

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
**BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 708/JPR/2024 (A.Y.2023-24)

Porwal Yuvak Sangh Kota,
77-78 Porwal Bhawan,
Vallabh Bari, Kota- 324006.
PAN No.:AAAAP7068G

..... Appellant

Vs.

CIT Exemption,
Jaipur – 302 001.

..... Respondent

Appellant by : Mr. Sarwan Kumar Gupta, Adv., Ld. AR
Respondent by : MS. Alka Gautam, CIT Ld. DR. (V.H)
Date of hearing : 12/12/2024
Date of pronouncement : 20/12/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of CIT (Exemption), Jaipur dated 30.03.2024 passed u/s. 12AB (1) (b) (i) of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2023-24. The assessee has raised the following grounds of appeal:-

1 The Impugned order u/s. 12AB of the Act dated 30.03.2024 is bad in law and on facts, without providing adequate & reasonable opportunity of being heard, being without jurisdiction and for various other reasons and hence the same may kindly be quashed.

2.1 The Ld. CIT (E) erred in law as well as on the facts of the case in rejecting the application for grant Registration/approval u/s. 12AB of the Act and in not granting Registration/approval. The rejection so made and refusal to grant Registration/approval u/s. 12AB of the Act is contrary to the provisions of law and facts of the case. The same may kindly be quashed.

2.2 The Ld. CIT(E) erred in law as well as on the facts of the case in rejecting the application for grant Registration/approval u/s. 12AB of the Act on the alleged reasons that Society is (i) Not registered under RPT Act, 1959, ii) Society meant for benefit of Porwal Samaj, iii) Society is running the Business Activity, iv) Application of income not for the object of the trust and v) genuineness of Activities, which are wrong and incorrect looking to the material and details available on record and not considered the same in their true perspective and sense. Hence the rejection so made and refusal to grant Registration/approval u/s. 12AB of the Act is contrary to the provision of the law and facts of the case. The same may kindly be quashed.

3. That the impugned order so passed was in the contravention of the law prevalent at the relevant point of time and also on fact and hence may kindly be quashed. The Id. CIT (E) be directed to grant Registration/approval from the date of application.

4. The appellant prays your honour indulgence to add, amend or alter of or any of the grounds of the appeal on or before the due date of hearing.

2. The brief facts of the case are that the assessee trust filed an application in form no. 10AB seeking registration u/s. 12AB of the Act vide dated: 29.09.2023, in continuation to earlier application filed and temporary registration granted vide dated: 05.04.2022. Application of the assessee was rejected assigning following reasons as under:

- Registration under Rajasthan Public Trust Act, 1959;
- Meant for benefit of Porwal Samaj;
- Business Activity;
- Application of income not for the object of the trust and
- Genuineness of Activities.

3. The assessee being aggrieved with this order of the Ld. CIT (E), preferred the present appeal before us. We have gone through the order of the Ld. CIT (E) and submissions of the assessee alongwith grounds taken before us. As far as first objection is concerned, the assessee has duly submitted the copy of registration certificate under the Rajasthan Public Trust Act, 1959. As far as second objection is concerned we have taken note of the Para 3 of the Ld. CIT (E)'s order, wherein he categorically pointed out that the trust is meant for the benefit of Porwal Samaj only and relied upon the decisions of the Hon'ble Apex Court in the case of CIT vs. Palghat Shadi Mahal Trust 254 ITR 212 and CIT, Ujjain vs. Dawoodi Bohra Jamat, Civil Appeal No. 2492 of 2014.

4. But, as per the scheme of the Act, reliance placed by the Ld. CIT (E) on CIT, Ujjain vs. Dawoodi Bohra Jamat, Civil Appeal No. 2492 of 2014, 222 Taxman 228 (SC) is misplaced. As the Hon'ble Apex Court held as under:

“Under the scheme of the Act, sections 11 and 12 are substantive provisions which provide for exemptions available to a religious or charitable trust. Income derived from property held by such public trust as well as voluntary contributions received by the said trust are the subject-matter of exemptions from the taxation under the Act. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemption under sections 11 or 12 by the assessee and the grant or rejection of such application by the Commissioner.

A conjoint reading of sections 11, 12, 12A and 12AA makes it clear that registration under sections 12A and 12AA is a condition precedent for availing benefit under sections 11 and 12. Unless an institution is registered under the aforesaid provisions, it cannot claim the benefit of sections 11 and 12. Section 13 enlists the circumstances wherein the exemption would not be available to a religious or charitable trust otherwise falling under section 11 or 12 and, therefore, requires to be read in conjunction with the provisions of sections 11 and 12 towards determination of eligibility of a trust to claim exemption under the aforesaid provisions. [Para 16]

Determination of nature of trust as wholly religious or wholly charitable or both charitable and religious under the Act is not a question of fact. It is a question which requires examination of

legal effects of the proven facts and documents, that is, the legal implication of the objects of the respondent-trust as contained in the trust deed. It is only the objects of a trust as declared in the trust deed which would govern its right of exemption under section 11 or 12.

It is the analysis of these objects in the backdrop of fiscal jurisprudence which would illuminate the purpose behind creation or establishment of the trust for either religious or charitable or both religious and charitable purpose. Therefore, the High Court has erred in refusing to interfere with the observations of the Tribunal in respect of the character of the trust. [Para 26]

Having said so, it is necessary to examine the question, whether the Courts below were justified in coming to the conclusion that the assessee-trust is a public religious trust and therefore, outside the purview of section 13(1) (b) and eligible for exemption under section 11. [Para 27]

The objects of the assessee-trust are not indicative of a wholly religious purpose but are collectively indicative of both charitable and religious purposes. It is expedient to comprehend the objects of the assessee-trust with reference to the construction of the expressions 'charitable purpose' and 'religious purpose.' [Para 28]

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The phrase charitable purpose is expansive and inclusive. The expression 'charitable purpose' is defined in the dictionary clause of the Act under section 2(15). [Para 29]

According to section 2(15), the expression 'charitable purpose' has been defined by way of an inclusive definition so as to include relief to the poor, education, medical relief and advancement of any other object of general public utility. A catena of decisions of this Court which have interpreted the said provision and especially the expression 'any other object of general public utility' have observed that the said expression is of the widest connotation. The word 'general' in the said expression means pertaining to a whole class.

Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose. The said expression would prima facie include all objects which promote the well-being of the general public. It cannot be said that a purpose would cease to be charitable even when public welfare is intended to be served. [Para 30]

In certain cases, the activities of the trust may contain elements of both: religious and charitable and thus, both the purposes may be overlapping. More so when the religious activity carried on by a

particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of optional charity in the form of Khairat or Sadaquah under Mohammadan Law would be covered under both charitable as well as religious purpose. Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non-Hindus as well. [Para 36]

Unquestionably, objects which provide for the activities completely religious in nature and restricted to the specific community of the respondent-trust are objects with religious purpose only. However, in respect to the other objects, the fact that the said objects trace their source to the Holy Quran and resolve to abide by the path of godliness shown by Allah would not be sufficient to conclude that the entire purpose and activities of the trust would be purely religious in colour. The objects reflect the intent of the trust as observance of the tenets of Islam, but do not restrict the activities of the trust to religious obligations only and for the benefit of the members of the community. [Para 38]

The activity of providing for food on certain specific occasions and other religious and auspicious events of the Dawoodi Bohra community do not restrict the benefit to the members of the community. Neither the religious tenets nor the objects as expressed limit the service of food on the said occasions only to the members of the specific community. Thus, the activity of Nyaz performed by the respondent-trust does not delineate a separate class but extends the benefit of free service of food to public at large irrespective of their religion, caste or sect and thereby qualifies as a charitable purpose which would entail general public utility. [Para 39]

Therefore, the objects of the trust exhibit the dual tenor of religious and charitable purposes and activities. Section 11 shelters such trust with composite objects to claim exemption from tax as a religious and charitable trust subject to provisions of section 13. The activities of the trust under such objects would therefore be entitled to exemption accordingly. [Para 41]

Further, one has to examine the objects under the provisions of section 13(1)(b) of the Act. It becomes amply clear from the language employed in the provisions that section 13 is in the nature of an exemption from applicability of sections 11 or 12 and the examination of its applicability would only arise at the stage of claim under sections 11 or 12.

Thus, where the income of a trust is eligible for exemption under section 11, the eligibility for claiming exemption ought to be tested on the touchstone of the provisions of section 13. In the instant case, it being established that the respondent-trust is a public charitable and religious trust eligible for claiming exemption under section 11, it becomes relevant to test it on the anvil of section 13. [Para 42]

Thus, the second issue which arises for consideration, whether the respondent-trust is a charitable

and religious trust only for the purposes of a particular community and therefore, not eligible for exemption under section 11 in view of provisions of section 13(1)(b). [Para 43]

In the instant case, the Tribunal has found on facts after analysing the objects of the trust that the respondent trust is a public religious trust and its objects are solely religious in nature and being of the opinion that section 13(1)(b) is solely meant for charitable trust for particular community, negated the possibility of applicability of section 13(1)(b) at the outset. The High Court has also confirmed the aforesaid view in appeal and observed that section 13(1)(b) would only be applicable in case of income of the trust for charitable purpose established for benefit of a particular religious community. The said view may not be the correct interpretation of the provision. [Para 44]

From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b). What is intended to be excluded from being eligible for exemption under section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste. [Para 45]

The trusts with composite objects would not be expelled out of the purview of section 13(1)(b) per se. The Section requires it to be established that such charitable purpose is not for the benefit of a particular religious community or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large. The section of community sought to be benefited must be either sufficiently defined or identifiable by a common quality of a public or impersonal nature. [Para 46]

In the present case, the objects of the respondent trust are based on religious tenets under Quran according to religious faith of Islam. As already noticed that the perusal of the objects and purposes of the respondent-trust would clearly demonstrate that the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community. The objects, as explained in the preceding paragraphs, do not channel the benefits to any community if not the Dawoodi Bohra Community and thus, would not fall under the provisions of section 13(1) (b). [Para 49]

In that view of the matter, it is held that the respondent-trust is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held that section 13(1) (b) of the Act would be attracted to the respondent-trust and thereby, it would be eligible to claim exemption under section 11. [Para 50]

5. In view of the above ratio laid down by the Hon'ble Apex Court and totally misplaced by the Ld. CIT (E), matter is restored back to the file of the Ld. CIT (E) for reconsideration in the light of the decision of the Hon'ble Apex Court after giving the assessee a reasonable opportunity of being heard and pass the order strictly in compliance to the decision of the Hon'ble Apex Court.

6. Third and fourth question raised by the Ld. CIT (E) are related to element of business activity involved in the operations of the assessee trust and application of income of the trust. We have thoroughly gone through the Para 4 and 5 of the order of the Ld. CIT (E)'s order and found the same to be vague and wrong interpretation of the section 2(15) of the Act, which is reproduced herein below as under:

(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of 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 cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

7. On these issues also, findings of the Ld. CIT (E), found to be not so specific about the case. Rent receipts if are incidental to and ancillary to the main object of the trust same has to be allowed and so in the case of application of the income of the trust also. In view of the above the matters are restored back to the Ld. CIT (E), for reconsideration in the light of the various decisions of the Hon'ble

Apex Court after giving the assessee a reasonable opportunity of being heard and pass the order strictly in compliance to the decision of the Hon'ble Apex Court.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th day of December 2024.

Sd/-

Sd/-

(Dr. S. SEETHALAKSHMI)

(GAGAN GOYAL)

JUDICIAL MEMBER

ACCOUNTANT MEMBER

Jaipur, दिनांक/Dated: 20/12/2024

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
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BY ORDER,

(Asstt.Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	20.12.2024		Sr.PS/PS
2	Draft Placed before author	20.12.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

