

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 71/SRT/2023 (AY: 2022-23)
(Hearing in Physical Court)

Shri Buhari Vibhag Dasha Shrimali Jain Gnyati Samaj, Vaniya Bazar, Buhari, Tal.- Valod, Dist.-Tapi, Surat-394630. PAN: AAATU 8250 E	Vs.	The Commissioner of Income Tax (Exemptions), Ahmedabad, Room No. 609, Floor-6, Aayakar Bhawan (Vejalpur), Nr. Sachin Tower, 100 Foot Road, Anandnagar- Prahladnagar Road, Ahmedabad-380015.
APPELLANT		RESPONDEDNT

Assessee by	Shri Hiren Vepari, CA & Miss Himali Mistri CA
Department by	Shri Ashok B. Koli (CIT-DR)
Date of Institution of Appeal	31/01/2023
Date of hearing	07/07/2023
Date of pronouncement	31/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee-trust is directed against the order of learned Commissioner of Income Tax, (Exemptions), Ahmedabad [in short the ld. CIT(E)] dated 31/10/2022 in rejecting the application of assessee-trust for registration under Section 12AB of the Income Tax Act, 1961 (in short, the Act). The assessee has raised following grounds of appeal:

- "(1) The CIT(Exemption) was not justified in rejecting application u/s 12AB of the Act.*
- (2) The learned CIT(Exemption) was driven by extraneous considerations while interpreting provisions u/s 13(1)(b) of the Act.*

(3) *The appellant craves leave to add, alter or vary any of the grounds of appeal.”*

2. Brief facts of the case are that the assessee is filed an application for registration under Section 12AB of the Act in Form 10AB as per Rule 17A of the Income Tax Rules, 1962, (in short, the Rules) on 04/04/2022. On receipt of such application, the ld. CIT(E) issued notice dated 25/08/2022 and subsequently on 12/09/2022 for requiring certain details. The assessee furnished necessary details at the time of filing application electronically/online including copy of original registration alongwith memorandum of association/constitution deed/trust deed of assessee. The assessee also furnished copy of certificate of registration and PAN and the notes on activities with the audited financial statements for last three financial years.
3. On perusal of details objects of the assessee the ld CIT(E) was of the view that objects are *“otherwise charitable in nature is / are for the benefits of any particular religious community or caste DASHA SHRIMALI JAIN COMMUNITY”*. The ld CIT(E) by refereeing the decisions of Hon’ble Supreme Court in CIT Vs Palghat Shadi Mahal Trust (120 Taxman 889-SC) and in CIT Vs Dawoodi Bohra Jamat (43 taxmann.com 243-SC) held that provision of section 13(1)(d) would be applicable and therefore would not be eligible for exemption under section 11 and registration under section 12AB cannot be granted to the assessee. Aggrieved by the order of ld. CIT(E), the assessee has filed this appeal before Tribunal.

4. We have heard the submissions of learned Authorized Representative (ld. AR) of the assessee and the learned Commissioner of Income Tax- Departmental Representative (ld. CIT-DR) for the revenue. The ld. AR of the assessee submits that the assessee furnished complete details while filing/uploading required details at the time of filing of application. The ld. AR of the assessee submits that they have furnished copy of trust deed, registered under the provisions of Bombay Public Trust Act, bearing registration No. A-75 Tapi dated 18.06.1984. The ld. AR of the assessee submits that the assessee is religious and charitable trust. The trust is in existence from 1983. There is no change in the object and activities of the assessee-trust. The assessee was granted provisional registration certificate under section 21A(1)(ac)(iii) on 10.03.2022. the ld AR for the assessee submits that the objects of the assessee was not doubted by ld CIT(E). The assessee has furnished details of its activities undertaken in furtherance of its objects. The case laws relied by ld CIT(E) in his order is more favorable to the assessee. The ld. AR of the assessee submits that the application of assessee was rejected in a mechanical way without seeking any clarification for explanation from the assessee. The ld. AR of the assessee submits that the assessee has fulfilled both the condition that object of the trust is charitable and activities are genuine. The appeal of assessee may be allowed. To support his submissions, the ld AR for the assessee relied on the following decisions;

- ❖ CIT Vs Ahmedabad Rana Caste Association (1983) 140 ITR 1-SC,
 - ❖ CIT Vs Ahmedabad Rana Caste Association (1973) 88 ITR 354-Guj,
 - ❖ CIT Vs Bayath Kutchhi Dasha Oswal Jain Mahajan Trust (2016) 74 taxmann.com 199 (Guj),
 - ❖ CIT Vs Chandra Charitable Trust (2006) 156 TAXMAN 19 (Guj),
 - ❖ DIT (E) Vs Sheth Jivandas Godidas Shankheshwar Parshwanath Ji Jain (2014) 41 taxmann.com 492(Guj),
 - ❖ CIT Vs Indian Society of Church of Jesus Christ of Latter Day Saints (2017) 86 taxmann.com 44 Delhi,
 - ❖ CIT Vs Dawoodi Bohra Jamat- (2014) 43 taxmann.com 243-SC/ 268 CTR-1(SC).
5. On the other hand, the ld. CIT-DR for the revenue supported the order of ld CIT(E). The ld CIT-DR for the revenue submits that the objects of the assessee are clearly for the benefits of particular community as has been clearly identified by ld CIT(E). the assessee in its note of activities has admitted that they have no plan for religious activities in future. The object and activities of the assessee was not verified by the ld. CIT(E). The ld AR for the assessee has wrongly claimed that their activities are not doubted. The ld. CIT-DR submits that in case, if the Bench of view that the assessee deserve any relief, the matter may be restored back to the file of ld. CIT(E) to examine the object of assessee and genuinity of the activities undertaken by the assessee trust and to examine any other requirement, if the assessee fulfills such condition.
6. We have considered the submissions of both the parties and have gone through the order of ld. CIT(E) carefully. We have also perused various documentary evidences filed in the form of paper book. Further, we have deliberated on various case laws relied by the ld CIT(E) in his

order as well as by Id AR in his submissions. We find that the Id CIT(E) dismissed the application of the assessee by taking view that that objects of assessee are otherwise charitable in nature is / are for the benefits of any particular religious' community.

7. We find that the Id. CIT(E) in para 7 of his order, has accepted that objects of the assessee is otherwise charitable in nature. Thus, only activities are to be examined as genuine. Though, the Id AR for the assessee submits that the activities are not disputed, however, we find that, in fact the activities were not examined by Id CIT(E). On examination of various evidence, we find that assessee is in existence from 1983 and registered under the provisions of Bombay Public Charitable Trust vide registration No. A-75 - Tapi. Further the assessee was allowed provisional registration certificate up to AY 204-25 on the basis of similar objects and activities. However, as noted above the activities of the assessee was not examined by Id CIT(E).
8. We find that Hon'ble Jurisdictional High Court in CIT Vs Bayath Kutchhi Dasha Oswal Jain Mahajan Trust (supra) held that where Trust had large number of other objects for benefit of general public apart from objects for benefit of a religious community, Tribunal was correct in allowing registration to it. In CIT Vs Chandra Charitable Trust (supra) it was held that when from covenants of trust deed, it was spelt out that objects of trust were not only to propagate Jainism or help and assist maintenance of temple, Sadhus, Sadhvis, Shraviks and Shravaks, but other goals were also set out in trust deed, it could

be said that trust was a charitable religious trust and section 13(1)(b) would not be applicable. In DIT (E) Vs Sheth Jivandas Godidas Shankheshwar Parshwanath Ji Jain (supra) also held that where assessee-trust apart from propagation of Jain philosophy and ideology, was also engaged in spreading religious and dharmik knowledge and providing amenities and facilities to pilgrims and renovation of Jain temples all over India, it was to be regarded as public charitable trust performing activities of general public utility and, thus, benefit of exemption could not be denied to it by invoking provisions of section 13(1)(a) and 13(1)(b). In CIT Vs Indian Society of Church of Jesus Christ of Latter Day Saints (supra) Delhi High Court held that when assessee-society formed with object to promote, sustain and carry out programmes and activities of Church, was eligible to claim exemption under section 11. Further, Hon'ble Supreme Court in *Dawoodi Bohara Jamat (supra)* held that even where the trust or society has both religious and charitable objects, "it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large". In that case it was factually found that "the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community" and, therefore section 13 (1) (b) was not attracted. Adverting to the facts of case in hand, we find that facts of this case is not at variance.

9. In view of the above factual and legal position, we deem it appropriate to restore the issue back to the file of Id. CIT(E) reconsider the registration of assessee under Section 12AB of the Act afresh and pass order in accordance with law. Needless to direct that before deciding the application afresh, the Id. CIT(E) shall grant opportunity of hearing to the assessee and further to allow to make further submission to prove the object of assessee-trust and its activities. The assessee is also directed to file/furnish any other necessary information, if so desired. In the result, this appeal of assessee is allowed for statistical purposes.

Order pronounced on 31/07/2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 31/07/2023

**Ranjan*

Copy to:

1. Assessee
2. Respondent
3. CIT (E)
4. DR
5. Guard File

By Order

Sr. Private Secretary, ITAT Surat