



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.367/RJT/2023

Assessment Year: (NA)

(HybridHearing)

Shree Baua Bhavik Mandal Nani Tumbdi- Charitable Trust, Nani Tumbdi, Patel Faliyu, Mundra, Kutch-370421	Vs.	CIT(Exemption), Ahmedabad.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AATTS7738Q		
(Appellant)		(Respondent)

Appellant by : Shri Kalpesh Doshi, Ld. A.R.

Respondent by : Shri Sanjay Punglia, Ld. CIT. DR

Date of Hearing : 09/01/2025

Date of Pronouncement : 21/03/2024

आदेश / O R D E R

Per, Dr. A. L. Saini, AM

Captioned appeal filed by the assessee, is directed against the order passed by the Learned Commissioner of Income Tax (Exemption), Ahmedabad, vide order dated 29.08.2023, wherein, the Learned Commissioner of Income Tax (Exemption), has rejected assessee's application in form 10AB, u/s 12A(1)(ac)(iii) of the Income Tax Act, 1961, holding that assessee- trust has been created for the benefit of particular religious community or cast "BAUA BHAVIK."



2. Grounds of appeal raised by the assessee as follows.

1. *That, the learned CIT(Exemption) has wrongly rejected the application filed in form no. 10AB for granting registration u/s 12A of the IT Act, 1961.*
2. *That, the findings of the learned CIT, Exemption are not justified in law as well as facts of the case and required to be deleted.*
3. *The appellant craves to add, alter, amend or delete any of the above grounds of appeal.*

3. The facts necessary for disposal of the appeals are stated in brief. The assessee- trust filed an application for registration of the trust u/s 12AB of the Income Tax Act, 1961. The learned Commissioner of Income Tax (Exemption), has issued notice to the assessee, to submit documents and details. In response to the notices issued, the assessee-trust has filed its response on 21/07/2023. The assessee-trust has filed Form 10AB, u/s 12A(1)(ac)(iii) of the Act, on 07/02/2023. The assessee-trust had been granted order for provisional registration in Form No. 10AC, issued on 20/03/2022, under section 12A(1)(ac)(vi) for the period commencing from assessment year (AY) 2022-23 to AY 2024-25. From perusal of objects of the assessee-trust, it was observed by Id. CIT(E) that following objects, which are otherwise charitable in nature are for the benefit of any particular religious community or caste " BAUA BHAVIK" In view of the above, a fresh show cause notice was issued to the assessee, on 24.08.2023, and the relevant portion of the same is reproduced by Id CIT(E) on page No.7 to 9 of his order.

4. In reference to the above notice dated 24.08.2023, the assessee-trust has submitted its reply, before Id. CIT(E), on 28.08.2023, which is reproduced as under:



“With reference to your above notice dt. 28/08/2023. Your observation is that the objects of the trust are both Religious & Charitable in nature whereas objects under clause 4(1) & 4(3) are charitable in nature appear to be restricted to benefit of a particular religious community or caste i.e. Bauva Nukh. Therefore there is specified violation as defined in the Explanation to section 12AB(4). For that our explanation are as under:

Section 13(1)(b) prohibits exemption for those trusts and institutions formed for benefit of any particular religious, community or caste. As per section 13(1)(b)(1) if such trust or institution has been created or established after the commencement of this Act, Proviso to section 13(1) provides that in case of a trust or institution created or established before the commencement of this Act the provisions of sub-clause(ii) shall not apply to any use or application whether directly or indirectly of any part of such income or property of the trust or institution for the benefit of any person referred to in sub section (3) if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution. Sir, our trust is registered under Gujarat Public Trust Act on dt. 11/05/2017. However the Idol of God Sachhamata of Bauva Family established at resident of Shri Lakhamshibhai since 70 years at Village Nani Tumbdi, Tal. Mundra-Kutch. Bauva Family is doing Pooja & Religious activities since this period. Thus, our Bauva Family is doing seva, puja & religious activities for Sachhamata since more than 70 years i.e. the year 1953. The Sarpanch of Village Nani Tumbdi, Tal. Mundra-Kutch has also confirmed and given certificate mentioning the above fact. Therefore our trust is created in the year 1953 that is before the Commencement of the Income Tax Act 1961. In view of above submission Sir, Our trust has not violated any provision as per section 12AB(4) of I.T. Act and is eligible for registration under section 12A of the Act.”

5. However, CIT(Exemption), rejected the contention of the assessee, and observed that the date of registration of Trust before the Deputy Charity commissioner – Kutch, is 11.05.2017 and also the assessee-trust has itself mentioned in FORM 10AB under para 4b that the date of incorporation/creation/Registration is 11.05.2017. Therefore, the assessee-trust has failed to show that this trust was created prior to commencement of this Act. Since, Bauva Nukh family is not a particular religious community, and there is no application of section 13(1)(b) of Income Tax Act, 1961 in this case. However, the provision of section 13(1)(c) of Income Tax Act, 1961 will be applicable in this case and the assessee-trust is also not claim benefit that the trust is made prior to commencement of this Act. The Id. CIT(E) also noticed that the following object of the Trust shows that this is a private religious trust:



“To create facilities so that the members of the BauaNukh family bowing to Shri Sachchamata can celebrate, religious and other rituals, beliefs and festivals according to the occasion at the temple of Shri Sachchamata without any problem.”

Thus, Id CIT (E) noted that this is a specific violation under explanation (c) to section 12AB(4) of Income Tax Act, 1961. Therefore, considering these facts, the Id.CIT(E) rejected the present application filed in Form No.10AB, u/s12A(1)(ac)(iii) of the Act.

6. Aggrieved by the order of the learned CIT (E), the assessee is in appeal before us.

7. Shri Kalpesh Doshi, Learned Counsel, on behalf of the assessee, argued that CIT(Exemption) has denied the registration of trust stating that section 13(1)(c) of Income Tax Act, 1961 is applicable to the assessee, whereas trust under consideration has started activities prior to commencement of the Income Tax Act, 1961. Second reason of rejection of application by the Commissioner of Income Tax(Exemption) was that the trust was created for particular community called “ Baua Nukh” family. In this regard, Id Counsel submitted that trust is named, just in the name of family, but it works for entire Society and for every caste and community in the society. So the name of the trust does not matter, and some of the activities of the trust are related to temple and the said temple is available for worship for every person and not restricted to the family members. The said trust provides food to everybody without discrimination of the caste or creed. Thus, the trust is not for particular family and the assessee-trust has not restricted its charitable work for family or particular community, the said trust have other major objects, which is for general public, hence assessee trust deserve registration.

8. On the other hand, Learned DR for the revenue, submitted that this trust has created only for one family and therefore not eligible for registration. Besides,



Id.DR for the revenue relied on the findings of the order passed by the Id. CIT(Exemption).

9. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We note that assessee-trust was created in the year 1953, that is, before the commencement of Income Tax Act, 1961, and for that assessee is ready to furnish the relevant information before the Id. CIT (E). It is submitted that the Idol of God Sachhamata of Bauva family is established at the residence of Shri Lakhamshibhai, since 70 years, at Village Nani Tumbadi Tal Mundra-Kutch. Bauva family is doing pooja and religious activities for Sachhamata, since more than 70 years i.e. since 1951. It has also enclosed a certificate dated 27.08.2023, issued by sarpanch of village in this regard, as per which construction of temple has been made during the year ending 31.03.2020. Bauva family is doing pooja for Sachhamata, however, the temple of Sachhamata, is open for pooja and darshan, for every section of society, without any discrimination of caste or creed etc. The Peoples residing in surrounding area have faith and belief in the temple of Sachhamata. The temple of Sachhamata offers food to the poor and weaker sections of society, without any discrimination of caste or creed etc. Having examined these features, we find that temple of Sachhamata, is not only for Bauva family, but it is for every sections of the society.

10. We note that objects of the trust which is stated in the trust deed, are as follows:

“Objectives related to God: -



1. To create facilities so that the members of the Baua Nukh family bowing to Shri Sachchamata can celebrate, religious and other rituals, beliefs and festivals according to the occasion at the temple of Shri Sachchamata without any problem.
2. Celebrating Patotsav every year and celebrating other Manglik festivals and events.
3. To celebrate social events and support such activities that increase intimacy, brotherhood, family spirit, harmony and love among the members of the Baua Nukh family.
4. To establish, maintain and run Atithigruh and Bhojanalay for accommodation, lodging and dining arrangements for the pilgrims coming to the temple.
- 5. To help the poor and needy members by providing food, clothing, shelter, medical aid, financial aid and other relief works.**
- 6. Helping them to carry out medical relief works, opening dispensaries, hospitals. Giving medicine and treatment to patients. Conducting classes on medicaleducation and giving scholarships.**
- 7. To assist in literary, cultural, social and any other recreational activities useful to the public. and assisting in research works.**



- 8. To help spread physical education and conduct nutritional programmes.**
- 9. To help the needy and human useful animals in all ways during natural and man-made calamities.**
- 10. Sadhu - serving or helping the nuns in such tasks.**
- 11. Helping in livelihood or similar activities, running and maintaining cattle herds, gaushalas or cages.**
- 12. To do or help in all kinds of activities like tree planting, tree resources, environment, energy and its nutrition.**
- 13. To undertake all the activities of nurturing and nurturing the Indian culture and to help in such activities.**
- 14. All necessary activities can be done for the overall development of the village.**
- 15. To carry out other activities incidental to the above objectives or to assist Trusts or individuals engaged in such activities.**

11. We have gone through the above objects of the trust, and we find that most of the objects of the trust are for the benefit of general public. The objects at serial No. 5 to 15 are for benefits of general public, therefore, it can not be said that trust has been created for the benefit of particular religious community or cast "BAUA BHAVIK. For that reliance is placed on the judgement of Hon`ble High Court of Gujarat in the case of BayathKutchhi Dasha Oswal Jain Mahajan



Trust,[2016] 74 taxmann.com 199 (Gujarat), wherein it was held that 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. Findings of the Hon`ble of Court is reproduced below:

“6. As noted, in the present case the Commissioner referred to the social activities clause contained in the constitution of the trust to come to the conclusion that the objects of the trust were confined for the benefit of a religious community. We, however, notice that there were large number of other objects which were for the benefit of general public. Relevant portion of the constitution of the trust reads as under :

"4. Objects of Trust: Object of this institution will be as under:

1. Educational :

- 1. To do all activities related to Education or which encourages education*
- 2. To establish, maintain and run Educational centres, infant schools, Primary Schools, Secondary Schools, High Secondary Schools, Colleges, to establish, maintain and run Hostels, training Centres and to help in such activities for creating awareness in the common people and to make the publicity of education.*
- 3. To impart knowledge of Computer and latest technology.*
- 4. To help or arrange for such help to students through Scholarships, subsidy, loan prize, stipend, etc.*
- 5. To provide guidance and education for Technical, Vocational and other crafts professions.*

2. Social Activity:

- 1. To arrange such collective function and to be helpful in such activities which increases relationship, brotherhood, familyness, unity, love amongst the members.*
- 2. To establish, administer and maintain Guest Houses, Bhojanalaya, Service (vaiyavachh), centres and other buildings for the benefit of members of the society.*
- 3. To construct or to arrange for the construction of residential complexes for the members of the Samaj and to provide loan/financial help subject to the provisions of the rules of the trust.*

3. Medical :

- 1. To do all activities of medical help, to establish, administer and maintain Dispensary, Hospital, Laboratory and other medical treatment centres and arrange camps and seminars.*
- 2. To help patients in medical treatment by providing medicines, financial assistance and all other helps.*
- 3. To make publicity of medical education and given Scholarships.*
- 4. Rural Development:*



1. *To provide employment to the villagers and to do all activities of poverty elimination.*
2. *To make tree plantation, tree protection and provide energy, forestry and electricity.*
3. *To create water scheme units for providing water for agriculture and drinking and make storage of water through ponds, small dams and farm ponds, well etc.,*
4. *To take the any Government Scheme to villagers which make development of their area.*

5. *Literature & Culture:*

1. *To make efforts for the development and protection of Indian Culture*
2. *To do or help in such activities, which is socially prosperous for common people in the area of literature, culture, physical education, and in sports.*
3. *To give every help for encouragement of people who are interested and liking in culture and literature.*

6. *Others:*

1. *For development of institutions' objects, make research, publicity and developmental works or to help any institution, person, doing such activity or with their help to plan Training Centres, camps, Lectures, meetings, gatherings and seminars and to print books and other literatures, publish it or exhibit.*
2. *To run Cow homes and do the activities of growth of cow.*
3. *To provide food, cloths, residence, financial help and other help to financially weak and needy persons.*
4. *During natural or manmade calamities, provide help to needy persons and domestic helpful animals and birds.*
5. *To do all activity of Jivdaya.*
6. *To do activities of service to human and animals over the objects mentioned above."*

7. *It can thus be seen that the Commissioner focused his attention to clause 4.2 of the objects of the trust to come to the conclusion that the same were for the benefit of a certain religious communities only, in the process ignoring various other objects, for e.g. as per clause 4.1, the trust would engage itself in activities relating to education by maintaining and running education centers, infant schools, primary secondary and high schools, colleges etc., to run hostels, training centers for creating awareness in the common people and to make the education available for the public. It would also engage in imparting training in computers. As per clause 4.3, the trust would engage in doing all activities for medical help and to establish and administer dispensaries, hospitals and laboratories etc. It would also help the patients by supplying medicines and financial assistance. Likewise in clause 4.4 the trust could engage in rural development schemes. As per clause 4.5, the trust would engage in literary and cultural activities by making efforts for the development and protection of Indian culture. Clause 4.6 which pertains to other included activities such as running cow shelters, to provide food, cloth and financial help for economically weaker persons, to help during natural or other calamities, to serve humans and animals etc.*

8. *Thus, very premise for the Commissioner to come to the conclusion that the objects of the trust were confined for the benefit of a religious community, is incorrect. Thereafter to suggest that the activities were carried out only for such purposes would be entering in the realm of granting exemptions in terms of Section 13 of the Act, which would be the task of the*



ITA NO. 367/RJT/2023
SHREE BAUA BHAVIK MANDAL
NANI TUMBDI – CHARITABLE TRUST

Assessing Officer to be undertaken at the time of assessment on the basis of material that may be brought on record.

12. Therefore, we set aside the order of CIT(E) and remand the various issues raised by the assessee in the grounds of appeal, for fresh consideration by the Id. CIT(E), with a liberty to the assessee-trust to prove his case by producing sufficient evidence/material to the satisfaction of the Id CIT(E). For statistical purposes the appeal of the assessee is allowed.

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

Order pronounced in the open court on 21 /03/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 21/03/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot