

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.431/Ind/2022
(Assessment Year:)

Dawat E Islami Chhhtisgarh Sanjay Nagar R D A Plot Raipur Raipur, Chhhtisgarh	Vs.	CIT(Exemption) Bhopal
(Appellant / Assessee)		(Revenue)
PAN: AADTD 7213 R		
Assessee by	Shri Ankit Chowksi, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	01.08.2023	
Date of Pronouncement	22.09.2023	

O R D E R

PER VIJAY PAL RAO, JM:

This appeal by the Assessee is directed against order dated 03.11.2022 of Commissioner of Income Tax (Exemption), Bhopal passed u/s 12AB whereby the application of the assessee for registration u/s 12A was rejected by the CIT(E). The assessee has raised following grounds of appeal as under:

“On the facts and circumstances of the case of your appellant, the learned CIT Exemption Bhopal has erred in rejecting the registration u/s. 12A of Income Tax Act, 1961. Therefore, your appellant prays that the order rejecting the registration shall be quashed and Ld. CIT may be directed to grant registration u/s. 12A of the Act to the appellant trust.”

2. The Ld. AR of the assessee has submitted that the CIT(E) has denied the registration on the ground that out of 29 objects, 3 objects numbered as 1 to 3 are religious in nature and some other objects are charitable in nature which makes the trust as composite trust i.e. charitable and religious trust and therefore, the assessee is found to involved in violation of section 13(1)(b) of the Act as it is created for benefit of a particular religious community. He has submitted that the assessee has duly explained the nature of the objects of the assessee as religious in nature but the CIT(E) has denied the explanation of the assessee on the ground that during the year under consideration the assessee has not started any activity and no expenditure in respect of the any activity shown in the profit and loss account. The assessee trust is duly registered as public religious trust with the Government of Chhattisgarh and is governed by the Indian Trust Act, 1882. Ld. AR has submitted that the assessee has explained the activities vide note as per the submissions dated 09.09.2022. The Copy of the same is also placed at page no.9 to 11 of the paper book. The assessee also produced the evidence of the activities carried out during the financial year 2022-23. All the objects of the assessee trust are clearly religious in nature and same can be seen from the trust deed of page no.6 to 29 of the paper book. He has relied upon the judgment of Hon'ble Rajasthan High Court in case of CIT vs. Shri Digamber Jain Mandir 189 taxman 106 as well as the judgment of Hon'ble Madras High Court in case of New Life in Christ Evangelistic Association vs. CIT 246 ITR 532.

3. Ld. AR has also relied upon the judgment of Hon'ble Supreme Court in case of CIT, Ujjain vs. Dawoodi Bohra Jamat 43 Taxmann.com 243 (SC). Thus, Ld. AR has submitted that the Hon'ble Supreme Court has held that religious trust is entitled for exemption u/s 11 & 12 of the Act which are substantive provisions provided for exemption available to a religious or charitable trust. Therefore, income derived from property held by such public trust as well as voluntary contributions received by the said trust are the subject matter of exemptions from the taxation under the Act.

Section 12A & 12AA contemplates the procedural requirements for making an application to claim exemption u/s 11 or 12 by the assessee. Thus, the Ld. AR has submitted that the provisions of section 13(1)(b) are not applicable in the case of the assessee which is purely religious trust. The CIT(E) itself has accepted the fact that the assessee is a public religious trust and accepted some of the objects as religious but other objects are treated as charitable in nature. The mere mentioning of word “Islamic World in the objects does not established that the assessee trust is created only for the benefit of particular community or the activities to be carried out outside India. He has also relied upon the following decisions:

1. PIMS Medical & Education Charitable Society vs. CIT 56 SOT 522
2. Acharya Sewa Nyas Uttaranchal v. CIT 13 SOT 54 (Delhi)
3. M.L. Nambyar Saarc Law Charitable Trust vs. Union of India 269 ITR 556 (Delhi HC)
4. N.N. Desai Charitable Trust vs. CIT 246 ITR 452 (Gujarat HC)
5. Indo-German Studies v. DIT (Ex.) Hyderabad 74 taxmann.com 66 (Hyd. Trib.)

4. On the other hand, Ld. DR has submitted that after considering the objects of assessee trust the CIT(E) has pointed out that the assessee trust is created for benefit of particular religious community and further the assessee has not carried out any activity of charity as pointed out by the CIT(E) in para 3 of the impugned order. He has further submitted that the assessee has not explained as to why the provisions of section 13(1)(b) are not applicable in the case of the assessee. He has relied upon the impugned order of the Ld. CIT(E).

5. We have considered the rival submissions as well as relevant material on record. The CIT(E) has denied the registration to the assessee trust by citing the reasons that the assessee has not submitted any activity note which clarifies about the activities of the assessee. Only some

photographs are produced by the assessee but nowhere the name of the assessee is shown in there and nature of activities carried out by the assessee. Secondly the CIT(E) observed that the objects of the assessee are not charitable as it is created for specific community and hit by section 13(1)(b) of the Act. The CIT(E) has given the finding in para 6 to 8 as under:

“6- Findings-As per the discussion made above the following findings are concluded:

1. Proper opportunities as mentioned in Para 1 of this order have been granted to the assessee before deciding the application for registration and concept of natural justice is duly followed.

2. All the documents, replies and case laws referred and submitted by the assessee are duly considered.

3. The assessee has not submitted any activity note which clarifies about the activities of the assessee. No expenditure in respect of any charitable activity was shown in the P&L A/c. Mere bills of some kirana items and other items cannot prove the charitable activities carried out by the assessee.

4. The decision of Hon'ble SC in the case of M/S NEW NOBLE EDUCATIONAL SOCIETY APPELLANT(S) VERSUS THE CHIEF COMMISSIONER OF INCOME TAX 1 AND ANR. RESPONDENT(S), clarifies the power of CIT while granting the registration.

5. Out of 29 objects, the assessee is having only 3 objects numbered as 1 to 3 as religious in nature. Some other objects are charitable in nature, which make the trust as composite trust i.e. charitable and religious trust and section 13(1)(b) of the Act is applicable as per the decision of Hon'ble SC in the case of CIT. Ujjain Vs Dawoodi Bohra Jamat (Supra).

6. The trust deed contains various clauses like qualification of trustee on the basis of particular religious community, conditions when the trustee ceases to be trustee on change of his religion, powers of trustee to execute the objects whether they are charitable or non charitable, which attracts section 13(1)(b) of the Act.

7. The assessee is found to be involved in violation of section 13(1)(b) of the Act as it is created and established for the benefit of particular religious community.

8. Many of the objects are neither charitable nor religious like making arrangements for accommodations, publishing books and magazines,

To purchase, acquire, lease, hire immovable properties, transfer of immovable properties, to borrow or raise funds, etc..

9. The assessee has objects which allow the assessee to carry out activities outside India and also there is no such restriction for Muslim communities of outside India being beneficiary.

10. Hence, the assessee is not eligible for registration U/s 12AB of the Act.

7. Further, as per Section 12AB(1)(b)(i)(B) of the Act;

"12AB. (1) The Principal Commissioner or Commissioner...

(a) where the application is made.....

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause-

(i) call for

(i) after satisfying himself.

(A) pass an order.....

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard"

8-- Considering the facts of the case, the application of the assessee filed in Form 10AB for grant of registration u/s 12AB of the Act is hereby rejected and the provisional registration/approval u/s 12AB in Form 10 AC vide URN No. AADTD7213RE20211 dated 06.10.2021 granted by CPC is also hereby cancelled."

6. The first objection of the CIT(E) is regarding no expenditure in respect of charitable activities was shown in the profit and loss account. The second objection is regarding some of the objects of the assessee trust are religious in nature and some are charitable and therefore, the provisions of section 13(1)(b) are attracted. It appears that the CIT(E) has selected some of the objects without considering overall objects of the assessee trust. The assessee has clearly explained that it was first year and the assessee yet to start the activities and in the subsequent years the assessee has carried out the activities which are charitable/religious in nature. Accordingly in the facts and circumstances of the case we find that the activities carried out by the assessee in the subsequent years are

required to be verified in order to satisfy himself by the CIT(E) to decide whether objects and activities of the assessee are charitable/religious in nature or not. Further mere use of the terms Islamic world in the objects and particularly the Islamic Scholars would not epso facto lead to the conclusion that the assessee trust is created only for the benefit of specific religious community or cast in violation of the provisions of section 13(1)(b) of the Act. The Overall objects of the assessee trust as well as activities carried out by the assessee trust are required to be taken into consideration in the light of various judgments relied upon by the assessee including judgment of Hon'ble Supreme Court in case of CIT, Ujjain vs. Dawoodi Bohra Jamat (supra). Accordingly in our considered opinion this matter requires reconsideration after proper verification and examination of the relevant facts in the light of the above observations. Hence, the impugned order is set aside and the matter is remanded to the record of the CIT(E) for reconsideration of registration application of the assessee after giving an appropriate opportunity of hearing to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.09.2023

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 22 .09.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore