

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

ITA No. 844/Ahd/2023

Rotary International District 3054 Charitable Trust 34, World Business House, Near Parimal Garden, Ellisbridge, Ahmedabad-380006 PAN: AAETR1710L (Appellant)	Vs	The CIT(Exemption), Ahmedabad (Respondent)
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Assessee Represented: Shri Anil Kshatriya, Advocate
Revenue Represented: Shri Sudhendu Das, CIT-DR

Date of hearing : 27-08-2024
Date of pronouncement : 26-11-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the denial of registration under section 12AB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 29.08.2023 passed by the Commissioner of Income Tax (Exemption), Ahmedabad [hereinafter referred as CIT(E)].

2. Brief facts of the case is that the assessee is a public charitable trust, came into existence on 24-09-2020 and registered under the Bombay Public Trust Act, 1950 with the Charity Commissioner, Ahmedabad. The assessee was granted provisional registration by the Ld. CIT(E) by order dated 27-05-2021 for the Asst. Years 2020-21 to 2023-24. The assessee filed final registration u/s. 12AB in Form No. 10AB on 05-04-2023. The same was rejected by this impugned order on the ground that the fund raising programme carried out by the assessee trust by way of coupon sales and mega lucky draw were in the nature of business activities which is not identical to carry out the object of the trust and violation of conditions specified in Section 12AB(4) of the Act. Thus CIT(E) denied the registration u/s. 12AB of the Act and also cancelled the provisional registration granted to the assessee trust.

3. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On facts and circumstances of the case and in law, the order passed by the Ld. CIT(E) is bad in law, Illegal besides being in violation of principle of natural justice & equity as passed without considering the material already placed on record, as such it is liable to be quashed and set aside.

2. On facts and circumstances of the case and in law, the Ld. CIT(E) has grossly erred in rejecting the application filed u/s.12AB of the Act and cancelling the provisional registration, when there is no justification In passing such Impugned order. The said application may kindly be allowed and registration to the trust be restored.

4. Ld. Counsel Mr. Anil Kshatriya appearing for the assessee submitted that the assessee trust during Covid-19 Pandemic period carried out various projects under disaster Relief Programme of

Rotary International, namely putting up dialysis center at Ahmedabad, Jaipur & Deesa, Covid Testing Lab at Visnagar, Plasma Separator at Red Cross Himatnager, Oxygen generator plants at Ambaji & Mehsana, etc besides doing many projects at various cities. For fund raising of the same a programme named “Adbhut Hungama” by raising donation tickets of Rs. 500/- with lucky draw prizes namely Hyundai Creta car, Bikes, Laptop, LED TV, Dinner Sets, Tea Mug etc. The assessee raised a donation of Rs.1,37,40,442/- through this fund raising programme and the surplus was given to “the Rotary Foundation” a registered trust for implementing the following projects:

- (A) Rotary 3054 Dialysis center by Rotary Club of Vasna six dialysis machine at Kachchiseva Sadan near Gita mandir, Ahmedabad and two machines at Abu Road.
- (B) CT Scan machine at Rajesh Hospital - Run by Rotary Club, Kalol.
- (C) 3054 Eye Care center for giving Pheco emulsification machine:-
 - 2 machine at - Andjan mandal - Bareja & Bhuj
 - 1 machine at- Chipa Hospital - Narol
 - 1 Machine at- Rotary club Pali
- (D) Establishing Blood Bank at SMS cancer Hospital Jaipur.
- (E) Establishing a skin Bank at Jaipur.

4.1. Thus the entire surplus was utilized for implementing unique service projects of medical needs of the society at large and economically weaker people to avail the dialysis facility at Vasna, Abu Road and CT Scan facility at Kalol and 4 Catract operating machines at various places. With regard to the allegations made by Ld. CIT(E) of violation u/s. 12AB(4) of the Act, the assessee

submitted there is no such violation within the meaning of definition as follows:

Clause of explanation	Criteria	Assessee's Submission
1	2	3
(a)	Application of income of a trust for other than object of the trust.	(a) as may be verified from the "ledgers of expenses" under different heads filed vide appellants letter dated 12.08.2023, the income derived has been essentially utilized for implementing various service projects as enumerated at para 2 of the referred letter.
(b)	Having income which is not incidental to attainment of its objects or not maintain separate books of accounts by the trust.	(b) as may be verified from the audited income and expenditure account, the trust has raised income by donations through coupon subscription, FD interest and other direct donations from entities, which has been essentially incidental to attainment of its objects. Hence there is no requirement to maintain separate books of accounts.
(c)	Application of part of its income for private religious purposes not for the benefit of public	As may be perused from the table appearing on page 7 of the impugned order, there is no such income having been applied for private religious purpose.
(d)	Application of part of income for benefit of any particular religion, community or caste.	(d) As stated against clause (c) above, there has been not a single rupee of income applied for the benefit of any religion, community or caste.
(e)	Activity carried out is not genuine or not in accordance with condition attached to registration.	(e) There is no finding of the authority that the activity carried out by the appellant is not genuine nor there is any infringement of any condition attached to registration.
(f)	Non compliance of any other law referred to in section 12AB(I)(b)(i)(B) of the Act.	(f) There is no such non compliance of any other law referred to in the section, on the part of the appellant as such.
(g)	Application being incomplete or containing false or incorrect information.	(g) The application filed by the appellant is in the prescribed profroma having been transmitted through ITBA portal and there is no such adverse finding noted by the Ld.CIT(E) as to the application being false or containing incorrect information.

4.2. Ld. Counsel thus submitted that the Ld. CIT(E) failed to consider that the fund raising programme was made to prevent diseases, more particularly during Covid-19 Pandemic was at its peak. Without appreciating the same, Ld. CIT(E) proceeded to reject the application filed by the assessee trust, which is against the

provisions of law and also relied on Jurisdictional High Court Judgment in the case of CIT(E) Vs. United Way of Baroda in Tax Appeal No. 95 of 2020 dated 25-02-2020. Thus the Ld. Counsel pleaded to set aside the order passed by Ld. CIT(E) and grant registration u/s. 12AB of the Act.

5. Per contra Ld. CIT-DR Shri Sudhendu Das appearing for the Revenue supported the order passed by Ld. CIT(E) and requested to uphold the same.

6. We have given our thoughtful consideration and perused the materials available on record including the Paper Book and Case laws cited by the parties. It is undisputed fact that the assessee trust made the fund raising programme "Adbhut Hungama" by selling donation coupon for Rs. 500/- each and also given prices worth of Cars to Tea Mugs. The surplus out of this fund raising programme were utilized for buying Six Dialysis machines, CT Scan machines, 4 Catract operating equipments and establishing Blood Bank, Skin Bank at various places at Gujarat and Rajasthan. Ld. CIT(E) has elaborately considered fund raising programme in his impugned order, but to failed address the activities carried out by the assessee trust and thereby denied registration u/s. 12AB of the Act which is in our considered opinion is against the provisions of law. The Ld. CIT(E) is not disputing the Medical Equipments, Machines donated to various institutions to carry out medical relief to the needy and poor.

6.1. The Hon'ble High Court on an identical issue wherein the trust organizing Garba event at Baroda during Navratri period by selling tickets and the surplus out of that Garba event is used for charitable purposes which was held to be not in the nature of trade commerce or business. The Hon'ble High Court confirmed the Coordinate Bench decision of this Tribunal and dismissed the appeal filed by the Revenue by observing as follows:

11. The Appellate Tribunal, while dismissing the appeal of the Revenue held as under:

"4. There are thus two issues requiring our adjudication in this appeal first, whether or not the CIT(A) was justified in holding that proviso to Section 2(15) will not have any application on the facts of this case and thus benefit of Section 11 cannot be declined to the assessee; and, second- whether or not the CIT(A) was justified the expenses, like assistance to voluntary agencies, management assistance and training, public education programme, research and publications and expenses for community service, as application of income for the purposes of Section 11 of the Act.

5. To adjudicate on these issues, only a few material facts need to be taken note of. The assessee before us is a society registered as a charitable institution registered under section 12AA of the Act. The assessee filed a return of income on 26.9.2011 showing NIL income. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown gross receipts of Rs 3,81,01,051, and a surplus of Rs 39,94,650. In the computation of income, the assessee had claimed application of funds for charitable purposes to the extent of Rs.3,81,16,559 and claimed exemption under section 11 of the Act. When the Assessing Officer probed the matter further, he found that out of total receipts of Rs.3,81,01,051, a sum of Rs.2,73,26,591 (i.e. 71.72% of revenues) is in respect of garba event only. The Assessing Officer also noted that the assessee organizes one of the most popular and prestigious garba event in Baroda in a highly professional manner, that the assessee charges entry fees from the participants as also the stall owners, and that it is in the nature of a business activity. It was in this backdrop that the assessee required the assessee to justify the eligibility for exemption of income under section 11, in the light of

the provisions of Section 13(8) read proviso to Section 2(15). In response to this requisition, the assessee explained at length about the activities of the United Way of Baroda, which includes supporting 120 NGOs and volunteer driven activities that link, support and deliver health and human services to improve the quality of life in the society. Its mission was said to be to Improve and make Baroda a better place to live in and its vision was stated to be to increase the organized capacities of people and to take care of one another. It was also pointed out that the objectives of the society include mobilizing resources from the local communities and the people having affiliation and concern for India in general, and Gujarat in particular, residing in India or abroad and to apply them for strengthening the services in education, health and human care and other social sectors existing in Baroda and State of Gujarat and assessing on a continuing basis the need for human service programs, to seek solution to human problems, to assist in the development of new or the expansion or modification of existing human services programs, and to foster cooperation among local, state and national agencies for providing service to the community. It was also pointed out that the assessee contributes by strengthening the services in education, by providing vocational training to the disabled, helping orphans, empowering women through various programs and providing mid meal to poor students. The details of the eye camp and thalassemia screening and detection camp conducted by the assessee were also furnished. The assessee also gave details of how the monies are spent to these ends. As regards the application of proviso to Section 2(15), it was pointed out that only when the institutions are carrying out activities on commercial lines with profit motive, this provision comes into play. It was pointed out that surplus funds are purely incidental and the institution is not run on the commercial lines at all. Elaborate legal submissions were made on the scope of proviso to Section 2(15) and its legislative history and background. A reference was also made to CBDT circular No. 11/2008 dated 29th December 2008 in support of the proposition the proviso to Section 2(15) will not apply in respect of activities involving relief to poor, education or medical relief, even if it incidentally involves the carrying on of commercial activities. It was then pointed out that main object of the trust is to mobilize the resources from local communities and the people having affiliation and concern for India in general, and Gujarat in particular. residing in India or abroad, and to apply them for strengthening the services in

education, health and human care and the other social sectors of the underprivileged. It was thus contended that the proviso to Section 2(15) will have no application in this case. The assessee also made elaborate submissions on the connotations of expressions business activities and made out a case as to how the activities of the assessee, even with respect to holding the garba event, do not business activities.

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13. Prior to the introduction of the Proviso to Section 2(15) of the Act, there was no dispute that the assessee herein was established for charitable purposes and, therefore, its income was not to be included in the total income and was, therefore, granted the benefit of exemption. The income received by the assessee is from organizing the event of Garba by sale of tickets and also leasing out food and beverages outlets at the venue of the event. However, the dominant and main object of the assessee cannot be said to be organizing the event of Garba. **The charitable activities which the assessee has been undertaking has been discussed by the Appellate Tribunal. We take notice of the fact that the assessee has been supporting 120 non-government organizations. The assessee is into health and human services for the purpose of improving the quality of life in the society. The objectives of the Society includes mobilizing resources from the local communities. It organizes medical camps for thalassemia affected children. It also provides vocational training to the disabled orphans, undertakes various program for empowering women including providing midday meal to the poor students. The activities like organizing the event of Garba including the sale of tickets and issue of passes etc. cannot be termed as business. The two authorities have taken the view that the profit making is not the driving force or the objective of the assessee. This is indicative of the fact that any income generated by the assessee from events like Garba does not find its way into the pockets of any individual or entities. It is to be utilized fully for the purposes of the objects of the assessee. As held in many pronouncements, the expression "trade", "commerce" and "business" as occurring in the first Proviso to Section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner. The purpose and the dominant object for which an institution carries on its**

activities is material to determine whether the same is business or not. The object of introducing the first proviso is to exclude the organizations which are carrying on regular business from the scope of "charitable purpose". An activity would be considered 'business' if it is undertaken with a profit motive, but in some cases, this may not be determinative. Normally, the profit motive test should be satisfied, but in a given case the activity may be regarded as a business even when the profit motive cannot be established/proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business.

14. In the overall view of the matter, more particularly. having regard to the concurrent findings recorded by the two authorities, we are of the view that we should not interfere with the order passed by the Appellate Tribunal.

15. In the result, this appeal fails and is hereby dismissed.

6.2. Respectfully following the above judicial precedents of the Jurisdictional High Court, we have no hesitation in holding that the one-time fund raising programme carried out by the assessee trust is not an organized activities in the nature of business akin to selling of lottery tickets. Since the surplus were been invested in buying medical equipment and establishing Blood Bank and Skin Bank at various parts of Gujarat and Rajasthan. There is no question of violation of Section 12AB(4) of the Act. Thus we hereby set aside the order passed by the Ld. CIT(E) and direct him to grant exemption u/s. 12AB of the Act.

7. Further the provisions of Section 13 of the Act can be invoked only at the time of assessment and not at the time of grant of registration under Section 12A of the Act. In the case of Bhojalram

Leuva Patel Seva Samaj Trust [2024] 162 taxmann.com 270 (Ahmedabad - Trib.), the ITAT held that provisions of section 13(1)(b) can be invoked only at the time of assessment and not at the time of grant of registration under section 12A. Again, in the case of Jamiatul Banaat Tankaria [2024] 160 taxmann.com 358 (Ahmedabad-Trib.), the ITAT held that where objects of assessee-trust were primarily charitable rather than favouring any specific religious community, Ld. CIT(E) was not justified in denying registration under Section 12A, by invoking Section 13(1)(b) as said provision would be attracted only at the time of assessment and not at the time of grant of registration. In the case of Malik Hasmullah Islamic Educational and Welfare Society, [2012] 24 taxmann.com 93/138 ITD 519 (Lucknow), the ITAT held that since provisions of Sections 11, 12 and 13 are intended for exercise of jurisdiction by an Assessing Officer in an assessment proceedings, Commissioner is not competent to invoke such provisions for purpose of declining registration under Section 12AA. In the case of St. Joseph Academy (2014) 50 taxmann.com 216 (Hyderabad-Trib), the ITAT held that provisions of Section 13 can be invoked by Assessing Officer, while framing assessment and not by Commissioner while considering application for registration under Section 12AA of the Act. Our view is further supported by the decision of the Hon'ble jurisdictional High Court in the case of CIT (Exemptions) v. Bayath Kutchhi Dasha Oswal Jain Mahajan Trust (2016) 74 taxmann.com 199 (Gujarat) wherein on the issue of denial of grant of registration under 12A of the Act by invoking Section 13(1)(b) of the Act, it was categorically held that the provisions of Section 13 would be

attracted only at the time of assessment and not at the time of grant of registration.

8. In the case of United Way of Baroda (cited supra) the Hon'ble High Court held that sales of tickets for Garba events during Navratri period does not amount to "trade", "commerce" and "business" as occurring in the first Proviso to Section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. Thus the Hon'ble High Court held that denial of exemption u/s. 11 during the assessment proceedings is also held to be not correct on sales of tickets for Garba events. Thus the assessee cannot be denied registration u/s. 12AB of the Act.

9. In the result, **the appeal filed by the Assessee is hereby allowed.**

Order pronounced in the open court on 26-11-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad : Dated 26/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)

5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद