

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. 657/JP/2017
निर्धारण वर्ष/Assessment Year : 2017-18

Shree Kaila Devi Temple Trust, Karauli House, New Sanganer Road, Jaipur.	बनाम Vs.	The Commissioner of Income Tax (exemptions), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATK3696E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri N.S. Vyas (C.A.)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 29/09/2017
उदघोषणा की तारीख / Date of Pronouncement: 03/10/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT (Exemptions) dated 09.06.2017 whereby the application of the assessee trust seeking approval u/s 80G was rejected.

2. Briefly the facts of the case are that the assessee trust is registered u/s 12AA of the Act as charitable and religious trust vide order issued by the Id CIT(E) dated 16.09.2016. The assessee trust subsequently moved an application before the Id CIT(E) on 22.12.2016 seeking approval under section 80G of the Act.

3. The Id. CIT(E) in his order stated that while considering the application u/s 80G, the nature of activities undertaken by the trust are to be examined so as to ascertain its charitable character. In this regard, on perusal of the Income & Expenditure account of the assessee trust for the F.Y. 2014-15, it was observed by the Id CIT(E) that the assessee trust has incurred following expenditure which are of religious nature:-

S. No.	Particulars	Amount (Rs)
(i)	To Expenses of Jat Chaitra 2014	27,30,290/-
(ii)	To Expenses of Jat Chaitra 2015	32,20,589/-
(iii)	To Bhandwa Festival Expenses	5,02,435/-
(iv)	To Jagran Expenses	6,14,154/-
(v)	To Dail Seva Expenses	15,25,763/-
(vi)	To Jagran Expenses	6,14,154/-
Total		98,07,385/-

4. The Id CIT(E) referring to the above expenses held that these expenses constitute 7.97% of total receipts of Rs. 12,31,06,820/-. Thus expenses incurred on the religious activities by the assessee are more than 5% of the total receipts. Further, it was held that the rest of expenses shown or claimed in above Income & Expenditure accounts are also indirectly related to the religious activity. Further, on perusal of Income & Expenditure account for FY 2013-14, it was held that such type of expenses comes to 5.08% of total receipts (religious expenses Rs. 54,92,670/- against total receipts Rs. 10,80,31,712/-). It was accordingly held that the predominant activity of the trust is religious in nature.

5. The Id CIT(E) further held that from the plain reading of section 80G(5) and 80G(5B), this section applies only to the charitable institution/fund. It also indicate that if the Institution/fund incurs expenses of religious nature not exceeding 5% of total income than also it will be eligible for approval u/s 80G. But if the expenses of religious nature exceed 5% of total income, the institution/fund cannot be granted approval. In the present case, on the basis of accounts produced, it is seen that the trust has incurred expenses of religious nature exceeding 5% of total income. Thus the trust does not qualify for approval u/s 80G. In the light of the above facts, the application filed in form No. 10G seeking approval u/s 80G was rejected.

6. During the course of hearing, the Id AR submitted that the assessee trust has been granted registration under section 12AA of the Act as charitable cum religious trust and has been running schools, hospitals, dharamshala and also maintenance of temple known as Kaila Devi Ji Temple. It was accordingly contended that the Id CIT(E) was therefore not correct to hold that the predominant activity of the trust is religious in nature.

7. The Id. AR further submitted that the main expenses as mentioned by the CIT(Exemptions) for religious purpose for the financial year 2014-15 are expenses on JAT/CHATRA 2014 of Rs. 27,30,290/- and expenses on JAT/CHATRA 2015 of Rs. 38,20,589/-. In this regard, it was submitted that from the details of said expenses as available in APB 6-8, it can be observed that maximum expenses are on maintenance, cleanness and staff expenses which is Rs. 21,02,201/- &

Rs. 31,20,589/- and if the said expenses are not taken into consideration, the expenses on religious purpose as mentioned by the CIT(Exemptions) is less than 5%. Similar is the position for the financial year 2013-14 where if the above expenses are not considered from the total expenses of Rs. 54,92,670/- on the total receipt of Rs. 10,80,31,702/-, the balance expenses on religious purpose as mentioned by the CIT(Exemptions) is less than 5%. Under the circumstances, the CIT(Exemptions) was not correct to reject the approval u/s 80G.

8. The Id CIT DR is heard who has vehemently argued the matter and submitted that registration under section 80G is available to a charitable trust but not to a religious trust and the Id CIT(E) has rightly denied the registration under Section 80G of the Act.

9. We have heard the rival submissions and perused the material available on record. We find that the assessee trust has been registered as charitable cum religious trust under section 12AA of the Act and the Id AR has contended that the assessee trust besides maintenance of temple known as Kaila Devi Ji Temple, also runs schools, hospitals, etc which are charitable in nature. In light of the same, can it be said that the activities of the assessee trust are religious in nature or predominantly religious in nature which doesn't warrant registration under section 80G of the Act. On perusal of the order of the Id CIT(E), we donot see any basis for arriving at the conclusion that the activities of the assessee trust are predominantly religious in nature except for few expenditure heads which are held to include expenditure

incurred towards religious activities. In this regard, the Id AR has contended that the expenses incurred on mela Jat Chatra 2014 and 2015 are predominantly on maintenance, cleanliness and on staff expenses and the same cannot be held to be expenditure on religious activities. In our view, besides examining the nature of the expenditure, the larger question is whether organizing such melas are in the nature of religious activities or more in a form of a social gathering where people irrespective of their caste, creed, and religion gather and participate in various activities. Further, the conclusion so arrived at should be taking into consideration the whole of the activities which have been actually carried on by the assessee trust and which we find in the instance case to include running of schools, hospitals, etc.

10. In this regard, useful guidance can be drawn from the decision of the **Hon'ble Rajasthan High Court in case of Umaid Charitable Trust v. Union of India** reported in [2008] 171 TAXMAN 94 (RAJ.). In that case, the assessee-trust was granted exemption certificate under section 80G for the period from 1-4-2001 to 31-3-2004. However, renewal of exemption certificate for a further period was refused on the ground that the assessee had incurred expenditure exceeding 5 per cent of its total income on a particular religion, namely, colouring and repairing of Lord Vishnu's temple. The assessee filed a writ petition challenging the said order and the Hon'ble High Court has set-aside the said order and has laid down the following legal proposition:

" 31. This Court is of the considered opinion that mere one contribution by the charitable trust to another trust which carried out repair and renovation of Lord Vishnu's temple does not disentitle the petitioner-

*trust from renewal of its exemption certificate under section 80G of the Act. **The line of distinction between religious purposes and charitable purposes is very thin and no water tight compartment between the two activities can be very well-established. Unless objective of the charitable trust in question itself is for spending its income for a particular religion and it is so found in the trust deed, the Income-tax Department cannot reject the renewal of the Trust as Charitable Trust under section 80G of the Act merely because one particular expenditure is for an activity which may be termed as spending for a particular religion. In the present case the repair and renovation of Lord Vishnu's temple does not necessarily mean that expenditure in question was for a particular religion only. All people who have faith in Lord Vishnu's temple belong to different sects and have faith in different religions and also visit such temple of Lord Vishnu. The revenue has not shown that entry in the said temple was restricted to the persons of one particular community or sect practicing one religion. Hinduism is not one particular religion and different sects following Hindu philosophy do visit temples of Lord Vishnu, be that Jains, Sikhs, Brahmins etc. There is no water tight compartment between different castes or sects following one particular religion. Freedom of religion is guaranteed in the Constitution of India under article 25 of the Constitution of India. Therefore, taking such a pedantic and narrow approach, it cannot be said that character of the Charitable Trust is lost if one particular expenditure is made for repair and renovation of Lord Vishnu's temple and that too by way of contribution to another trust. A***

perusal of the trust deed of the petitioner produced on record shows that objective of the trust was clearly charitable and was not for any particular religion even wholly or substantially. Nothing has been pointed out in the impugned order that the petitioner-trust has been constantly spending money for a particular religion. One should discern and imbibe with great respects the observations of Hon'ble Supreme Court in Sri Jagannath Jew's case (supra).

32. This Court does not see any leaning in favour of any particular religion in trust deed of the petitioner-trust and therefore, once such exemption was granted to the petitioner trust, upon scrutiny of its application and it held the field for at least three years as is shown by the impugned order itself and trust deed indicates that said trust was constituted long back on 27-8-1963 and has been carrying on such charitable activities, this Court finds no justification for rejecting its renewal under section 80G of the Act which is a matter of right. The conditions of section 80G(5) read with Explanation 3 do not stand violated in the present case.

33. The learned counsel for the revenue relied upon the decision of the Supreme Court in the case of Upper Ganges Sugar Mills (supra), which has been relied upon by the learned CIT(A) also in the impugned order, it was held on the basis of one particular clause (2)(h) of the trust-deed which read "to establish, maintain and to grant and/or aid to public places of worship and prayer halls". The Hon'ble Supreme Court dealing with Explanation 4 of section 80G(5) held as under :

"To reiterate, Explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable purpose is of religious nature. If it did, it would read

differently. It requires the ascertainment of whether there is one purpose within the institution or fund's overall charitable purpose which is wholly, or substantially wholly, of a religious nature. There is little doubt that clause 2(h) of the trust deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of religious nature, and this has not been seriously disputed. Therefore, in our view, the trust and the donation by the assessee to it fall outside the scope of section 80G." (p. 582)

*The aforesaid case is clearly distinguishable from the facts of the present case as there is no clause in the trust deed in the present case which indicates that income of the petitioner-trust was to be applied wholly or substantially for any particular religion. Therefore, the said case has been clearly wrongly applied by the learned CIT(A) in the present case. In Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust's case (supra) also relied upon by the learned Counsel for the revenue, the facts of the case were distinguishable in the said case. Thus, the judgments cited and relied upon by the learned Counsel for the revenue are distinguishable on facts and do not support the case of the respondents. Since the law in the case of Upper Ganges Sugar Mills (supra) was laid down while dealing the case of deduction under section 80G of the Act in the hands of donor so also in the case of Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust (supra) by this Court, those judgments do not advance cause of the revenue. On the other hand, the case laws relied upon by the learned counsel for the petitioner fully support the case of the petitioner **when the Courts have consistently held that it is the dominant object of the***

trust which is important and contribution and expenditure incurred by the petitioner-trust has to be viewed in light of the objects with which charitable trust in question was constituted.

34. Consequently, this writ petition is allowed and the impugned order Annex. 10 dated 16-12-2004 is quashed and set aside and the petitioner-trust shall be deemed to be registered under section 80G of the Act throughout the period after 1-4-2004 with all consequential benefits.” (Emphasis supplied)

11. In light of above discussions, we are setting aside the matter to the file of the Id CIT(E) to examine the same a fresh taking into consideration the legal proposition laid down by the Hon’ble Rajasthan High Court in case of Umaid Charitable Trust (Supra).

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

Order pronounced in the open court on 03/10/2017

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

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

जयपुर / Jaipur
दिनांक / Dated:- 03/10/2017.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shree Kaila Devi Temple Trust,
Karauli House, New Sanganer Road, Jaipur.

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. 657/JP/2017}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar