

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.1239/PUN/2023

Our Lady of Hope Church, Ghormal, Naglai Bunder, Thane, Maharashtra	vs	CIT (Exemption), Pune.
PAN: AAATO 1231 B		
Appellant		Respondent

Assessee by	:	Shri Mahendra Gohel, CA
Revenue by	:	Shri Keyur Patel, DR
Date of hearing	:	11/03/2024
Date of pronouncement	:	11/03/2024

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax [Exemption], Pune (for short, 'CIT(E)'), dated 27.09.2023 as per the following grounds of appeal:-

"On the facts and in the circumstances of the case and in law:

- 1.1. The learned Commissioner of Income-tax (Exemption), Pune i.e. CIT(E) erred in cancelling the provisional registration granted to the Appellant trust under Section 12A(1)(ac) of the Act.*
- 1.2. The learned CIT(E) failed to appreciate that the Appellant is a religious and charitable having religious, educational, medical and charitable objects and activities.*
- 1.3. The CIT(E) failed to appreciate that the benefits of the Trust are open to all irrespective of caste, creed or religion. In fact, the beneficiaries of the activities of the Trust for past 20 years are the people from Koli (fisher folks), Non-Christians and Christian Communities in Ghormal in Thane district.*

- 1.4. *The learned CIT(E) has failed to appreciate that there is no change in the objects and activities of the appellant Trust since inception. Further the learned CIT(E) has not noticed any irregularities or there has not been any allegation of non-genuine activities or any favour to a particular community to the exclusion of other communities in the region.*
- 1.5. *The learned CIT(E) erred in somehow reaching the conclusion that the Appellant Trust is carrying on commercial activities and that the activities carried on are neither charitable nor genuine.*
- 1.6. *The CIT(E) failed to appreciate that the Appellant trust is governed by the Cannon Law under which the Archbishop of Bombay is appointed by His Excellency Pope Francis, Rome and the said Archbishop of Bombay appoints Trustee to look after the day-to-day affairs and activities of all the Roman*
- 1.7. *The learned CIT(E) failed to appreciate and consider the explanations offered by the Appellant in response to the Show Cause Notice issued. It is submitted that the learned CIT(E) resorted to cancellation of registration merely going by Clauses of the Trust Deed without going into the actual state of affairs of the Appellant Trust and the charitable activities carried on by it for the public at large in the region.*

The Appellant hereby reserves the right to add to, alter or amplify the above Grounds of Appeal.”

2. The solitary grievance of the assessee is the cancellation of provisional registration granted to the assessee trust and rejection of registration of the said applicant trust u/sec. 12AB of the Act.

3. That, as evident from the order of Id.CIT(E), the first reason for rejecting the registration and cancellation of the provisional registration of the trust is that according to the Id.CIT(E), as per the object clause of the trust, it is only for the benefit of Christian community i.e. Roman Catholics and not for the entire society at large. That, for strengthening this view point, the Id.CIT(E) brought on

record certain clauses of the trust deed which are in his order and are not repeated herein for the sake of brevity. The second reason given by the Id. CIT(E) for rejection of registration to the assessee trust is that the Archbishop of Mumbai has been given enormous power for taking essential decision with regard to the functioning of the applicant trust which therefore suggest that it is for the benefit of one particular community of the society. The third reason canvassed by the Id.CIT(E) for not granting registration is that the said applicant trust has been receiving rental income by way of leasing a plot of land and according to the Id.CIT(E) it appears that this transaction is of a commercial nature. That, for these three reasons, the provisional registration was cancelled and the application for regular registration was denied.

4. *Per contra*, it is the case of the applicant trust that the trust is registered under Maharashtra Public Trust Act, 1950 and the benefits of the trust are provided to all irrespective of caste, creed or religion. In fact, the beneficiaries of the activities of the trust for the past 20 years are the people from Koli (fisher community) non-Christian and Christian community in Ghormal District of Maharashtra. It was further contended for the trust that the applicant trust is governed by Canon law under which the Archbishop of Mumbai is appointed by his Excellency Pope Francis of Rome and the said Archbishop of Mumbai appoints the trustees to look-after the day to day affairs and activities

