IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

Before Shri L. P. Sahu, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No. 742/Asr/2017
(Assessment Year: 2017-18 and onwards)

Shri Raghvendra Sewa Trust Doodhadhari Ashram; Shastri Nagar, Jammu – 1800 004	Vs.	Commissioner of Income-tax (Exemption) Chandigarh

PAN– AAQTS2334B

(Appellant)	**(Respondent)**

Appellant by: Shri. Parikshit Aggarwal, C.A
Respondent by: Shri M.P Singh, CIT D.R

Date of Hearing: 05.02.2020
Date of Pronouncement: 30.06.2020

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Exemptions), Chandigarh, dated 29.09.2017 under Sec. 12AA(1)(b)(ii) of the Income-tax Act, 1961(hereinafter referred to as the'Act') .

2. Briefly stated, the assessee trust which was registered with the Sub-registrar, Jammu on 18.11.2014 had filed an application in Form 10A with the CIT(Exemptions), Chandigarh[hereinafter referred to as CIT(Exemptions)] on 30.03.2017 seeking registration under Sec. 12A(a) of the Act. As per the records, the aims and objects of the assessee trust were to establish, create and set up necessary infrastructure for the welfare, good health, well being, catering and looking after the cows, calves, buffalos and also to promote and inculcate the faith of public at large towards service

of the sacred cow; to initiate steps to provide necessary help which will be in large interest of public at large especially for those who were deserving, needy, helpless on many counts in their life, irrespective of caste, colour, creed or religion; to establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons; to grant relief and assistance to the needy victims during natural calamities, such as famine, earthquake, flood, fire, pestilence etc. and to give donations and other assistance to institutions, establishments or persons engaged in such relief work; to imbibe, promote and inculcate amongst the public at large the moral, ethical and spiritual values for improving and alleviating the standards of life and in this process to impart education encompassing within its fold various branches thereof; and to grant aid or render assistance to other public charitable trusts or institutions established with similar objectives.

3. In order to verify the objects and the genuineness of the activities of the assessee trust the CIT(Exemptions) called for certain information and deliberated on the same. Observing, that both the objects and genuineness of the activities of the assessee trust were not established, the CIT(Exemptions) vide his order passed under Sec. 12AA(1)(b)(ii), dated 29.09.2017 rejected its application for registration filed under Sec. 12AA of the Act.

4. Aggrieved with the order of the CIT(Exemptions) passed under Sec. 12AA(1)(b)(ii) of the Act, dated 29.09.2017, declining the grant of registration to the assessee trust, the latter has assailed the same before us.

5. We have heard the authorized representatives for both the parties at length, perused the order passed by the CIT(Exemptions) under Sec. 12AA(1)(b)(ii) of the Act, dated 29.09.2017, and also the material placed on our record. As is discernible from the records, the CIT(Exemptions) in the course of proceedings before him, had observed, that the assessee trust had vide a resolution dated 15.12.2014 sought to merge into itself another trust viz. Baba Doodhadhari Trust, Rajouri, and resultantly take over the management and control of eight properties viz. temples/ashrams/gaushalas situated in the State of Jammu & Kashmir. It was observed by the CIT(Exemptions) that the aforesaid merger of Baba Doodhadhari Trust, Rajouri into the assessee

trust suffered from certain serious infirmities viz. (i). that the settler of the assessee trust who was not clearly in possession of temples/ashrams/gaushalas had sought to settle the same to a group of trustees who also were not clearly brought out to be the settlers/trustees of the properties concerned; (ii). that the merger of an irrevocable trust i.e Baba Doodhadhari Trust into the assessee trust which was supposedly required to be based on the decision of the trust being merged was however sought on the basis of a resolution passed by the assessee trust; (iii). that even otherwise the aforesaid arrangement of merger had not fructified as the resolution dated 15.12.2014 passed by the assessee trust was not registered with the competent authority; (iv). that no evidence as regards the ownership and the legal status of the eight temples/trust proposed to be taken over by the assessee trust was furnished; and (v). that as in the State of Jammu & Kashmir alienation of land rights and ownership is guided by special provisions endemic to the state and its special status, therefore, it was beyond comprehension as to how the assessee trust could comprise of trustees who were not the permanent residents of the state. As can be gathered from the order passed by the CIT(Exemptions) the aforesaid infirmities had primarily weighed in his mind while rejecting the application filed by the assessee trust for registration under Sec. 12A of the Act on the ground that both the objects and the genuineness of the activities of the assessee trust were not established.

6. We have perused the order passed by the CIT(Exemptions) under Sec. 12AA(1)(b)(ii) of the Act in the backdrop of the material available on record. Before proceeding any further, we are of the considered view that the factual observations of the CIT(Exemptions) that had formed the basis for declining the grant of registration to the assessee trust requires to be deliberated upon, as under:

(i). The CIT(Exemptions) in his order passed under Sec. 12AA(1)(b)(ii) of the Act had observed that the settler of the assessee trust viz. Sant Shree Prabhu Dass Ji Maharaj of Doodhadhari Ashram, Haridwar who was not clearly in possession of certain temples/ashrams had sought to settle the same to a group of trustees who also were not clearly brought out to be the settlers/trustees of the properties concerned. Also, it was observed by him that no evidence as regards the ownership and the legal status of the eight temples/trust proposed to be taken over by

the assessee trust was furnished in the course of the proceedings. On a perusal of the records, we find that it was the claim of the assessee before the CIT(E) that the settler of the assessee trust viz. Sant Shree Prabhu Dass Ji Maharaj of Doodhadhari Ashram, Haridwar was in possession of the eight properties i.e temples/gaushalas/ashrams, and for managing, control and administering of the same the assessee trust was created on 18.11.2014 viz. (i). temple, gaushala & ashram at shastri nagar, jammu; (ii). gaushala at jeevan nagar, jammu; (iii).temple complex at pacca danga, jammu; (iv). temple site at akhnoor, district jammu; (v). temple site at village godhar; (vi). temple site at village dab; (vii). temple and gaushala at rajouri; and (viii). temple complex at karlai dhar road, udhampur. It was submitted by the assessee that the aforementioned properties which were situated in the State of Jammu & Kashmir were constructed 35 to 40 years ago by the devotees of Braham Rishi Baba Shree Doodhadhari Ji Maharaj, Haridwar, who after his death in the year 1984 was succeeded by Sant Shree Prabhu Dass Ji Maharaj. It has been the claim of the assessee that the aforementioned eight properties were donated by the devotees to Doodhadhari Ashram, Haridwar, and on the same temples/gaushalas/ashrams were established/constructed. In sum and substance, it was submitted by the assessee that the aforesaid temples/gaushalas/ashrams were very old properties which earlier were being managed by the devotees with the advise/directions of Braham Rishi Baba Shree Doodhadhari Ji Maharaj, Haridwar, and after the latters death in the year 1984, with that of his successor viz. Sant Shree Prabhu Dass Ji Maharaj. On a perusal of the records, we find that the assessee in order to drive home its claim that the aforesaid eight properties viz. temples/gaushalas/ashrams were very old properties which had came up with the contributions of the devotees scattered in the State of Jammu & Kashmir, had therein vide his reply dated 26.09.2017 filed with the CIT(Exemptions) copies of the sale deeds, gift deeds, court decrees etc. in respect of the land on which these ashrams/gaushalas/temples had been constructed. Ld. A.R had in the course of hearing of the appeal drawn our attention to copies of the aforesaid documents placed at Page 115-170 of the assesses 'Paper book' (for short 'APB'). In the backdrop of the aforesaid facts we are unable to persuade ourselves to subscribe to the view taken by the CIT(Exemptions) that that the settler of the assessee trust was not in possession of temples/ashrams/gaushalas under consideration.

(ii). We shall now advert to the observation of the CIT(Exemptions) that the merger of an irrevocable trust i.e Baba Doodhadhari Trust into the assessee trust which was supposedly required to be based on the decision of the trust being merged was however sought on the basis of a resolution passed by the assessee trust. We have given a thoughtful consideration to the aforesaid observation of the CIT(Exemptions) and in the absence of clarity of facts discernible from the records in context to the issue under consideration are unable to summarily accept the same. On a perusal of the "trust deed", dated 18.11.2014 of the assessee trust, we find that it is stated that the earlier trust namely "Baba Doodhadhari Trust, Rajouri" formed vide trust deed dated Nil shall be deemed to have been merged with the assessee trust in view of the unanimous resolution of the respective trustees of Doodhadhari Ashram, Rajouri. Also, it is further stated that Clause 40 & 42 of the earlier trust namely "Baba Doodhadhari Trust, Rajouri" provides for merger of the same with any other trust with similar objects. In the backdrop of the aforesaid facts, we are unable to comprehend that as to on what clear basis the CIT(E) had concluded that the merger of Baba Doodhadhari Trust into the assessee trust was sought on the basis of a resolution passed by the assessee trust. At the same time, we also cannot remain oblivious of the fact that the assessee had also neither dispelled the ambiguity emerging in respect of the aforesaid issue before the CIT(E) nor tried to dislodge the said observation recorded in the impugned order in the course of hearing of the appeal before us.

(iii). We shall now take up the observation of the CIT(E) that as in the State of Jammu & Kashmir alienation of land rights and ownership is guided by special provisions endemic to the state and its special status, therefore, it was difficult to comprehend that as to how the assessee trust comprised of trustees who were not the permanent residents of the State of Jammu & Kashmir. In sum and substance, the CIT(E) held a conviction that now when as per the special provisions as regards ownership and alienation of land rights in the State of Jammu & Kashmir only its permanent residents could purchase land in the state, therefore, it was beyond comprehension as to how persons other than permanent residents were taken up as trustees by the assessee trust. On a perusal of the records, we find that the assessee in reply to a query raised by the CIT(E) in context of the aforesaid issue under consideration, had submitted, that the assessee trust

comprised of only the settler viz. Sant Shree Prabhu Dass Ji Maharaj of Doodhadhari Ashram, Haridwar and one trustee viz. Shri. Hemant Rungta R/o. Haridwar, who were not permanent residents of the State of Jammu & Kashmr. It was stated by the assesee that there was no legal impediment for a non-state subject to become a trustee of a trust operating and located in the State of Jammu & Kashmir. In order to fortify its aforesaid claim, it was submitted by the assessee viz. (i). that the restriction was on the non-state subjects as regards acquiring of immovable property in the State of Jammu & Kashmir under the local laws; (ii). that since the non-subject trustee took part only in the decision making process of the trust for its welfare and did not hold any property, directly or indirectly, in his name, therefore, the restrictions as regards acquiring of property by the non-state subject was not applicable in its case; and (iii). that even otherwise the assessee trust had not acquired any property, directly or indirectly, in the name of any of the non-state subject trustees. Also, we find that the aforesaid reply filed by the assessee with the CIT(Exemptions) was based on a legal opinion that was obtained by it from a senior advocate viz. Shri. D.C Raina. On a perusal of the view taken by the CIT(Exemptions) in context of the aforesaid issue under consideration, we find that the reply of the assessee on the said aspect which was specifically based on a legal opinion had not been taken cognizance of by him.

7. We have deliberated at length on the declining of the registration to the assessee trust by the CIT(Exemptions) vide his order passed under Sec. 12AA(1)(b)(ii) of the Act and are unable to find favour with the reasoning accorded by him for so concluding. We find that the provisions of Sec. 12AA which contemplates the procedure for registration, reads as under :

> *"*The [Principal Commissioner or] Commissioner, on receipt of an application for registration of a society or institution made under clause : (a) [or clause (aa) of sub-section (1)] of section 12A shall:-
>
> (a) Call for such documents or information from the society or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the society or institution and may also such inquiries as he may deem necessary in this behalf; and
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> (b) after satisfying himself about the objects of the society or institution and the genuineness of its activities, he :-
>
> (i) shall pass an order in writing registering the society or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the society or institution....."

The aforesaid provisions mandates examination of two basic conditions for grant of registration to an assessee under Sec. 12AA viz. (i) examination of objects of the society or institution; and (ii) satisfaction of the registering authority about the genuineness of the activities of the society or institution on the basis of inquiries. Insofar the observation of the CIT(Exemptions) that the objects of the assessee trust are not established, we do not find ourselves to be in agreement with the same. In our considered view the aims and objects of the assessee trust to establish, create and set up necessary infrastructure for the welfare, good health, well being, catering, and looking after the cows, calves, buffalos and also to promote and inculcate the faith of public at large towards service of the sacred cow; to initiate steps to provide necessary help which will be in large interest of public at large especially for those who were deserving, needy, helpless on many counts in their life, irrespective of caste, colour, creed or religion; to establish, maintain or grant aid to homes for the aged, orphanages or other establishments for the relief and help to the poor, needy and destitute people, orphans, widows and aged persons; to grant relief and assistance to the needy victims during natural calamities, such as famine, earthquake, flood, fire, pestilence etc. and to give donations and other assistance to institutions, establishments or persons engaged in such relief work; to imbibe, promote and inculcate amongst the public at large the moral, ethical and spiritual values for improving and alleviating the standards of life and in this process to impart education encompassing within its fold various branches thereof; and to grant aid or render assistance to other public charitable trusts or institutions established with similar objectives clearly brings the same within the realm of the definition of the term "charitable purpose" as envisaged in Sec. 2(15) of the Act. Accordingly, not being able to subscribe to the observation of the CIT(Exemption) as regards the objects of the assessee society which as observed by us hereinabove are clearly established to be charitable in nature, we vacate his order to the said extent.

8. Insofar the genuineness of the activities of the assessee trust are concerned, we find that the **Hon'ble High Court of Punjab & Haryana** in the case of **CIT-II, Chandigarh Vs. M/s Surya Educational and Charitable Trust (ITA No. 710 of 2010; dated 05.10.2011)** had inter alia observed that Sec. 12AA of the IT Act required satisfaction in respect of the genuineness of the

activities of the trust, which includes the activities which the trust is undertaking at present and also which it may contemplate to undertake. In our considered view the CIT(Exemptions) in the case before us while verifying the genuineness of the activities of the assessee trust had remained well within his jurisdiction while examining the taking over of the management and control of the eight properties i.e ashrams/temples/gaushalas scattered over the State of Jammu & Kashmir by the assessee trust. We are unable to accept the claim of the ld. A.R that the CIT(Exemptions) by examining the taking over of the aforesaid eight properties by the assessee trust had traversed beyond the scope of jurisdiction that was vested with him under Sec. 12AA of the Act. At the same time, as observed by us hereinabove, the observations and the reasoning adopted by the CIT(Exemptions) for drawing of adverse inferences as regards the genuineness of the activities of the assessee trust does not inspire much of confidence in the backdrop of the facts discernible from the records. In fact, as had been deliberated at length by us hereinabove, certain factual observations recorded by the CIT(Exemptions) for drawing of adverse inferences as regards the genuineness of the activities of the assessee trust clearly militate against the facts borne from the records to which our attention was drawn by the ld. A.R during the course of the hearing of the appeal. As noticed by us hereinabove, certain observations recorded by the CIT(E) are clearly divorced and shorn of the specific replies that were filed by the assessee trust in its attempt to dispel the doubts as regards certain issues pertaining to its aforesaid activities. Be that as it may, in our considered view the matter in all fairness requires to be revisited for a limited purpose by the CIT(Exemptions), who in the course of the set-aside proceedings is directed to re-consider the application filed by the assessee trust for grant of registration under Sec. 12AA of the Act after considering the replies/material available on his record as well as calling for further details as he may deem fit in so far the same pertain to and are relevant for the purpose of making of necessary verification as regards the genuineness of the activities of the assessee trust. Needless to say, the CIT(Exemptions) in the course of the set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee trust which shall remain at a liberty to place on record fresh material/documents to fortify the genuineness of its activities in furtherance of its aims and objects.

9. Before parting, we may herein deal with the issue that though the hearing of the captioned appeal was concluded on 05/02/2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows : (5) The pronouncement may be in any of the following manners :— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, "ordinarily" the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression "ordinarily" has been used in the said rule itself. This rule was inserted as a result of directions of Hon'ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

> "We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment".

In the rule so framed, as a result of these directions, the expression "ordinarily" has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any "extraordinary" circumstances.

10. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai 'F' Bench in DCIT, Central Circle-3(2), Mumbai

Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

> "Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure…". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.
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> 10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by the Hon'ble High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same, therein respectfully follow the same. As such, we are of the considered view that the period during which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

11. Accordingly, the appeal of the assessee trust is allowed for statistical purposes and the application filed by the assessee society for grant of registration under Sec. 12AA of the IT Act is restored for a limited purpose to the file of the CIT(E) for fresh consideration in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-	Sd/-
(L. P. Sahu)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Date 30.06.2020

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

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **आयकर आयुक्त(अपील)** / The CIT(A)-
4. **आयकर आयुक्त** / CIT
5. DR, ITAT, Amritsar Bench, Amritsar
6. **गार्ड फाईल /** Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण/ITAT, Amritsar. Bench, Amritsar.