

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

(Through Video Conferencing)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

And

DR. B.R.R.KUMAR, ACCOUNTANT MEMBER

ITA No.3133/DEL/2016

M/s Akhil Bhartiya Shree Vekunthnath Sewa Dharmarth Trust Vrindaban, H. No.1336-37, Sector-14P, Hisar, (Haryana)	Vs.	Commissioner of Income Tax (E), C.R Building, Sector-17E, Chandigarh-160017
PAN-AACTA8982H		
Assessee		Revenue

Assessee by	Sh. K. Sampath, Adv. & Sh. V. Rajkumar, Adv.
Revenue by	Sh. Satpal Gulati, CIT-DR

Date of Hearing	11.01.2022
Date of Pronouncement	17.01.2022

ORDER

PER Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER :

This appeal has been filed by the assessee against the order of the Id. CIT(E), Chandigarh, dated 29.04.2016.

2. Following grounds have been raised by the assessee:

"That on the facts and in the circumstances of the case and in law the action of the Learned Assessing Officer in denying registration u/s 12AA of the Income-tax Act, 1961 is arbitrary, erroneous and illegal and must be quashed with directions for registering the same forthwith."

3. Akhil Bhartiya Shree Vekunthnath Sewa Dharmarth Trust Vrindaban - the Appellant herein was incorporated in August, 2010. The Trust was registered vide Registration No.5382 on 05.08.2017.

4. The Trust had been indulging in charitable activities including providing food to the poor through Bhandaras. It had audited accounts for the years ended 31.03.2013 to 31.03.2015.

5. The Trust submitted an application for registration u/s 12AA of the Income-tax Act, 1961 on 13.10.2015 to the Ld. Commissioner of Income-tax (Exemptions), Chandigarh.

6. The objectives of the Trust include support of cows and animals, provision of education and medical relief, establishing Dharamshalas, construction of Temples and monasteries, arranging religious discourses, providing financial assistance to people suffering from natural disasters, preparation for sports and physical development of children, establishing reading rooms and library, organizing cultural events, establishing Adult Education Centre, old age homes, training women in sewing, weaving, embroidery, sculptures, etc., undertaking plantation for environmental purification, organizing mass marriage for poor girls, providing support to registered authorized Societies and Trusts, etc. etc. These objectives are stated elaborately in the Trust Deed.

7. Consequent to the submission of Application in Form-1 OA for registration by the Trust, the Ld. CIT(E) asked for details and related material including a note on activities which were all submitted. The Ld. CIT(E) examined the totality of the material submitted to them but remarked that no evidence with regard to the activities having actually been carried out by the Trust were furnished;

- that the so called charitable activities of the Trust were not corroborated in the absence of supporting details;

- that the purchase of land by the Trust and the subsequent alteration of the land use suggested that it was for religious use;
- that the focus of the Trust was on the construction of building and purchase of land which was not covered under any of the limbs of Sec.2(15) of the Act;
- that the purchase of land and the subsequent construction of Temple complex thereof by the Trust had been sourced mainly from corpus donations;
- that the corpus donations lacked specific directions;
- that the corpus donations having been utilized by the Trust for the purchase of land and construction of building was not charitable act;
- that corpus donations had not been obtained to be utilized right at the very outset of the activities of the Trust;
- that corpus funds were permanent funds retained for the basic expenditure needed for the administration and survival of the Trust;
- that the corpus funds are generally not allowed to be utilized for the attainment of the objectives;
- that the transfer of the Trust's corpus to M/s Thakur Shree Hari Dev Ji Maharaj Trust was restrictive in nature.

8. With such observations the Ld. CIT(E) concluded that the sole objective of the Trust was the construction of a Temple and so he rejected the prayer for registration with the following remarks:

"Given all of the above, it is safe to conclude that the so called charitable activities being claimed by the applicant trust do not get corroborated. In the instant case, the applicant has failed to exhibit that it has undertaken activities that could be considered charitable. In fact it has been fairly conceded that the predominant purpose of service to Cow and other elated objects contained in the trust deed have not been initiated. The only activity that is evident is that of purchase of land and construction of building which do not get covered by the

provisions of section 2(15) of the I.T. Act, 1961. This activity further gets impinged by several loopholes that have been discussed above. In the light of the same, the application under section 12A for grant of registration is rejected".

9. It is submitted that the Trust is purely charitable in terms of its objectives. The Ld. CIT(E) has made light of the comprehensive objectives and has only emphasized on two objectives which were for cow protection and Temple construction to deprecate it.

10. The Ld. CIT(E) held that the Trust has failed to show any sale of milk, butter, etc. The Ld. CIT(E) failed to understand and appreciate that the Trust was not holding any cows as part of its chattel so as to draw any milk or make any butter out of the yield. The Ld. CIT(E) erred in observing that the construction of Temple is not a charitable activity. The Ld. CIT(E) did not realize that if there is any benign activity for the public at large it is always charitable. The definition under Section 2(15) of the Act is not exhaustive. It is inclusive and merely illustrating. The scope of Section 2(15) is to be read with contents of the supplemental provisions such as Sections 11,12 and 13 of the Act. The later sections clearly delineate religion being indeed in the realm of charity. The Ld. CIT(E) could not realize that the Trust was in dire needs of funds for pursuing its activities. The funds could be generated by the Trust after it was registered for tax exemption. The Accounts of the assessee along-with the details submitted to the Ld. CIT(E) during the course of its registration proceedings indicate the activities. The Ld. CIT(E)'s concept of the manner of expending the corpus donations is neither in consonance with facts is misplaced. Section 12 of the Act does not prescribe any mode or manner in which any corpus donation has to be retained or expended. As to the transfer of the corpus of this Trust, in the event of its dissolution or discontinuation the sole condition is that the balance funds at the time of closure should be transferred to a like charity. In resolving to transfer the corpus in such an eventuality to M/s Thakur Shree Hari Das Ji Maharaj Trust no aberration of any sort can be conceived as having been committed by the Trust. Use of

corpus donations and funds for charity was definitely in terms of the provisions of law and societal practice.

11. The purchase of land and the construction of a building thereon were integral to the establishment and existence of the Trust and thus were entirely in consonance with the pursuit of charitable objectives. They were not in any way derogatory for any part of Section 2(15) of the Act as the Ld. CIT (E) erroneously seems to think. Focus should be on charity was in pursuit of charitable objects alone.

12. Any charitable religious entity is entitled to registration as a charity u/s 12AA of the Act. The submission is made on the authority of the decision of Madras High Court in CIT vs. Arulmigu Sri Kamatchi Amman Trust (2012) 206 Taxman 69, of the Gujarat High Court DIT (E) vs. Sheth Jivandas Godidas Shankheshwar Parshwanathji Jain (2014) 221 Taxman 44 and of the apex court itself in CIT vs. Dawoodi Bohra Jamat (2014) 364 ITR 31 (SC). Keeping in view, the judgments quoted above, we hereby hold that the trust is eligible for registration u/s 12AA of the Act. In case, the activities of the trust are found to be not in the nature of charitable activities in the wider public interest, subsequently the department would be at liberty to invoke the relevant provisions of the Act to tax the surplus amount and also to revoke the registration granted.

Order pronounced in open court on 17th day of January, 2022.

Sd/-

[KUL BHARAT]
JUDICIAL MEMBER
Delhi; Dated: 17.01.2022.

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)

Sd/-

[B R R KUMAR]
ACCOUNTANT MEMBER

5. DR

Asst. Registrar,
ITAT, New Delhi