

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE
SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA Nos. 3353 & 3354/DEL/2023
Asstt. Years: 2023-24 & 2023-24

Karamshi Jethabhai Somaiya (Delhi) Trust 210, Second Floor, Antriksh Bhawan Building No. 22, Kasturba Gandhi Marg, New Delhi PAN AAATK0201H	Vs.	CIT(Exemption), Delhi Civic Centre, Minto Road, New Delhi – 110 002
(Appellant)		(Respondent)

Assessee by:	Shri K Gopal, Advocate
Department by:	Shri Sanjay Kumar, CIT(DR)
Date of Hearing:	22.05.2024
Date of pronouncement:	02.07.2024

ORDER

PER VIMAL KUMAR, JM

Both the appeals filed by the assessee are against order dated 26.09.2023 of the Learned Commissioner of Income Tax (Exemption), Delhi [hereafter referred as "Learned CIT(E)"] rejecting applications filed on 28.03.2023 in FAO From No. 10AB for registration under section 12A(1)(ac)(ii) and under Section 80G(5) of the Income Tax Act,1971.

2. Brief facts of the case are that appellant filed applications dated 28.03.2023 in Form No. 10AB seeking registration under Section 12A(1)(ac)(iii) and 80G (5) clause (iii) of first proviso of the Income Tax Act, 1961. The applicant was issued a questionnaire on 25.05.2023 with a request to furnish certain details and documents in support of its claim for registration on or before 09.06.2023. The applicant uploaded certain details and documents on 18.07.2023. Reply was also submitted by appellant vide letter dated 5.9.2023 and requested to submit the documents and clarifications by 12.09.2023. No reply was furnished by the appellant. Another opportunity was afforded. In reply to the notice dated 15.09.2023 appellant uploaded bank ledger, bank statements on 21.09.2023. The documents submitted by appellant showed that no charitable activity was initiated. As per income and expenditure account no expenses have been incurred on any charitable activity as detailed in section 2(15) of the Income Tax Act, 1961. So the applications were rejected on 26.09.2023.

3. Being aggrieved appellant/assessee preferred appeals.

4. Learned authorized representative submitted that Learned authorised representative for appellant/assessee submitted that Learned CIT(Exemption) erred in rejecting application for registration on the ground that appellant had not carried out any charitable activity as envisaged under section 2(15) of the Income Tax Act, 1961.

5. Learned CIT(Exemption) erred in not appreciating that letter dated 21.9.2023 at page No. 51 of the paper book mentions :-

“3. The Trust purchased land by payment of advance at Gurgaon admeasuring 46.44 acres. The Land are yet to transferred by the landlord to the Trust. This will be possible once the ownership of the land is mutated in the name of landlord. The matter of ownership is pending in Chandigarh High Court vide CWP 12493/2006 and 17804/2006. (Serial no 3 of notice)

5. The documentary evidence with regard to similarity of objects of the donor and donee trust along with the registration certificate of the donee and certified copy of minutes of the meeting held by the trust is attached in Annexure-2. (Serial no. 5 of notice)”

6. Learned authorised representative of appellant/assessee stated that Learned CIT(Exemption) erred in appreciating that letter dated 17.07.2023 (page 68 to 70 of the Paper Book) at page No. 69 mentions :-

“K.J Somiya (Delhi) Trust was founded by Late Padmabhushan Shri Karamshibhai Jethabhai Somiya with a view to establish and nucleate renowned Educational Institutions i.e replica of Somaiya Vidyavihar, a premier education institute at Mumbai, at the prime location of Delhi, Gurgaon. As a first move, the Trust has acquired/purchased the land in the prime location of Delhi, so as to enable to create an educational hub for the society at large. In furtherance of aims and visions of the Trust, the Trustees are promoting the education by way of giving substantial financial assistance to the other Trusts which are active in education and also in healthcare services. During the last three years, while the Trust is pursuing the establishment of Educational Hub, the Trust has actively given the financial assistance/donation to improve the healthcare education and services and to uplift the standard of living of Tribals and to provide the healthcare services to tribals.”

7. Learned authorised representative for appellant/assessee referred to item No. 17 of Form No.10 BE of paper book at page No. 71 of paper book as:

“Name of Donor K.J Somaiya (Delhi) Trust.”

Item 18 at page No. 73 receipt of donation from Karamshi Jethabhai Somaiya Medical Trust along with Minutes of Meeting, certificate of registration –

Receipt No. 992 dated 27.03.2020 for Rs. 30,00,000/-

Item No. 20 at page No. 82 Receipt of donation from Shree Girivanavasi Pragati Mandal

Receipt No. 734 dated 15.02.2021 for Rs. 26,00,000/-

8. Learned authorised representative submitted that Hon'ble Supreme Court of India in the case of Ananda Social & Educational Trust vs Commissioner of Income Tax reported in 426 ITR 340 (SC) has held as under :-

“12. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term ‘activities’ in the provision includes ‘proposed activities’. That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.”

9. Both the appeals are inter connected having same facts so they are taken up together. ITA No. 3353/Del/2023 is against the order dated 26.09.2023 seeking registration under section 80G(5) of the Income Tax Act, 1961 and ITA No. 3354/Del/2023 is

against the order dated 26.09.2023 seeking registration under section 12A(1)(ac(ii) of the Income Tax Act, 1961.

10. Learned authorised representative for department of revenue submitted that in Form 10B, Independent Auditors Report, Balance sheet and income and expenditure accounts as on 31.03.2020. Page 40 of Paper Book shows total worth of property & assets Rs. 125,515,159/-. Page No. 43 and 44 shows details of advance for purchase of land . Trust deed at page No. 1 – 17 shows close family members as trustees. Appellant failed to carry out any charitable activity.

11. From examination of record in light of aforesaid rival submissions it is crystal clear that the applications dated 28.03.2023 in Form No. 10AB seeking registration u/s. 12A(1)(ac(ii) under section 80G(5) of the I.T. Act were filed. The documents submitted by appellant showed that no charitable activity was initiated. As per income and expenditure account no expense has been incurred on any charitable activity as detailed in section 2(15) of the Income Tax Act, 1961. So application was rejected on 26.09.2023. However, letter dated 21.09.2023 at page 51 of paper book show purchased of land. Letter dated 17.7.2023 at page 68 to 70 mentions the trust has given financial assistance/donation to improve the healthcare education and services and to uplift the standard of living at Tribals. Copies of receipts are at item Nos. 17 to 20 page No. 71 to 96 of Paper Book.

12. As per ratio of judgment in Ananda Social & Educational Trust vs. Commissioner of Income Tax's case (supra) it is well

settled that a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In view of above material facts and well settled principle of law passing of impugned order has led to miscarriage of justice which is required to be remedied. Accordingly impugned order is not just, fair and legal.

13. No other point was argued.

14. Hence the appeals of the assessee are allowed. Impugned order is set aside. Learned CIT (Exemptions) is directed to consider the issue afresh exercising the powers in accordance with law.

Order pronounced in the open court on 2nd July, 2024.

sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 02/07/2024
Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	