

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

ITA Nos.7-8/2010

BETWEEN

M/S. BANGALORE URBAN & RURAL
DISTRICT CO-OPERATIVE MILK
PRODUCERS SOCIETIES MEMBERS
AND EMPLOYEES WELFARE TRUST
BANGALORE MILK UNION LTD.,
DR.H.M.MARIGOWDA ROAD
D.R.COLLEGE POST
BANGALORE-560 029.
REPRESENTED BY ITS PRESIDENT
SRI.C.MANJUNATH
AGED ABOUT 50 YEARS
SON OF SRI CHIKKAAPPAYANNA.

....APPELLANT

(BY SRI.S.PARTHASARATHI, ADVOCATE)

AND

THE DIRECTOR OF INCOME TAX
(EXEMPTIONS)
3RD FLOOR, CR BUILDINGS

QUEENS ROAD
BANGALORE-560 001.

...RESPONDENT

(BY SRI. K.V.ARAVIND, ADVOCATE)

THESE APPEALS ARE FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, TO SET ASIDE THE ORDERS PASSED BY THE ITAT BANGALORE IN ITA NOs.301 AND 302/BNG/2009, DATED 30.09.2009, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19TH FEBRUARY 2016, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **S.SUJATHA J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are preferred by the Assessee, challenging the Order of the Income Tax Appellate Tribunal, 'A' Bench, Bangalore, ['Tribunal' for short], raising the following substantial questions of law.

"i) The Appellant trust having object for advancement of general public utility which is evident from the object clause of the trust, whether the Tribunal was justified in holding that the trust was only for the benefit of milk producers societies and more of mutual concern and not a charitable entity by upholding the denial of registration under Section 12A

and recognition under Section 80G of the Act?.

ii) Assuming that the Appellant was constituted for the benefit of milk producers societies, can it be said to be a mutual concern and not charitable as held by the Tribunal without appreciating the ratio laid down by the Supreme Court in Ahmedabad Rana Caste Association Vs. CIT (1971) 82 ITR 704?.

iii) Whether the mere fact that the trust having not carried on all objects of the trust, being the first year of existence, can the Tribunal conclude that the trust was not constituted for charitable purpose to uphold the denial of registration under Section 12A and consequently denial of recognition under Section 80G(5)(vi) of the Act?"

2. The Appellant is a Trust and applied to the Director of Income Tax [Exemptions], respondent herein, for grant of registration under Section 12A of the Income Tax Act, 1961, [‘the Act’, for short] and also for grant of recognition under Section 80G[5][vi] of the Act. The respondent rejected the application holding that the Trust exists not for general public or a section of general public, but for the benefit of its Members. Aggrieved by

the Order of the respondent, the appellant preferred appeals before the Tribunal. The Tribunal rejecting the contentions of the appellant dismissed the appeals holding that the Appellant-Trust emerges out from the Members involved in a particular commercial activity and exists mainly for the purpose of the well being of the Members of a particular trade/occupation on mutuality concept and there is no enduring benefit to the general public.

3. Heard Mr. S. Parthasarathi, learned Counsel for the Appellant-Assessee and Mr. K.V. Aravind, learned Counsel appearing for the Revenue and perused the material on record.

4. The Tribunal has extracted the main objectives of the Trust at paragraph 7.1 of the Judgment which reads as under:

“1) The benefit of the project or scheme shall flow to the public in general or to individuals belong to the economically weaker sections of the society;

II) The applicant has the necessary expertise, personnel and other facilities for efficient implementation of the project or scheme;

a) Construction and maintenance of drinking water projects in rural areas and in urban slums, including installation of pump-sets, digging of wells, tube-wells and laying of pipes for supply of drinking water;

b) construction of dwelling units for the economically weaker sections;

c) Construction of school buildings primarily for children belonging to the economically weaker sections of the society;

d) Establishment and running of non-conventional and renewal sources of energy systems;

e) Any other programme for uplift of the rural poor or the urban slum dwellers, as the National Committee may consider fit for support;

f) Promotion of sports;

g) Establishment and running of educational institutions in rural areas, exclusively for and children up to 12 years of age;

h) Establishment and running of hospitals and medical facilities in rural areas, exclusive women and children up to 12 years of age;

i) Encouraging the production of bacteria induced fertilizers;

j) Construction of hostel accommodation for woman or handicapped individuals or individual who are of the age of 65 years or more;

k) Establishment and running of Institutions imparting education in the field of engineering, medicine in rural areas or towns which consists of population of less than 5 lakhs; etc.

l) Plantation of softwood on degraded non-forest land;

m) Any programme of conservation of natural resources or of afforestation;

n) Relief and rehabilitation of handicapped individuals.”

5. However, while coming to a conclusion, the

Tribunal has relied on the other objectives of the Trust which reads thus:

“To provide educational facilities and medical services (prevention disease including immunization) to the members of

the Milk Producers societies and their family members as also to the employees of the societies.

(3) To establish educational institutions and hospitals, to promote education and safeguard the health of the milk producers and their families and also the employees of the societies.

(4) To open shops to sell stationary items and from the income derived out of the business will be utilized for the activities of the trust.

(5) To take up the work for the benefit of the producers and their families and also the employees of the societies through the trust and to decide the other matters relating to the mutual interest of the members.

(6) To run the hospitals having inpatient, out-patient, pharmacy laboratory and medical store facilities;

(7) to organize rural development programmes apart from all other activities supporting the aforesaid objectives.

8) To render financial assistance from the Trust to the family (husband/wife) of the deceased in the event of death of any milk producer /member.

(9) in the event of death of the cattle of the milk producers/members by

consuming poison/accident /thunder/fire to provide appropriate financial compensation through trust by treating the same as a special circumstance.”

6. The application for registration under Section 12A of the Act is rejected by the respondent and confirmed by the Tribunal, placing reliance on the other objectives of the Trust cited supra and the preamble of the Trust Deed which reads as under:

“WHEREAS, the SETTLOR/EXECUTOR with an intention to safeguard the interests of the Milk Producers and the employees of the Milk Producers Co-operative Societies of the District and to help the Milk Producers, has come forward to constitute this Trust to safeguard the interests and to promote the health and education of the Member Milk Producers, their families/dependant children and the employees working in the Milk Producers Co-operative and their families/dependant children.”

7. To ascertain the true nature/purpose of the Trust, the objectives have to be considered as a whole, not in isolation. The Tribunal cannot pick and choose certain objectives ignoring the main objectives. It

appears that the respondent and the Tribunal are influenced by the preamble in the Trust Deed. Preamble cannot control the main objectives of the Trust.

8. The Appellant-Trust would have started with an intention to safeguard the interest of the Milk Producers and the Employees of the Milk Producers Co-operative Societies of the District and to help the Milk producers. But, that intention of the Settlor/Executor would not decide the nature of the Trust whether it is for charitable purposes or not. A conjoint reading of the objectives i.e., the main objectives of the Trust enumerated at paragraph-2 of the Trust Deed and the other objectives of the Trust at paragraph-3 of the Trust Deed would indicate that the Trust is created for charitable purpose or not.

9. While considering the case of the Trust created for the benefit of Rana Caste or community of

City of Ahmedabad, the Apex Court in '**AHMEDABAD RANA CASTE ASSOCIATION Vs. COMMISSIONER OF INCOME TAX**' reported in **[1971] 82 ITR 0704** has held thus:

"It is well settled by now, and the High Court also has rightly taken that view, that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose, it is not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present."

10. Applying the principles laid down in the case of **AHMEDABAD RANA CASTE ASSOCIATION** [supra], we are of the considered opinion that the other objectives of the Trust may be to provide educational facilities and medical facilities to the Members of the Milk Producers Societies and their family members as also to the employees of the Societies, the main objective of the Trust as enumerated at paragraph-2 of the Trust Deed cannot be ignored.

11. Section 2[15] of the Act contemplates 'charitable purpose'. 'Charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The phrase 'any other object of general public utility' if, examined in the light of the Judgment in the case of **AHMEDABAD RANA CASTE ASSOCIATION** [supra], it is not necessary that the object should be to benefit of the whole of mankind or of persons in a Country or State. If it is distinguished from a specified individual and if it is to the benefit of section of the public, it has to be construed as charitable purpose. As such, the Order passed by the Tribunal is unsustainable.

12. In the given circumstances, we are of the considered opinion that the matter deserves to be reconsidered by the Tribunal regarding the purpose and

objectives of the Trust in the light of the Trust Deed and any other documents to be furnished by the Assessee.

13. Accordingly, without answering the questions of law raised in these appeals, we are restoring the matter to the Tribunal to consider the matter afresh in the light of the observations as aforesaid. All contentions are left open to the parties.

14. In the result, the appeals are allowed to the extent indicated above.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AN/-