

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर

**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.898/Ind/2018**

M/s Shri Parshwnath Jain Shwetamber Moorti Poojak Mandir Trust, Gandhi Chowk, Ganj Basoda, Distt. Vidisha	Vs.	CIT(Exemption), Bhopal
(Appellant)		(Respondent )
PAN AAPTS0996L		

Revenue by	Shri S.S. Mantri, CIT
Assessee by	Shri Arun Jain, CA
Date of Hearing	05.03.2020
Date of Pronouncement	22.05.2020

**ORDER**

**PER MANISH BORAD, AM**

The above captioned appeal filed at the instance of the assessee is directed against the orders of Ld. Commissioner of Income Tax (Exemption) (in short 'Ld.CIT(A)'], Bhopal dated 28.9.2018.

2. Assessee has raised following grounds of appeals;

1. *That in the facts and under the circumstances of the case the learned Commissioner of Income Tax (Exemption) [CIT(E)] erred in facts and also in law in rejecting application filed u/s 12A of the Income Tax Act for the registration.*

2. *That in the facts and under the circumstances of the case the learned Commissioner of Income Tax (Exemption) [CIT(E)] erred in facts and also in law in forming the opinion that objects of the trust are for the benefit of a particular community and not for public at large whereas Jain temple is open for all the communities.*

3. *That in the facts and under the circumstances of the case the learned Commissioner of Income Tax (Exemption) [CIT(E)] erred in facts and also in law in forming the opinion that proper documents of ownership of temple not provided whereas ownership certificate issued by Municipal Council, Ganj Basoda was produced as the temple is about 300 years old and the new land for expansion of temple has been purchased in the name of trust.*

4. *That in the facts and under the circumstances of the case the learned Commissioner of Income Tax (Exemption) [CIT(E)] erred in facts and also in law in differentiating between Object and Area of operation as Point No.5 of Trust deed is area of operation and not Object of the Trust.*

5. *The appellant prays to seek leave to add or amend any grounds of appeal, if necessary in the interest of justice under law.*

3. Brief facts of the case as culled out from the records are that the assessee is a Trust registered with Registrar of Public Trust dated 11.12.2009. To verify the objects and activities of the applicant and to ascertain the fulfillment of the conditions of the conditions mentioned under Section 12AA, Ld. CIT(Exemption) called for the information. It was observed that the trust is engaged in maintenance of a 300 year old Jain temple. The activities carried out by the trust are both religious and charitable in nature. In reply to the information asked by Ld. CIT(Exemption) about the title deed of the property, resolution passed for receipt of corpus donation and whether the objects are for the benefit of a particular community. Assessee filed submission/clarification on 19.9.18 but the same were not considered to be acceptable by Ld. CIT(Exemption) on following grounds :-

- (i) Objects are for the benefit of a particular community and not for public at large. The trust is working towards specific community & religion i.e. Jain Shwetamber community. It is also specifically mentioned in the point No.5 of the Trust deed that benefits of the Trust can be availed generally by only the Shwetamber devotees, borther & Sisters living in Ganj Basoda and near by towns clearly violated the provlso t9 section 1~(1)(b} of the I T Act.

- (ii) No proof /evidence produced that the temple is owned by the said Trust, only receipt of property tax in the name Shwetamber Samaj Jain Mandir is provided, which does not substantiate the ownership by the applicant Trust. In the absence of proper ownership documents like "Title Deed", of the Temple itself, the entire activities in the name of Temple becomes doubtful.

4. On the basis of the above observation of Ld. CIT(Exemption) rejected the application for registration u/s 12AA of the Act. Aggrieved assessee is in appeal before the Tribunal.

5. Ld. Counsel for the assessee referred to the paper book running from page 1 to 70 which includes copy of trust deed, registration order dated 2.10.17 of Court of Sub Division Officer and Registrar of Public Trust, District Vidisha, certificate of ownership of temple issued by Municipal Council, Ganj Basoda and property tax receipt issued by Municipal Council, Ganj Basoda. Ld. Counsel for the assessee also referred to the objectives of trust deed and submitted that trust is running both for religious and charitable purposes. The objectives includes providing medical relief to human beings. Objects are also included providing safety to birds and animals. He also submitted that it is consistently held

by Hon'ble courts that if the objects of the trust are for charitable as well as religious purposes then the registration u/s 12AA of the Act should not be denied on the premise that the trust is working for a particular religious community.

6. Per contra Ld. Departmental Representative vehemently argued supporting the orders of lower authority.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the documents filed in the paper book. Perusal of trust deed shows that the objects of the trust are both religious and charitable in nature and the trust deed refers to particular Jain community and maintenance of old Jain temple but apart from this the objects also includes providing medical relief to both human beings, birds and animals. The objects also includes providing place for meditation. As regards the issue raised by Ld. CIT(Exemption) about the ownership of the temple by the said trust, we observe that the temple is 300 year old Jain temple. The Municipal Council of Ganj Basoda, District Vidisha has issued a certificate bearing No.323 dated 14.9.18 mentioning that the temple has been allotted the building/land

Sl.No.225 in Ward 22 and the assessee trust is paying property tax for this immoveable property i.e. old Jain temple. A copy of the receipt of property is also placed on paper book by the assessee. The assessee trust is also duly registered with the Registrar, Public Trust and the trust deed is signed by 11 persons resident of Ganj Basoda, District Vidisha. Genuineness of these document has not been doubted by Ld. CIT(Exemption).

8. In the back drop of these facts, we find that the assessee trust having maintenance right of the old Jain temple and the place attached thereto is being used for religious and charitable purpose and running under registered trust deed.

9. Now whether in this given facts Ld. CIT(Exemption) was justified in denying the registration u/s 12AA of the Act. We find that the similar issue and almost similar facts came up for adjudication before Co-ordinate Bench, Pune in the case of *Shri Jain Shwetamber Murtipujak Sangh V/s CIT ITA No.1353/PN/2014 order dated 31.3.2015* wherein also similar issue of denial of registration u/s 12AA of the Act was under consideration. We find that the Co-ordinate bench decided in favour of the assessee

referring to various judgments and also referring to the objects of the trust and held as under :-

9. We have heard the rival contentions and perused the record. The assessee trust was registered under the Bombay Public Trusts Act, 1950 vide Notification dated 17.11.2005. The assessee had applied for registration under [section 12A](#) of the Act, vide application filed in Form No.10A. The aims and objects of the assessee trust as per the Trust Deed were as under:-

1. To build Shri Jain Shwetamber Jain Temple, prayer hall (Dharmshala), renovate and maintain them, administer and in pursuance of that to do anything needed to be carried on.
  2. To set the religious library, maintain it, propagate Indian culture and inculcate and study all the cultures of all the religion. To take up research on religious, social & educational in order to uplift the public as a whole.
  3. To arrange necessary matters enabling the disciples to carry on prayers and worship. To take up all the activities as are customary or traditional as per the philosophy of Jain Shwetamber Murtipujak.
  4. To arrange all the ceremonies as are envisaged in the philosophy of Shri Jain Shwetamber Murtipujak and to take up all the administrative requirements relating thereto.
  5. To arrange residence and discourses of Sadhus Sadhvis of Jain Shewatamber Murtipujak and to take up all the relevant activities to provide necessary services to them.
  6. All the families who believe in tradition and philosophy of Shwetamber Murtipujak are to be encouraged for inter-se co-operation, secularism and create fruitful belief and understanding and to take up the activities for their protection and benefit similarly to sort out all the disputes relating to religion or social issues.
  7. To create, encourage, propagate inter-se co-operation, co-living and feeling of co-living in the community of entire public at large.
10. The Commissioner while considering the application for grant of registration under [section 12A](#) of the Act, was of the view that the prime thrust of trust was to provide for the benefit of a particular religious community and further, the activities carried on by the assessee i.e. hiring of Dharmshala was not a charitable object. The assessee claimed that it was organizing blood donation campaigns, medical check-up campaigns, etc. in its Dharmshala. However, the Commissioner noted that the said camps were organized by other organizations at Dharmshala of the assessee, against which rent

*was paid, which was accounted for by the assessee in its income and expenditure account.*

