

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL, CUTTACK BENCH, CUTTACK

(समक्ष)Before माननीय श्री के. के. गुप्ता, लेखा सदस्य, एवं/and

Hon'ble Shri K.K.Gupta, Accountant Member.

माननीय श्री के.एस.एस.प्रसाद राव, न्यायिक सदस्य

Hon'ble Shri K.S.S.Prasad Rao, Judicial Member

आयकर अपील संख्या / I.T.A.No. 212/CTK/2012

Sri Gomandir Seva Trust, Chhend Basti, Rourkela 769 015 PAN: AALTS 5595 H	-वनाम- -Versus-	Commissioner of Income-tax, Sambalpur.
(अपीलार्थी/APELLANT)		(प्रत्यर्थी/RESPONDENT)

अपीलार्थी की ओर से/ For the Appellant:

श्री/Shri

S.N.Sahu, AR

प्रत्यर्थी की ओर से/For the Respondent:

श्री/Shri

N.K.Neb, DR

सुनवाई की तारीख / Date of hearing:	31.10.2012
घोषणा की तारीख / Date of pronouncement:	02.11.2012

आदेश/ORDER

श्री के. के. गुप्ता, लेखा सदस्य,

Shri K.K.Gupta, Accountant Member.

At the outset it is observed that this is

the second round of appeal before the Tribunal when on the restoration of the issue by the Tribunal to the learned CIT in ITA No.144/CTK/2011 dt.12.09.2011 directing him to grant the registration u/s.12A in accordance with law, the learned CIT considered the application under the provisions of Section 2(15) here again when he sought to correlate the income generated whether was from business activities or from charitable activities and came to conclude that maintenance of live stock does not come under the definition of "charitable purpose" and also does not come within the meaning of any other objectives of general public utility as regular business of selling of milk for maintenance of "Goshala" is being carried on by the assessee trust, and holding so he again denied to give registration to the assessee u/s.12A, against which the assessee is in the present appeal raising the following grounds.

“1. That the order of the learned Commissioner of Income Tax, Sambalpur dated 16.02.2012, in file no. 36 of 2010 / 11 u/s. 12A of the I. T. Act, 1961 rejecting the application of the appellant Trust, for grant of registration u/s. 12A of the Income Tax Act in utter disobedience of the order of the Hon'ble Income Tax Appellate Tribunal in ITA No. 144/CTK/2011 dated 12.09.2011 is illegal, uncalled for and hence to liable to be quashed.

2. That the application of the appellant Trust should have been allowed in view of the settle law that the scope of enquiry of CIT is limited about the Charitable object of the Trust and genuineness of the activities which the Hon'ble Tribunal after due examination of the fact and circumstances of the case being the highest fact finding Authority had already concluded and observed that it is a genuine Gosala and Trust is working for the weak and helpless cows which is of the Charitable in Nature. They have also further opined and held had that the activities of selling Milk, Gobar, Khata and manure etc for expanding number of cows and supporting them are a part of charitable activities.

The Honourable Tribunal has further observed that the case of appellant is similar to that of the case of Sri Haridevi Gosala Trust Vs. CIT (24 SOT 14). It is also further held by the Hon'ble Tribunal that selling Milk, Gober, Khatta and Milk etc are incidental to the objective of the Trust for carrying out the main object of the Trust of maintaining Gosala.

3. That the Hon'ble Tribunal after considering the facts and circumstances of the case have given their considered opinion that the assessee appellant ought to have been granted registration u/s. 12A of the IT. Act, 1961 but the CIT has traveled beyond his jurisdiction and not following the decision of the Tribunal, therefore his order is not a speaking order and vitiated in the eye of law.

4. That since the Trust has satisfied all the conditions laid down under the law, the Learned Commissioner is not justified in refusing to allow registration u/s. 12A of the I.T.Act, 1961.

5. That the books of accounts have been maintained and duly audited by qualified Chartered Accountant and no adverse comments have been given by the Auditor. Without giving sufficient opportunity to the appellant the Learned CIT is not justified in observing that no proper books of accounts were produced. That the Learned CIT himself admits that Audited accounts have been submitted. That merely because the proprietor was earlier carrying on business as a proprietor that will be no legal bar to convert the said business as Charitable Trust unless any irregularities are established.

The activities of maintaining Gosala with cows and buffalo is not in dispute which itself constitute as a charitable activity of general public activity.

6. That the observation of the Learned CIT is not justified as the same is based on mere suspicion and surmises.

7. That it is settled law that suspicion how so ever strong cannot take the place of evidence or proof.

8. That the case law cited by the learned Commissioner Hiralal Bhagwati Vs. Commissioner of Income Tax, 246 ITR 188 is not applicable under the facts and circumstances of the case of the appellant, rather it supports the case of the appellant.

9. That the observation of the Learned Commissioner that maintenance of live-stock and Gosala does not come within the meaning of Charitable work is not correct in view of decisions noted by Honourable Tribunal in favour of the assessee.

10. That there are also other objects like assistance to the needy victims during natural calamities / erection, construction, maintenance of Dharmasala, worship centre, Drinking water centre etc which are very much Charitable in nature."

2. The learned Counsel of the assessee submitted that the assessee is in second round in appeal before the Tribunal against the order of the learned Commissioner of Income-Tax dt. 16.02.2012, as he has again rejected the application of the appellant in utter disobedience of the direction of the Tribunal in I.T.A. No. 144/CTK/2011 dt.12.09.2011, wherein the Tribunal after considering all the facts and circumstances of the case was of the view that the assessee trust ought to be granted registration u/s.12A and for that purpose remanded the matter to the file of the learned CIT. He further submitted that the only issue involved in this case is whether the activities of the Goshala is Charitable in nature and whether having agreed with the fact that the Trust is carrying on the activities of maintaining Goshala, the learned CIT, was justified in refusing to grant registration u/s. 12A of the I.T. Act, 1961 despite clear direction of the Tribunal

for granting the same and further whether having agreed on the fact that the Trust is maintaining Goshala, the learned CIT is justified in observing that the Trust has not done any Charitable work during the relevant period and the activities of the Trust were only for the purpose of generating income, which has already been held by the Tribunal charitable activity.

The learned Counsel of the assessee submitted that the learned CIT is not justified in denying registration u/s.12A by referring Sec. 2(15) and holding that “Live Stock” does not come under the definition of Charitable purpose. He submitted that the definition of “Goshala” has been clearly defined under “The Orissa Goshala Act, 1961” (An Act to provide for better Management and Control of Goshalas in the state of Orissa) which reads as under

Section -2 : Definitions : In this Act, unless the context otherwise requires

(d) **“Goshala” means a Charitable institution** established for the purpose of keeping, breeding, rearing and maintaining cattle or for the purpose of reception, protection and treatment of infirm, aged or diseased cattle and includes a “Pinjrapoloe” where such cattle are kept.

From the above it is amply clear that maintenance of a Goshala itself is a Charitable activity and the Learned Commissioner, is misconceived and not justified in saying that “the activities which the Trust has carried on during the period were only for purpose of generating income. There is no material before him to be satisfied of the genuineness of the activities of the Trust. The learned Counsel for the assessee submitted that the law is well settled that the Commissioner at the stage of granting exemption u/s. 12A has to examine only

two aspects that is (1) Genuineness of the activities of the Trust institution AND (2) Object of the Trust Institution. Once there is no dispute about the genuineness of the activities, the Commissioner cannot take shelter of any other reason for refusing registration u/s. 12A of the Act. The learned Counsel of the assessee submitted that the learned CIT did not dispute the activities of the “Goshala” as is evident from his observation in Page-3 towards the middle of his impugned order dated 16-02-2012 when he observed –“.... Similarly expenditure on account of maintenance and upkeep of “Goshala” and livestock only. The learned Counsel of the assessee submitted that ‘Goshala’ is a Charitable institution according to “The Orissa Goshala Act, 1961”, established for the purpose of keeping breeding, rearing and maintaining cattle or for the purpose of reception, protection and treatment of infirm, aged or diseased cattle and includes a Pinjrapole where such cattle are kept. The Learned CIT’s doubt has no basis and he is not justified in saying that there is no material before him to be satisfied of the genuineness of the activities of the Trust. Because there is no dispute regarding upkeep of “Goshala’ and “Live-Stock”, which maintenance itself is charitable in nature within the meaning of Sec. 2 (15) of the I.T. Act. 1961. He further contended that the learned CIT is not correct in concluding that apart from the existing activities the trust should have conducted other social or charitable activity, without disputing the charitable nature of the existing activities. Further, he is under the misconception that maintenance of “Live Stock” or maintenance of “Goshala” does not come under the definition of Charitable purposes is based on wrong assumption of facts as well as law particularly in view of the definition given in the “Orissa Goshala

Act”, 1961 itself as stated earlier. In support of his above submissions the learned Counsel of the assessee relied on the decision of Hon’ble Gujrat High Court in the case of CIT Vs. Swastik Textile Trading Co (P) Ltd, 113 ITR 852, wherein it is held that when the Trust was created along with its objects of helping, interalia, poor, blind, deaf, dumb, disabled, aged and distressed human beings for setting up “panjarapoles” and Goshala, the same are highly charitable purposes within the meaning of Section 2(15) and in keeping with the Directive Principles of State Policy. The learned Counsel of the assessee further relied on the decision in the case of Sri Haridevji Gaushala Trust Vs. CIT (119 TTJ 98), wherein it was held by the ITAT, Agra Bench that the activities of selling milk, manure etc., for expanding the number of cows and supporting them are a part of charitable activities. He also relied on the decision of Hon’ble Allahabad High Court in the case of CIT vs. Red Rose School [2007] 163 Taxman 19 (All.), wherein it is observed -

“CIT is entitled to see only the genuineness of objects and activities : It has been held that while refusing application under section 12A the Commissioner has to examine only two aspects, i.e., genuineness of the activities of the trust / institution and object of the trust / institution. Once there is no dispute about the genuineness of the activities; the Commissioner cannot take shelter of any other outer source for refusing registration under section 12A. The issue of registration under section 12A and the scope of enquiry at the stage of section 12AA was discussed, it was categorically held in the said decision that section 12AA does not speak anywhere that the CIT, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit.

Profit earning or misuse of the income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income but cannot be taken to be a synonym to the genuineness of the activities of the trust or the institution. While considering the registration under section 12AA, the scope of enquiry of the Commissioner would be limited to the aforesaid extent only.”

In view of the above, the learned Counsel of the assessee sought for setting aside the impugned order with a direction to the learned CIT to grant registration u/s.12A.

3. The learned DR opposed the contention of the learned Counsel for the assessee by indicating the sole proprietorship concern of the Trustee Smt. Manjudvi Bagadia has been taken lock, stock & barrel by the trust when the trust chose to amend its trust deed by indicating that the loan on which the live stock existed has been leased out for a period of five years to be extendable for a period of another five years as per the lease deed. This fact was not brought to the knowledge of the learned CIT when the consideration by the learned CIT was to hold that a business entity rendering income from maintaining the live stock has been considered for the purpose of carrying out charitable activities declaring income which ought to have been taxed under the amended provisions of Section 2(15). The charitable purpose therefore has been infringed by the trustees themselves was suitably considered by the learned CIT when the issue was restored to the learned CIT for reconsideration on the request of the learned Counsel for the assessee before the Tribunal. The situation remains unchanged, therefore, was considered appropriately by the learned CIT against which the assessee has preferred this appeal may be considered on these technicalities insofar

as the charitable activities could not be carried out unless the trustees have given on their interest in the business activities.

4. We have heard the rival submissions and perused the material on record. Before deciding the present appeal, it is felt necessary to quote here the relevant extract of order dt.12.9.2011 in ITA No.144/CTK/2011 when the assessee was in appeal in the first round, when for the reasons mentioned therein in detail, this Bench of the Tribunal had directed the learned CIT to grant registration u/s.12A to the assessee trust. The relevant portion of the order contained in paragraph 3 is extracted below.

“3. We have heard the rival contentions and perused the material available on record. The learned CIT has rejected the application of the assessee for grant of registration u/s.12A of the Act holding that the Trust is not carrying on any charitable activities by observing in his order mainly on the ground that the Trust keeps and maintain 350 live stocks out of which 100 are milking cows. The main source of income of the Trust is by selling of milk at its counter at Birajpali, Uditnagar under name and style of “Amritganga”. Besides, the Trust also derives income from sale of Gobar, Khattu and sale of male calf. From the copy of the Trust Deed dt.20.01.2010(copy placed on record) we find that the assessee is a Trust having objects of the Trust –

(a) to maintain develop the existing ‘Gosala’ & Live Stocks received from the settler and to do all such acts & things for the development & maintenance of animal welfare, other Gosala etc.

(b) to grant relief and assistance to the needy victims during natural calamities such as famine, earthquake, Tsunami, flood, fire, pestilence, Avalanche etc., and to give donations and other assistance to institutions, establishments/ persons engaged in such relief work.

(c) to erect, construct, develop, maintain place(s) of Kalyan Mandap, Hindu Worship Centers, Dharamsala, Drinking water points and also to organize various Spiritual & Cultural functions.

(d) to do such other things or deed that are incidental to, in attainment of the objects of the Trust.

It is also further mentioned that the beneficiaries of the Trust will be the Public in general, without any discrimination of caste, creed, community or religion. The learned AR of the assessee contended that the 100 milch cows are the part of the trust property, which will help the trust in advancement of its objectives of protecting old and vulnerable cows. The learned CIT has ignored the fact that though the assessee has 100 milch cows, it was also maintaining and supporting 250 live stocks which were of little commercial use and required substantial cost to look after. Therefore, it is a genuine Goushala. In the case of Shri Haridevji Gaushala Trust v. CIT (24 SOT 14), it was held that a Trust working for weak and helpless cows was charitable in nature. It was further held that the activities of selling milk, manure etc., for expanding the number of cows and supporting them are a part of charitable activities. The facts and circumstances of the above case are similar to this case where it was held that income from milk and other by-products for the objective of the trust was permissible. The learned AR of the assessee further contended that sale of milk, gobar, khattu and male calf are activities arise in the course of the normal activities of a Goushala therefore, cannot be considered as business activity. Therefore, considering the facts and circumstances of the present case as submitted before us that the activities carried out by the assessee on the land proposed to be transferred in the name of the Trust by the Managing Trustees was the basis for holding the intention for carrying out the main object of the trust for the purpose of general public utility therefore could not be on the basis of holding that the

sale of milk, gobar, khattu and male calf etc., is not relating to the carrying out the activities of general public utility. These are incidental to carrying out the main object of trust i.e., maintaining a "Gaushala". Law is well settled that while considering application for granting registration u/s.12A, the scope of enquiry of the CIT is limited so as to satisfy about the charitable nature of objects of the trust and about the genuineness of the activities of the trust. For this proposition, we derive support from the decision of Hon'ble Allahabad High Court in the case of CIT v. Red Rose School, as relied on by the learned AR of the assessee. On the basis of the objects carried out by the assessee as discussed above, we are of the considered view that the assessee ought to be granted registration u/s.12A. However, on the basis of submissions of the learned AR of the assessee we restore the issue to the learned CIT for granting the registration u/s.12A in accordance with law after giving proper opportunity of being heard to the assessee-Trust."

5. On this back drop and considering the facts and circumstances of the case, we are of the considered view that the Tribunal vide their order dt.12.9.2011 had noted all the facts finding when it was the endeavor of the learned CIT to limit himself to satisfy about the charitable nature of the objects of the Trust and find the genuineness of the activities of the Trust. The undisputed facts are that the learned CIT in the second innings has reiterated that the activities carried out are the same as were before and therefore, there was violation of the provisions of Section 11 to grant registration u/s.12AA. It has been held by the various judicial pronouncements as submitted by the learned Counsel for the assessee that charitable activities may have bent up profit making activities but is incidental to the activities carried out insofar as it has also been held that a cow renders income to the trust which Goshala is maintained by the Trust. It

is immaterial that the Trust has been formed on the basis of transferring of the assets of the proprietorship concern which as per the Trust deed has been given free of cost to the Trust as part of the charity by the Trustees themselves. A corpus therefore was formed on the basis of the assets rendered to the Trust by the sole proprietorship which has to be assessed in accordance with the provisions of the I.T.Act by the Assessing Officer and in no way interfered with the granting of registration to the Trust assessee by the learned CIT. The Tribunal in the first inning of appeal by the assessee had satisfied itself on the basis of legal pronouncement as well as on the basis of the charitable activities having been carried out which again has been considered by the learned CIT being bent of business activities remains undisputed insofar as maintenance of plant and machineries is allowed to a business entity in the form of depreciation which is a charge to the Profit & Loss account and not for the purpose of computing excess of income over expenditure. In that view of the matter, we are of the considered view that even the learned DR has not been able to establish that a violation of Section 11 which was not the issue for consideration by the learned CIT, for granting registration u/s.12AA has been made. We therefore set aside the impugned order of the learned CIT by allowing the appeal of the assessee and direct the learned CIT to grant registration u/s.12AA as applied for by the assessee.

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

(के.एस.एस.प्रसाद राव), न्यायिक सदस्य
(K.S.S.Prasad Rao), Judicial Member

(के. के. गुप्ता), लेखा सदस्य,
(K.K.Gupta), Accountant Member.

(तारीख)Date:

(हरेकिष्ण पाटी), वरिष्ठ निजी सचिव
(H.K.Padhee), Senior.Private Secretary.

आदेश की प्रतिलिपि अग्रेषित:-

Copy of the order forwarded to:

1. अपीलार्थी / The Appellant : Sri Gomandir Seva Trust, Chhend Basti, Rourkela 769 015,
2. प्रत्यर्थी / The Respondent: Commissioner of Income-tax, Sambalpur.
3. आयकर कमिशनर/The CIT,
4. आयकर कमिशनर (अपील)/The CIT(A),
5. वभागिय प्रतिनीधी /DR, Cuttack Bench
6. Guard file.

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,