

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Sri J Sudhakar Reddy, AM & Sri Aby T. Varkey, JM]

I.T.A No. 364/Kol/2017
Assessment Year: 2016-17

Bhuvaneshwari Kali Thakuranir Seva Samity -vs.- Commissioner of Income Tax-(Exemptions)
Vill. Thakdari Kolkata
P.O. Krishnapur
Dist.24-Pgs(N)
Kolkata – 700 102
[PAN : AAHCS 0616 C]
(Appellant) (Respondent)

For the Appellant : Shri G. Banerjee, FCA
For the Respondent : Shri G. Mallikarjuna, CIT, D/R

Date of Hearing : 12.02.2018.

Date of Pronouncement : 13.04.2018.

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal by the Assessee directed against the order dated 22.12.2016 of the Id. CIT, Exemptions (Id. CIT(E)), Kolkata relating to A.Y.2016-17, wherein the Id. CIT(E) has passed an order rejecting grant of the approval u/s 80G of the Income-tax Act, 1961 (hereinafter referred to as the ‘Act’).

2. The assessee is a society registered with the Registrar of Firms, Societies & Non-Trading Corporation, West Bengal. It applied for approval u/s 80G of the Act, to the Id. CIT(E), Kolkata. The Id. CIT(E), vide his order dt. 16/12/2016 rejected the case of the assessee by holding as follows:-

“ By spending more than 5% of its total income for religious purposes, the applicant has not complied with the provisions of Section 80G(5B) of the Income-tax Act, 1961.

Because of the reason mentioned above, the application for approval u/s 80G is REJECTED. This is also held that, the application Society is not approved for exemption to donations u/s 80G of the Income-tax Act, 1961.”

3. The Id. Counsel for the assessee, Shri G. Banerjee made elaborate submission. He also made written submissions which are extracted for ready reference:-

“The application for approval u/s, 80G(5)(vi) has been disallowed by the Id. CIT(Exemption) by order dated 16.12.2016 which is contested in this appeal. The application of the assessee falls under 80G(2)(i) and is covered by S.80G(5) as to its validation. Sub section (5) of s. 80G stipulates the conditions for grant of approval of an institution or fund as prescribed in Rule 11AA. As per 11AA(4), the approval should be granted on satisfaction of conditions u/s. 80G(5)(i) to (v). One of the condition in Sub clause (iii) is that the inst./fund is not expressed to be for the benefit of any particular religious community (or caste. As per the MOA of the assessee (pgs. 7 of PB) the object clauses 3(a) to 3(1) contains purposes of performance of seva puja (charitable offerings), give lessons and instructions of Puran, Geeta(holy books), maintain, construct, repair, add or alter the Mandir (temple) & land of Sri Sri Kalimata, These objects are not for any particular religious community or caste. There is nothing in the object clause to indicate that the puja or worshipping right belongs to only Hindus or Brahmins. Any person practicing any other faith, religion or caste is not precluded to enter the temple or to offer puja or to worship and pay respect to the deity namely Bhuvaneshwari Kali Thakuranir, offer pranamis etc. Thus, it is argued that the object clause of the assessee does not contain any expression to be for the benefit of any particular religions community or case. Reliance on 307 ITR 226 (Raj) Umaid Charitable Trust V UOI. Further, in the impugned order, nothing has been shown to disentitle the application for approval of assessee by not fulfilling any one or more conditions of s. 80G(5)(i) to (v) as prescribed in Rule 11AA(5) to reject the application. “It is essentially a charitable organization with the avowed object of serving the humanity irrespective of any caste, creed or religion which would also be borne out from the objects contained in the memorandum of association. Secondly, sub clause (5B) of S. 80G is an enabling clause by which it is provided that an entity, otherwise entitled to the benefit of s. 80G, shall not lose the benefit merely because a small percent of its total income (5%) is spent for religious nature. This enabling clause can not be used for refusing grant of registration to assessee. The assessee also submits that the two items of disbursement, namely priest honorarium and puja expenses, considered as outgoings for religious purposes are not for any religious purpose, either for a particular religion or otherwise. These expenses are incurred for offering worship of any person who visits the temple and offers pranami/donation. The charitable offerings or performing of customary practices are not religion but practice of one's own consciousness. Moreover, the limit of sub section (5B) is to be applied on a year to year basis during assessment of the entity and can not be applied at the time when the Institution/fund is seeking registration (Reliance on Abacus Foundation V CIT(E) ITA 02/03/Kol)2016). Further, the limit prescribed by sub section (B) is 5%of total income of assessee whereas the Id CIT(E) has compared the same as a percentage of gross receipts and not total income. In case total income of the assessee is considered. (Rs. 3058 for F.Y. 2015-16 - PB Pg. 2), then no part of this total income has been spent or applied for any purpose and, have been accumulated to next year. Thus, it is claimed that the assessee is sufficiently entitled to the grant of registration u/s. 80G. The assessee has not spent anything out of his total income and the entire total income is accumulated for application in succeeding year. The Ld. Commissioner refused to grant registration on the basis of sub clause (5B) of section 80G on the basis that more than 5% of its

income was spent on religious activity but ignored the fact that income does not mean gross receipt. Income of any business is worked out after deducting expenses reasonably incurred. It was in any event a case of an initial registration which should not have been refused."

Thirdly, the word charitable purpose has been explained in Expl. 3 as excluding purposes, the whole or substantially the whole of which is of a religious nature. Religious nature, having not been defined anywhere in the Act, its ordinary meaning is to be interpreted. Sub section (5) also contains that for application of conditions of s. 80G, the institution must be established for a charitable purpose. Sub clause (ii) of Subsection (5) again states that the instrument under which the inst./fund is constituted, does not contain rules for transfer or application of whole or part of its income or assets for purposes other than charitable. Now, all these clauses are aiming to rule out religious inst./fund from availing benefits of s. 80G. The assessee claims that they are not religious inst./fund, either for any particular community or caste. In case it is held that all activities of worship, tantamount to religious activities, then the use of word "particular religious community or caste" made in sub clause (iii) of subsection (5) becomes otiose and inoperative. There would have been no need to differentiate between a particular religious community or caste and other religious activity. Religion in its expression resembles a particular sect, community, caste or body of people and one religion can not be conceived as applicable to or practiced by the whole of humanity as such. [Religion: Monastic condition, order, practice of sacred rite, one of the prevalent systems of faith and worship.] Thus the word religion essentially means and embraces a particular faith, discipline or practice. There is nothing known as a religion followed by the entire humanity in this world. Religion in its interpretation can not thus be divorced from a particular religion so as to apply to all mankind universally. Reliance also placed on 251 ITR 849 (AP) & quoted 307 ITR 226 quoted at pages 232 & 233 of 307 ITR and also para 14 of page 234 & 235, para 15 & 16 of page. 236, para 19 of page 237 to indicate the distinction of religion with charitable objects.

It is true that the organization is looking after sewa puja of Kali Thakurani. The offerings to the deity after meeting the expenses of sewa puja are accumulated for the purpose of charitable expenses. Ld. Commissioner took exception to the fact that expenses were incurred for sewa puja and in payment of honorarium to the priest but ignored the fact in the absence of sewa puja no one is likely to make any offering or pranami. No sewa puja can be conducted without a priest. The aforesaid expenses were incurred to earn the Surplus to be applied for charitable purposes."

4. The Id. D/R, Shri G. Mallikarjuna, pointed out that the disallowance was made because the assessee has incurred expenditure in excess of 5% of this total income for religious purposes. He pointed out that the expression for the benefit of particular religious community or caste cannot be brought in or imported or relied upon while

interpreting Section 80G(5B) of the Act, which is a separate section having different wording and purpose.

5. After hearing rival contentions, perusing the papers on record, orders of the authorities below as well as case-law cited, we hold as follows:-

5.1. The relevant provisions of the Act and Rules as well as a discussing on the case law on the subject has been brought out by the Hon'ble Rajasthan High Court in the case of *Umaid Charitable Trust vs The Union Of India (Uoi) And Ors.* 2008 207 ITR 226 (Raj), which is extracted for ready reference:-

"5. That before considering the various judgments on this aspect of the matter, it would be appropriate to reproduce the relevant provisions of section 80G of the Act to the extent the same are relevant for the controversy involved in the present case.

"80G. Deduction in respect of donations to certain funds, charitable institutions, etc.—(2) The sums referred to in sub-section (1) shall be the following, namely :—

(iv) any other fund or any institution to which this section applies; or

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely :—

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :—

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

(a) the institution or fund maintains separate books of account in respect of such business;

(b) the donations made to the institutions or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not use directly or indirectly, for the purposes of such business.

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose.

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any

University established by law, or is an institution financed wholly or in part by the Government or a local authority; and

(vi) in relation to donations made after 31-3-1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf :

Provided that any approval shall have effect for such assessment year or years, not exceeding (five) assessment years, as may be specified in the approval.

(5A) Where a deduction under this section is claimed and allowed for any assessment year in respect of any sum specified in sub-section (2), the sum in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other assessment year.

(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

Explanation 3 - In this section 'charitable purpose' does not include any purpose the whole or substantially the whole of which is of a religious nature

6. The learned counsel for the petitioner also relied upon rule 11AA of the Income-tax Rules, 1962 particularly sub-rules (4) to (6) of the said rule 11AA, which are reproduced hereunder :—

*"11AA. Requirements for approval of an institution or fund under section 80G.—(1) to (3)******

(4) Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) The time-limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the date on which such application was made :

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded."

7. Now a scrutiny of relevant case laws on the controversy involved in the present case is considered expedient at this stage. From the side of the assessee-petitioner, following case laws are relied upon which are noticed with relevant extract from the same as below :—

8. In Addl.CIT v. Surat Art Silk Cloth Manufacturers' Association [1980] 121 ITR 1, the Hon'ble Apex Court held that where the main or primary objects are distributive, each and every objects must be charitable in order that the trust or institution may be upheld as a valid charity. But if primary and dominant purpose of the trust is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. It was observed that the primary and dominant purpose in the present case was promotion of commerce and trade in art silk etc., was an object of public utility not involving the carrying on of any activity for profit within the meaning of section 2(15); and that the assessee was entitled to exemption.

9. In CIT v. K.H. Kusumgar [1988] 169 ITR 370, the Bombay High Court observed that where the object of a charitable trust was, inter alia, imparting of education and encouragement and promotion of the study and practice of the Shewatamber Jain Murtipujak

religion amongst students of ashrams, boarding-houses, gurukuls, vidyalayas, pathshalas and shraivikushramas and also amongst all persons without distinction of sex, caste, creed, place or religion, a gift of immovable property made to such charitable trust could not be said to be for a purpose the whole or substantially the whole of which was of a religious nature and the gift would be entitled to exemption under section 5(1)(v) of the Gift Tax Act.

10. In *Tirumala Tirupati Devasthanam v. Chief CIT* [\[2001\] 251 ITR 849](#) (AP), the petitioner institution maintained 10 temples and 22 educational institutions, peer home and bala mandir specified in Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. The petitioner provided free food, free accommodation, free transport to the pilgrims irrespective of caste and religion on the simple declaration of faith in the Lord. The Hon'ble High Court, while allowing the writ petition and setting aside the order of the Commissioner of not granting exemption to the petitioner and directing him to consider the application de novo in light of Hon'ble Court's order, held that 'section 80G of the Income-tax Act, 1861, provides for deduction in respect of donations to certain funds and institutions. It applies to donations to any institution or fund established in India for charitable purpose and if it fulfils the following conditions, namely the instrument under which the institution is constituted does not or rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose. Sub-section (5) read with Explanation 3 makes it clear that the Commissioner can refuse to grant recognition under section 80G of the Act only in the event of finding that the claimed charitable purpose includes any purpose the whole or substantially the whole of which is of a religious nature'. It was held that in the present case there was no such finding and hence the Commissioner ought not have refused the claim of petitioner.

11. In *Sri Ramakrishna Sewa Ashrama v. CIT* [\[2001\] 252 ITR 171](#) (AP), the petitioner, a registered society, had many objects including those charitable in nature, to diffuse scientific knowledge on Vedanta and the promotion of science, literature and fine arts. One of the objects was preaching ideals of Hinduism. It was granted approval for deduction under section 80G but its subsequent applications for approval were rejected by the Commissioner on the ground that preaching of ideals of Hinduism and other religions amounted to an object of religious nature. The Hon'ble High Court, while setting aside the rejection and restoring the matter before Commissioner held that although the aims and objects of the petitioner did not include some purely religious activities, they also included many temporal and secular activities such as to diffuse scientific and technical knowledge on Vedanta and also for promotion of science, literature, fine arts, charitable institutions in educational, technical, social and scientific fields to carry on spiritual and cultural works, study of philosophies of different cultures and civilizations, etc. The rejection of Commissioner did not satisfy the requirements of a reasoned decision or speaking order. The Commissioner had to consider the applications of the petitioner under section 80G and apply his mind to the material placed before him and take a decision by a reasoned order. It was also observed that when the Commissioner grants or refuses to grant approval to an institution under section 80G, he acts as a quasi-judicial statutory authority; the conclusion reached and the findings recorded by him have to be supported by reasons.

Past Activities of Applicant to be seen

12. In *Kirti Chand Tarawati Charitable Trust v. DIT (Exemption)* [\[1998\] 232 ITR 11](#), the Delhi High Court observed that :—

"For the purpose of construing the purpose of the trust, one need not remain necessarily confined to the objects of the trust and set out in the deed of declaration. The real purpose of the establishment of the trust has to be found out and spelled out. 'Purpose' means that which one sets before him to accomplish or attend, an intention or aim, object, plan, project; the term is synonymous with the ends sought and an object to attain, an intention, etc. Purpose must obviously be construed as a real purpose and not a purpose as it outwardly appears to be. Any other interpretation would permit a fraud being played on the law permitting

exemption from taxation. If the argument of learned counsel for the petitioner were to be accepted then a trust may be established with a purpose as set out in the deed of declaration which appears to be highly charitable but the trust may in fact be engaged in such activities which cannot even remotely be called charitable, and yet the donations made to the trust would enjoy exemption. The authority conferred with the power to grant exemption is not debarred from finding out the real purpose as distinguished from the ostensible purpose and if it may find that the purpose of the trust was other than charitable then nothing debars the authority from denying the approval.

. . . The purpose of the establishment—the real purpose as distinguished from the ostensible purpose - is germane to the inquiry, which the Commissioner has to hold while granting [or refusal to grant] approval. . . ." (p. 19)

13. *In Hiralal Bhagwati v. CIT [2000] 246 ITR 188 , it was observed by the Gujarat High Court that an object beneficial to a section of the public is an object of 'general public utility'. To serve as a charitable purpose, it is not necessary that the object must be to serve the whole of mankind or all persons living in a country or province. The Hon'ble Court further opined that the CIT has to examine the objects of creating the trust as well as an empirical study of the past activities of the appellant has to be done. The CIT has to examine that it is really a charitable trust or institution entitled for registration.*

14. *In CIT v. Sri Jagannath Jew [1977] 107 ITR 9 , the Hon'ble Supreme Court speaking through Krishna Iyer, J. held as under :—*

" . . . The law is set out thus by B.K. Mukherjea :

'The fact that property is ordinarily described as debutter is certainly a piece of evidence in favour of dedication, but not conclusive'. In Binod Behari v. Manmatha [1915] 21 CLJ 42 (Cal.), Cox, J. observed as follows :—

'The fact that the property is called debutter is a doubtless evidence in the plaintiff's favour but it does not relieve them of the whole burden of proving that the land was dedicated and is inalienable.'

Though inconclusive, it carries weight in the light of what we may call the mission of the disposition which is inspired by devotion to 'my Thakoor' and animated by a general religious fulfilment. It must be remembered that the donor was not tied down by bigotry to performance of pujas, important though they were. A more cosmic and liberal view of Hinduism informed his soul and so in his declaration of dedication of Sree Jagannathjee he addressed to the managers many directions of a broadly religious and charitable character. His injunction to feed the poor was Narayana seva for worship of God through service of man in a land where the divinity in daridra Narayana is conceptually common place and, while it is overtly secular, its motive springs from spiritual sources. It is religion to love the poor. Likewise his insistence on the aviary and the menagerie and throwing open both to the people to see and delight is not a mundane mania but has deeper religious roots. Hinduism worships all creation :—

(Peace be unto all bipeds and even so to all quadrupeds).

Indeed, the love of sum-human brethren is high religion.

For

'He prayeth best, who loveth best

All things both great and small

For the dear God who loveth us.

He made and loveth all.'

(Coleridge, in Ancient Mariner)

From the Buddha and Mahavira to St. Francis of Assisi and Gandhiji, compassion for living creatures is a profound religious motivation. The sublime mind of Mullick was obviously in religious sympathy with fellow beings of the lower order when he showed this tenderness to birds and beasts and shared it with the public. The art gallery too had link with religion in its wider connotation although it is plainer to regard it as a gesture of aesthetics and charitable disposition. God is Truth. Truth is beauty, beauty is Truth. A thing of beauty is a joy for ever.

In fact for a highly elevated Indian mind, this conceptual nexus is not far-fetched. The garden and the love of flowers strike a psychic chord at once beautiful and religiously mystical, as any reader of Wordsworth or other great poet in English or Sanskrit will agree. The point is that the multiform dispositions had been united by a spiritual thirst and, if read in their integrality, could be designated religious-cum-charitable. In sum, the primary intendment was to dedicate as debutter and to direct fulfilment of uplifting religious and para-religious purposes, the focus being on worship of Sree Jagannathjee and the fall-out some subsidiary, yet significant, charitable items. The finer note struck by the felt necessities of his soul was divinised and humanised, the central object being Sree Jagannathjee, the Lord of the Universe." (p. 19)

15. In *CIT v. Swastik Textile Trading Co. (P.) Ltd.* [\[1978\] 113 ITR 852](#), the Gujarat High Court observed that compassion for living creatures, although it motivates all true religion, is also practical spirituality as it has an elevating moral influence, fostering a deep sense of fellow feeling and fraternity. Such acts not only fulfil our cherished human values but they equally promote public goods and welfare and are, therefore, dominantly religio-charitable, it was further held that the Tribunal was right in holding that the donations to the trust could be deducted. The Hon'ble Court, while quiting Sri Jagannath Jew's case (*supra*), where the amounts spent for religious and charitable purposes such as feeding of poor were excluded from the total income, observed on page 865, "it is religion to love the poor."

16. In *S.P. Mittal v. Union of India* AIR 1983 SC 1, the Hon'ble Supreme Court discussed the definition of religion. It was observed by Chinappa Reddy, J. in para 12 that :

"... Constitution views religion, as comparising thought, expression, belief, faith or worship, as involving the conscience and as something which may be professed, practiced and propogated and which is any man's attribute in the same manner as race, sex, language, residence etc. We also see that economic, financial, political or other secular activity may be associated with religious practice though such activity is not covered by the guarantee of freedom of conscience and the right freely to profess, practice and propagate religion. So, the Constitution considers religion as a matter of thought, expression, belief, faith and worship, a matter involving the conscience and a matter which may be professed, practiced under propagated by anyone and which may even have some secular activity associated with it. . . ." (p. 5)

Hon'ble Reddy, J., on page 6 para 13 further observed,

"Religion is certainly a matter of faith with individuals or communities and it is not necessary theistic. There are well-known religion in India like Buddhism and Jainism that do not believe in God or intelligent first cause.

The Hon'ble Court observed at page 20 :

"Religion is squarely human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirement of that power as may enable the individual believer to exist more happily is common to all 'religions'."

17. In *CIT v. Social Service Centre* [\[2001\] 250 ITR 39](#), the Andhra Pradesh High Court opined,

"We do not find that donation to a church or construction of a church is not a purpose which is not of general public utility. Therefore, the contention of the Department that the expenditure on religious activities could not be given exemption cannot be accepted particularly in the context of our polity. We are aware that most of the religious and charitable activities go together in this country." (p. 40)

The assessee, which was a registered under section 12A of the Income-tax Act, 1961, as a charitable trust was granted exemption/sections 11 and 12 of the Act.

Charitable purpose includes benefit of a section of public

18. In *CIT v. Andhra Chamber of Commerce* [\[1965\] 55 ITR 722](#), the Hon'ble Supreme Court observed that the expression "object of general public utility" was not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of public was an object of general public utility. To serve as a charitable purpose, it was not necessary that object

should be to benefit the whole of mankind or even all persons living in a particular country or province. It was sufficient if the intention was to benefit a section of the public as distinguished from specified individuals. The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some common quality of a public or impersonal nature. The Court further observed that if the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose was there. It was also held that advancement or promotion of trade, commerce and industry leading to economic prosperity enured for the benefit of the entire community. That prosperity would be shared also by those who engaged in trade, commerce and industry, but on that account the purpose was not rendered any the less an object of general public utility.

19. In *CIT v. Ahmedabad Rana Caste Association* [1973] 88 ITR 354 (Guj.), the Gujarat High Court observed that a purpose would be charitable if it is for the "advancement of any other object of general public utility". "Public" means the body of people at large including any class of the public and "utility" means usefulness. Therefore, the advancement of any object beneficial to the public or a section of the public as distinguished from an individual or a group of individuals would be a "charitable purpose". On appeal, this judgment has been affirmed by the Apex Court in *CIT v. Ahmedabad Rana Caste Association* [1983] 140 ITR 1.

20. In *CIT v. Rajneesh Foundation* [2006] 280 ITR 553, the Bombay High Court observed that charitable purpose includes relief of the poor, education, medical relief and advancement of any other object of general public utility. Not only in India, meditation and yoga are being accepted in the western countries also as a great source for physical and mental health and spiritual attainment. When a large number of people feel that meditation is a great source for physical, mental and spiritual well-being it must be held to be an activity for the advancement of general public utility.

Rule of Consistency

21. In *Radhasoami Satsang v. CIT* [1992] 193 ITR 321, the Apex Court observed :

"That in the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee-appellant should not have been reopened.

Strictly speaking, *res judicata* does not apply to income-tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following year; where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year." (p. 322)

22. In *DIT v. Lovely Bal Shiksha Parishad* [2004] 266 ITR 349, the Delhi High Court observed that in view of the fact that no change in the nature of activities had been pointed out and the assessee had been granted exemption under section 10(22) of the Income-tax Act, 1961, not only in respect of the earlier years but subsequent years as well, the assessee was entitled to exemption in the assessment year 1991-92.

23. In *CIT v. N.P. Mathew* [2006] 280 ITR 44, the Kerala High Court observed that in Income Tax Proceedings difference should not be made between assesseees in similar situation and between different assessment years of same assessee.

24. In *Orpat Charitable Trust v. CIT* [2002] 256 ITR 690, the Gujarat High Court observed that setting aside the order of the Commissioner refusing grant of approval, that even if the ground about contravention of section 11(5) was validly taken by the Commissioner, that would have bearing only at the point of time of the assessment of the petitioner and would not be a material consideration insofar as granting approval under section 80G(5) was concerned. That might be a material factor, but that could not be the sole determinative factor for the purpose of deciding whether the certificate of approval had to be granted to the petitioner or not. Further it had been pointed out to the Commissioner that the trustee

through whom the deposits had been made had paid up the funds deposited in those institutions to the petitioner and, so far as the petitioner was concerned, the technical breach ought not to have weighed with the Commissioner.

25. In *Suresh Sunderrao Nayak v. M.K. Pandey, DIT (Exemption)* [2007] 288 ITR 79 the Bombay High Court observed that the fact that some of the devotees has been given small amounts on monthly basis does not mean that all the beneficiaries were identifiable. Some of the devotees who were poor and needed assistance were being given, assistance monthly basis. The fact that some of the devotees were given cash assistance could not be a ground to hold that all the beneficiaries were identifiable. That apart, much more money of the trusts was being spent for the medical benefits, poor feeding and education assistance to a larger number of persons. It was not possible to say that it was more in the nature of a private trust and the benefit to the public was incidental or insignificant. It was also material to note that in the earlier assessments of this very trust, the objectives of the trust were accepted and the assessment orders had been passed even after 1992 to the effect that the trust was a public charitable trust. The order of the Income-tax Officer was not valid and was liable to be quashed.

26. In *CIT v. Thanthi Trust* [1999] 239 ITR 502, the Hon'ble Supreme Court observed that dismissing the appeal, that the question herein was essentially a question of fact. A college was run, not by the assessee-trust, but by another registered charitable Society. The High Court had found that the conduct of the educational institution is drawing from the assessee-trust larger sums than what had been credited by the trust in its favour in 1969-70 showed that it was fully aware of its credit with the assessee-trust and the funds that had been made available to it by the trust. It was no part of the revenue's case at any point of time that the credit entries made in the assessee's books of account were not genuine or the trust or that they were make - believe or bogus. The Income-tax Officer had not doubted the said entries and called upon the assessee to produce the accounts of the college. The High Court was right in holding that the assessee was entitled to exemption under section 1 of the Income-tax Act, 1961.

27. In *CIT v. Indian National Theater Trust* [2008] 169 Taxman 42, the Delhi High Court held that as far as the third question is concerned, on examining the orders passed by the authorities, in which the objects of both the assessee-trust as well as the Shriram Centre for Art and Cultural have been discussed, we are of the considered view that the Tribunal was correct in its conclusion that the sum of Rs. 50,000 deposited with Shri Ram Centre for Art and Culture should be treated as an application of the income of the Trust. The work "application" has to be given a wider interpretation keeping in view the purpose for which the provision has been introduced.

28. On the side opposite, Mr. K.K. Bissa, learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of *Upper Ganges Sugar Mills (supra)*. He also relied upon the decision of this Court in the case of *Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust v. Union of India* [2005] 273 ITR 475, in which this Court held as under :

"Section 80G of the Income-tax Act, 1961, applies to donations to any institution or fund established in India for a charitable purpose. Charitable purpose, for the purpose of the section, does not include any purpose the whole or substantially the whole of which is of a religious nature. For the purpose of applying Explanation 3 to section 80G each and every object of the trust has to be read and the trust deed is not to be as a whole.

Sub-section (5B) of section 80G inserted with effect from 1-4-2000 does not have retrospective effect and is not applicable to earlier assessment years.

The petitioner-trust was recognized as a trust wholly and substantially for charitable purposes. But the Commissioner denied the special deduction under section 80G(5) for its donors for the assessment years 1994-95 to 1997-98 on the ground that some of the clauses of the petitioner-trust pertained to wholly religious purposes. On a writ petition :

Held, dismissing the petition, that the Commissioner had quoted object items 1 to 5 and sub-clause (4) of other objects and also the preamble to the petitioner-trust which showed that the petitioner-trust had many objects which were wholly and substantially religious. Therefore, the mere fact that insignificant amount had been spent on religious charity, did not entitle the donors to claim deduction under section 80G." (p. 475)

29. *Another decision relied upon by the learned counsel for the revenue in the case of Mishrilal Gordhanlal Batra Charitable Trust v. Union of India [D.B. Civil Writ Petition No. 4287 of 1998, decided on 6-12-2007] in which the case the Court merely remitted the case back to the Commissioner for reconsideration of the application for renewal with effect from 1-4-2000 uninfluenced by the order rejecting the renewal for the previous period 1995 - 2000. This judgment is of no help to the learned counsel for the respondents.*

30. *I have heard the learned counsel for the parties at length and given my thoughtful consideration to the facts of the present case and the case laws cited at the Bar.*

31. *This Court is of the considered opinion that mere one contribution by the charitable trust to another trust which carried out repair and renovation of Lord Vishnu's temple does not disentitle the petitioner-trust from renewal of its exemption certificate under section 80G of the Act. The line of distinction between religious purposes and charitable purposes is very thin and no water tight compartment between the two activities can be very well-established. Unless objective of the charitable trust in question itself is for spending its income for a particular religion and it is so found in the trust deed, the Income-tax Department cannot reject the renewal of the Trust as Charitable Trust under section 80G of the Act merely because one particular expenditure is for an activity which may be termed as spending for a particular religion. In the present case the repair and renovation of Lord Vishnu's temple does not necessarily mean that expenditure in question was for a particular religion only. All people who have faith in Lord Vishnu's temple belong to different sects and have faith in different religions and also visit such temple of Lord Vishnu. The revenue has not shown that entry in the said temple was restricted to the persons of one particular community or sect practicing one religion. Hinduism is not one particular religion and different sects following Hindu philosophy do visit temples of Lord Vishnu, be that Jains, Sikhs, Brahmins etc. There is no water tight compartment between different castes or sects following one particular religion. Freedom of religion is guaranteed in the Constitution of India under article 25 of the Constitution of India. Therefore, taking such a pedantic and narrow approach, it cannot be said that character of the Charitable Trust is lost if one particular expenditure is made for repair and renovation of Lord Vishnu's temple and that too by way of contribution to another trust. A perusal of the trust deed of the petitioner produced on record shows that objective of the trust was clearly charitable and was not for any particular religion even wholly or substantially. Nothing has been pointed out in the impugned order that the petitioner-trust has been constantly spending money for a particular religion. One should discern and imbibe with great respects the observations of Hon'ble Supreme Court in Sri Jagannath Jew's case (supra).*

32. *This Court does not see any leaning in favour of any particular religion in trust deed of the petitioner-trust and therefore, once such exemption was granted to the petitioner trust, upon scrutiny of its application and it held the field for at least three years as is shown by the impugned order itself and trust deed indicates that said trust was constituted long back on 27-8-1963 and has been carrying on such charitable activities, this Court finds no justification for rejecting its renewal under section 80G of the Act which is a matter of right. The conditions of section 80G(5) read with Explanation 3 do not stand violated in the present case.*

33. *The learned counsel for the revenue relied upon the decision of the Supreme Court in the case of Upper Ganges Sugar Mills (supra), which has been relied upon by the learned CIT(A) also in the impugned order, it was held on the basis of one particular clause (2)(h) of the trust-deed which read "to establish, maintain and to grant and/or aid to public places of*

worship and prayer halls". The Hon'ble Supreme Court dealing with Explanation 4 of section 80G(5) held as under :

"To reiterate, Explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable purpose is of religious nature. If it did, it would read differently. It requires the ascertainment of whether there is one purpose within the institution or fund's overall charitable purpose which is wholly, or substantially wholly, of a religious nature. There is little doubt that clause 2(h) of the trust deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of religious nature, and this has not been seriously disputed. Therefore, in our view, the trust and the donation by the assessee to it fall outside the scope of section 80G." (p. 582)

The aforesaid case is clearly distinguishable from the facts of the present case as there is no clause in the trust deed in the present case which indicates that income of the petitioner-trust was to be applied wholly or substantially for any particular religion. Therefore, the said case has been clearly wrongly applied by the learned CIT(A) in the present case. In Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust's case (supra) also relied upon by the learned Counsel for the revenue, the facts of the case were distinguishable in the said case. Thus, the judgments cited and relied upon by the learned Counsel for the revenue are distinguishable on facts and do not support the case of the respondents. Since the law in the case of Upper Ganges Sugar Mills (supra) was laid down while dealing the case of deduction under section 80G of the Act in the hands of donor so also in the case of Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust (supra) by this Court, those judgments do not advance cause of the revenue. On the other hand, the case laws relied upon by the learned counsel for the petitioner fully support the case of the petitioner when the Courts have consistently held that it is the dominant object of the trust which is important and contribution and expenditure incurred by the petitioner-trust has to be viewed in light of the objects with which charitable trust in question was constituted.

34. Consequently, this writ petition is allowed and the impugned order Annex. 10 dated 16-12-2004 is quashed and set aside and the petitioner-trust shall be deemed to be registered under section 80G of the Act throughout the period after 1-4-2004 with all consequential benefits.

35. With these observations, this writ petition is allowed with no order as to costs.

6. Applying the propositions of law laid down in this case-law, to the facts of the case, we find from the objects of the trust that it is constituted mostly to perform *puja and seva* to Shri Shri Kali Mata in a Mandir built and erected at village Thakdari, P.O. Krishnapur, District-24 Parganas (N), Kolkata – 700 102, and to keep and maintain the *mandir* and the land and to make arrangements to continue *seva and puja*. In addition to these objects, a number of charitable objects have been included. These relate to relief to poor, maintaining educational institutions etc.

6.1. The ld. CIT(E), in his order u/s 80G(5B) of the Act, held that the assessee spent more than 5% of its income towards religious purposes. The religious expenditure in question is towards *puja* expenses and honarium paid to priests. In our view the judgement in the case of *Umaid Charitable Trust (supra)*, does not come to

the rescue of the assessee, because in that case a single charitable contribution was made to another trust, which carries out renovation of Lord Vishnu Temple. Such single contribution was not considered as a religious activity. In the case on hand, worship of Goddess Kali Mata and expenditure incurred towards the same is definitely incurred for a particular religious purpose. The arguments of the assessee, that any person of any religion can perform the *Puja* to Goddess Kali and hence the expenditure in question is not restricted to a particular religion is not correct. The expenditure is of religious nature. Just because the expenditure is by persons of all categories, castes and creeds, does not cease to make the expenditure of religious nature. The requirement of the Section 80G(5)(iii) of the Act are not the basis on which approval u/s 80G of the Act, was denied and hence the arguments advanced based on this Section has no merit.

7. In view of the above discussion, we uphold the order of the Id. CIT(A) and dismiss this appeal of the assessee.

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

Order pronounced in the Court on 13.04.2018.

Sd/-
[Aby T. Varkey]
Accountant Member

Sd/-
[J Sudhakar Reddy]
Judicial Member

Dated :13.04.2018.

[SC Sr.PS]

Copy of the order forwarded to:

1. Bhuvaneshwari Kali Takuranir Seva Samity
Vill. Thakdari
P.O. Krishnapur
Dist.24-Pgs(N)
Kolkata – 700 102

2. Commissioner of Income Tax-(Exemptions)
Kolkata

3. C.I.T. (A)- , Kolkata. 4. C.I.T.- , Kolkata.

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Sr. Private Secretary
Head of Office/DDO,, ITAT, Kolkata Benches