

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.214/SRT/2023

(Physical Hearing)

Mar Baselius Orthodox Syrian Church, Ranchhod Nagar, Opp. Magdalla Port Colony, Dumas Road, Magdalla B.O., Magdalla, Surat – 395007.	Vs.	The CIT(Exemption), Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAATM3808N		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.265/SRT/2023

(Physical Hearing)

Sindhu Seva Samiti, TP No.3 FP 53, Anand Mahal Road, Near Sneh Sankul Wadi, Adajan Choryasi, Surat – 395009.	Vs.	The CIT(Exemption), Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABTS3067J		
(Appellant)		(Respondent)

Appellant by	Shri Hiren Vepari, CA
Respondent by	Shri S. M. Keshkamat, CIT(DR)
Date of Hearing	05/07/2023
Date of Pronouncement	17/07/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned two appeals filed by different assessee-trusts, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Exemption), Ahmedabad [in short “the ld. CIT(E)”], wherein the Ld. CIT(E) has denied the registration under section 12AB of the Act on the reason that charitable activities of the trust were confined to a particular caste “*Surat Parish*” and “*Sindhis*” respectively, and therefore the provision of section 13(1)(b) of the Act are applicable and hence Ld. CIT(E) rejected the Form 10AB for the registration under

section 12AB of the Income Tax Act, 1961, in case of both assessee-trusts.

2. Since, the issues involved in these two appeals, are common and identical; therefore, these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts as well as grounds as per lead case in ITA No.265/SRT/2023 (Sindhu Seva Samiti) have been taken into consideration for deciding these two appeals *en masse*.

3. The grounds as per the lead case in ITA No.265/SRT/2023, wherein the grounds of appeal raised by the assessee are as follows:

“(1) On the facts and circumstances and in law, the learned Commissioner of Income-tax (Exemption) was not justified in rejecting application u/s 12A, particularly when the appellant complied with all the details as also rendered evidence of activities undertaken in consonance with the objects.

(2) The learned Commissioner of Income-tax (Exemption) was driven by extraneous considerations while rejecting application.

(3) The learned Commissioner of Income-tax (Exemption) was apparently incorrectly driven by the provisions of section 13(1)(b).

(4) The learned Commissioner of Income-tax (Exemption) ought to have taken a judicious and liberal view rather than a hyper technical view.

(5) The appellant craves leave to add, alter or vary any of the grounds of appeal.”

4. The similar and identical ground is also raised by the assessee in ITA No.214/SRT/2023 (Mar Baselius Orthodox Syrian Church).

5. As per lead case, the facts in short are that the application for registration of the trust under section 12AB of the Income Tax Act, 1961, was filed electronically on 26.09.2022 by the assessee in Form No.10AB under Rule 17A of the I.T. Rule, 1962. The Rules 17(1) of the Income Tax Rules prescribes the different forms to be filed for making application under various sub-clauses of clause (ac) of sub-section (1) of section 12A

of the Act for registration of a charitable or religious trust or institution. The Id CIT(E) reproduced Rule 17A(1) of the Act, vide page No.3-4, in his order. The Id CIT(E) also reproduced section 12AB of the Act in his order. Then after, Id CIT(E) did inquiry about the actual activities of the trust, which was necessary in view of the mandatory provisions of the procedure for registration u/s 12AB of the Income Tax Act, 1961. The Ld. CIT(E) issued a notice to the assessee and noted that it is essential to make analysis, as to whether the provisions of section 13(1)(b) of the Act is applicable to the assessee or not.

6. The Id CIT(E) states in his order that section 13(1) (a) of the Act stipulates that provisions of section 11 and 12 would not apply to an assessee, where any part of the income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public. Therefore, the provision of section 13(1)(a) of the Act is applicable only when any part of income is from the property held under a trust for private religious purposes which does not ensure for the benefit of the public. Further section 13(1)(b) of the Act stipulates that provisions of section 11 and 12 would not apply in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the **benefit of any particular religious community or caste**. Therefore, the provision of section 13(1)(b) of the Act is applicable only in a case of charitable trust/institution created or established after commencement of this Act, if the trust/institution is created or established for the benefit of any particular religious community or caste. As per Form No. 10AB filed by the assessee, the date of incorporation/Creation/Registration of the trust has been mentioned as

26.03.1980. Further, in the Form No. 10AB filed, the assessee has mentioned the Nature of activities as “**Charitable**”.

