

आयकर अपीलीय अधिकरण, "ई" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
श्री बी. आर. बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI B.R.BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7420/MUM/2012
(निर्धारण वर्ष / Assessment Year: 2012-13)

S. V. Foundation Public Charitable Trust M/s. Mehta Kothari & Co. Chartered Accountants 17, Swastik Society, Road No.2, JVPD Scheme, Vile Parle (West), Mumbai - 400056	बनाम/ Vs.	Director of Income Tax (Exemption) 6 th Floor, Piramal Chambers, Lower Parel Mumbai - 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKTS3045H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri V. P. Kothari
Department by:	Shri Manjunatha Swami

सुनवाई की तारीख / Date of Hearing: 04.04.2016
घोषणा की तारीख /Date of Pronouncement: 29.06.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 28.09.2012 passed by the Director of Income Tax (Exemption), Mumbai [hereinafter referred to as the "DIT(E)"] relevant to the

A.Y.2012-13 wherein the application of the appellant u/s.12AA(1)(b)(ii) of the Income Tax Act, 1961 (in short “the Act”) has been rejected.

2. The appellant moved an application for registration u/s.12A of the Act in the prescribed Form No.10A on 01.03.2012. The trust has been constituted by a Trust Deed dated 11.01.2011. The trust has been registered with the Charity Commissioner, Mumbai on 16.11.2011. The DIT(E) was not satisfied about the object of the trust and genuineness of its activities, therefore the application u/s.12A of the Act was rejected. Feeling aggrieved the assessee has filed the present appeal before us. The representative of the appellant has argued that the trust has been created for charitable purpose as defined u/s.2(15) of the Act and its object such as establishment of computer training institutions, social welfare centre, marriage hall, establishment / maintenance of Gymnasium and other means of public recreation, establishment of museums, study centres etc. are only to fulfill the purpose u/s.2(15) of the Act. But the learned DIT(E) has treated the same as for business purpose which is wrong against law and facts. It is also argued that the DIT(E) has wrongly assumed that in view of the clause 9(a) of the trust deed that the trustees are permitted to hold the investments at their desire in the name of any two or more Trustees jointly or in the name of any scheduled bank and to prove which trustees shall in case of joint investment be named

as the final, which is not in consonance with the public charitable character of the trust but it is wrong appreciation of the facts hence the registration has wrongly been rejected.

3. It is also argued that the trust has wrongly be considered for the religious purpose which is not for religious purpose. Therefore, the learned DIT(E) has passed the order in question wrongly and illegally which is liable to be set aside in the interest of justice. In support of these contention the learned representative of the appellant has placed reliance on the case law decided by the Income Tax Appellate tribunal, Mumbai bench in ITA No.7101/Mum/2012 in case of Smira Charitable Trust, Mumbai Vs. DIT(E) and the judgment passed by the Hon'ble High Court of Allahabad in case of Hardayal Charitable & Educational Trust Vs. CIT-II [ITA No.107/2012] and the judgement passed by the Hon'ble High Court of Punjab & Haryana in case of CIT Vs. Surya Educational & Charitable Trust [ITA No.701/2010] and the judgement passed by the Income Tax Appellate Tribunal in case of Shree Vile Parle Vardhman Sthanakvasi Jain Foundation, Mumbai Vs. DIT(E) in ITA No.7094/Mum/2012 for A.Y.2013-14.

4. On the other hand the learned representative of the department has strongly relied upon the order passed by the DIT(E), Mumbai. On appraisal of the order in question dated 28.09.2012, it came into notice that the DIT(E) examined the object of the trust and raised the question with regard to the genuineness of the its activities. The

DIT(E) is of the view that the trust deed is charitable as well as non-charitable / business objects such as establishment of computer training institutions, social welfare centre, marriage hall, establishment / maintenance of Gymnasium and other means of public recreation, establishment of museums, study centres etc. DIT(E) is also of the view that the trustees have been vested with the discretion in the matter of application of trust funds and there is no binding legal obligation on them to utilize such funds solely and exclusively for charitable purpose.

5. On appraisal of the above said observations how it can be assumed that the purpose of the above said objects are for the business purpose and specifically in the circumstances when no prima facie objects seems to be commercial, trade and business purpose. However on asking, the assessee filed the written submission stating therein that all the objects mentioned above are in connection with the object of the trust and not for the purpose of business activities. Moreover, these activities are yet to commence, how it can be assumed that the same is for the business purpose while no activity was done by the trust in this regard. It should be clear on record that the object of the trust is of the trade, business and commerce. Moreover, the amended provision of the second proviso to section 2(15) of the Act accommodated commercial transaction aggregate value is less than 25 lakhs. The trust is at the initial stage and yet the

work in future in accordance with its objects. Moreover, the power given to the trustees on the point of investment cannot be treated as non-charitable whereas the same is in connection with the management of funds. Activity of trade, business and commerce should be apparent on record i.e. in object of trust and provision contained in section 2(15) is also required to be kept in mind while considering the application. The last ground which has been considered to reject the application is in connection with the advance of loans to the students Mohit R. Mehta and Sunil P. Vora to the tune of Rs.25,000/- and Rs.1,00,000/- respectively. During the initial activities of the trust the trust provided loan only to the two students mentioned above and received the donation from Prabhat and Pankaj Vora. The Assessing Officer was of the view that the donors as well as the beneficiaries are of the same community (Jain Community). Therefore, the trust is being run for religious purpose. It is not a good ground to reject the application. Object of trust is liable to be considered and activity is only liable to be considered when the trust is functioning after the registration of the trust. Activities are yet to be commenced. The DIT(E) is required to consider such activities when the trust has been got registered in accordance with law. In view of the above said discussion and in view of law decided by the Income Tax Appellate Tribunal, Mumbai Bench in ITA No.7101/Mum/2012 in case of Smira Charitable Trust, Mumbai Vs. DIT(E) and the judgment passed by the Hon'ble High Court of

Allahabad in case of Hardayal Charitable & Educational Trust Vs. CIT-II [ITA No.107/2012] and the judgement passed by the Hon'ble High Court of Punjab & Haryana in case of CIT Vs. Surya Educational & Charitable Trust [ITA No.701/2010] and the judgement passed by the Income Tax Appellate Tribunal in case of Shree Vile Parle Vardhman Sthanakvasi Jain Foundation, Mumbai Vs. DIT(E) in ITA No.7094/Mum/2012 for A.Y.2013-14.we are of view that the DIT(E) has rejected the application of the trust u/s.12AA of the Act wrongly and illegally, therefore, we set aside the order in question and direct the DIT(E) to reconsider the matter afresh in accordance with law.

4. In result the appeal filed by the **assessee is hereby allowed.**

Order pronounced in the open court on 29th June, 2016.

Sd/-

(B.R.BASKARAN)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated :29th June, 2016

MP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai