D.B. CIVIL WRIT PETITION NO.4287/98

M/s. Mishrilal Gordhanlal Batra Charitable Trust

Vs.

Union of India and Anr.

Date of Order :: 6.12.2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Anjay Kothari, for the appellant.
Mr. K.K. Bissa, for the respondents.

Heard the learned counsel for the parties.

The petitioner has challenged the order dated 25.9.1998 passed by the Commissioner, Income Tax, Udaipur (Annex.-9) whereby the application of the petitioner Trust for renewal of exemption under Section 80G was refused interalia on the ground that in one of the object of the Trust Deed the construction of temples etc. was included though notwithstanding such inclusion in object clause, no temples in fact have been constructed by it so far nor any expenditure of religious activities has been incurred by the petitioner Trust but because of the said object the Trust was held to be having partly for religious purposes.

Learned counsel for the petitioner has invited our attention to number of decisions to urge that it is substance of the objects of the trust in totality and the principal activity of the trust only should be taken into consideration and merely because as one of many activities have been stated to be construction of the Trust which in fact is not the basic purpose of formation of the Trust, should not be sole criteria of rejection of application. He also relied on the amendment brought in Section 80G by inserting sub-section (5B) of Section 80G by the Finance Act, 1999 w.e.f. 1.4.2000 which was in consonance with the submissions made by the learned counsel for the petitioner which inter alia provided an over-ridding provision that where an institution or fund which incurs expenditure in the relevant year which is of religious nature for an amount not exceeding 5% of its total income in that previous year then for that previous year, the institution or fund shall be deemed exempted under Section 80G by deeming it to be so.

On this premise learned counsel for the petitioner further urges that in view of this provision, every year the Commissioner has to consider the ratio between total income of the trust and expenditure actually incurred for religious purposes and only if the substantive part of the income, that is to say more than 5% of total income is incurred for religious purposes the registration of trust / fund under Section 80G can be refused on that ground.

With this premise, it is further submitted by the learned counsel for the petitioner that the petitioner shall be satisfied if the writ petition is disposed of with the direction to the Commissioner to consider the case of the petitioner Trust for renewal of its registration with effect from the insertion of sub-section (5B) uninfluenced by the impugned order of rejecting the renewal for assessment year 1995-2000. In other words, the petitioner's application for renewal w.e.f. 1.4.2000 should be considered keeping in view of sub-section (5B) of Section 80G.

These submissions appear to be justified in the light of the aforesaid provision.

Accordingly, the writ petition is disposed of with the direction that the petitioner's applications' for renewal of registration w.e.f. 1.4.2000 under Section 80G may be considered by the Commissioner independent of the impugned order dated 25.9.1998 keeping in view the provision of sub-section (5B) of Section 80G.

No costs.

[BHANWAROO KHAN],J.   [RAJESH BALIA],ACTG.CJ.

RM/