

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ 'B'- अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'B'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.2739/Ahd/2014

निर्धारणवर्ष/Asstt. Year: Block Period

GayatriParivarJankalyan Trust 165, Manglanagar, Vidya Dairy Road, Borsadchowkdi, Anand – 388001 PAN: AAB TG6 149 H	Vs.	CIT-II, Baroda.
<i>अपीलार्थी/</i> (Appellant)		<i>प्रत्यर्थी/</i> (Respondent)

Assessee by :	Arti N. Shah, AR
Revenue by :	SubhasBains, CIT DR

*सुनवाईकीतारीख/*Date of Hearing : 19/02/2019

*घोषणाकीतारीख/*Date of Pronouncement: 21/02/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

The present appeal is directed at the instance of the assessee against the order of the Ld. Commissioner dated 06/08/2014 wide which application for grant of registration under section 80(G)(5) of the Income Tax Act, 1961 has been rejected.

2. The brief facts of the case are that assessee trust was constituted on 10/01/2011 it got it is registered with the registrar of the public trust, Anand, under the Bombay Public Trust Act, 1950, it filed an application in Form No. 10G seeking approval under section 80(G)(5)(vi) of the Income Tax Act on 25.02.2014. The Ld. Commissioner issued show-cause notice on 21.07.2014 directing the assessee to submit necessary details/documents. After hearing the assessee Ld. Commissioner has rejected the

application of the assessee for approval under section 80(G)(5)(vi) of the Income Tax Act. Basically Ld. Commissioner was of the view that perusal of income and expenditure statement it revealed that assessee has incurred very less amounts on its objects. The relevant discussion read as under:-

“On perusal of the submissions, income and expenditure statement it was noticed, that assessee has claimed to have incurred expenditure on object of the trust amounting to Rs. 32,632/- as on 31.03.2012. In the Annexure C and Annexure D i.e. details of expenditure it was noticed that assessee trust has claimed Petrol & Diesel expenses of Rs. 15,363/- under the head “Educational expenses” and expenses incurred on “Gurupurnima Expenses” of Rs. 17,000/- as Charitable Expenditure. Similarly for the year ending 31.03.2013 assessee trust debited Rs. 3,46,533/- on Educational Expenses and Rs. 68,295/- on Charitable Expenses. Further on perusal of the Annexure C and Annexure D it was noticed Stationary & Printing Exp. and Petrol and Diesel Exp. are debited under Educational Expense. Assessee trust has also debited 3,01,198/- on Yuva KayakapSibir. No details or explanations are how these expenses are Charitable were not furnished. In activity report submitted along with the application, it is mentioned that the trust has distributed books in relation to health consciousness without producing corresponding evidence, to patients of Mahagujarat Hospital and PerfomedGayatriYagna every day at Mahagujarat Hospital in Nadiad. Assessee did not furnish explanation how performing Gayatri Yagna, Gurupurnimapooja are charitable.

In the Balance Sheet for the year ending 31.03.2012 & 31.03.2013, it was noticed that assessee trust has taken loans from the Trustees of Rs. 1,04,000/-. On perusal of the trust deed, no such clause has been provided.

Under the circumstances, the assessee trust appears to be not serious in pursuing the matter specially when the assessee trust/society had neither enclosed/nor submitted evidences w.r.t. registration as is mentioned in section 80(G) of the Income Tax Act. Moreover, it is for the assessee trust/society to establish genuineness of existence of such entities and that the existence and use/objects is/are for charitable purposes as is provided u/s. 80G(5) of the Act. In view of the non-compliance, it cannot be held that the requisite conditions as provided under Section 80G(5) of the I.T. Act specially clauses (ii), (iii), (iv) & (v) are met. Further, as a result of non-compliance it can neither be said nor held positively about maintenance of regular accounts of receipts, expenditure or accounts w.r.t. bank account's so as to fulfill the requisite conditions by the trust as provided u/s. 80G(5) of the Act.

Accordingly, the application for registration u/s 80G(5) of the Income Tax Act, 1961, not being in order technically, cannot be considered any further, hence the same is rejected and treated as filed.”

3. While impugning the order, Ld. counsel for the assessee contended that for grant of approval under section 80G(5)(v) Ld. Commissioner was required to look into the genuineness of the objectives of the trust. The assessee has been granted registration under section 12AA of the Income Tax Act. Therefore genuineness of the trust is not in doubt nor its objectives could be doubted. She made reference to the

registration certificate available on page No. 4 of the paper book. According to the Ld. Counsel, Ld. CIT fail to appreciate this registration certificate while rejecting the application moved under section 80(G)(5). For buttressing her contention she made reference to the following decision:-

1. CIT vs. Vipassana Trust [2015] 55 taxmann.com 57 (Guj HC)
2. CIT vs. Shree GovindbhaiJethalalNathavani Charitable Trust [2014] 49 taxmann.com 171 (Guj HC)
3. N.N. Desai Charitable Trust vs. CIT [1999] 246 ITR 452 (Guj HC)
4. Anand Incubation Centre vs. CIT(Exemptions) [2017] 86 taxmann.com 250 (Jaipur-trib).

4. On the other hand CIT DR contended that assessee fail to submit requisite details before the Ld. Commissioner. He took us through the last paragraph of the order of the commissioner and pointed out that even registration under section 12AA was not submitted.

5. We have duly considered the rival contention and gone through the record carefully. There is no dispute with regard to the fact that assessee trust has been enjoying registration under section 12AA of the Income Tax Act. Thus, its status as a charitable institution fulfilling charitable objectives are not in dispute. Similarly genuineness of the trust is also not in dispute, up to and until this certificate is intact. Ld. Commissioner made reference of certain expenditures which were incurred by the assessee up to 31.03.2012 and thereafter. In our opinion the magnitude of expenditure alleged to have been incurred by the trust on fulfillment of the objectives cannot be a sole criteria to decide application under section 80(G)(5), up to and until a charitable institution has not the resources then how it could incurred the expenditure. After getting approval under section 80G(5),it could get the more donations which could be incurred for fulfillment the objectives.

6. On due consideration of the facts and circumstances, we set aside the order of the Ld. Commissioner and remand this issue to his file for re-adjudication. Ld. Commissioner shall take into consideration the certificate of registration under section 12A and thereafter in the light of decision noted by us in this order the application of the assessee be decided afresh.

7. The observations made by us will not impair or injure the case of Revenue and will not cause any prejudice to the defense/explanations of the assessee.

8. Ld. CIT shall decide the application of the assessee afresh in accordance with law.

9. In the result, the assessee's appeal is allowed for statistical purposes.

[Order pronounced in the Court on 21st February, 2019.]

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 21/02/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Tanmay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्ता/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल/ Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद/ ITAT, Ahmedabad