of all the Roman Catholic Churches within the jurisdiction of Mumbai and Thane. It was further submitted by the applicant trust that the Id.CIT(E) had merely referred to some of the clauses of the trust deed without going into the merits of the entire trust deed as a whole. In totality and without examining the actual state of affairs of the assessee trust and without giving a finding whether charitable activities were carried out for the public at large or not the registration was denied and the provisional registration was cancelled. In this regard, Id.AR of the assessee referred to page No.5 of the trust deed wherein in object clause (5) sub-clauses (d)(f)(g)(h) & (i) and so on and so forth, referring to these specific clauses of the object of the trust deed, the Id.AR submitted that it is not for one particular community but all these charitable activities i.e. to be performed by the applicant trust are for the benefit of the entire society irrespective of any particular caste, religion or creed. Id.AR also demonstrated from page no.106 of the paper book which is the donations given for medical purposes by the trust to various persons for the period 1st April, 2022 to 31st March, 2023 wherein some of the beneficiaries are clearly non-Christians.

5. On the other hand, Id.DR placed reliance on the order passed by the Id.CIT(E) and submitted that based on the financial statements submitted and as per the case brought out by the Id.CIT(E), this applicant trust is only aiming to serve to a particular community in the

society and not for the benefit of the entire society at large.

6. We have heard the rival submissions herein and have considered the documents placed on record and have analysed the facts and circumstances in this case. We have already observed the three reasons why the Id.CIT(E) has rejected the application of the applicant trust for registration u/sec. 12AB of the Act and have cancelled the provisional registration granted therein. We observe that the Id.CIT(E) have culled out certain specific clauses of the trust deed as appearing in his order, but has not considered the entire trust deed as a whole. When on one hand there are clauses as referred to by the Id.CIT(E) for the benefit as opined by him for a particular community or religion, but at the same time we have examined there are clauses also in the trust deed which specifically mentions for extending the charitable activities to the entire target group of Ghormal District of Maharashtra irrespective of any caste, religion or creed. In fact, substantially the objects of the trust speaks of providing available benefits to all persons of the target area irrespective of their religion etc. We find that the Id.CIT(E) should have examined the entire trust deed in totality vis-à-vis the charitable activities conducted by the applicant trust in order to examine whether the applicant trust is only catering to the benefit of the Christian community or whether it is providing benefit to the entire target group community at large. That is for the reason that after reading the trust deed, we find that there are clauses

which talks of providing financial benefits like scholarship etc. (to any deserving persons). So, these aspects have to be examined by the Id.CIT(E) along with examining the actual charitable activities performed by the applicant trust. This exercise is missing in the order of Id.CIT(E). That, again regarding the controlling power of Archbishop of Mumbai, as contended by the applicant trust, it is as per the convention of Roman Catholics Church, this is only with respect to the administrative framework of the charitable trust. However, if the charitable activities extends to the entire community irrespective of any religion and if all the people of the society (the target group of the trust) are benefited, then it does not matter regarding the internal administrative set up of the trust as the trust is doing charitable activity for the society at large. That, regarding the rental income earned, the Id.CIT(E) only mentions it appears to be of commercial nature without elaborating on that issue. We are of the considered view that in terms with section 12AA, the Id.CIT(E) must be satisfied about the genuineness of the activities performed by the applicant trust and to see whether the applicable laws for the time being in force are followed by such applicant trust while discharging their charitable activities. Whether trust is doing anything for commercial in nature, these are the issues to be seen at the time of assessment and not at the time of granting registration. The Id.CIT(E) must come up with a speaking order as to the activities performed by the applicant trust and given those activities whether they are genuine or not, meaning

thereby he must conduct adequate examination and verification of facts and form his opinion accordingly and at the same time, he must mention regarding the applicant trust whether it is also abiding with the existing laws in force, these areas are not at all discussed and adjudicated in the order of Id.CIT(E). The power of granting registration is always with the Department as per the statute, however, this power has to be exercised while analyzing all the documents and examining the charitable activities of the applicant trust in terms with section 12AA of the Act. In view thereof, we set aside the order of Id.CIT(E) and remand the matter back to his file to specifically examine the genuineness of the charitable activities performed by the trust as per his satisfaction and whether also the trust is abiding by the laws in force at the relevant point of time. The applicant trust is also directed to file all the relevant documents/evidences as and would be called for by the office of Id.CIT(E) and this being the final opportunity given to the applicant trust, it must abide by all the hearing notices before the office of Id.CIT(E). The Id.CIT(E) shall conduct *de novo* adjudication complying with the principles of natural justice.

7. As per the above terms, the grounds of appeal stands allowed for statistical purposes.

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

Order pronounced in open Court on 11th March, 2024.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 11th March, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.