7. The Ld. CIT(E) noted that the provision of section 13(1)(b) of the Act is applicable to a charitable trust, as has been settled by the Hon'ble Supreme Court in the case of *CIT vs. Palghat Shadi Mahal Trust, reported in 120 Taxman 889*, wherein in the case of a public charitable trust, the Hon'ble Apex court held that where the benefit is available to Muslims from all over the world, none of whom except in Kerala are backward classes, the provision of section 13(1)(b) would be attracted and therefore the trust is not entitled for exemption u/s 11 of the Act. Even some courts had held that in case of composite trust/institution, i.e. charitable cum religious, the provision of section 13(1)(b) of the Act is not applicable. However, the said controversy was resolved by the Hon'ble Supreme Court in the case of *CIT vs Dawoodi Bohara Jamat, reported in 43 taxmann.com 243*, wherein the Hon'ble Apex Court held that the provision of section 13(1)(b) of the Act is applicable even to a composite trust/institution and held as under.

“45. From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b). What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste.”

8. **Therefore, Ld. CIT(E) observed that the assessee's submission that when the trust has both religious and charitable objects, claim for registration u/s 12A ought to be granted in terms of section 13(1)(b) of the Act, in view of the decision of the Hon'ble SC in the case of *CIT vs Dawoodi Bohara Jamat, reported in 43 taxmann.com 243***

(supra), is in direct contradiction to above referred finding of the Hon'ble SC in its decision in Para(45) reproduced above.

9. Further, the Hon'ble Supreme Court in the said case of ***CIT vs Dawoodi Bohara Jamat*** (supra), which was composite in nature, after analyzing the various objects of the trust, held that two of its objects provide for the activities completely religious in nature and restricted to the specific community of the assessee trust, are objects with religious purpose only. However, the Hon'ble Apex Court held that other four objects of the assessee trust was charitable in nature and finally held that the 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 and hence the trust would be eligible to claim exemption u/s 11 of the Act. In concluding para the Hon'ble Apex Court held has under:

“50. In that view of the matter, we are of the considered opinion 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 respondent-trust and thereby, it would be eligible to claim exemption under Section 11 of the Act.”

10. In the light of the above referred judgment of Hon`ble Supreme Court case of ***CIT vs Dawoodi Bohara Jamat*** (supra), the Ld. CIT(E) held that from the objects of the assessee, it is evident that it is not a religious trust, but it is a charitable trust and above referred objects, which are in the nature of charitable is restricted to benefit of a particular religious community or caste “***Sindhis***” and therefore as per law laid down by the Hon'ble Apex court in the above referred case, the provision of section 13(1)(b) of the Act, would be applicable and therefore the assessee would not be eligible for exemption u/s 11 of the Act. Therefore in the facts and circumstances of the case, the assessee cannot be granted

registration u/s 12A of the Act. In view of the above, the application filed in Form No. 10AB for the registration u/s 12AB of the IT Act, 1961 was rejected by Ld. CIT(E).

11. Aggrieved by the order of the Ld. CIT(E), the assessee is in appeal before us.

12. The Ld. Counsel for the assessee argued that objects of trust are purely charitable without discrimination of creed, nationally or place except name, since it is started by 'Sindhis'. The activities not doubted by Ld. CIT(E). Section 13(1)(b) of the Act does not apply to the assessee, since the school is run by the assessee- trust, which is not confined to a particular caste. For this, Ld. Counsel for the assessee, relied on the following decisions:

- a. *Sheth Jivandas Godidas Shankheshwar Parshwanathji Jain (41 taxmann.com 492)*
- b. *Bayath Kutchhi Dasha Oswal Jain Mahajan Trust (74 taxmann.com 199)*
- c. *Indian Society of the Church of Jesus Christ of Latter Day Saints (86 taxmann.com 44)*
- d. *Chandra Charitable Trust (156 TAXMAN 19)*

13. The Ld. Counsel also argued that decision referred by Ld. CIT(E) in the case of *Dewood Bohara Jamat (43 taxmann.com 243)*, favours the assessee, as the assessee trust is religious as well as charitable-trust.

14. On the other hand, the Ld. Departmental Representative (Ld.DR) for the Revenue has primarily reiterated the stand taken by the Ld. CIT(E), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

15. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(E) and other material brought on record. The Id Counsel argued before us that the objects of the assessee trust are purely charitable without discrimination of creed, nationally and place except name, since it is started by 'Sindhis' and activities of trust were not doubted by the Ld. CIT(E). The Id Counsel also argued that section 13(1)(b) of the Act, does not apply to the assessee-trust, because the school is run by assessee- trust, which is open for all sections of the society/caste and said School, is not confined to a particular caste, therefore the Ld. CIT(E) should not have denied the registration.

16. A part from this, we have gone through the paper book filed by the assessee and noted that assessee made final registration application with Form No.10AB, on 26.09.2022, well before six months from expiry date. The copy of trust deed of the assessee trust containing objects of the assessee trust were filed before us (vide pb.48). We have gone through the objects of the assessee trust and noted that first four objects of the assessee trust are only for '*Sindhis*', which are reproduced below:

- “(i) to develop and cultivate fellowship and fraternal feelings amongst Sindhi-speaking people of Surat and to bring about unity and co-operation amongst them;*
- (ii) to further the interest of Sindhi-speaking people of Surat and to undertake activities for their welfare, uplift and benefit; to work for their betterment; to redress their grievances and to bring about social reforms according to changing times;*
- (iii) to provide and construct a place for meeting and for organizing cultural or other activities, and to create a social and cultural centre in Surat for Sindhi-speaking people;*
- (iv) to conduct research in and develop Sindhi-language and to take effective steps for its enrichment and encouragement;”*

17. We note that trust deed of the assessee contains following other objects, which are not confined to '**Sindhis**' caste. Such other objects are reproduced below for ready reference:

(v) *To undertake activities for the advancement of education.*

(vi) *To help poor of other caste.*

(vii) *To give medical aid and relief to all sections of society.*

(viii) *To help public in general, in case of fire, flood and earthquake.*

We have gone through the above objects of the trust and noted that these objects are not for particular caste "Sindhi".

18. Therefore, we note that assessee trust, has two type of objects, one exclusively for "**Sindhi**" caste and second 'other objects' which are for the benefit of public in general, that is open for all sections of society. But these other objects, which are open for all public, have really been carried on, by the assessee-trust or not, is a question of fact, which has not been examined by Id CIT (E). For example, the Id Counsel argued before us, that school is run by assessee- trust, which is open for all sections of the society/caste, this fact has not been examined by Id CIT(E), as there is no reference in the entire order of Id CIT(E), hence it is a fresh argument before us which needs examination by Id CIT(E). The Id Counsel also stated that assessee-trusts have other objects like: to help poor, to give medical aid and to help public in general, in case of fire, flood and earthquake. However, the question before us is that since the assessee-trust is an old trust, and whether in past, these activities were carried on by the assessee-trust or not, is not ascertainable by us from the paper book filed by the assessee. Considering these facts, we are of the view that entire lis of the assessee should be remitted back to the file of the Id CIT(E) for examination of these facts and then after to pass the order in accordance with law. Accordingly, we set aside the order of Id CIT(E)

and remit the issue back to the file of the Id CIT(E), to adjudicate the afresh.

19. In the result, appeal filed by the assessee-trust (in ITA No.265/SRT/2023 -Sindhu Seva Samiti, is allowed for statistical purposes.

20. Now, coming to other assessee-trust, in ITA No.214/SRT/2023, Mar Baselius Orthodox Syrian Church, we note that Id CIT(E) has passed the order on the same line, as we have noted in the assessee-trust, in ITA No.265/SRT/2023 -Sindhu Seva Samiti, above. We have also gone through the objects of “Mar Baselius Orthodox Syrian Church – trust” and the same is reproduced below:

“2) Objects of the Trust:

i. The main object of the trust relates to Malankara Orthodox Church of which the ecclesiastical head is His Holiness Moran Mar Baselios Mar Thomas Mathews I, Catholics of the East and his successors in office.

ii. To erect and maintain buildings, walls and all manner of structures and internal fittings and fixtures necessary for worship for the members of the Malankara Orthodox Church and to provide quarters for priests of worship and for conducting hospitals, schools, colleges, hostels or orphanages and other centres and activities of social welfare for the benefit of the members of the Malankara Orthodox Church and the general public in the City of Surat.

iii. To organize activities of such natures as would promote the spiritual and social life of the members of the Surat Parish.

21. Since the issue is identical and similar in case of “Mar Baselius Orthodox Syrian Church – trust”, therefore our above findings in the case of assessee-trust (in ITA No.265/SRT/2023 - Sindhu Seva Samiti, shall apply *mutatis mutandis* to the aforesaid other assessee-trust (Mar Baselius Orthodox Syrian Church). Hence, assessee-trust`s, appeal in ITA No. 214/SRT/2023, is also allowed for statistical purposes.

22. In the result, both the appeals are allowed for statistical purposes in above terms.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 17/07/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 17/07/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat