

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.696/JP/15
निर्धारण वर्ष/Assessment Year :

Jyoti Vidyapeeth Trust, 143, Goms Defence Colony, Vaishali Nagar, Jaipur.	बनाम Vs.	The Pr. CCIT, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No.: AAATJ4910C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकी ओर से / Assessee by : Shri Rajeev Sogani (C.A.)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 15/05/2017
घोषणा की तारीख / Date of Pronouncement: 29/05/2017.

आदेश / ORDER

PER: SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. Pr. CCIT, Jaipur dated 30.07.2015 wherein the grant of approval u/s 10(23C)(vi) of the Income Tax Act, 1961 for the financial year 2013-14 relevant to the assessment year 2014-15 and onwards was denied to the applicant's trust.

2. Briefly the facts of the case are that the assessee trust moved an application before the Id. Pr. CCIT for seeking approval u/s 10(23C)(vi) of the Act on 22.07.2014. On perusal of the trust deed and other documents furnished in support of the application, the Pr. CCIT observed that various classes in the trust deed are not as per the provisions of section 10(23C)(vi)

of the Act and the trust was accordingly held as not existing solely for educational purposes and its application was rejected. In its order, the Ld. Pr. CCIT stated that the trust is having multiple objectives and therefore, it is not existing solely for educational purposes, all the powers are with the founder trustees and the trust is at the sole discretion of founder trustees and Dr. Pankaj Garg and Ms. Vidushi Garg who are the founder trustees are taking undue benefits by drawing huge remuneration from the trust which is contrary to trust deed and the trust has failed to justify the same. Accordingly, he held that looking at the clauses of the trust deed, the trust cannot be held existing solely for educational purposes and application seeking approval under section 10(23C)(vi) was rejected.

3. During the course of hearing, the Id. AR submitted that the issue of the scope of enquiry for approval under 10(23C)(vi) as well as issues requiring considerations at the time of grant of approval came up for consideration before the Hon'ble Supreme Court in the case of American Hotel & Lodging Association, Educational Institute v/s CBDT(301 ITR 86). The Hon'ble Supreme Court analyzed the provisions of section 10(23C)(vi) and various provisos thereto. The Hon'ble Supreme Court came to the conclusion that there are a lot many monitoring mechanisms provided in different provisos to check abuse of exemption provision. These regulatory mechanisms are not to be analysed at the time of grant of approval. Compliance of these conditions has to be seen subsequent to grant of approval at the time of assessment on year-on-year basis. However, for grant of approval, the only threshold condition to be analysed is the fact of actual existence of institution for the sole purpose of education.

The Hon'ble Supreme Court at Para 34 of the Order, observed that if after grant of approval it is brought to the notice of prescribed authority that registered/prescribed conditions are breached then the prescribed

authority can withdraw the approval by following the procedure mentioned in that proviso.

3.1 It was further submitted that the CBDT has issued clarification vide Circular No. 14/2015 dated 17/08/2015, clarifying certain issues related to grant of approval u/s 10(23C)(vi). At Para 1 of the said Circular, CBDT has clarified the scope of enquiry while granting approval. It has followed the guidelines prescribed by the Hon'ble Supreme Court in the case of American Hotel & Lodging Association, Educational Institute (supra).

At Para 5, CBDT has clarified the impact of extra-ordinary power of Managing Trustee to appoint, remove or nominate other trustees. CBDT has clarified that there is no provision under the Act which calls for denial of approval on account of such powers being exercised or being provided in the Trust Deed.

3.2 In the above background of law, decision of Hon'ble Supreme Court in American Hotel & Lodging Association, Educational Institute and CBDT Circular dated 17/08/2015, the denial of approval by Pr. CCIT is unjustified as submitted below:

A) Trust is having multiple objects and, therefore, is not existing solely for education.

Undoubtedly, the appellant Trust had multiple objects in its Trust Deed dated 14/11/2003, however, the said Trust Deed was amended subsequently vide Trust Deed dated 26/07/2015, wherein all other objects other than education were deleted.

Otherwise also, having multiple objects cannot be a reason for denial for approval as has been held by the different High Courts in the under noted cases:

- i. C.P. Vidya Niketan Inter College Shikshan Society(2013) 359 ITR 322 (Allahabad)
- ii. Geetanjali Education Society (2014) 267 CTR 369 (Karnataka)
- iii. Neeraj Janhitkari Gramin Sewa Sansthan(2014) 360 ITR 168 (Allahabad)
- iv. Digember Jain Society for Child Welfare(2010) 329 ITR 459 (Delhi)
- v. Harf Charitable Trust (REGD.) (2015) 376 ITR 0110 (P&H)

Appellant Trust is not involved in any activity other than education. No contrary finding is there in the Order of Id. Pr. CCIT or in any of the assessment orders u/s 143(3).

B) Trustees have derived benefits by drawing salary which is contrary to Trust Deed

The two trustees namely Dr. Pankaj Garg and Mrs. Vidhushi Garg were rendering full time services to the university in their capacity as Advisor and Chairperson respectively. These posts have been notified by the State Government by way of Gazette Notification for running the University. Both the trustees are highly qualified. Dr. Pankaj Garg is B.H.M.S. and Mrs. Vidhushi Garg is M.Sc. (Microbiology).

Ld. Pr CCIT has wrongly referred to Clause 14 of the Trust Deed dated 14/11/2003. The said clause of the Trust Deed prohibits trustees to draw any remuneration for their acting as trustees. It may be noted that trustees can act in dual capacities i.e. one in the capacity as trustee and other in their own personal professional capacity. This remuneration is drawn by these two trustees in their capacity as any other employee of the Trust rendering services to the Trust. There is no prohibition in the TrustDeed in such situation, for the trustees to draw remuneration acting in individual professional capacity.

It is brought to the notice that the same remuneration is not found violative of the provisions of the Act for the A.Y. 12-13 in the scrutiny assessment u/s 143(3) dated 20/03/2015.

Without prejudice to above, it is submitted that reasonableness or otherwise of the remuneration is beyond the scope of enquiry at the stage of grant of approval. This is the regulatory requirement to be seen at the time of assessment on year-on-year basis as has been so held by the Hon'ble Supreme Court in the case of American Hotel & Lodging Association, Educational Institute (Supra) and the CBDT in its Circular dated 17/08/2015.

C) Trust is Discretionary Trust, where sole powers are at the discretion of founder trustees

Ld. Pr CCIT has wrongly declared the applicant Trust as "Discretionary Trust". The term discretionary in the Income Tax parlance is used in a different context. Discretionary Trust under the Income Tax terminology is a trust in which either the beneficiaries are not defined or their share is indeterminable or unknown. This is clear from the provisions of section 164(1). This concept of "Discretionary Trust" is applicable only on private trusts and not on Charitable Trust (appellant is a charitable trust). This is clear from CBDT Circular No. 45 dated 2nd September 1970, CBDT Circular No. 281 dated 22nd September 1980(1981) 131 ITR St 4 and CBDT Circular No. 387 dated 6th July 1984 (1985) 152 ITR St. 18.

Thus, Ld. Pr CCIT has erred in categorizing the appellant Charitable Trust as Discretionary Trust and thereby rejecting the application on his wrong understanding of law.

The CBDT vide Circular dated 17/08/2015 has clarified that there is no law to deny approval on account of so called excessive powers entrusted with the founder trustee.

Otherwise also, Para 9 of the trust deed was deleted and Para 12 of the trust deed was suitably modified.

Further attention is drawn towards the following Clauses of the Trust Deed which demonstrate that management of the Trust is through the trustees.

Para 13 (j):

"To appoint Sub-Committees comprising one Trustee or more for carrying out the objects and purposes of trust and/or matters connected with the Trust and/or its affairs."

Para16 (1):

"The Trustees may from time to time, frame Rules for the conduct of the administration of the Trust and regulating the meetings of Trustees. In absence of such regulations:-

(1)All the matters will be decided by majority and the quorum for the meeting shall be two third"

D) Provisos third and thirteenth to section 10(23C)(vi) have been violated

Ld. Pr CCIT has misdirected himself in referring to Clause 6.22 - Clause 6.3 in amended Trust Deed reproduced in his order at as under:

"To invest the Trust fund in the various Financial Gain Projects/Schemes for the purpose of raising funds of the Trust to spend the same for the fulfillment of objects of the Trust".

Ld. Pr CCIT has observed that the above clause is violative of provisos third and thirteenth of section 10(23C)(vi).

Proviso third provides for application of income to the extent of 85% and Proviso thirteenth provides for withdrawal of approval on certain conditions including non-compliance to third proviso.

Both the above provisos stipulate the regulatory mechanism. These are to be seen at the time of assessment and not at the time of grant of approval. Reference is made to Hon'ble Supreme Court decision in American Hotel & Lodging Association, Educational Institute (Supra) and the CBDT in its Circular dated 17/08/2015.

Proviso thirteenth grants authority to prescribed authority for withdrawal of application under certain circumstances. It, in itself, manifests that this is to be seen post grant of approval.

Without prejudice to above, it is submitted that till date there is no finding that above clause of Trust Deed has actually resulted into violation of third and thirteenth provisos. Ld. Pr. CCIT has rejected the application only on apprehension of violation.

4. The Id DR is heard who has vehemently argued the matter and drawn reference to the object clause of the trust deed having multiple objects and which has no connection with the object of education. Further, he submitted that the amendment in the object clause where so done by the assessee trust can only apply prospectively and in support, drawn reliance to the decision of the Hon'ble Madras High Court in case of B.S. Abdur Rahman Institute of Science and Technology vs CCIT, Chennai (2017) 78 Taxmann.com 336 (Mad).

5. We have heard the rival contentions and perused the material available on record. The scope of enquiry to be carried out at the time of grant of approval u/s 10(23C)(vi) of the Act of the Act had come up before the Hon'ble Supreme Court in case of American Hotel & Lodging Association (supra) and subsequently the Central Board of Direct Taxes as also come out with a circular No. 14/15 dated 17.08.2015 clarifying the issues relating to grant of approval as well as to follow the guidelines as prescribed by the Hon'ble Supreme Court in case of American Hotel & Lodging Association.

Apparently the order under appeal has been passed by the Id. Pr. CCIT on 30.07.2015 and he therefore does not have the benefit of going through the said CBDT circular which is binding on the Revenue Authorities.

5.1 As per the scheme of the Act as well as the legal proposition laid down by the Hon'ble Supreme Court, what is to be seen at the time of grant of approval is whether the assessee trust exist solely for education purposes. In this regard, Id Pr.CCIT has noted that the assessee trust has multiple objectives in its trust deed. In compliance, the assessee trust has amended its trust deed dated 26th July, 2015 removing all the objects other than objects relating to education. What therefore has to be examined is whether the amended object clause satisfy the requirement of law or not. Further, where the assessee trust is already in existence, at the time of seeking the approval, the Revenue can examine whether its activities are being carried out for education purposes or not. In this regard, the Id AR has submitted that the assessee trust is involved in educational activities and is running Jyoti Vidyapeeth Mahila Vishwavidyalya having more than 2200 students. However, there is finding given by the Id. Pr.CCIT in this regard.

The matter relating to powers entrusted to the trustees and its relevance at the time of grant of approval has been discussed in the CBDT Circular which should be taken into consideration. Regarding the matter relating to payment of remuneration, there are counter-claims without any basis to support the contentions of either of the parties.

5.2 In light of above, as there is not enough material available on record to adjudicate on the matter and the fact that the guidelines laid down by Hon'ble Supreme Court and CBDT while granting the approval not been considered, we hereby set aside the matter to file of Id. Pr. CCIT to examine the same a fresh as per law, taking into consideration the guidelines laid

down by the Hon'ble Supreme Court in case of American Hotel & Lodging Association and the subsequent CBDT circular dated 17.08.2015, after providing reasonable opportunity to the assessee trust.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29/05/2017.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 29/05/2017

Santosh

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

1. अपीलार्थी / The Appellant- Jyoti Vidyapeeth Trust, 143, Goms Defence Colony, Vaishali Nagar, Jaipur.
2. प्रत्यर्थी / The Respondent- The Pr. CCIT, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT,
6. गार्ड फाईल / Guard File (ITA No.696/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.