

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 224/JP/2020

BGSAL CF TRY Plot No. 4 Vikash Nagar Vistar, Jhotwara, Jaipur.	बनाम Vs.	The CIT(Exemption) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADTB 7324 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Laxman Singh (Trustee)  
राजस्व की ओर से / Revenue by : Shri Amrish Bedi (CIT)

सुनवाई की तारीख / Date of Hearing : 26/11/2020  
उदघोषणा की तारीख / Date of Pronouncement : 05/01/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(E), Jaipur dated 19.02.2020 rejecting the assessee's trust application seeking registration U/s 80G(5)(vi) of the Act.

2. Briefly the facts of the case are that the assessee-trust has moved an application before the Id CIT(E) for seeking registration U/s 80G of the Act. Subsequently, notices were issued seeking information and documents from the assessee-trust and considering the submissions so filed by the assessee-trust, the Id. CIT(E) held that the assessee-trust is a private religious trust and therefore, cannot be held

as a charitable trust within the meaning of Section 2(15) of the Act. It has also been held by the Id. CIT(E) that the assessee-trust has failed to furnish clarification/details as sought vide order sheet entry dated 04.10.2019. Accordingly, the application seeking registration U/s 80G was rejected. Against the said order and the findings of the Id. CIT(E), the assessee trust is in appeal before us.

3. During the course of hearing, the Id. AR has submitted that the assessee-trust is duly registered U/s 12AA of the Act vide order dated 28.08.2019 passed by the Id. CIT(E), Jaipur. It was further submitted that assessee-trust is also registered under the Rajasthan Society Registration Act, 1958 vide registration certificate dated 26.12.2019. It was further submitted that the necessary information as called for by the office of the Id. CIT(E) have been duly submitted in terms of Form No. 10G as well as copy of the financial statements of the assessee trust. It was submitted that notices were issued for hearing on a holiday and the assessee did appear on the said date but the matter was thereafter adjourned and in any case, necessary information as called for by the office of Id. CIT(E) were duly submitted. It was further submitted that in respect of another trust, the registration has been duly granted U/s 12AA as well as 80G on the same date and therefore, in the case of the assessee, great prejudice has been caused by denying registration U/s 80G of the Act. Lastly, it was submitted that the assessee has filed the application on 01.08.2019 and the order has been passed by the Id CIT(E) on 19.02.2000 and therefore, the same has been passed beyond the limitation period of 6 months as prescribed in the Income Tax Rules. It was accordingly submitted that the order so

passed by the Id. CIT(E) should be set aside and necessary relief may be provided to the assessee-trust by granting registration as sought U/s 80G of the Act.

4. Per contra, the Id. DR submitted that it is not in dispute that the assessee-trust has been granted registration U/s 12AA of the Act however, mere grant of registration U/s 12AA of the Act does not automatically entitled the assessee to seek registration U/s 80G of the Act. The assessee-trust has to satisfy in respect of the genuineness of its activities as well as the satisfaction of other conditions as so stipulated U/s 80G(5) of the Act. It was submitted that the assessee-trust was granted registration U/s 12AA of the Act under the category of "advancement of general public utility" however, on examination of trust deed, it was noticed that trust has been established on 27.09.2017 and thereafter, the trust deed was amended on 03.10.2017 by incorporating point no. 23A in the trust deed which describe the property of the trust i.e, Bhairav Temple, however, the said property has not been depicted in the balance sheet furnished for the financial years 2017-18 & 2018-19 respectively. It was submitted that the necessary information/clarification were sought from the assessee-trust in this regard however, there has been no satisfactory explanation which has been submitted in this regard. It was accordingly submitted that the assessee-trust was having temple as its property and was carrying on religious activity in terms of running of the temple however, there is no mention of the religious objects in the trust deed and therefore, activities so carried out by the assessee-trust are not in a consonance with the objects for which the trust was granted

registration U/s 12AA of the Act under the category of general public utility. It was further submitted that all the trustees of the assessee-trust belong to a single family and therefore, taking into consideration the activities as well as the administration of the assessee-trust, it was held to be a private religious trust and not a public charitable trust and therefore, the registration u/s 80G has been rightly denied by the Id. CIT(E). It was further submitted that the assessee-trust was issued notice dated 04.10.2019 seeking necessary information and clarification and only part reply has been submitted by the assessee trust and therefore, it was submitted that in absence of the necessary information so submitted by the assessee-trust, the Id. CIT(E) in the given facts and circumstances of the case had rightly denied the registration U/s 80G of the Act. He accordingly supported the order and the findings of the Id. CIT(E).

5. We have heard the rival contentions and perused the material available on record. Firstly as regard the contention raised by the Id. AR that the impugned order has been passed beyond the limitation period so prescribed in the Income Tax Rules, we find that the assessee-trust has moved its application on 01.08.2019 and therefore, the limitation period has to be counted from the end of the month in which the application has been filed and the said period expired on 28.02.2020. In the instant case, the impugned order was passed on 19.02.2020, therefore, the same was passed within the limitation period as so prescribed and therefore, the contention so advanced by the Id. AR cannot be accepted.

6. Now coming to the findings of the Id. CIT(E) as also contended by the Id. CIT/DR that the assessee-trust is a private religious trust which doesn't enure for the benefit of public at large and thus cannot be held as charitable within meaning of section 2(15) of the Act.

7. In this regard, we are of the view that what is relevant to examine is whether the activities of the assessee-trust cater to the public at large or limited to selective individuals or community. Further, merely the fact that the trustees belongs to a single family cannot be a sole reason for holding that it is a case of private trust as compared to a public trust more so when we find that the assessee-trust has already been registered U/s 12AA of the Act as well as under the Rajasthan Society Registration Act. The trustees are the same at the time of applying for registration U/s 12AA of the Act as well as while applying for the impugned approval U/s 80G of the Act and therefore, where the Revenue has already taken a view that the assessee is a public trust, in such a scenario, basis the same documents, the Revenue cannot plead and take a different view in the matter. Having said that, where the Revenue believes that there has been a subsequent change in the basic structure of the assessee trust and/or violation of any of the conditions so specified while granting approval U/s 12AA of the Act, the Revenue has the necessary recourse under sub-section (3) and (4) of Section 12AA of the Act. However, having granted registration U/s 12AA of the Act which continues to remain in force and which has not been withdrawn as on date, the main character of the assessee-trust as that of the public trust cannot be challenged in the impugned proceedings.

8. Regarding the Bhairav Temple being described as property of the assessee trust as per the amended trust deed and carrying on the activities of running of the temple, the question that arises for consideration is whether the activities so conducted are for the benefit of particular religious community or public at large and the quantum of expenditure which has been incurred in respect of such activities and whether the provisions of sub-section (5B) of Section 80G are violated in the instant case. Admittedly, address of the assessee-trust while applying for approval U/s 80G of the Act as stated in Form no. 10G is Plot No. 4, Temple Bharav Ji Maharaj, Vikash Nagar, Kalwar Road, Jhotwara, Jaipur and thus, the assessee-trust which has been established on 27.09.2017 is operating out of the temple premises, therefore, it is a case of a trust which is operative as on the date of seeking registration and it thus becomes essential to examine the exact nature of the activities so undertaken by the assessee-trust. The assessee trust has claimed that the necessary information/documents have been submitted before the Id CIT(E) however, on perusal of the records, we are unable to decipher any information and documents which have been submitted by the assessee-trust in relation to Temple related activities and corresponding expenditure. At the same time, we believe that the assessee trust deserve one more opportunity to submit the necessary information/documents and in the interest of justice and fair play, we are setting aside the matter to the file of Id. CIT(E) for the purposes of examining the activities of the assessee's trust including the activities in relation to Bhairav Temple and basis the same, decide the matter afresh as per law preferably within three months of the receipt of this order.

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

Order pronounced in the open Court on 05/01/2021.

Sd/-

( संदीप गोसाई )

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/01/2021.

\*Santosh

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

1. अपीलार्थी / The Appellant- BGSAL CF TRY, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT-Exemption, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 224/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar