

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM &DR. A.L.SAINI, AM

आयकर अपील सं./ITA Nos.263/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2022-23)

(Physical Court Hearing)

Bal Hanuman Mandir 8/755-756, Hanuman Char Rasta, Gopipura, Main Road, Surat- 395003	Vs.	The Commissioner of Income-Tax (Exemption) Ahmedabad, Room No.609, 6 th Floor, Aaykar Bhawan (Vejalpur), Nr. Schin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AAMTS 2224 A		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपील सं./ITA No.268/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2022-23)

Valmik Kayastha Kelvani Fund, C/o Atulbhai Majumdar, B-6, Sushma Society, Near Hindu Milan Mandir, Gopipura, Surat- 395001	Vs.	The Commissioner of Income-Tax (Exemption) Ahmedabad, Room No.609, 6 th Floor, Aaykar Bhawan (Vejalpur), Nr. Schin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AAATV 4235 A		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपील सं./ITA No.272/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2022-23)

Shree Dasha Shreemali Jain Vanik Vyara, Surati Bazar, Vyara Dist. Tapti, Surat-394650	Vs.	The Commissioner of Income-Tax (Exemption) Ahmedabad, Room No.609, 6 th Floor, Aaykar Bhawan (Vejalpur), Nr. Schin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AAKTS 7688 G		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Hiren R Vepari, C.A

राजस्व की ओर से /Respondent by : Shri SM Keshkamat, CIT-DR

सुनवाईकीतारीख /Date of Hearing : 05/07/2023

घोषणाकीतारीख/Date of Pronouncement: 17/07/2023

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned three appeals filed by different assessees-trust, pertaining to same Assessment Year 2022-23, are directed against the separate orders passed by the Commissioner of Income-Tax(Exemption)-Ahmedabad [in short “ld. CIT(Exemption)”] dated 27.02.2023 & 22.03.2023, *wherein* Ld. CIT(Exemption) has denied registration under section 12AB of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. Since the issues involved in all three appeals are common and identical; therefore, all the three appeals have been heard together and are being disposed of by this consolidated order.

3. At the outset, Learned Counsel for the assessee, submitted that in case of Valmik Kayastha Kelvani Fund, vide ITA No.268/SRT/2023, and in case of Shree Dasha Shreemali Jain Vanik Vyara, vide ITA No.272/SRT/2023, the additional evidences were submitted by these assessee-trusts. These additional evidences were not available when the proceedings were going on before ld CIT(Exemption), hence assessee has submitted now before the Bench. The Ld. Counsel for the assessee submitted these assessee-trusts were established by way of a valid trust deed to carry out religious and charitable activities and has been in existence since a long period as per the Income Tax records, and owing to passage of time, the trustees have lost trace of the aforementioned trust deeds. The trustees were unable to find a copy of the trust deed, even after duly inquiring with the trust’s Chartered Accountant and in the Charity Commissioner’s office. Therefore, in the interest of regularizing the trust’s legal standing, the these assessees-trusts had redrafted the trust deed in a manner that is consistent with activities carried out by the trust across several decades, which are purportedly undertaken in consonance with the underlying objects. It was emphasized

that none of the objects envisaged by the original trust deed have been obliterated. The objects specified in re-drafted trust deeds were mentioned in these original deeds. The Ld. Counsel submitted these additional evidences under Rule 29 of the ITAT Rules, 1962, along with affidavit. Objects specified in re-drafted trust deed are mere elaboration of primary objects specified in PTR. The registration number granted by the Charity Commissioner Surat-A-1277 have always been stated in all the ITRs even in the earlier years. The Ld. Counsel submitted copy of PTR which was not demanded specifically by Id CIT(E), however, copy of the same is filed before the Bench, which is in consonance with the application for registration cum trust deed. The Id Counsel prays the Bench that in case of these two assessee-trusts, the additional evidences may be admitted and matter may be sent back to the file of the Ld CIT(E) for fresh adjudication.

4. Learned DR for the Revenue fairly agreed with the arguments advanced by Id Counsel and stated that since these assessee-trust have submitted additional evidences, therefore, both appeals may be remitted back to the file of the Id CIT(E) for his examination and to adjudicate the issue afresh.

5. We have heard both the parties. We note that in case of Valmik Kayastha Kelvani Fund, vide ITA No.268/SRT/2023, the assessee-trust submitted additional evidences in the form of re-drafted trust deed and claiming that objects in the re-drafted trust deed are identical with that of original deed. Such, re-drafted trust deed was not submitted by the assessee before the Id CIT(E), therefore, in the interest of justice, we admit such additional evidence under Rule 29 of the ITAT Rules, 1962, and remit the issue back to the file of Id CIT(E) for fresh adjudication.

6. We Note that in case of Shree Dasha Shreemali Jain Vanik Vyara, vide ITA No.272/SRT/2023, the assessee-trust submitted additional evidences in the form of re-drafted trust deed and claiming that objects in the re-drafted trust deed are identical with that of original deed. Such, re-drafted trust deed was not submitted by the assessee before the Id CIT(E), therefore, in the interest of justice, we admit such additional evidence under Rule 29 of the ITAT Rules, 1962, and remit the issue back to the file of Id CIT(E) for fresh adjudication.

7. In the result, appeals filed by assessee-trust, viz: Valmik Kayastha Kelvani Fund, vide ITA No.268/SRT/2023 and Shree Dasha Shreemali Jain Vanik Vyara, vide ITA No.272/SRT/2023, are allowed for statistical purposes.

8. Now, coming to assessee-trust, Bal Hanuman Mandir, vide ITA No. 263/SRT/2023, we note that Id. CIT(E) has denied the registration, under section 12AB because the assessee has not submitted the copy of trust-deed, however, the assessee submitted a copy of re-drafted objects before Id CIT(E). The main findings of Id CIT(E) are reproduced below:

*“13.The submissions of the applicant/assessee have been submitted carefully. However, the same is not found acceptable. It is an admitted fact that in Form No. 10AB the applicant in response to “Whether the applicant is established under an Instrument” has mentioned as “Yes”. Therefore, as per Rule 17A(2) of the Income Tax Rules, the applicant/assessee was required to attach/upload copy of said Instrument through which it was established, along with the present Form No.10AB filed, as the Rule 17A of Income Tax Rules requires the applicant/assessee to attach with Form No 10AB, filed copy of instrument creating or establishing the applicant, however, the assessee/applicant has failed to furnish self-certified copy of said instrument through which it was established. Further, in the redrafted deed, the applicant/assessee has mentioned that the same is prepared in a manner that is consistent with the activities carried out by the Trust across several decades, which are **purportedly** undertaken in consonance with the underlying*

objects. From, the same it is evident that there is no assertions that the objects of the re-drafted deed are identical to the original deed through which the trust was established, rather in the redrafted deed the usages of word “purportedly” itself suggests that the trustees are not sure as to whether the re-drafted deed is identical to the original deed, since the meaning of the word purportedly is “as appears or is stated to be true, through not necessary so.” Further, the applicant/assessee has not submitted the basis on which said redrafted deed has been prepared, except stating that they have filed the affidavit in this regard. Moreover, the activities of the trust are required to be as per the objects of the trust and it is not the case that the objects can be re-drafted on the basis of the activities carried out by the trust. Further, the said redrafted deed does not contain the details of settler and the property/fund settled which establishing the Trust. In response, to said query the applicant/assessee has submitted that the Trust was settled by Kantilal Chhotalal as appearing in the certificates of registration as per Bombay Public Trust Act, 1950. However, the applicant is silent on the funds/property settled while establishing the Trust.

I am therefore, constrained to dispose of the present applicant for registration u/s 12AB of the I.T. Act, 1961 on the basis of material available on records. In spite of specific requisitions, the applicant/assessee has not submitted the requisite details. Therefore, no verification of the objects as per the trust deed with the activities could be carried out. Thus, the genuineness of the activities does not get established, due to non-compliance by the applicant/assessee. Section 12AB makes, it very clear that before granting registration under this section, the Commissioner has to satisfy himself about the genuineness of the activities of the trust or institution and also he has to verify that these activities are in consonance with the objects of the trust or institution. Further, he has to ensure that other laws material for the purpose of achieving objects are complied with.....”

9. From the above findings of Id CIT(E) it is abundantly clear that assessee-trust has not addressed the questions asked by Id CIT(E), such as the activities of the trust are required to be as per the objects of the trust, and it is not the case that the objects can be re-drafted on the basis of the activities carried out by the trust. The redrafted deed, does not contain the details of settler and the property/fund settled which establishing the Trust. As per Id CIT(E) the trust deed, which was redrafted was silent on the funds/property settled while establishing the Trust. We note that Id Counsel stated that original trust deed was lost and not traceable, therefore in these

circumstances, we direct the Id CIT(E) to accept the redrafted trust deed, provided it contains all the facts and objects, as was stated in the original Trust-deed. We also direct the assessee to submit the relevant documents and evidences to satisfy about the genuineness of the activities of the trust and also make sure that these activities are in consonance with the objects of the trust. With these observations, we direct the Id CIT(E) to reconsider the application of assessee- trust and pass the order in accordance with law. For statistical purposes, the appeal of the assessee-trust, (Bal Hanuman Mandir, vide ITA Nos. 263/SRT/2023) is allowed.

10. In combined result, all three appeals filed by the assessee (ITA No.272/SRT/2023, ITA No.263/SRT/2023 & ITA No.268/SRT/2023) are allowed for statistical purposes in above terms.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced on 17/07/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूत /Surat/दिनांक/ Date: 17/07/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Senior Private Secretary/Private
Secretary/Assistant Registrar, ITAT,
Surat