

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.1061/Ahd/2024 & 1062/Ahd/2024
निर्धारण वर्ष /Assessment Year : -NA-

Salej Rotary Seva Foundation Padar Falia, Salej, Navsari - 396 325 (Gujarat)	बनाम/ v/s.	The CIT(Exemptions) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: ABECS 9399 G		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Hardik Vora, AR	
Revenue by :	Shri A.P. Singh, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 04/12/2024
घोषणा की तारीख /Date of Pronouncement: 16/12/2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JM:

These two appeals filed by the Assessee are directed against the separate orders dated 21/03/2024 and 30/03/2024 passed in ITA Nos.1061/Ahd/2024 & 1062/Ahd/2024 respectively by the Ld.Commissioner of Income Tax (Exemption), Ahmedabad [hereinafter referred to as "Ld.CIT(E)"] denying grant of registration of Trust u/s.12AB of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and also denying grant of approval u/s.80G of the Act.

2. We shall first take up the appeal of the assessee in ITA No.1061/Ahd/2024 against the order passed by the Ld.CIT(E) denying grant of registration to the applicant-trust u/s.12AB of the Act.

3. The brief facts of the case are that the assessee filed application before the Ld.CIIT(E) for grant of registration/s.12AB of the Act, however, the Id.CIT(E) on perusal of the Objects of the trust was of the view that on a reading of some of the Objects of the trust, the same were not for the benefit of public at large and were primarily for the benefit of the Members of the applicant-trust and their family members. The Ld.CIT(E) was of the view that the Objects of the trust are to protect the business interest and welfare of its Members and, hence, cannot be considered as charitable in nature. The CIT(E) observed that applicant-trust is established and functioning as Welfare Association or Union and also collecting fee from its Members. The Welfare activities adopted by the applicant-trust for its Members are in the nature of services being rendered to Members, as is the case in other welfare organizations. Accordingly, the Id.CIT(E) dismissed the application of the applicant-trust and also cancelled provisional registration earlier granted, with the following observation:-

“8.....From perusal of above referred objects of the applicant/assessee, it is evident that these objects are to protect the business interest and welfare of its members and that hardly can be considered as charitable in nature, particularly when the essence of altruism is absent from the same and these are not for the benefit of public at large as discussed above. The applicant/assessee is established and functioning as welfare association or union and also collecting fee from its members. Moreover, the welfare activities adopted for its members are in nature of services being rendered to members as are common in other welfare organizations, which could not be termed for general public utility and charitable purpose. Further, the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Truck Operators Association reported in 9 taxmann.com 267 decided the matter in favour of revenue and held as under.

“9. On examination of the objects and the purpose of the Association in the present case, it emerges that the respondent-Association is union of Truck Operators constituted for facilitating its members to carry on the trade of transportation and not to allow the outsider or non-member to undertake any business activity within the precincts of Hansi Town/village. The Association charges fees from its members

before the transportation on the basis of the distance involved. The membership and payment of fees are mandatory and the element of voluntary contribution is missing. The association is vigorously pursuing transportation business by receiving freight charges on behalf of its members. The welfare activities adopted for the truck drivers, cleaners and mechanics of the truck owner are in the nature of staff welfare activities, as are common in other business organizations which cannot be termed for general public utility."

9. *Therefore, as the aforesaid objects are for the benefit/welfare/interest of the members of the association Le. members and their families of Salej Rotary Seva Foundation and not for the benefit of public at large, thus, does not fall within the ambit of charitable purposes as defined us 2(15) of the Act. I am of the considered opinion that the applicant/assessee is not eligible for registration u/s. 12A of the Act. Therefore, in the facts and circumstances of the case, the applicant/assessee cannot be granted registration u/s. 12A of the Act.*

10 *In view of the above, the present application fled in Form No.10AB u/s. 12A(1)(ac)(iii) of the Act rejected and provisional registration stands cancelled."*

4. The assessee is in appeal before us against the aforesaid order passed by the Ld.CIT(E).

5. Before us, the ld.counsel for the assessee submitted that on perusal of the trust-deed, it can be seen that the assessee-trust has been formed for carrying out charitable, educational and cultural activities without discrimination of caste or religion. It was submitted before us that the trust was incorporated during Covid period with a view to carry out/pursue charitable activities for helping mankind amidst the pandemic. The ld.counsel for the assessee submitted that the Objects of the assessee-trust are not specific to its Members and the Ld.CIT(E) has only selectively picked up a few Objects to deny to grant of registration to the assessee-trust. The ld.counsel for the assessee submitted that the assessee is providing medical

relief to public at large, helping victims during disasters, is engaged in promoting educational, agricultural, social and other activities, is conducting programs for women's empowerment is engaged in setting up water treatment plants as part of its Objects etc. The Id.counsel for the assessee submitted that the assessee-trust has also been engaged in distributions of sweaters, bags, slates, stationery to the children of Salej Prathmik School, Salej, Gandevi, Navsari. Further, it was submitted that on perusal of Profit & Loss account, it can be seen that no money has been spent by the applicant-trust which is not for the benefit of general public or not in accordance with the provisions of law. The Id.counsel for the assessee submitted that the details of donations received and expenditure related to the trust along with supporting evidence were furnished before the Ld.CIT(E) and there is no specific allegation that any of the expenditure was not carried out in accordance with the Objects of the trust. Further, Id.counsel for the assessee submitted that the Trust was incorporated in 2020 and for past three years, the Objects/Activities of the trust have not been subject to challenge by the tax authorities. The Id.counsel for the assessee placed reliance on the decision of Hon'ble Gujarat High Court in the case of Commissioner of Income-tax (Exemption) vs. Bayath Kutchhi Dasha Oswal Jain Mahajan Trust reported at [2016] 74 taxmann.com 199 (Gujarat) :: [2016] 243 Taxman 60 (Gujarat)[22-08-2016], wherein the Hon'ble Court has held where Trust had large number of other objects for benefit of general public apart from objects for benefit of a religious community, Tribunal was correct in allowing registration to it.

5.1. In response, the Ld.DR placed reliance on the observations made by the Ld.CIT(E) in his order.

6. We have heard both the parties and perused the material available on record. On going through the contents of the order passed by the Ld.CIT(E), we observe that the Ld.CIT(E), out of various Objects submitted by the assessee, only hand picked a few Objects to deny registration to the applicant-trust on the ground that the trust was primarily found for the benefit of the Members of the trust along with their family Members. However, we observe that the Objects which were selected/picked up by the Ld.CIT(E) were only incidental Objects, which were only aimed at providing administrative support to the main Objects of the trust, which in our view, are charitable in nature. We also observe that all details of expenses incurred by the assessee-trust were submitted before the Ld.CIT(E) and no specific finding has been given that the said expenses were not charitable in nature. We further observe that for the past three years, the Objects of the trust have not been challenged by the Tax Authorities and even on the principle of consistency, unless any new facts comes on record, registration cannot be denied to the assessee, on the basis of same set of facts. Accordingly, looking to the instant facts, we are of the considered view that the Ld.CIT(E) has erred in facts and law in denying granting of registration to the applicant-trust u/s.12AB of the Act. In the case of CIT (Exemption) vs. Bayath Kutchhi Dasha Oswal Jain Mahajan Trust (supra), the Hon'ble Jurisdictional High Court has held that where apart from Objects which were for the benefit of religious community, the assessee-trust had large number of other objects which were for benefit of general public, the Tribunal was correct in allowing registration to the assessee. Respectfully following the aforesaid judgement of the Hon'ble Gujarat High Court and looking into the assessee's particular set of facts, the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee in ITA No.1062/Ahd/2024 is allowed.

Assessee's appeal in ITA No.1062/Ahd/2024

8. The next appeal filed by the assessee is with regard to denial of grant of registration u/s80G(5) of the Act. The primary reason for denial of grant of registration u/s.80G of the Act was that in the Objects of the trust, at two places the word "religious" was appearing. The Ld.CIT(E) was of the view that since the assessee was engaged in promotion of religious activities and not for charitable activities/purposes exclusively, the assessee was not liable to be granted benefit of Section 80G(5) of the Act.

9. Before us, the Id.counsel for the assessee submitted that a bare perusal of the Objects of the trust would show that the trust has not been formed for the purpose of benefiting any particular religious community at all. A perusal of the Objects of the trust itself shows that it has not been formed for the purpose of the benefit of any particular religious community and the Objects of the trust are general in nature. Therefore, it was submitted that effectively the Ld.CIT(E) had no reason to the denial of grant of benefit u/s.80G(5) of the Act.

10. In response, the Ld.DR placed reliance on the observations made by the Ld.CIT(E) in his order.

11. We have heard both the parties and perused the material available on record. On going through the Objects of the trust, we observe that the trust has not been formed for the benefit of any specific religious community.

Though, the term “religious” is appearing in the Objects of the trust but the same is only being used in general sense. On going through the Objects of the trust, the same are largely for the benefit of public at large and include promotion of education, cultural, social religious, medical and other developmental activities for the benefit public at large. Therefore, perusal of the order of the Ld.CIT(E), we are of the considered view that this is not a fit case where registration u/s.80G(5) of the Act should be denied to the assessee, since from the Objects of the applicant-trust it is evident that the Trust has not been formed for benefit of any particular religious community or for that matter for carrying out religious activities *per se*. As a result, appeal of the assessee in ITA No.1062/Ahd/2024 is allowed.

12. In the combined result, both the appeals of the assessee are allowed.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 16/12/2024

T.C. NAIR/Tanmay, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(E), Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोकट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad