

।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "A" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.933/PUN/2023

निर्धारण वर्ष / Assessment Year :-

Golden Charitable Trust, 2349, Guruwar Peth, Miraj, Maharashtra – 416410. PAN: AACTG0998H	V s	The CIT Exemption, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Kishor B Phadke – AR
Revenue by	Shri Keyur Patel – CIT(DR)
Date of hearing	24/01/2024
Date of pronouncement	12/04/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the assessee against the order of Ld.Commissioner of Income Tax(Exemption), Pune under section 12AB of the Income Tax Act, 1961, passed on 30.06.2023.The assessee has raised the following grounds of appeal :

*“1. Learned CIT (Exemption) has erred in fact and in law in rejecting the application for the Registration of the trust u/s. 12A(1) (ac) despite the fact that appellant trust is engaged in pursuing purely charitable objects such as providing medical and educational aid to needy beneficiaries and the trust activities are genuine and there is no contrary finding to it. Thus the rejection order is patently illegal &*

*arbitrarily and perverse and deserves to be quashed and the registration may please be granted.*

2. *Learned CIT (Exemption) has grossly erred in fact and in the circumstances of the case in concluding that, assessee has admitted the query with respect to construction of houses and residual object clause no (e), despite the fact that , appellant has categorically stated that, it is a charitable purpose and object and shown willingness to change the clause if required by CIT exemption.*

3. *Learned CIT (Exemption) has erred in fact and in law in rejecting the application of the appellant trust without properly appraising the documents furnished and without providing adequate time and opportunity. Thus the order passed by CIT (exemption) deserves to be set aside and may please be set aside.*

4. *Learned CIT (Exemption) has erred in fact and in law and in the circumstances of the case in rejecting the application and passing the order for rejection of recognition u/s.80G, merely on the ground that, application is delayed by only two days and such delay could have been condoned by CIT ( exemption) as per provisions of section 119(2)(b).*

5. *Learned CIT (Exemption) has erred in fact in law in passing rejection order for Registration u/s. 12(A) (1) (ac) despite the fact that, there is no violation of any of the provisions of Income Tax Act and the trust is pursuing charitable objects and the violations of Trust Act mentioned by CIT (exemption) which is non obtaining of permission of charity commissioner is technical in nature and curable one and appellant did inform that it will seek the permission and hence the order is in gross violation of principles of natural justice and the same may please be quashed and registration may be granted.*

6. Appellant craves to leave add / amend or alter any other ground of appeal.”

**Submission of ld.AR :**

2. The Ld.Authorised Representative(ld.AR) of the assessee filed a paper book. Ld.AR submitted that Assessee had carried out Charitable activities like medical aid etc. Ld.AR also submitted that the ld.CIT(E) had not properly appreciated the submission of the assessee.

**Submission of Ld.Departmental Representative :**

3. Ld.DR relied on the order of the ld.CIT(E). The Ld.DR invited attention to the Clause(D) of the trust deed which is about construction of houses. Ld.DR submitted that the construction of houses cannot be a charitable object. Ld.DR also submitted that the Assessee had given its 20000 sq.ft constructed building to The Muslim Education Trust on a very nominal Lease for 50 years on 03/07/2019.The said Lease deed is not registered as per the Registration Act. The Assessee has not shown any Receipt of Rent/Lease in the Return of Income and Profit and Loss Account. This demonstrates that the Accounts are not properly maintained.

**Findings and Analysis :**

4. We have heard both the parties and perused the records.

5. On perusal of the Trust Deed which is part of the paper book at page no.1 to 19, it is observed that assessee trust was formed on 13.02.2009 by Shri Mohammad Shafi Haji Chand Bagwan as Settler of the Trust. The said trust is registered with Assistant Charity Commissioner, Sangli on 24.03.2014(copy of the registration certificate is at page 20 of the paper book).

5.1 On perusal of the Trust Deed, it is observed that one of the objects of the Trust is as under :

**“To construct, maintain or help in the construction or erection of houses or housing colonies for the low income group people.”**

**Construction of Houses :**

5.2 Thus, as per the said object, one of the objects of the assessee is to construct and maintain houses, housing colonies for the low-income group people. To construct houses or housing colony, even if it for low-income groups, is a business activity. Therefore, such activity cannot be considered as “Charitable Purpose” as defined in section 2(15) of the Act. Though assessee has claimed that assessee has not carried out such activities, but admittedly one of the objects of the assessee is construction of houses, housing colonies for low-income groups. To become eligible for

registration under section 12A of the Act, the objects of the assessee must be charitable in nature. In this case, we have already observed that construction of houses, housing colonies is not a charitable object.

5.3 The Hon'ble Supreme Court of India in the case of Yogiraj Charity Trust Vs CIT 103 ITR 777(SC) held as under :

*Quote, "The test is that if one of the objects of the trust deed is not of a religious or charitable nature and the trust deed confers full discretion on the trustees to spend the trust funds for an object other than of a religious or charitable nature, the exemption under section 4(3)(i) of the Act is not available to the assessee" Unquote.*

5.4 Thus, the proposition of law laid down by Hon'ble Supreme Court(Supra), is that if one of the objects of the Trust is not Charitable or Religious and trustee have discretion to spend the funds of the trust on any object , then , the trust will not be eligible for exemption as one of its object was not charitable.

5.5 In the assessee's case we have observed that the clause of 'Construction houses' is not Charitable in nature, hence respectfully following Hon'ble Supreme Court, we hold that the assessee is not eligible for registration as Charitable Trust.

Therefore, we agree with Id.CIT(Exemption) that assessee is not eligible for registration under section 12A of the Act.

5.6 Accordingly, we uphold the order passed by Id.CIT(E).

**Lease :**

6. The assessee has filed copy of Lease Agreement dated 03.07.2019 at page 55 to 64 of the paper book. The assessee has entered into a lease agreement with The Muslim Education Welfare Trust on 03.07.2019. The assessee has given on lease, a building situated at Survey No.181/1/A-32R & 181/1/B-32R, Takali Road, Bagwan Mala, Miraj admeasuring Ground Floor built up area 929.09 sqm and First Floor built up area 990.75 sqm. The lease is for 50 years. Annual Lease is Rs.10 lakhs for first five years.

6.1 Admittedly the said lease agreement is on a stamp paper of Rs.100/- which is not a registered agreement.

6.2 The relevant part of The Registration Act, 1908 is reproduced here as under :

***PART III  
OF REGISTRABLE DOUCMENTS***

17. *Documents of which registration is compulsory:-*

*(1) The following documents shall be registered. if the property to which they relate is situate in a district in which, and if they have been executed on*

*or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866) or the Registration Act, 1871 (VIII of 1871) or the Indian Registration Act, 1877 (III of 1877) or this Act came or comes into force, namely:-*

*(a) instruments of gift of immoveable property;*

*(b) other non-testamentary instruments which purport or operate, create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*

*(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and*

*(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*

6.3 Thus, as per section 17 of The Registration Act, 1908, any lease of immovable property from year to year for any term exceeding one year has to be registered. The lease entered by assessee is for 50 years and hence it falls under section 17 of the Registration Act, which needs mandatory registration. However, admittedly assessee has not registered the said lease. Therefore, assessee has violated Registration Act of 1908.

6.4 **Violation of Maharashtra Stamp Act:**

*Section 3 of the Maharashtra Stamp Act defines the Instruments on which Stam Duty shall be paid. The List of such Instruments is given in Schedule 1 of the Maharashtra Stamp Act. The entry number 36, 36A of said schedule 1 is “Lease of immovable property”. Violation of provisions of Maharashtra Stamp Act is a punishable offence with imprisonment under Section 59 of the Maharashtra Stamp Act . The said section 59 of Maharashtra Stamp Act is reproduced here under :*

*59. (1) 1[Any person who, with the intention to evade the duty, executes or signs] otherwise than as a witness any instrument chargeable with duty without the same being duly stamped shall, on conviction, for every such offence 2[be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which may extend to five thousand rupees :]*

6.5 The assessee has not paid any stamp duty on the lease agreement 03.07.2019. We have already discussed the provisions of Maharashtra Stamp Act above. The assessee’s lease agreement falls under section 3 read with schedule 1 of the Maharashtra Stamp Act. Therefore, it was mandatory for assessee to pay the stamp duty on the impugned lease agreement. However, assessee has not paid any stamp duty. Violation of Maharashtra Stamp Act is a punishable offence with imprisonment under section 59 of Maharashtra Stamp Act. The assessee has violated the provisions of Maharashtra Stamp Act.



**Violation of The Maharashtra Public Trust Act :**

6.6 Assessee is registered under Charity Commissioner, Sangli, Maharashtra. As per Section 36 of Maharashtra Public Trust Act, it is mandatory to seek prior permission from Charity Commissioner before entering into any lease of immovable property for a period more than three years. In the case of the assessee, the assessee entered into Lease Agreement for 50 years. However, admittedly assessee has not taken any prior permission of Charity Commissioner. Thus, assessee has also violated provisions of Maharashtra Public Trust Act. However, as per section 36(1A) of the Maharashtra Public Trust Act, even the Charity Commissioner is barred by giving permission to a lease exceeding 30 years. The relevant section is reproduced here as under :

*“[(1A) The Charity Commissioner shall not sanction any lease for a period exceeding thirty years under this Act.]”*

6.6.1 Thus, by entering into a Lease Agreement for 50 years, assessee has violated provisions of The Maharashtra Public Trust Act. The ld.AR claimed that assessee had sought permission from Charity Commissioner for the Lease Agreement, subsequently. However, as per section 36(1A), Charity Commissioner shall not

sanction any lease for a period more than 30 years. Therefore, there is no merit in the said pleading of the Id.AR of the assessee.

6.7 As per section 12AA of the Act, the Id.Commissioner of Income Tax has to satisfy himself that assessee has not violated any applicable law. The section 12AA of the Act is reproduced here as under :

*12AA. (1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A, shall—*

*(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about,—*

*(i) the genuineness of activities of the trust or institution; and*

*(ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects, and may also make such inquiries as he may deem necessary in this behalf; and*

*(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause, he—*

*(i) shall pass an order in writing registering the trust or institution;*

*(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution, and a copy of such order shall be sent to the applicant :*

6.8 Thus, it was mandatory for assessee to follow the applicable law to become eligible for registration under section 12A of the Act. However, we have already discussed in earlier paragraphs that assessee has violated provisions of The Maharashtra Public Trust Act, Registration Act and Maharashtra Stamp Act. Therefore, as per section 12AA, since assessee has violated the applicable law, assessee is not eligible for Registration under section 12A of the Act. The exemptions provisions are beneficial

provisions, therefore, this shall be strictly interpreted as observed by the Hon'ble Supreme Court in the case of CIC(Imports), Mumbai Vs. Dilip Kumar & Company [2018] 95 taxmann.com 327 dated 30.07.2018. Therefore, we agree with the ld.CIT(E) that assessee is not eligible for Registration under section 12A of the Act. Accordingly, we uphold the order of ld.CIT(E).

6.9 Even otherwise, one arm of the law cannot be used to defeat the purpose of another arm of the law. In case of Bihari Lal Jaiswal and others Vs. Commissioner of Income-tax and others reported in (1996) 217 ITR 746(SC), wherein the assessee was a firm and sought registration under the Income Tax Act. One of the partners of the firm had obtained license for retail sale of country spirit. One of the conditions of the license was that the holder shall not enter into a partnership for the working of privilege under the license despite which, the holder of the license entered into such partnership. In this background, it was observed that registration confers a substantial benefit upon the partnership firm. There is no reason why such a benefit should be extended to persons who have entered into a partnership agreement prohibited by law. One arm of law cannot be utilised to defeat the other arm of law.

6.9.1 In this case, assessee had sought exemption under Income Tax Act, but has not paid stamp duty under Maharashtra Stamp Act, has violated Registration Act, therefore, following the principle of one arm of the law cannot be used to defeat the purpose of another arm of the law, the assessee is not eligible for registration under section 12A of the Act.

7. On perusal of the Income & Expenditure Account as on 31.03.2021, 31.03.2022 and 31.03.2023, it is observed that assessee has not shown any rental income; though assessee has entered into lease agreement in the year 2019.

7.1 The objects of the Assessee Trust are as under:

- i) *Carrying on activity for propagation of high ideals like non-violence, truth, abstinence, humanity and absolute morality and friendship among human beings.*
  - a) *Arousing human consciousness for morality and moral progress among human beings;*
  - b) *For establishing peace by mutual discussion based on love and compassion.*
  - c) *Holding of conferences, etc, for propagation of these ideals.*
- ii) *To establish libraries or to carry out research so as to promote the objects mentioned herein above.*
- iii) *To establish libraries wherein such literature promoting the aforesaid ideals is fully propagated and understood.*
- iv) *To grant scholarships, free-ships or fellowships to deserving students.*
- v) *Promotion of education and learning in all its branches.*

vi) *Distribution of free food, clothing, of grant of relief in any form to the poor.*

vii) *To construct, maintain or help in the construction or erection of houses or housing colonies for the low income group people.*

7.2 Thus, on reading the objects of the Trust Deed, it is observed that the Objects of the Trust fall in the last limb of the Section 2(15) which is General Public Utility(GPU).

7.3 The Hon'ble Supreme Court has observed in the case of ACIT(Exemption) Vs. Ahmedabad Urban Development Authority in Civil Appeal No.21762 of 2017 as under :

*Quote, “150. Therefore, what Parliament intended – through the amendments in question was to proscribe, involvement or engagement of GPU charities, from any form (“in the nature of”) of activities that were trade, business or commerce, or engage or involve in providing services in relation to trade, business or commerce- for a fee, cess or other consideration. The inclusion of the term “in the nature of” was by design, to clarify beyond doubt, that not only business, trade or commerce, but all activities in the nature of, or resembling them, were proscribed. Likewise, service in relation to such activities, i.e., services relating, or pertaining to, such proscribed activities, too were forbidden.*

*151. The reference to fee or cess, is in the opinion of the court, only to emphasize that even a statutory consideration, for a service to business, trade or commerce, would take the activity outside the definition of a GPU charity. The sense in which the expressions “cess, fee or other consideration” are used, is that if any amount, is received for trading, or business or commercial activity, or any services to such activity, then, notwithstanding their nomenclature (as fee or cess, i.e. that they are fixed under a law) the GPU charity cannot claim tax*

*exempt status. To bring home this even more pointedly- and underline a break from the past, the application of such amounts (received in the course of trade, commerce, or business, or towards services in relation thereto) would be irrelevant, as evidenced by the term “irrespective”, in the fourth limb of reading Section 2(15).”Unquote.*

7.4 Thus, the Hon’ble Supreme Court has categorically observed that GPU are proscribed from any activities in the nature of Trade, Commerce, Business. However, it is observed that assessee has earned income from lease. Since assessee’s objects are General Public Utility, the assessee is barred from doing any business activity. Earning lease is not incidental to the objects of the assessee. Hence, earning lease is a commercial business activity. Hence, respectfully following the Hon’ble Supreme Court, it is held that the assessee is not eligible for Registration under section 12A of the Act.

7.5 For all the reasons discussed above, grounds of appeal raised by the assessee are dismissed.

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

Order pronounced in the open Court on 12<sup>th</sup> April, 2024.

Sd/-  
(S.S.GODARA)  
JUDICIAL MEMBER



Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> April, 2024/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.