

IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
SHRI A.L. GEHLOT, ACCOUNTANT MEMBER

ITA No.176/Agr/2009

Madhavrao Scindia Enclave Resident vs. Commissioner of Income Tax,
Welfare Society, Gwalior.
HIG-14, MRS Enclave,
Thatiapur, Gwalior.
(PAN: AACTM 1909 Q).
(Appellant) (Respondent)

Appellant by : Written Submission
Respondent by : Shri A.K. Sharma, Jr. D.R.

Date of Hearing : 09.05.2012
Date of Pronouncement : 18.05.2012

ORDER

PER A.L. GEHLOT, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order dated 30.03.2009 passed by the Ld. CIT, Gwalior on the following grounds :-

“1. On the facts & in the circumstances of the case the learned Commissioner of Income Tax erred in law & on facts in refusing registration u/s 12A(a) of the Income Tax Act to the appellant society. The order of the Commissioner of Income Tax, may kindly be set aside & directions issued or grant of registration.

2. *The appellant craves leave to add, amend, alter, modify, substitute or delete any ground of appeal at the time or before hearing of the appeal.”*

2. The assessee instead of putting personal presence filed written submissions. The brief facts of the case are that the assessee society filed application for registration under section 12A/12AA of the Income Tax Act, 1961 ('the Act' hereinafter) on 15th September, 2008. The CIT(A) called for remand report from the ACIT, Gwalior. In the report, it has been reported that the society has been formed to regulate Enclave's maintenance of roads, street light and security for the residents as well as of Enclave. The society was formed for the benefit of its members only. The objects of the society are for the utility of only a few persons. Therefore, the activities of the society do not seem to be for charitable purposes. The CIT after perusal of records and after hearing the assessee society found that the society was not engaged in carrying out charitable activities and has not fulfilled all the conditions necessary for granting registration. She, therefore, refused to grant registration under section 12A/12AA of the Act.

3. After hearing the Id. Departmental Representative and after going through the written submissions filed by the assessee, we notice that the assessee society is registered under the Madhya Pradesh Society Registration Act, 1973 on

03.12.2007. The society was having following main objects:- (noted from the written submission)

- *To look after the welfare of the Resident of the colony.*
- *To find a solution of the problems of the colony.*
- *To make arrangement for security & cleaning of Water Sewerage & Ecology.*
- *To foster a feeling of fraternity amongst the Resident & for this purpose to organize cultural programs.*
- *To organize camps for Health Child & Women Welfare.”*

4. In the written submissions, the assessee relied upon the following decisions:-

- “1. *Bai Hirbai Rahim Aloo Paroo & Kesharbai Dharam S Kakoo Charitable & Religious Trust vs. CIT, 68 ITR 811 (Bom).*
2. *CIT vs. Saraswath Poor Student Funds, 150 ITR 142 (Karnataka).*
3. *CIT vs. Andhra Pradesh Police Welfare Funds Society, 148 ITR 287 (A.P.).*
4. *Kamla Town Trust vs. CIT, 133 ITR 632 (All)”*

5. The decisions relied upon the written submission by the assessee trust are distinguishable on facts. The Court had decided those cases considering the facts of the respective cases which are not similar to the facts under consideration. In the case under consideration, the admitted facts are that the objects of the assessee society are for welfare of resident of the colony and other maintenance services of the colony. Whether such activities amount to charitable purpose or not ? For this

purpose, the procedure for registration provided under section 12AA of the Act is required to be seen. The said section requires that the CIT(A) is to satisfy himself about the objects of the society and genuineness of the activities. Whether the object of the society is charitable or not is to be examined. Section 2(15) provides the definition of charitable purposes which reads as under :-

“Charitable purpose” includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

***Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:*

***Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [ten lac rupees] or less in the previous year.”*

6. Charity is necessarily altruistic, and involves the idea and aid or benefit to others. Mutual benefit societies and charitable societies both are different type of societies. Mutual society is not charitable for two reasons firstly, although a member, according to his poverty or misfortune, might share in the funds held by the society for the mutual benefit of the subscribing members, it cannot be said that

he had subscribed for a charitable purpose where in truth he had subscribed for the primary purpose of protecting himself or his family or colony. Secondly, whereas the possible beneficiaries of a charity have no right to demand anything from the party who administers the charity, in a mutual society a member can claim benefits as of right in return for his own and his co-members' subscriptions. Charity must be by way of bounty, it cannot be by way of bargain. Therefore, the mutual society would be non-charitable on the further ground that the benefit of the subscribing members is not public benefit, whereas the definition in section 2(15) requires charity to be of a public character. Further a person incurring expenditure on him by out of his own income does not amount to expenditure of charity. In the case under consideration, the society is formed for welfare of a colony by the members for the benefit of the members. Such society cannot be said to be for the purpose of charity. Before a society can be held to be "charitable" there must be an element of charity to public at large. The society under consideration is a mutual concern of the members who form the society and the whole idea of this mutual society is that the particular members comprising it should be benefited out of their own contribution.

7. In the light of above discussions, we find that the assessee society is not a charitable society within the meaning of the Act so that registration under section

12A/12AA can be granted. Therefore, we find that the CIT(A) has rightly rejected the assessee's registration under section 12A/12AA of the Act.

8. In the result, appeal of the assessee is dismissed.

(Order pronounced in the open Court on 18.05.2012)

Sd/-
(BHAVNESH SAINI)
Judicial Member

Sd/-
(A.L. GEHLOT)
Accountant Member

Date: 18th May, 2012

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Copy of the order forwarded to:

Appellant
Respondent
CIT concerned
CIT (Appeals) concerned
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Sr. Private Secretary
Income-tax Appellate Tribunal, Agra
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