

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.1201/Del/2022
Assessment Year: 2018-19

ITA No.761/Del/2021
Assessment Year 2021-22

ICRW Group Gratuity Trust,
C-59, Ground Floor,
South Extension Part II,
New Delhi 110 049

Vs CIT (Exemptions),
Delhi.

PAN: AABTI3510L

ITA No.762/Del/2021
Assessment Year: 2020-21

ICLEI South Asia Group Gratuity Trust,
C-3, Lower Ground Floor,
Green Park Extension,
New Delhi – 110 016.

Vs CIT (Exemptions),
Delhi

PAN: AABTI7567H

(Appellant)

(Respondent)

Assessee by	:	Shri Anand Chaudhuri, Advocate
Revenue by	:	Sh. Mohd. Gaysuddin Ansari,CIT,DR
Date of Hearing	:	17.05.2023
Date of Pronouncement	:	01.06.2023

ORDER

PER M. BALAGANESH, AM:

These appeals by the above two assesseees in ITAs No.1201/Del/2022, 762/Del/2021 and 761/Del/2021 for AYs 2018-19, 2020-21 and 2021-22 respectively are directed against the order of the Commissioner of Income Tax (Exemption), Delhi [hereinafter referred to as 'Id. CIT(E)', in short] in Appeals No. ITBA/EXM/F/EXM42/2021-22/1042364952(1), CIT(E)/12A:80G/2020-21/AABTI7567H/13297 and CIT(E)/12A:80G/2020-21/AABTI3510L/13294 dated 31.03.2022, 25.03.2021 & 23.03.2021 respectively rejecting the application for registration u/s 12AA of the Income-tax Act, 1961 (hereinafter referred to as 'the Act' for short).

2. Identical issues are involved in all these appeals and, hence, they are taken up together and disposed of by this common order for the sake of convenience.

3. With the consent of both the parties, the appeal of the assessee in ITA No.1201/Del/2022 for AY 2018-19 is taken up first.

4. Though the assessee has placed several grounds before us, the only effective issue involved in this appeal is as to whether the Id. CIT(E) was justified in rejecting the application seeking registration u/s 12AA of the Act, in the facts and circumstances of the instant case.

5. We have heard the rival submissions and perused the material available on record. We find M/s International Centre for Research on Women (ICRW) is a non-profit organization established with the objective of promoting social and economic development with women's full participation and is incorporated as a company registered u/s 25 of the Companies Act, 1956. The provisions of

Payment of Gratuity Act, 1972 are applicable in the case of ICRW and, therefore, to protect the financial interest of its employees, the ICRW set up a trust, namely, 'ICRW Group Group Gratuity Trust' , i.e., the assessee herein. This new trust applied in online seeking registration u/s 12AA of the Act in the prescribed form No.10A before the Id.CIT(E) ON 23.08.2017. The assessee filed trust deed and other documents as required by the Id.CIT(E). After examination of the same, the Id.CIT(E) observed that the trust's aims and objectives were only for the workers/employees of the ICRW and did not appear to be for general charitable purposes and, accordingly, rejected the application seeking registration u/s 12AA of the Act vide order dated 27.02.2018. Aggrieved by such rejection, the assessee preferred an appeal before this Tribunal and this Tribunal, in the first round of proceedings, *in ITA No.2244/Del/2018, order dated 21.10.2021 for AY 2018-19*, restored the matter to the file of the Id.CIT(E) with the following directions:-

"10. In view of the above decisions, the registration of the assessee trust cannot be rejected merely on the ground that it is for the benefit of a restricted group of employees of the company 'ICRW'. However, we find some merit in the argument of the Ld. DR that trust has been engaged in discharging the statutory obligation of the company 'ICRW' of making gratuity payment to their employees. But in this regard the competent authority has not examined the activities actually carried out by the trust, sources of funds and how the same are distributed to the employees, whether by way of creating the trust, the company is getting some benefit of saving of money, whether any activity of welfare of the employees other than making gratuity payment has been carried out by the trust etc. The assessee has also not filed any information with regard to its activities before us. Therefore, examining those issues need enquiry at the end of the Ld.CIT(E). In view of the above facts and circumstances and the interest of substantial justice, we feel it appropriate to restore this issue back to the Ld. CIT(E) for re-examination of the application of the assessee trust as per the provisions of the law, in the light of the decision of the Hon'ble Supreme Court in the case of Ahmedabad Rana caste Association (supra) and the decision of the Hon'ble High Gujrat of in the

case of Hiralal Bhagwati (supra). We accordingly order so. It is needless to mention that adequate opportunity of being heard shall be provided to the assessee. The grounds of the appeal of the assessee are allowed for statistical purposes.”

6. The present proceedings before us are against the giving effect order passed by the Id.CIT(E) on 31.03.2022. We find that the Id.CIT(E) had stated that the judgement of the Hon'ble Supreme Court in the case of *Ahmedabad Rana Caste Association, reported in 82 ITR 704 (relied upon by the assessee)* would not be applicable in the present case as Ahmedabad Rana Caste Association was incorporated for the purpose of management of movable and immovable properties of Rana community of the city of Ahmedabad, doing acts to improve education in the community and to give medical help to the community, etc. However, in the case of the assessee, the trust has been incorporated to discharge the statutory liability of ICRW in the form of gratuity payable to the employees of ICRW. Accordingly, the Id. CIT(E) concluded that the assessee trust was not created for any general welfare of the employees.

7. Similarly, the Id.CIT(E) distinguished the order of the Hon'ble Gujarat High Court relied upon by the assessee in the case of *Hiralal Bhagwati vs. CIT, reported in 246 ITR 188 (Guj)* as factually distinguishable. The Id.CIT(E) observed that in that case, the trust was created to 'give financial aid to the employees of Gujarat Law Society in cases of death of an employee during his/her service, illness or permanent disability which incapacitates the employee to discharge his/her duties.' In order to avail the benefits, the staff working in the institution were required to become member on payment of entrance fee and also required to make contribution to the fund, whereas, in the case of the assessee herein, no such requirement of making contribution to the fund by the

employees are mandated and it can be seen from the financial statements that the funds have instead been received by the assessee trust from ICRW. Therefore, the Id.CIT(E) held that the ratio laid down by the Hon'ble Gujarat High Court in the case referred to, *supra*, would not be applicable in the case of the assessee trust herein as it is only acting as an agent to discharge the statutory liability of 'ICRW' of making gratuity payment to its employees.

8. Further, the Id. CIT(E) observed that despite specific show-cause notice issued by him, the assessee trust had not furnished any documentary evidences indicating the purpose of formation of its trust and, ultimately, concluded that the assessee trust was formed only for the limited purpose of managing the statutory obligations in the form of gratuity payable to the employees of ICRW. Accordingly, he concluded that the said purpose would not fall within the ambit of 'charitable purpose' as defined u/s 2(15) of the Act and dismissed the application seeking registration u/s 12AA of the Act. Aggrieved, the assessee is in appeal before us.

9. At the outset, we find that the observation of the Id.CIT(E) that no documentary evidences were furnished by the assessee trust to prove the purpose of its creation, its financial statements, etc., made by the Id.CIT(E) is factually incorrect and totally contradictory to the observations made in his own order in para 5. In para 5 of the impugned order, we find that the Id.CIT(E) had reproduced the reply given by the assessee in response to show-cause notice issued by him. For the sake of convenience, the reply given by the assessee in that regard before the Id.CIT(E) is reproduced hereunder:-

"In continuation of our previous reply filed on dated 14.03.2022, we are respectfully submitting desired information as under

"1. Copy of Audit report, Balance sheet, Income expenditure account, Receipt and payment account for the year ending 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020 and 31.03.2021 as Annexure-1

2. There is no donation received by the trust since inception, except the contributions for the corpus towards gratuity fund.

3. The trust is formed for the social cause of the employees of International Center For Research on women (ICRW) and the said trust is part of ICRW and is formed for payment of gratuity amount to its employee. There is no further activities carried out by the trust and not involved in any trade or business activities.

4. A detail of source of fund is enclosed as Annexure-2

5. The amount of Rs 20,16000/- was received from ICRW towards setting up of gratuity fund for the employees of ICRW. Since this amount was received for specific purpose and was to be used for retirement fund of employees of ICRW, it was capital receipt in nature , hence it was capitalised as per normal Indian accounting standards. This was the reason that it was shown in balance sheet instead of income and expenditure account, being corpus fund in nature.

6. Your honour has presumed that a public charitable trust can not be an employer, This presumption is basically wrong because a public charitable trust to carry out its activity of charity also employs person who are its employees, thus payments towards gratuity of employee is a part of the normal activity of charitable trust. The activities of forming a gratuity trust is only a step , in this direction of payments towards employees of charitable trust."

10. The assessee has also placed on record the copy of registered trust deed which is enclosed in pages 1-14 of the paper book. On going through the objects of the said trust and the reply given by the assessee before the Id.CIT(E), we are of the considered opinion that the assessee's activity falls squarely within the object of 'advancement of general public utility' as defined in section 2(15) of the Act. Hence, apparently, the activity carried out by the

assessee is a charitable activity as per section 2(15) of the Act. It is not in dispute that the assessee's case does not fall within the ambit of proviso to section 2(15) of the Act, which provides a restriction, if the charitable purpose is not for advancement of general public utility. Hence, the assessee's case does not fall within the ambit of proviso to section 2(15) of the Act.

11. In respect of another observation made by the Id.CIT(E) that any trust that has been created for the purpose of discharging statutory obligations of another parent trust could not be considered as a charitable purpose within the meaning of section 2(15) of the Act, we find that this issue has been addressed by the Hon'ble Supreme Court in the case of *ACIT (Exemption) vs. Ahmedabad Urban Development Authority & Ors in Civil Appeal No.21762 of 2017 dated 19.10.2022* wherein the Hon'ble Apex Court in respect of appeal in the case of *Institute of Chartered Accountants of India (ICAI)* had held as under:-

"194. The Institute is a creature of the Institute of Chartered Accountants Act, 1949. By Section 4 of this Act, every person who qualifies in the examination conducted by the Institute has to seek registration as a Chartered Accountant. Only when members obtain certificates issued by the Council of the Institute under Section 6 can they be known as a 'Chartered Accountant' and be entitled to practice that profession (Sections 6 and 7). The Council of the Institute is constituted under Section 9 which defines such constitution and the manner for holding elections, etc. The functions of the Council by Section 15(2A) include approving the academic courses and their contents, examining the candidates, regulation and articleship assistance, prescribing qualification for entry of persons in the register, collection of fees from members; the regulation and maintenance and status of the professional qualifications of the members of the Institute, etc. By Section 15A, universities are enabled to impart education on subjects covered by the academic courses of the Institute. However, by Section 15A(2) while awarding degrees or diplomas, their designation should not resemble or be identical to what is awarded by the Institute. The finances are regulated by Section 18. The Council is enjoined to maintain the register

under Section 19 and has disciplinary powers by virtue of Section 21A, 21B and 21C of the Act.

195. These provisions of the Act clarify beyond a doubt that the Institute performs statutory functions in the larger public interest of regulating the standards of education, leading up to the profession of Chartered Accountancy and also prescribing standards of professional etiquette, behaviour, and discipline of its members. No other entity or body has the authority in law to perform the functions that the Institute does. Although the Act regulating Chartered Accountancy came into force prior to the Constitution of India, the subject (of regulating professions, etc.) appears to be relatable to the exercise of legislative power under Entry 25 and 26 of the Concurrent List. Furthermore, they also appear to conform to Entry of the Union List (which has been adverted to in Entry 25 of the Concurrent List). As things stand, the Institute is the only body which prescribes the contents of professional education and entirely regulates the profession of Chartered Accountancy. There is no other body authorised to perform any other duties which it performs. It, therefore, clearly falls in the description of a charity advancing general public utility. Having regard to the previous discussion on the nature of charities and what constitutes activities in the 'nature of trade, business or commerce', the functions of the Institute ipso facto does not fall within the description of such 'prohibited activities'. The fees charged by the Institute and the manner of its utilisation are entirely controlled by law. Furthermore, the material on record shows that the amounts received by it are not towards providing any commercial service or business but are essential for the providing of service to the society and the general public.

196. Similarly, there are several other regulatory bodies that discharge functions which are otherwise within the domain of the State. A singular characteristic of ICAI and other statutory bodies which can be said to regulate specific functions and professions (including the profession of Cost and Work Accountants, and Company Secretary, etc.) is the powers conferred upon them by the statutes to prescribe standards and enforce them through disciplinary sanctions. Therefore, it is held that bodies which regulate professions and are created by or under statutes which are enjoined to prescribe compulsory courses to be undergone before the individuals concerned is entitled to claim entry into the profession or vocation, and also continuously monitor the conduct of its members do not ipso facto carry on activities in the nature of trade, commerce or business, or services in relation thereto."

12. Further, we also find that the coordinate Bench of Pune Tribunal in the case of *Nashik District Security Guards Board vs. CIT in ITA No.1379/PN/2010 dated 20.02.2015* had, under similar circumstances, decided the issue in favour of the assessee. For the sake of convenience, the relevant operative portion of the said Tribunal order is reproduced hereunder:-

"2. The applicant before us is constituted as per the Maharashtra Private Security Guards (Regulation of Employments and Welfares) Act, 1981. The basic object of establishing the assessee Board is to regulate the employment of Private Security Guards in factories and establishments in the State of Maharashtra and for making better provisions for the terms and conditions of their employment and welfare. The objects of the assessee have noted by the Commissioner in para 2 of his order, as under:--

(i) Protect the casual, unorganized Pvt. Guards, from the exploitation by ensuring full and proper payments of wages due to them and provide security of work.

(ii) Ensure that the guards are employed properly.

(iii) Ensure benefits to the guards in the form of Provident fund, gratuity, bonus, compensation for injury, medical benefits, etc.

(iv) Ensure welfare and safety measures such as housing for the guards, providing scholarships to the wards of the guards, providing full fledged Hospitalization facility, maternity benefits and free medical treatment to the guards, etc.

3. The claim of the assessee was that its activities are falling within the purview of section 2(15) of the Act, which defines 'charitable purpose', as its activities are towards advancement of an object of general public utility. The Commissioner has denied the registration to the assessee by way of the impugned order.

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9. We have considered the aforesaid objection and find that the activities of the assessee Board have not been appreciated by the Commissioner in its correct perspective. It is abundantly clear as per the provisions of the Maharashtra Private Security Guards (Regulation of

Employment and Welfare) Act, 1981 that the said legislation is intended to regulate the employment of private security guards employed in factories and establishments in the State of Maharashtra for making better provisions in the terms and conditions of their employment and welfare through the establishment of the Boards. The applicant Board before us is with regard to the Nashik District in Maharashtra. The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 further prescribes that the State Government by means of a scheme provide for the registration of the employers and security guards. The said statute also provides for deciding the rate of services, payment, overtime payment, leave with wages, gratuity, etc.. The statute also provides for deciding the time within which should be registered principal employer are to remit the wages payable to the registered security guards. The statute also provides for constitution of any fund or funds including, Provident Fund for the security guards. The statute also provides for the scheme by which the cost of operating the scheme is to be defrayed. The Government of Maharashtra is also empowered to provide for constituting the authority who shall be responsible for the administration of the scheme. The statute also provides for establishment of Boards, who are under the superintendence and control of the Government of Maharashtra. In-fact, the statute also provides the manner in which the property, funds and assets of the Board are to be held and applied subject to the provisions and for the purposes of the scheme formulated under the said statute. We are enumerating the aforesaid clauses of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 only to point out that the legislature has enacted the aforesaid statute not with the purpose of carrying out of any trade, commerce or business or any activity of rendering any services in relation to any trade, commerce or business. Ostensibly, the said objectives are for regulating the employment of private security guards employed in factories and establishments in the State of Maharashtra and for making better provision for terms and conditions of their employment and welfare. Clearly, it is a welfare measure of the Government of Maharashtra and in our view, the activities of the Board cannot be said to be falling foul of the proviso to section 2(15) of the Act, as contended by the Commissioner. We are unable to affirm the aforesaid stand of the Commissioner.”

13. Respectfully following the aforesaid decision, we hold that any trust that has been created for the purpose of managing the statutory obligations of employees of the parent trust would certainly fall within the ambit of

advancement of general public utility and, hence, to be considered as a charitable activity as defined u/s 2(15) of the Act.

14. In view of the aforesaid observations, we direct the Id.CIT(E) to grant registration u/s 12AA of the Act to the assessee trust. Accordingly, the grounds raised by the assessee are allowed.

15. In the result, the appeal of the assessee is allowed.

ITA No.761/Del/2021 for AY 2021-22 (ICRW Group Gratuity Trust)

16. We find that the assessee in this case had filed yet another application in Form No.10A seeking registration u/s 12AA of the Act before the Id.CIT(E) which was also rejected by the Id. CIT(E) vide its order dated 23.03.2021 stating the same reasons as was done earlier which is discussed hereinabove in the previous year. The decision rendered by us hereinabove shall apply mutatis mutandis to this appeal also. In any case, the registration u/s 12AA of the Act granted to the assessee for AY 2018-19 shall be applicable for AY 2021-22 also. Accordingly, the grounds raised by the assessee in ITA No.761/Del/2021 are allowed.

17. In the result, the appeal of the assessee in ITA No.761/Del/2021 is allowed.

ITA No.762/Del/2021 for AY 2020-21 (ICLEI South Asia Group Gratuity Trust)

18. The facts and discussions made by us in ITA No.761/Del/2021 for AY 2021-22 in the case of ICRW Group Gratuity Trust (*supra*) are exactly identical with the facts of this appeal also, save that, this assessee trust has been created for the purpose of managing the statutory obligations in the form of gratuity payable to the employees of "ICLEI" instead of ICRW. Hence, the decision

rendered by us hereinabove for ICRW Group Gratuity Trust in ITA No.761/Del/2021 shall apply *mutatis mutandis* to this appeal also. Accordingly, the grounds raised by the assessee in ITA No.762/Del/2021 are allowed.

19. In the result, the appeal of the assessee in ITA No.762/Del/2021 is allowed.

20. To sum up, all the appeals of the assessee are allowed.

Order pronounced in the open court on 01.06.2023

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 01st June, 2023.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi