

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. 655/JP/2017
निर्धारण वर्ष / Assessment Year :

Sidha Sthan Shri Kapaleshwar Mahadev Sanyas Ashram Trust, Mela Ground, Pushkar, Ajmer.	बनाम Vs.	The Commissioner of Income Tax (Exemptions) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARTS9375F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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निर्धारण वर्ष / Assessment Year :

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निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Shri Vrindra Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 27/09/2017
उदघोषणा की तारीख / Date of Pronouncement : 28/09/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These two appeals filed by the assessee are against the order of Id. CIT (Exemptions), Jaipur dated 28.06.2017, refusing to grant u/s 12AA of the Act and exemption u/s 80G of the Act.

2. Briefly the facts of the case are that the assessee is a charitable trust constituted under deed of trust dated 11.02.1998. It filed an application with the Id. CIT(E) for registration u/s 12AA of the Act. In its order, the Id. CIT(E) states that while considering the case for registration u/s 12AA, the object of the Trust/Society and the genuineness of its activities are to be examined and as per the rules, the certified copy of instrument establishing the Society/Trust needs to be verified. The applicant was asked to file certain information/documents which were duly filed and considered by the Id. CIT(E). Subsequently, vide show cause dated 30.05.2017, the assessee was asked to show cause as to why its application for registration should not be rejected as no specific dissolution clause is provided in the deed of trust. In response, the assessee filed its submission which was not found acceptable by the Id. CIT(E) and his relevant finding are as under:-

"The applicant in its replies mainly has stressed upon that absence of dissolution clause in the deed cannot be made a ground for refusal of registration u/s 12AA. Reply of the applicant is not found acceptable because the constitution of the trust has no dissolution clause. The dissolution clause ensures that in the event of dissolution of the trust, the balance funds are not mis-utilized. In absence of dissolution clause it is not known that in the event of dissolution of the trust how these funds will be utilized. There has to be check that balance fund on dissolution

do not go to the office bearers of the trust. As this clause is not there in the trust deed, there is no security of proper utilization of the funds."

3. The Id. CIT(E) accordingly rejected the application of the assessee seeking registration u/s 12AA of the Act and consequently, the application for exemption under section 80G was also rejected for want of registration under section 12AA of the Act. Now, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR drawn our reference to the trust deed dated 10.02.1998 wherein it is stated as under:-

यह सारी सम्पति भगवान कपालेश्वर महादेव मन्दिर की है इसको महन्त, सन्त, ट्रस्ट के कोई भी सदस्य बेच नहीं सकते हैं। मण्डल करने का सभा को अधिकार है, खाण्डन करने का किसी को कोई अधिकार नहीं है अगर करेगा नियमों के विरुद्ध तो वह सज्य दरबार झूठा रहेगा।

Drawing our attention to the said clause in the trust deed, the Id AR submitted that neither the trust nor any member of the trust is empowered to sale any part of the property of the trust. Further, the Id AR submitted that it is a public charitable trust registered with Devsthan Vibhag and in the event of dissolution of the trust, all the assets and properties of the trust shall vest with the Charitable Commissioner Devsthan Vibhag, Government of Rajasthan in accordance with the relevant provisions of the Rajasthan Public Trust Act, 1959.

5. The Id. AR further submitted that looking to the objects of the trust, there is no dispute at all raised even by the Id CIT that such objects fall very well within the definition of a "charitable purpose" as defined u/s 2(15) of the Act nor there is any adverse remark on the genuineness of the activities of the trust after he detailed examination carried out by him as evident from the detailed query letters and detailed replies thereto. Thus, so far as the objects of the trust being charitable in nature are concerned, there is no dispute between the parties. It is a public charitable trust registered with Devsthan Vibhag.

6. It was further submitted that the sole basis for refusal to grant registration was the absence of the dissolution clause in the trust deed which firstly, is not at all a valid ground and in any case is not at all required by the limited scope of sec. 12AA(1) and by considering such a ground, the Id. CIT has rather exceeded his jurisdiction/enhanced the scope of enquiry than what is conferred by the statute upon him.

7. It was further submitted that even otherwise, such a clause is already there i.e. clause at page 15 of the deed of trust according to which the possibility of the dissolution of the appellant Trust has been ruled out. In such a situation, the property shall vest in the Charity Commissioner - Devsthan Vibhag of Government of Rajasthan in accordance with the relevant provisions of the Rajasthan Public Trust Act, 1959.

8. In support, reliance was placed on the decision of Umiya Charitable Trust v/s CIT (2014) 40 CCH 0437 (Rajkot) wherein it was held that:-

" 5.2 The last ground of rejection pointed out by the Id. CIT is that the trust deed of the trust does not contain the dissolution clause in the event of its dissolution. This issue has already been covered in favour of assessee-institution/association by the decision of ITAT Ahmedabad 'C' Bench in the case of Sitaram Kutir Charitable Trust v. CIT in ITA No. 71/Ahd/2013, decided on 17.05.2013; wherein it was held that in case the trust registered with the Sub-registrar as a charitable trust and the trust being an irrevocable trust, the obvious position shall be that the Charity Commissioner should take over the assets on dissolution; hence rejection of registration by the Id. Commissioner on the ground that there was no specific clause in the instrument in regard to the treatment to be given in the vent of dissolution was not on a sound footing.

In view of the foregoing, I am of the view that the registration u/s 12AA of the Income-tax Act, 1961, as sought by the assessee-institution/association, cannot be refused and I, therefore, direct the Id. CIT, Rajkot-III, Rajkot to grant the registration u/s 12AA to the assessee-institution/association."

The Id AR also relied on the following decisions:-

- Shri Agarwal Panchayat vs ITO (2015) 173 TTJ 61 (Jd)
- CIT vs Tapagachha Sangh Mota (2015) 232 Taxman 715 (Guj)

- Dharma Sansthapak Sangh (Niyas) vs CIT (2008)118 TTJ 0823/13 DTR 589 (Del)
- DIT(Exemptions) vs Vanchhara Tirthadhipati-Chintamani Paraswaprabhu (2015) 233 Taxman 1 (Guj)

9. It was further submitted that there several cases on the scope of examination by the Id. CIT in the context of Sec. 12AA and it has been repeatedly held that the allegations of the mis-utilization of the funds or the unreasonableness of the expenditure incurred or the misapplication of income, utilization of the funds, are all required to be examined at the time of assessment only with respect to the benefit provided u/s 11 &12 and it is not at all the stage where the CIT is expected to look into this aspect.

10. There apart, the Courts have gone to the extent that even where there was no commencement of activities, registration could not have been denied. Therefore, it is too remote and out of scope to examine the existence or otherwise of the dissolution clause and the suspected ill consequences of absence thereof. Kindly refer CIT vs Vijay Vargiya Vani Charitable Trust (2014) 271 CTR 0698/110 DTR 0207/369 ITR 0360 (Raj HC) held that:

"Registration must be granted u/s 12AA to Assessee when it is meant for charitable purpose on basis of genuineness of objects of trust and not income of trust."

11. Regarding refusal to grant exemption u/s 80G of the Act, the Id. CIT(E) held that since the assessee trust has been denied registration u/s 12AA of the Act. Per contra, the Id. AR submitted that the CIT has refused simply as a consequence to the rejection of 12AA registration hence, it is consequential. However, assuming, the rejection of 12AA registration is upheld does not by itself means that the assessee does not deserves grant of approval u/s 80G more particularly, when the Id. CIT has not adversely commented upon any of the conditions mentioned in Sec. 80G(5).

12. We have heard the rival contentions and perused the material available on record. Firstly, the tests which are germane and are to be satisfied before the grant of registration u/s 12AA of the Act are the objects of the trust whether charitable or not and secondly, the genuineness of activities of the assessee trust. The Id CIT(E) has not recorded any adverse finding or dissatisfaction about the objects and the genuineness of activities of the assessee trust. Hence, there is no dispute regarding the objects and the genuineness of activities of the assessee trust.

13. The limit issue raised by the Id. CIT(E) relates to absence of the dissolution clause in the trust deed dated 11.02.1998. In this regard, the Id. AR has drawn our reference to the relevant clause at page 15 of the trust deed (referred above) and submitted that neither the trust nor any member of the trust is empowered to sell any part of the property of the trust. To our mind, the event of sale of the assets or the property

of the trust could be during the continuation of the trust or at the time of its dissolution. This clause therefore effectively restricts the sale of the property of the trust at all times. But can it be said that the trust which holds such property cannot be dissolved at all times to come and what are the consequences thereto. In our view, the matter relating to the dissolution and the consequences thereof has not been spelt out in the trust deed.

14. Now coming to the another contention of the Id AR that it is a public charitable trust registered with Devsthan Vibhag and in the event of dissolution of the trust, all the assets and properties of the trust shall vest with the Charitable Commissioner Devsthan Vibhag, Government of Rajasthan in accordance with the relevant provisions of the Rajasthan Public Trust Act, 1959. Here, we refer to the decision of the Coordinate Bench in case of Sitaram Kutir Charitable Trust v. CIT (supra) wherein it was held that "in case the trust registered with the Sub-registrar as a charitable trust and the trust being an irrevocable trust, the obvious position shall be that the Charity Commissioner should take over the assets on dissolution; hence rejection of registration by the Id. Commissioner on the ground that there was no specific clause in the instrument in regard to the treatment to be given in the vent of dissolution was not on a sound footing." We have no hesitation but to concur with the view taken by the Coordinate Bench and we accordingly, find force in the above-said contention of the Id AR. At the same time, we find that there is no specific findings of the Id CIT(E) regarding whether the trust is a irrevocable trust or not, and whether

the assessee trust is registered with the Devsthan Vibhag and the consequences on its dissolution as contented by the Id AR. We are accordingly setting aside the matter to file of the Id. CIT(E) to examine the above said contentions of the Id AR and where the same is found to be correct, grant the necessary registration u/s 12AA of the Act.

15. Further, the grant of approval u/s 80G has been denied for want of registration u/s 12AA. Since we have set aside the matter relating to grant of registration u/s 12AA, the matter relating to approval u/s 80G is also set aside to file to the Id. CIT(E).

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28/09/2017

Sd/-

(कुल भारत)

(Kul Bharat)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/09/2017.

*Santosh.

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

1. अपीलार्थी / The Appellant- M/s Sidha Sthan Shri Kapaleshwar Mahadev Sanyas Ashram Trust, Mela Ground, Pushkar, Ajmer.
2. प्रत्यर्थी / The Respondent- Commissioner of Income Tax (Exemptions), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 655 & 656/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar