

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपीलसं./ I.T.A.Nos.144 to 147/Chny/2019
(निर्धारणवर्ष / Assessment Years: 2009-10, 2012-13, 2014-15 & 2015-16)

M/s.Sri Aurobindho Ashram Trust, No.12, Rue De La Marine, Pondicherry-605 002. PAN : AAATS 2408L (अपीलार्थी/Appellant)	Vs	The Deputy Commissioner of Income Tax (Exemptions), Chennai Circle, Chennai. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr. S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. AR.V.Sreenivasan, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	09.01.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.01.2024

आदेश / ORDER

PER MAHAVIR SINGH, VP:

These four appeals by the assessee are arising out of common order passed by the Commissioner of Income Tax (Appeals), Puducherry, vide ITA Nos.129, 130 /CIT(A)-PDY-2015-16; 229 /CIT(A)-PDY-2016-17 & 091 /CIT(A)-PDY 2017-18, dated 26.01.2018. The assessments were completed by the Deputy Commissioner of Income Tax (Exemptions), Chennai Circle, Chennai, for the relevant assessment years 2009-10, 2012-13, 2014-15 & 2015-16 u/s. 143(3) / 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter 'the Act') vide separate orders dated 31.03.2015 / 29.12.2016 /11.12.2017. Since, facts are identical and issues are common,

these three appeals are heard together and are being disposed off, by this consolidated order for the sake of convenience.

ITA No.144/Chny/2019 (A.Y. 2009-10):

2. The first issue in this appeal of assessee is as regards to order of the CIT(A) in sustaining reassessment order passed u/s.143(3) r.w.s. 147 of the Act, without assigning proper justification and appreciating that assumption of jurisdiction u/s.147 is bad in law. For this, the assessee also raised an issue that neither the Assessing Officer nor CIT(A) has conducted the proceedings of reopening as per procedure prescribed by the Hon'ble Supreme Court in the case of M/s. GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC). The learned counsel for the assessee took us through grounds of appeal raised and particularly, drew our attention to ground of appeal No.4 which reads under:-

“The CIT(A) failed to appreciate that having not conducted the proceedings of reopening as per the prescription of the Apex Court decision reported in 259 ITR 19, the consequential reassessment should be further reckoned as bad in law.”

3. The learned counsel for the assessee took us through the assessment order and stated that the assessee has raised detailed objects of the assessee vide letter dated 12.03.2015 and 21.05.2013, but Assessing Officer failed to pass a speaking order which is required by the Hon'ble Supreme Court in the case of M/s. GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC). The learned counsel for the assessee drew our attention to a specific ground raised before the CIT(A) which reads as under:-

“B Violation of Principle of Natural Justice:

7. It is submitted that the Ld. Assessing Officer failed to address the detailed objective of the Appellant for AY.2009-10 provided vide letter dated 12th March, 2015 and 21st May, 2013. He has failed to pass a speaking order which is required as per principles laid down by the Hon'ble Supreme Court in M/s. GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC). The assessment order is bound to be struck down on this aspect also.”

The learned counsel for the assessee requested for the aforesaid reasons that the matter may be restored back to the file of the Assessing Officer to answer objections raised by the

assessee and then decide the issue of reopening. Further, the learned counsel for the assessee stated that in case, reopening is held as valid, the Assessing Officer can re-examine the issue on merits also.

4. To this proposition, the Ld. Senior DR heavily objected and argued that the matter cannot be set aside, because the issue of jurisdiction raised by the assessee has to be decided by the Tribunal. While it was pointed out by the Bench that when prescribed procedure laid down by the Hon'ble Supreme Court in the case of *M/s. GKN Driveshafts (India) Ltd.* (supra) has not been followed what is the remedy left with. But, the Ld. Sr.DR opposed for remitting the matter back to the file of the Assessing Officer.

5. After hearing both the sides and going through facts of the case, we set aside the orders of Assessing Officer as well as CIT(A) on this issue and remand the matter back to the file of the Assessing Officer to deal with objections of the assessee. The Hon'ble Supreme Court has held that when notice u/s.148 of the Act is issued to the assessee, proper course of action for

the noticee to file its return of income (as in this case, the assessee has already filed return of income by replying to the notice issued u/s.148 of the Act) and after that he has to seek reasons for issuing notice. The assessee has asked for reasons recorded. The Assessing Officer is bound to furnish reasons within reasonable time and on receipt of reasons, the assessee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose off the same by passing a speaking order. As held by the Hon'ble Supreme Court, we direct the Assessing Officer to pass a speaking order on objections and after that deal with the issue of reopening as per law on the issues raised by the assessee. If the reopening is held as valid, the Assessing Officer will also proceed to decide the issue on merits. In term of above, this ground of appeal raised by the assessee is allowed for statistical purposes.

6. Coming to the issue on merits raised in ITA Nos.144 to 147/Chny/2019 for the assessment years 2009-10, 2012-13, 2014-15 and 2015-16, is as regards to lower authorities denied benefit of tax exemption u/s.11 of the Act and the assessee's contention is that the authorities below has acted on wrong

determination of nature of assessee trust and completely misconstrued the proviso to section 2(15) of the Act in holding the assessee as GPU (General Public Utility Trust) . For this, the assessee has raised many grounds i.e., ground no.7 to 15 for the assessment year 2009-10. An identical ground is raised by the assessee in other assessment years also. The main thrust of the assessee's argument is that the assessee's object falls under category of education and also under category of preservation of place / objects of historical trust and hence, the assessee should not be treated as GPU Trust falling under the proviso to section 2(15) of the Act. The learned counsel stated that recently the Hon'ble Supreme Court in the case of ACIT Vs. Ahmedabad Urban Development Authority (2022) 449 ITR 1, and review petition reported in (449 ITR 389 (SC) has considered the issue of applicability of proviso to section 2(15) of the Act as well as nature of GPU trust, which should be considered in the given facts and circumstances of the present case also. The learned counsel for the assessee stated that the CIT(A) has not considered the submissions of the assessee which were filed in detail, but just by making passing reference

has held that the assessee is a GPU trust by observing in paras 5.4.1 to 5.4.9 as under:-

"5.4.1 I have gone *through* the submissions filed by the assessee in detail. The amendment made under Section 2(15) of the IT Act has brought in a crucial change in the way the activities of the charitable institutions were seen and assessed from the angle of direct *taxation*. *Under* the amendment, advancement of any object of general public utility shall not be a charitable purpose if it involves the carrying on any *activity* in the nature of trade, commerce or business irrespective of the nature of use or application or retention of income from such activity.

5.4.2 The appellant has argued that the activities carried on by it are in the nature of systematic education. The definition of 'charitable purpose as given in *section 2(15)* of the Income-tax Act, 1961 (hereinafter referred to as the *Act*) with *which* we are concerned reads as under:

"(15) 'Charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

5.4.3 The appellant argues that it helps the devotees towards their educational and spiritual upliftment in conformity with the ideals and teachings of Aurobindo. It is true that large number of devotees visit the Ashram and some of them might buy the publications kept for sale in the shop established by the assessee trust in the premises. This activity of selling books which are exclusively published and marketed by the assessee trust is treated as "education" by the trust. This cannot be "education" as given in the section 2(15).

5.4.4 In this context the following excerpt from the decision of apex court in the case of Sole Trustee Loka Shikshana. Trust vs Commissioner of Income Tax, on 28th August,1975 (1976 AIR 10) is relevant to quote:

The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and

zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

5.4.5 It is clear from the above that the activity of selling books earned out by the appellant cannot be treated as "education". Some devotees who visit the Ashram or the trust premises might buy the books displayed at its shop. This is not akin to the process of training and developing the knowledge, skill, mind and character of students by formal schooling as held in the above referred judicial pronouncement.

5.4.6 The appellant has attempted to link the current issue in dispute with an argument that the educational curriculum of Sri Aurobindo International Centre of Education is recognized by the Government of India as a course equivalent to higher secondary examination or degree of recognized Board or University. However, the issue in question and the consequent assessment is not on this. The assessment has been done only on the income of commercial unit of publication department from where it received an income of Rs 2,50,63,626/- in AY 2012-13 .

5.4.7 The appellant has given submissions unconnected to the issue in dispute stating that the trust received a communication from the Ministry of Education, Government of India commending the excellent educational work. The assessment made and the issue on which dispute has been raised in appeal has nothing to do with the activities of or appreciations given to Sri Aurobindo International Centre of Education. The issue in dispute is limited to the activity of selling books in the commercial unit of the publication department.

5.4.8 The appellant has admitted that it engages in printing, publication and sale of exclusive academic and spiritual materials which are not available for sale by any other agency. The appellant exclusively sells them at various prices. The appellant's argument that mark up over cost for the publications is less than usual mark

up over cost by commercial publishing houses is not backed up by data and docs not support the claim of the assessee.

5.4.9 Thus, it is clear from the above that the income from the above **cannot be claimed as exempt** in view of the activity of trade/commerce/business under the advancement of general public utility.”

7. Further, the learned counsel also stated that vide para 5.5, the CIT(A) has not allowed the claim of income from guest house by observing as under:-

Income from Guest House

Appellant has also shown income from guest house as exempt. AO has assessed the same as income while completing the scrutiny assessments for the year AY 2014-15 and AY 2015-16. The income from the guest houses are Rs 2,34,27,341 in AY 201415 and Rs 2,73,95,216/- in AY 2015-16.

5.5.1 The appellant has stated that the guest house operated by the Appellant trust cannot be considered as commercial in nature. AR has argued that the activity of providing accommodation to pilgrims is not a "business" and is not driven by any commercial considerations or profit motive. It is stated that the guest houses are not for use by general tourists.

5.5.2 It is observed that the appellant has been marketing the availability of guest houses in their website and also in various brochures. There is no specification that the guest houses are given only to the devotees who come there with a desire to learn the teachings and philosophies of Sri Aurobindo and the Mother. Appellant has their guest houses in different parts of the city and a large number of them are situated near to the beach and not part of the Ashram. Appellant even advertise in the brochures about the availability of substantial number of "Sea facing" rooms near the beach. This clearly indicates what type of guests appellant is luring. They are definitely not offering them as service for the devotees of Ashram.

5.5.3 it is clear from the above that the income from commercial sale of guest houses **cannot be claimed as exempt** in view of the activity of trade/commerce/business under the advancement of general public utility.

8. Finally, according to the CIT(A) transactions of the assessee are commercial in nature to earn income and hence, hit by proviso to section 2(15) of the Act and the CIT(A) finally observed in para 5.7 as under:-

“5. 7 Commercial transactions to earn income are not exempt. As discussed in the earlier paragraphs, the appellant has engaged in activities in the nature of trade/business in respect of commercial publications division and guest houses. These are not charitable activities. These cannot be incidental activities connected to charity as well, considering the substantial sums received in each year under appeal. The section 2(15) as amended is squarely on this aspect. It is also clarified in the CBDT Circular dated 19/12/2008. Explanation in the Memorandum of the Finance Bill 2010 has explained the consideration in the said Act, the genuine commercial activities that are incidental and that do not exceed Rs.10 lakh. Consequent to the amendment in section 2(15), earlier landmark decision of apex court in Indian Chamber of Commerce Vs CIT [101 ITR 796) has become significant in the cases like that of the present appellant in favour of revenue.

5.7.1 ITAT Mumbai in the **case** of MIG Cricket Club vs. DIT (E) ITAT Mumbai held on 28/04/2017 that activities of the assessee of Banquet Hall Hiring. Hospitality (Restaurants) and Permit Room (Bar) are in the nature of carrying on track, commerce, or business for consideration, which are hit by proviso to Section 2(15) of 1961 Act. It was observed that the receipts from these activities, during the previous year relevant to the impugned assessment year 2009-10, are far in excess of minimum prescribed threshold limit. The tribunal asked the DIT to further examine the issue through proper investigation. In the case of Information Systems Audit and Control Association (157 ITD 815 (2016), ITAT Chennai has held that education has to be formal schooling.

5.7.2 ITAT 'B' Bench Chennai, in a case exactly similar to that of the current appellant held as follows:

ITA.No.2053/ Mds/2016 dated 31.01.2017

Matru Karmadhara Trust Vs ITO, W-1. Pondicherry.

"Admittedly, the assessee has established three guest houses in Pondicherry and made available to pilgrims who visit Aurobindho Ashram. The assessee claims that since, promoting the preaching of Sri

Aurobindho, it has to be construed as an education. This Tribunal is of the considered opinion, Education as provided under section 2(15) of the Act, cannot be construed acquisition of knowledge by anyone. An individual may acquire knowledge every day and every minute in participating in some programme or activity that cannot be construed as education at all. Education is a formal schooling which results in confirmation of a degree or diploma by a Government or a Government agency or a university established under law, Acquisition of all kind of knowledge cannot be construed as an education at all. Therefore, preaching of ideology by the trust cannot be construed as engaged in educational activity.

Therefore this Tribunal is of the considered opinion the assessee's trust cannot be construed to be an educational trust. The main object of the trust is to provide guest houses for those who visit Pondicherry and also preach the ideology Shri Aurabindho and the Mother. Therefore this Tribunal is of the considered opinion the activity of the assessee is nothing but general public utility. It is not in dispute that if the assessee's object is general public utility, proviso to section 2(15) of the Act, would come into operation. It is also in dispute that the annual receipt exceeded the limit prescribed in proviso to Section 2(15) of the Act. Therefore, the assessee is not eligible for exemption under section 11 of the Act. Hence, this Tribunal do not find any reason to interfere with the orders of the lower authorities."

5.7.3 From the above, it is clear that the appellant is not entitled to claim exemption for the income generated from commercial publication departments and from guest houses for all the years in appeal. The addition is confirmed."

9. Hence, the learned counsel for the assessee requested that matter may be restored back to the file of the Assessing Officer to decide the issue afresh after considering the principles laid down by the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra), wherein the Hon'ble Supreme Court has considered applicability of proviso to section 2(15) of the Act and also nature of trust including GPU Trust. The learned counsel further argued that

this is the only issue and this can be decided based on the facts of the present case with that of the decision of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra).

10. On the other hand, the Ld.Sr.DR argued that the assessee is a GPU trust and for the relevant assessment years, the income of the assessee has been brought to tax as receipts from commercial activities exceeded the limits prescribed u/s. 2(15) of the Income Tax Act. He also drew our attention to the chart filed by the Ld.AR during the course of hearing on 02-02-2023, showing certain figures and claimed that it is within the limits prescribed u/s 2(15) and contended that the said data is misleading, because in the chart the AR has substituted the "income" from commercial activities in the place of "aggregate receipts" to present an inaccurate picture. The Ld.Sr.DR also drew our attention to the data filed by assessee before CIT(A) which has been reproduced in page 44 of his order, wherein it has stated that aggregate receipts from commercial activities exceeded the limits prescribed u/s. 2(15) of the Act. He also placed reliance on the decision of

Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) and submitted that the Hon'ble Supreme Court has examined the issue of import of prohibition imposed on commercial activity and the evolution of law in this regard. He also submitted that the Hon'ble Court nowhere intended to interpret the expression "Receipts" occurring in the proviso to Sec.2(15) of the IT Act to mean profits from such activity and the wording in para 172 is being quoted out of context by the learned AR. He further stated that the word "income" has been used here synonymously with "receipts". He also submitted that the summation of conclusion of the Hon'ble Supreme Court in the above judgment makes it clear that it is only the receipts from the commercial activity which have to be taken into account for the purpose of computing the limits in the proviso to Sec.2(15) of the IT Act. In fact, the Hon'ble Supreme Court vide para 138 takes into account the emphatic manner in which Parliament wished to express itself as to what cannot be done by GPU charities. He further stated that this judgment

does not interpret the meaning of the word "receipts" under the proviso of Sec.2(15) as the above question was never raised before the Hon'ble Supreme Court. He also submitted that in fact, in para 125, while dealing with interpretation, the Hon'ble Supreme Court says *"to discern the purport of a provision, the term, as defined has to prevail, whenever the expression is used in the statute."*

11. The Ld.Sr.DR also drew our attention to clause (ii) to proviso 2(15) of the Act, and submitted that the limit prescribed in the proviso to Sec.2(15) has to be applied only with reference to the receipts from commercial activities and not with reference to profits from commercial activities and the provisions of Sec.2(15) of the Act for the years under appeal do not prescribe the percentage but quantum of gross receipts only. He also stated that from AY 2009-10, the limit was rupees ten lakhs and from AY 2012-13, it was enhanced to rupees twenty-five lakhs and the percentage is prescribed only w.e.f. 1.4.2016. He also drew our attention to the details of gross-receipts of the assessee from the

business activities for the above years which is available in page 44 of the CIT(A) order. Further, he submitted that the Ld. Authorised representative of the assessee submitted a chart before this Tribunal on 02.02.2023 giving details of the amount of receipts and net income from business activities as under:

Particulars	2015	2014	2012	2009
Gross Revenue	53,97,19,363	35,58,88,597	29,99,95,932	21,70,13,414
Revenue from Business Activities	5.73 Crore	5.65 Crore	5.35 Crore	4.53 Crore
Net Income	2,09,88,974	2,16,97,167	2,57,52,065	2,24,54,658

According to the Ld.Sr.DR the said data makes it clear that the assessee is disqualified by the proviso to Section 2(15) of the Act, because the aggregate receipts from commercial/business activities are in excess of the limits prescribed. He also drew our attention to the specific findings of CIT(A) in para 5.5.2 of his order and thus, concluded that all these appeals of the assessee are liable to be dismissed. The Ld.Sr. DR also strongly opposed for setting aside of impugned orders and tried that order of CIT(A) be upheld.

12. After hearing rival contentions and going through facts of the case, we are of the considered view that the issue has not been examined on facts by the CIT(A) or by the Assessing Officer. We also find that an identical issue has been considered by the co-ordinate Bench of this Tribunal in the case M/s. SAE India in ITA No.3144 & 315/Chny/2018 dated 20.10.2023, wherein the Tribunal in light of judgement of the Hon'ble Supreme Court in the case of ACIT Vs. Ahmedabad Urban Development Authority (449 ITR 1) observed as under:-

“10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We have carefully considered the objects of the assessee's Trust as per their Memorandum of Association and as per the objects, the assessee is conducting technical meetings, workshops, seminars and other educational programs and specialty conference for development of Mobility Engineering, etc. On perusal of main objects of the assessee's Trust and activities carried out for the impugned assessment year, it is undoubtedly clear that the assessee falls under the last limb of the definition of 'charitable purpose' as defined u/s.2(15) of the Act i.e. any other object of GPU, and this principle is supported by the decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority,(449 ITR 1) wherein, it has been clearly held that Trust/Societies which provides services in relation to trade, commerce or business for

fees or other consideration has to be broadly covered by trade promotion. Further, when a trade promotion provides individualized or specialized services such as conducting paid workshops, training courses, skill development courses, and other services to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinized in light of provisions of Sec.2(15) of the Act. In the present case, the objects of assessee's Trust and its activities are clearly in the nature of GPU activity, and thus, in our considered view, the exemption, if any, needs to be examined in light of provisions of Sec.2(15) of the Act. The Ld.CIT(A) without considering relevant facts simply held that the assessee is not hit by the amended provisions of Sec.2(15) of the Act, and thus, we set aside the order of the Ld.CIT(A) on this issue.

11. *Having said so, let us come back to the applicability of proviso to Sec.2(15) of the Act. As per proviso to Sec.2(15) of the Act, the advancement of any other object of GPU shall not be a 'charitable purpose', if it involves carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a fees or cess and further, the aggregate receipt from such activity during the previous year, exceeds 20% of the total receipt of the Trust or Institution. In the present case, undoubtedly, the objects and activities of the Trust are in the nature of trade, commerce or business and hit by proviso to Sec.2(15) of the Act. Therefore, the assessee entitlement for exemption needs to be examined in light of gross-receipts and receipts from the activity of trade, commerce or business. The gross income of the assessee from conducting conference is more than*

20% of the gross-receipts of the assessee for the impugned assessment year. We have gone through the computation filed by the assessee's Society and we find that the Ld.Counsel for the assessee has considered net income after expenses from conducting conference and then, compared with gross- receipts of the assessee to work out the limit prescribed under provisions of Sec.2(15) of the Act. In our considered view, the working furnished by the Ld.Counsel for the assessee is not in accordance with law, because, as per provisions of Sec.2(15) of the Act, if gross receipts from the GPU activity, i.e. from trade, commerce or business exceeds 20% of gross receipts, then, the assessee is not entitled for exemption u/s.11 of the Act. If you consider the gross-receipts from conducting conference, then undisputedly, said receipts exceeds 20% of the gross receipts of assessee's Trust for the impugned assessment year. But, fact needs to be verified with reference to financial statement of the assessee for relevant AY."

13. Therefore, in our considered view, the income of the assessee needs to be computed in light of amended provisions of Sec.2(15) of the Act and proviso provided therein in light of the latest decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority (supra). Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO and direct the AO to reconsider the issue *de novo* in light of our discussion given hereinabove

and also by following the decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority (supra).

14. In term of above, all these appeals are allowed for statistical purposes.

Order pronounced in the open court on 9th January, 2024

Sd/-

(मंजुनाथ . जी)

(Manjunatha.G)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Date: 09.01.2024

DS

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- 1.Appellant
2. Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.