

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.29/NAG/2018

निर्धारण वर्ष / Assessment Year : -

Hajrat Baba Lodhishah Bahuddeshiya Shikshan Sanstha, C/o.Chandak Umalkar & Associates, Chartered Accountants, Plot No.198, Akshay Aprtment, Near Dr.Dngre Homeopathy Clinic, Ngpur – 440015. PAN: AAATH 8449 J	V s	The Commissioner of Income Tax (Exemption), Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	None
Revenue by	Shri Kailash Kanojiya – DR
Date of hearing	22/09/2023
Date of pronouncement	06/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.CIT(E), Pune under section 12AA of the Income Tax Act,
1961 dated 28.09.2017.

2. At the outset of hearing, no one appeared on behalf of the assessee.

Findings & Analysis :

3. We have heard the Id.Departmental Representative for the Revenue. On perusal of the Id.CIT(E)'s order, it is observed that Id.CIT(E) has denied the registration only on one ground i.e. non-availability of "Dissolution Clause" in the Trust Deed. The relevant paragraph of the Id.CIT(E)'s order is reproduced here as under :

"5.1 On the basis of information available on record, objects of the trust prima-facie appear to be "Charitable" in nature but the lack of clause on Dissolution and failure of the applicant to produce a copy of the application for amending the trust deed to include the "Dissolution Clause" filed before the Charity Commissioner the application for grant of registration u/s 12AA cannot be accepted.

6. In view of the above, the application is hereby rejected u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 on technical grounds.

4. Thus, the Id.CIT(E) himself stated in the order that prima-facie objects of the assessee are charitable in nature. The Commissioner has never doubted about the genuineness of the activities in the order. He rejected it only on one ground i.e. absence of "Dissolution Clause" in the Trust Deed. In the facts statement filed by the assessee along with appeal memo, it is

submitted by assessee that they have agreed to add “Dissolution Clause” and assured the same to the Commissioner during the hearing. It is also mentioned in the facts of the case that Trust fulfilled all the conditions laid down under section 12AA of the Act.

5. The Hon'ble Gujarat High Court in the case of CIT Vs. Tapagachha Sangh Mota [2015] 59 taxmann.com 204 (Gujarat) has held as under :

“In a given case even in absence of any provision in the trust with respect to "dissolution clause" if on facts the trust is found to be genuine and/or genuineness of the trust is established, the trust may be entitled to registration under Section 12 AA of the Act, however subject to fulfillment of conditions under Section 12 AA of the Act i.e. when the Commissioner is satisfied about the genuineness of the activities of the trust or the institution.”

6. Thus, the Hon'ble Gujarat High Court has held that if Trust fulfilled all other conditions, then the Trust will be eligible for registration even in the absence of Dissolution Clause in the Trust Deed. We have already mentioned that in this case, the Id.Commissioner was satisfied about the charitable nature of the objects. The Id.Departmental Representative for the Revenue has not brought to our notice any contrary decision of Jurisdictional High Court. In these facts and circumstances of the case, we direct the Id.CIT(E) to grant registration under

section 12AA of the Act, accordingly grounds of appeal raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 6th October, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 6th October, 2023/ SGR*

आदेशकीप्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.