

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1829/Bang/2018
Assessment Year : 2018-19

M/s. Sri Channamallikarjuna Trust Committee Gangavathi Sri Mallikarjuna Mutta – Gangavathi, District Koppal – 583 227. <b>PAN : AAJTS 7938 J</b>	Vs.	CIT (Exemption), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Veerabasanna Gowda, CA
Revenue by	:	Shri. Srinivas T. Bidari, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	28.04.2022
Date of Pronouncement	:	04.05.2022

**ORDER**

*Per N. V. Vasudevan, Vice President*

This is an appeal by the Assessee against the order dated 12.3.2018 of the CIT(Exemption) Bangalore, whereby the Assessee was granted registration u/s.12AA of the Income Tax Act, 1961 (Act) with salient activities as “religious activities” as against the claim of the Assessee in Form No.10 filed for registration with salient activities as “charitable activities”.

2. There is a delay of 3 days in filing this appeal which has been explained as owing to delay on the part of the Trustees in getting legal opinion regarding filing appeals due to non-convening of Board of

Committee meeting due to preoccupation of the members of the Committee, to decide on further course of legal action. The delay in our view was occasioned due to reasonable cause and there has been no negligence of want of due diligence and hence the nominal delay in filing the appeal is condoned.

3. One Shri. Channabasavaswamy, a resident of Gangavathi town in the erstwhile Raichur District of Nizam Area, now Koppal District of Karnataka created a Mutt in Gangavathi Town called Sri Mallikarjuna Mutt. He installed an idol of Sri ChhnaMallikarjunaSwamy to perform pooja, out of food grains, cattle, cash and land donated by devotees of all caste creed for their well being and went on performing puja and all kinds of religious activities and held movable and immovable properties. On 16th October, 1945, he executed his last will and testament, when he was of the age of 95 years, in which he expressed his desire that as per the customs and traditions of the Mutt, Shiva Sharana works are to be done by performing pooja, vapour and Naivedya. Trustees were appointed and one immovable property, cattle and all movable properties were dedicated to the Mutt (Trust) for carrying out the objects of the trust. This is how the Assessee trust came to be created. Many trustees of the trust died and on 2.5.2002, the then surviving trustees appointed new trustees. On 21.3.2009 an addendum, supplementary deed was made whereby the trustees felt the desire to add and added the following supplemental objects of the Trust, viz.,

*“Now has been found necessary for the achievement of the objects of the trust to add supplements to the original trust as mentioned below.*

- a. The General funds of the trust shall be invested in such immovable properties, debentures and bonds and in banks as approved by the managing committee of the Trust.*

- b. *The funds of trust shall be invested in the modes specified under the provisions of section 13(1) (d) read with Section 11(5) of the Income Tax Act, 1961 as amended from time to time.*
- c. *No amendment to the objectives of the Trust shall be made which may prove to be repugnant to the provisions of section 2(15), 11, 12 and 13 and 80(G) of the Income Tax Act, 1961 as. amended from time to time. Further no amendment shall be carried out without the prior approval of the commissioner of Income Tax.*
- d. *The funds and the income of the trust shall be solely utilized for the achievement of its objectives and no portion thereof it shall be utilized for payment to the members by way of profit, interest, dividends etc.,*
- e. *There shall be maintained all accounts of the trust regularly and the same shall be duly audited by the Chartered Accountant every year and the accounts shall be closed by 31st day of March of each year.*
- f. *In the event of dissolution or winding up of the trust the assets remaining as on the date of dissolutions shall under no circumstances be distributed among the members of the managing committee but the same shall be transferred to another charitable Trust whose objectives are similar to those of this Trust and which Trust enjoys recognition u/s 80(G) of the Income Tax Act, 1961 as amended from time to time.*
- g. *The movable and immovable properties donated by any donor and acquired by the Trust shall be absolute properties of the trust.*
- h. *To establish and maintain "SHREE CHANNABASAVA SWAMY NITYA DASOYA NIDHI" for feeding poor students studying in educational institution, pilgrims and devotees.*
- i. *To establish educational institutions, for imparting any type of educations, hostels and organize medical*

*camps, health service centre, lectures, yoga camps, musical academy, library and also social cultural and spiritual up-liftment of community.-*

- j. The Trust formed shall be irrevocable.*
- k. The Trust shall have power to accept donations either in cash, movable or immovable properties either with or without any special conditions attached thereto.*
- l. The Trust shall have power in general to acquire all things and do all acts necessary to carry' out its objectives.*
- m. The entire control, regulation, management, application and administration of the Trust properties whether capital or income, rent, interest or profit of any kind shall be in the discretion of the Trust.*
- n. To maintain and develop existing Go-Shala.*
- o. This deed of supplementary addendum is to be construed and treated as part and parcel of original trust formed by his said Holiness and registered deed No.8/ 2002-03.*

4. The Assessee applied for grant of registration u/s.12AA of the Act and filed form No.10A of the Act for grant of registration as a “Charitable Association” for establishing and carrying on charitable activities for the overall benefit of the community at the outset at Gangavathi and over all Karnataka and for the benefit of the public at large mainly promoting education, sports and environment protection. The Assessee also applied for grant of recognition u/s.80G of the Act. Section 80G applies only to charitable trusts or institutions. It does not apply to religious trusts or institutions whereas scheme of exemption u/s 12A applies to both charitable as well as religious trusts. Section 80G of the Income Tax Act’1961

provides deduction while computing the total income in the hands of donor. It provides deduction in respect of donations to certain funds, charitable institutions, etc. The recipient of money or the donee gives a receipt of donation, based on which the donor is entitled to claim a deduction, provided the donee institution is approved under section 80G of the Income Tax Act'1961. One of the Conditions to be satisfied to get approval under Section 80G (5) is that the Institution should be established in India for Charitable purpose and institution should not be for the benefit of any particular religious community or caste. It was therefore important for the Assessee get itself recognized as a "Charitable Institution" rather than "Religious Institution".

5. The CIT(E) exemption was of the view that the objects of the trust were for religious purpose and therefore registration can be granted only as "Religious Trust" rather than "Charitable Trust". The Assessee in a letter filed on 9.3.2018 submitted that the trust does not discriminate on the basis of caste, creed or religion and the benefit of the trust is open to one and all without any bias towards caste, creed and religion. The intention of the trust was to do charitable activities. The Assessee placed reliance on a decision of the ITAT Nagpur Bench in the case of M/S.Shiv Mandir Devasttan Panch Committee Sanstan Vs. CIT (2013) 56 SOT 456 (Nagpur) and contended that reference to idol of Lord Mallikarjunaswamy and performance of pooja cannot be the basis to hold that the trust was religious in nature because, Lord Shiva does not represent any particular religion but are merely regarded as superpowers of the universe. Hinduism is not a religion nor a community but a way of life and therefore worship of Shiva and maintenance of temple cannot be regarded as religious purpose. Anybody who wants to visit the temple whether for worship or not are allowed to come and avail of facilities available to the public at large

(providing free food). The Assessee was running Yoga Centre, eye clinic for the poor. In the case of M/S.Shiv Mandir Devasttan Panch Committee Sanstan (supra) The Assessee trust was set up with the object of “*worship of Lord Shiva, Hanumanji, Goddess Durga and maintaining of temple*” and “*to celebrate festivals like Shivratri, Hanuman Jayanti, Ganesh Uttasav, Makar Sankranti*”. It applied for a certificate under section 80G. S. 80G (5) provides that the trust should be established for a “*charitable purpose*”. Explanation 3 to s. 80G provides that “*charitable purpose*” does not include a purpose which is of a “*religious nature*”. S. 80G(5)(iii) also stipulates that the trust should not be expressed to be for the benefit of any particular religious community or caste. The CIT rejected the application on the ground that the Assessee was set up for “religious” purposes. On appeal by the Assessee to the Tribunal, the Tribunal held reversing the order of CIT that the objects of the Assessee are not for advancement, support or propagation of a particular religion. Worshipping Lord Shiva, Hanumanji, Goddess Durga and maintaining the temple is not advancement, support or propagation of a particular religion. **Lord Shiva, Hanumanji & Goddess Durga do not represent any particular religion.** They are merely regarded to be the super power of the universe. Further, **there is no religion like “Hinduism”**. The word “Hindu” is not defined in any of the texts nor in judge made law. The word was given by British administrators to inhabitants of India, who were not Christians, Muslims, Parsis or Jews. **Hinduism is a way of life.** It consists of a number of communities having different gods who are being worshipped in a different manner, different rituals, different ethical codes. The **worship of god is not essential** for a person who has adopted Hinduism way of life. Therefore, expenses incurred for worshipping of Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose. In holding so, the Tribunal referred to the decisions in the case of

**Commissioner of Hindu Religious and Charitable Endowments vs. Sri Lakshmindra Thirtha Swamiar 1954 SCJ 335 & T. T. Kuppuswamy Chettiar Vs. State of Tamil Nadu (1987) 100 LW 1031.**

6. In the impugned order of the CIT(E), there is no reference to any of these contentions and the CIT(E) proceeded to hold that the Trust is granted registration u/s.12A of the Act, with salient activities as “Religious activities”. The Assessee is aggrieved by the order of the CIT(E) in not recognizing the Assessee as a trust with salient activities as “Charitable activities”. Hence this appeal by the Assessee before the Tribunal. The Assessee’s application for grant of recognition u/s.80G(5)(vi) of the Act was also rejected by the CIT(E) by a separate order dated 14.3.2018 but that order is not subject matter of this appeal. In the said order the CIT(E) held that since the Assessee was granted registration u/s.12A of the Act as a “religious Trust” and since as per the provisions of Sec.80G read with Explanation 3 to Sec.80G provides that the benefits of Sec.80G are not available to Religious Trusts, the Assessee’s request for grant of recognition u/s.80G(5)(vi) of the Act is being rejected.

7. We have heard the rival submissions. Apart from reiterating submissions made before the CIT(E), the learned counsel for the Assessee submitted that the Learned Commissioner of Income Tax (Exemption) considered the Trust as Religious in nature based on the assumption that by performing Pooja namely `Rudrabhisheka' the trust generates major income without appreciating the fact that the Trust is carrying out the activities of providing free food and Hostel Facilities to Students and also to General Public. The facilities provided are for people without distinction relating to caste, creed or community. The CIT (Exemptions) did not appreciate the fact that the Author of the trust has clearly specified in his Will that he has received monies and properties from people of different caste and creed

which clearly proves that the Trust is not dedicated to only one religion or caste. People from different walks of life are free to enter the Holy place, meditate, pray and worship. The monies collected in the form of voluntary contributions are utilised for providing food and hostel facilities, Conducting Training for creating employment, helping the needy people by giving them Sewing machines and other necessary equipment and support for sustaining livelihood for mainly people below poverty line.

8. It was submitted that the Audited Financial Statements for the past three Assessment years clearly shows the nature of activities carried out which are majorly charitable in nature. Besides the above, the Assessee has also enclosed Newspaper reports in support of its claim that the activities carried out are in the nature of supporting general public and not related to any particular caste, community or creed.

9. The learned counsel for the Assessee relied on the decision of Hon'ble Supreme Court in the case of CIT v. Dawoodi Bohra Jamat (2014) 364 ITR 31 (SC) in support of his claim that the Assessee is entitled to registration as a "Charitable Institution". The facts of the case before the Hon'ble Supreme Court, was a case in which some of the objects of the institution were religious and some charitable. The objects of the trust exhibited dual tenor of religious and charitable purposes and activities. The Hon'ble Supreme Court held that such trusts with composite objects would not be expelled out of the purview of Section 13(1)(b) per se i.e., a trust existing solely for religious purpose. The Hon'ble Court made reference to the decision of the Constitution Bench of this Court in Addl. CIT v. Surat Art Silk Cloth Manufacturers' Association [1979] 2 Taxman 501 (SC) wherein it was held that if the primary purpose and the predominant object of a trust are to promote the welfare of the general public the purpose would



be charitable purpose. If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charitable trust. The Court then held that the Section requires it to be established that such charitable purpose is not for the benefit of a particular religious community or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large. The section of community sought to be benefited must be either sufficiently defined or identifiable by a common quality of a public or impersonal nature. The Hon'ble Court held that the objects of the trust in that case were based on religious tenets under Quran according to religious faith of Islam. The Court found on perusal of the objects and purposes of the trust that the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community. The objects do not channel the benefits to any community if not the Dawoodi Bohra Community and thus, would not fall under the provisions of Section 13(1)(b) of the Act. In that view of the matter, the Court held that the respondent-trust is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held that Section 13(1)(b) of the Act would be attracted to the trust and thereby, it would be eligible to claim exemption under Section 11 of the Act.

10. The learned counsel submitted that benefits of section 80G allowed for donations to charitable institutions is not available for a donation for religious purposes. Merely because the Assessee is religious institution, it should not come in the way of recognition under section 80G when it runs

medical college. It cannot be characterised as religious object especially when it does not make a distinction between caste, creed, race, religion, etc. In this regard the learned counsel placed reliance on the decision of Hon'ble Punjab & Haryana High Court in the case of CIT v. Christian Medical College (2015) 374 ITR 17(P&H) wherein the principle as laid down as above was accepted. The learned counsel accordingly submitted that the Assessee should be treated as Charitable Trust instead of Religious Trust.

11. The learned DR submitted that whatever be the nature of charitable activities that may be performed by the Assessee, the purpose for which the trust came into existence was for religious purpose and therefore the CIT(E) was right in recognizing the Assessee as existing for religious purposes only. The case of the Assessee does not fall within the parameters of the law to enable grant of registration as existing for charitable purpose.

12. We have carefully considered the rival submissions. As already observed, Sec. 80G applies only to charitable trusts or institutions. It does not apply to religious trusts or institutions whereas scheme of exemption u/s 12A applies to both charitable as well as religious trusts. Section 80G of the Income Tax Act'1961 provides deduction while computing the total income in the hands of donor. It provides deduction in respect of donations to certain funds, charitable institutions, etc. The recipient of money or the donee gives a receipt of donation, based on which the donor is entitled to claim a deduction, provided the donee institution is approved under section 80G of the Income Tax Act'1961. One of the Conditions to be satisfied to get approval under Section 80G (5) is that the Institution should be established in India for Charitable purpose and institution should not be for the benefit of any particular religious community or caste.

13. In sections 11, 12 & 13, a distinction has been drawn between 'charitable purpose' and 'religious purposes', but there is no definition of the term 'religious purpose' in the Act. Generally interpreted, it would encompass within its fold all institutions or funds, which are for the advancement, support or propagation of a religion and its tenets. How religion is to be understood in the context of the Act, has been examined in the case of Dawoodi Bhora Jamat (supra). If the benefit of religious endowments too ensures for the benefit of the public, then the religious trusts/endowments too will be entitled to the exemption provided by section 11 of the Act. A religious trust could be 'public' or 'private'. Section 13(1)(a) bars exemption to any private religious trust, which does not enure for the benefit of the public. Section 80G(5)(iii) makes a distinction in cases of institutions or funds, which are for the benefit of any particular religious community or caste - say for Hindus, Muslims, Christians or for Brahmins, etc. Donors to such trusts are debarred from claiming benefit of deduction from income for donations made to such trusts. Conversely, it follows that for donations made to religious bodies, which do not fall in the category mentioned in section 80G(5)(iii), benefit of deduction under section 80G can be claimed. Thus, it could be said that a public religious trust, not meant for the benefit of a particular community, caste or section, will be entitled to claim exemption on its income in the same way as a public charitable trust.

14. A perusal of the original will of late His Holiness Sri.Channa Basava Swamy, reveals that he had only public benefit in mind to be the beneficiaries and the benefit was through performing puja and all kinds of religious activities. No private person belonging to any caste or creed, is the beneficiary. It is undisputed that the objects of the trust as per the supplementary deed dated 21.3.2009 are charitable. Admittedly the Assessee has been carrying on charitable activities like providing free

notebook, blood donation camp, conducting free coaching classes for poor students for appearing in competitive exams, providing free education, hostel rooms etc. The objects of the Assessee as per the original will as well as the supplementary deed (addendum) would show that the predominant object of the Assessee was public benefit and not benefit of any private individual. The Assessee is admittedly carrying out the activities of providing free food and Hostel Facilities to Students and also to General Public. The facilities provided are for people without distinction relating to caste, creed or community. The Author of the trust has clearly specified in his Will that he has received monies and properties from people of different caste and creed which clearly proves that the Trust is not dedicated to only one religion or caste. People from different walks of life are free to enter the Holy place, meditate, pray and worship. The monies collected in the form of voluntary contributions are utilised for providing food and hostel facilities, Conducting Training for creating employment, helping the needy people by giving them Sewing machines and other necessary equipment and support for sustaining livelihood for mainly people below poverty line. The Audited Financial Statements for the past three Assessment years clearly shows the nature of activities carried out which are majorly charitable in nature. Besides the above, the Assessee has also enclosed Newspaper reports in support of its claim that the activities carried out are in the nature of supporting general public and not related to any particular caste, community or creed.

15. We are of the view that the objects and purposes of the Assessee are both charitable and religious, the Assessee does not exist exclusively for the benefit of a particular religious community. The objects do not channel the benefits to any community and thus, would not fall as an institution existing solely for religious purpose. In that view of the matter, we are of the view

that the Assessee is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held that it exists solely for religious purpose. It cannot be characterised as religious object especially when it does not make a distinction between caste, creed, race, religion, etc.

16. In the light of the aforesaid discussion, we are satisfied that the plea of the Assessee to recognize it as existing for “Charitable Purpose” deserves to be accepted and is accepted. We accordingly allow the plea of the Assessee and direct that the registration be allowed treating the Assessee as existing for “Charitable purpose”.

17. In the result, appeal of the Assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Sd/-**  
**(N.V. VASUDEVAN)**  
**Vice President**

Bangalore,  
Dated: 04.05.2022.  
/NS/\*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.