- 11. The issue arising before us is whether the assessee is entitled to the claim of registration under [section 12A](#) of the Act being a charitable and religious trust and also where the assessee has violated the provisions of [section 13\(1\)\(b\)](#) of the Act, registration under [section 12A](#) of the Act could be granted to the assessee. The perusal of aims and objects reflect that the first object of the assessee trust was to build Shri Jain Shwetamber Jain Temple, prayer hall. Further object of the trust was to set up religious library to maintain it and propagate Indian culture and inculcate and study all the cultures of all the religion. As per clause No.3, the object was to arrange necessary matters enabling the disciples to carry on prayers and worship and also to take up all activities as are customary or traditional as per the philosophy of Jain Shwetamber Murtipujak. The objects also provide that the assessee would arrange the residence and discourses of Sadhus, Sadhvis of Jain Shwetamber Murtipujak and also to take up relevant activities to provide necessary services to them. Further, all the communities who believe in the tradition and philosophy of Jain Shwetamber Murtipujak were to be encouraged for inter-se cooperation and to take up certain activities and also benefits. As per clause 7, the object was to create, encourage, propagate, inter-se cooperation, co-living and feeling of co-living in the community of entire public at large. The issue which has been raised by the Commissioner in this case whether where prime thrust of the trust was to provide benefits to a particular religious community, can the assessee be entitled to the claim of registration to its trust of carrying on charitable activities. The objections of the learned Authorized Representative for the assessee against the order of Commissioner were that the objects of the trust were not for the promotion of any religion and hence, it could not be denied the benefit of registration under [section 12A](#) of the Act.*
- 12. We find that the Hon'ble Gujarat High Court in CIT Vs. Chandra Charitable Trust (2007) 294 ITR 86 (Guj) which has been referred to by Pune Bench of the Tribunal in JITO-Pune Chapter Vs. CIT (supra), had considered the issue of grant of registration under [section 12A](#) of the Act, it was observed by the Hon'ble Gujarat High Court that where the objects of the trust were not only to propagate Jainism or help and assist maintenance of temples, Sadhus, Sadhvis, Shraviks and Shravaks, and other goals are also set out in the trust deed, the trust was a charitable as well as religious trust and [section 13\(1\)\(b\)](#) of the Act would not be applicable. The Hon'ble High Court has held as under:-*

*"5. The question, that what should be the principle adopted and whether Jainism is a lifestyle or a religion, would lose much of its importance in view of the judgment of this Court in the matter of [CIT vs. Barkate Saifiyah Society](#) (supra). If Jainism is accepted to be a religion and from the covenants of the trust deed it can be spelt out that not only to propagate Jainism or help and assist maintenance of the temple, Sadhus, Sadhvis, Shraviks and Shravaks, yet other goals are set in the trust deed, then the trust would become a charitable trust, so also a religious trust or it can be addressed as a charitable religious trust, and, if that be so, [s. 13\(1\)\(b\)](#) would not be applicable. Once the basic question is answered against the interests of the Revenue, then the other questions can conveniently be decided against the interests of the Revenue. The reference stands disposed of accordingly. No costs."*

13. *The Hon'ble Supreme Court in CIT Vs. Dawoodi Bohra Jamat, (2014) 364 ITR 31 (SC) had observed that the objects of trust as declared in the Trust Deed would govern its right of exemption under [sections 11 and 12](#) of the Act. The Hon'ble Supreme Court also recognized the creation or establishment of trust for either religious or charitable or both religious and charitable purposes. By looking at the objects of the trust, it had to be determined whether the objects were wholly religious or wholly charitable or both religious and charitable and it was held that on consideration of the objects of the trust, the religious and charitable purposes and activities of the trust could be determined. It was further held that [section 11](#) of the Act allows such trust with composite objects to claim exemption from tax as a religious and charitable trust, subject to provisions of [section 13](#) of the Act. Though the objects of the trust were based on religious tenets but where the activities of the trust for both charitable and religious were not exclusively meant for a particular religious community, then it would not fall under the provisions of [section 13\(1\)\(b\)](#) of the Act and it was further held that where the assessee was charitable and religious trust, which did not benefit any specific religious community and hence, it could not be held that the provisions of [section 13\(1\)\(b\)](#) of the Act would be attracted to the assessee trust and therefore, it would be eligible to claim exemption under [section 11](#) of the Act. The relevant observations of the Hon'ble Supreme Court are as under:-*

*"(i) that determination of the nature of the trust as wholly religious or wholly charitable or both charitable and religious under the Act is not a question of fact. It is a question which requires examination of the legal effects of the proven facts and documents, that is, the legal implication of the objects of the assessee-trust as contained in the trust deed. It is only the objects of a trust as declared in the trust deed which would govern its right of exemption under [section 11](#) or*

12. It is the analysis of these objects in the backdrop of fiscal jurisprudence which would illuminate the purpose behind creation or establishment of the trust for either religious or charitable or both religious and charitable purpose. Therefore, the High Court had erred in refusing to interfere with the observations of the Tribunal in respect of the character of the trust on the grounds that they were pure findings of fact.

