be granted."

22. In the present case also the Ld. CIT(E) has not doubted the activities of the assessee for maintenance of Dharamshala and free Hospital, these activities are charitable in nature as has been held by Hon'ble Rajasthan High Court in the case of CIT Vs. Paramhans Ashram Trust reported at [2009] 315 ITR 220 by following the earlier order in the case of same assessee as reported at 203 ITR 711, that:

“ Charitable purpose” has been defined to include relief of the poor, education, medical relief and advancement of any other object of general public utility not involving the carrying on of any activity for profit. Normally, in a private trust, the beneficial interest is vested in one or more individuals whereas a public or charitable trust, on the other hand, has objects by which the public at large is benefited. The beneficiaries are capable of being ascertained in a private trust.”

It has further been held that

“ the objects of the assessee trust were maintenance of the existing dharamshalas, help of Agarwals and other widows and children, feeding of mendicants, construction of new dharmshalas and schools and help of destitutes. These were charitable purposes and the assessee was a public charitable and religious trust entitled to exemption under section 11.”

23. In the instant case, the Ld. CIT(E) denied the registration by observing that the head of the society is restricted to be from Shree Dhar Vansh and no other member of the Sabha will have any right to raise any objection. In my opinion that cannot also be a ground to refuse the registration when the object of the assessee society are charitable in nature. On a similar issue the Hon'ble Kolkata High Court in the case of Smt. Ganesh Devi Rami Devi Charity Trust Vs. CIT reported at 71 ITR 696 held as under:

“ (i) a trust may be of a public charitable nature even if the control of the trust property was not vested in the public but was retained by the settlers;”

It has further been held that

“ (v) a dharamshala is always meant for the public and the Sanskrit pathshala was also open to the public; and, even though only Brahmin boys read there, still it was for the public also; “

24. In the present case also the Ld. CIT(E) himself admitted in the body of the impugned order that the establishment of free Hospital and Dharamshala were objects seemingly qualified for the label of charitable purposes. I therefore by keeping in view the peculiar facts of this case as discussed hereinabove concur with the view of the Ld. Accountant Member who has directed the Ld. CIT(E) to grant the registration under section 12AA of the Act to the assessee society.

25. Now this matter will go to the regular Bench for giving effect in accordance with the majority view.

Sd/-

**एन.के.सैनी,
(N.K. SAINI)**

उपाध्यक्ष / VICE PRESIDENT

AG

Date: 08/01/2020

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, अर्मतसर/ DR, ITAT, AMRITSAR
6. गार्ड फाईल/ Guard File