- (ii) That the objects of the assessee-trust were not indicative of a wholly religious purpose but were collectively indicative of both charitable and religious purposes. Although objects (c) and (f) which provided for activities completely religious in nature and restricted to the specific community of the assessee-trust were objects with religious purpose only, the fact that the other objects traced their source to the Holy Quran and resolved to abide by the path of godliness shown by Allah would not be sufficient to conclude that the entire purpose and activities of the trust were purely religious in colour. The objects reflected the intent of the trust as observance of the tenets of Islam, but did not restrict the activities of the trust to religious obligations only and for the benefit of the members of the community. The provision of food to the public on religious days of the community, the establishment of Madarsas and organisations for dissemination of religious education and rendering assistance to the needy and poor for religious activities would reflect the essence of charity. The activity of providing for food on certain specific occasions and other religious and auspicious events of the Dawoodi Bohra community did not restrict the benefit to the members of the community. Neither the religious tenets nor the objects as expressed limited the service of food on these occasions to members of the specific community. The establishment of Madarsas or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of [section 2\(15\)](#) of the Act. Similarly, assistance by the assessee-trust to the needy and poor for religious activities would not divest the trust of its altruist character. Therefore, the objects of the trust exhibited the dual tenor of religious and charitable purposes and activities. [Section 11](#) of the Act allowed such trust with composite objects to claim exemption from tax as a religious and charitable trust subject to the provisions of [section 13](#). The Activities of the trust under such objects would, therefore, be entitled to exemption accordingly.

*In re : trustees of the tribune [1939] 7 ITR 415 (PC) and In re : SOUTH PLACE ETHICAL SOCIETY; BARRALET V. ATTORNEY GENERAL [1980] 3 All ER 918; [1980] 1 WLR 1565; 54 Tax Cas 446 applied.*

*(iii) That the objects of the assessee-trust were based on religious tenets under the Quran according to the religious faith of Islam. The activities of the trust though both charitable and religious were not exclusively meant for a particular religious community. The objects did not channel the benefits to any community if not the Dawoodi Bohra community and thus, would not fall under the provisions of [section 13\(1\)\(b\)](#) of the Act. The assessee-trust was a charitable and religious trust which did not benefit any specific religious community and, therefore, it could not be held that [section 13\(1\)\(b\)](#) of the Act would be attracted to the assessee-trust and thereby, it would be eligible to claim exemption under [section 11](#) of the Act."*

14. *In view of the above said proposition laid down by the Hon'ble Supreme Court, the objects of the trust are to be looked into and those objects can be either charitable or religious in nature or both charitable or religious in nature. The question which arises for consideration before us is whether the trust whose objects were religious as well as charitable would be entitled for registration under [section 12A](#) of the Act. Looking at the objects of the trust, we find that one of the objects of the assessee trust was to build a temple, prayer hall and maintain the same and further object was to set up a religious library, maintain it and propagate Indian culture and inculcate and study all the cultures of all the religion. Further, to take up research on religious, social and educational in order to uplift the public at large. The objects Nos.3 to 5 of the Trust Deed were admittedly for the propagation of philosophy of Shri Jain Shwetamber Murtipujak. However, object No.7 was to create, encourage and propagate inter-se cooperation, co-living and feeling of co-living in the community of entire public at large. The objects of the assessee trust thus, reflect the activities to be carried on for the purpose of Jain religion and also for the purpose of public at large. In view thereof, it could not be held that the same are meant for the benefit of only Jain religious community. We reverse the findings of the Commissioner in this regard.*

10. On examining the facts and issue of the instant appeal in the light of above referred decision of *Shri Jain Shwetamber Murtipujak Sangh V/s CIT (supra)* we find that the issue stands squarely covered in favour of assessee with regard to the issue of registration u/s 12AA of the Act and we therefore, respectfully following the above decision are of the considered view that Ld. CIT (Exemption) erred in denying the registration u/s 12AA of the Act to the assessee completely ignoring the fact that the assessee is working for both religious and charitable purpose and the property in question i.e. 300 year old Jain temple is being maintained and used for religious and charitable purpose by the assessee trust under the certificate granted by the Municipal Council. We therefore allow Ground No. 1 to 4 raised by the assessee and direct Ld. CIT (Exemption) to grant the certificate of registration u/s 12AA of the Act.

11. Ground No.5 is general in nature which needs no adjudication.

10. In the result appeal of the assessee is allowed.

The order pronounced in the open Court on 22.05.2020.

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

Sd/-

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 22<sup>nd</sup> May, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore