**IN THE INCOME TAX APPELLATE TRIBUNAL,**

**DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER**
**AND**
**SHRI KULDIP SINGH, JUDICIAL MEMBER**
**[Through Video Conferencing]**

**ITA No.2244/Del/2018**
**Assessment Year: 2018-19**

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| **ICRW Group Gratuity Trust C-59, Ground Floor, South Extension, Part-II, New Delhi PAN No. AABTI3510L** | **Vs.** | **CIT (Exemption) New Delhi** |
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| **(Appellant)** | | **(Respondent)** |

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| **Appellant by** | Ms. Hasneeta, CA |
| **Respondent by** | Ms. Sunita Singh, CIT DR |

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| Date of hearing | 27.09.2021 |
| Date of pronouncement | 21.10.2021 |

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 27/02/2018 passed by the Ld. Commissioner of Income-Tax(Exemption), Delhi [in short the Ld. CIT(E) ] rejecting the application of the assessee for registration under section 12AA of the Income Tax act, 1961 (in short the Act). The grounds raised by the assessee are reproduced as under:

> *1. That the CIT (E) has erred in law in not granted registration U/S 12A of the Income Tax Act 1961, to the Appellant.*
>
> *2. The CIT (E) has not considered that the activities of the Appellant are charitable in nature and conducted to support the activities of International Center For Research On Women which is the its self a section 25 company under companies act 1956 and engaged in charitable activities and has been granted registration U/s 12 A of the Act.*
>
> *3. The Appellant craves leaves to add, alter or modify the aforesaid ground and craves leaves to file additional grounds.*

2. Briefly stated facts of the case are that M/s International Centre for research on Women Ltd. ('ICRW') is a non-profit organisation with the object of promoting social and economic development with women's full participation and is incorporated as a limited company under section 25 of the Companies Act, 1956. The said

company is registered for the purpose of section 12AA and section 80G of the Act. The provisions of Payment of Gratuity Act, 1972 are applicable in the case of 'ICRW' and therefore to protect the financial interest of its employees, the 'ICRW' setup this trust namely 'ICRW Group Gratuity Trust' i.e. the assessee. This trust applied for online application on 23/08/2017 in form No.10A before the Ld. CIT(E) for seeking registration under section 12AA of the Act. The assessee filed trust deed and another documents as desired by the Ld.CIT(E). After examination of objects of the trust, the Ld.CIT(E) observed that trust's aims and objectives is only for the worker/employee of the 'ICRW' and does not appear to be for general charitable purpose. The Ld. CIT(E) accordingly rejected the application of the registration under section 12AA of the Act.

3. Before us, the Ld. Counsel of the assessee submitted that

(i) the ICRW is a non-profit organisation and already registered under section 12A and 80 G of the Act.

(ii) The assessee trust has been formed for benefit of it's employees. The amount of gratuity will be set aside by the 'ICRW' for the payment of the gratuity to the employees of the 'ICRW' and the interest received on the said amount shall also be payable to the said employees. There will be no income besides interest in the assessee trust.

(iii) Relied on the decision of Hon'ble Supreme Court in the case of the Ahmedabad Rana Caste Association (1971) 82 ITR 704 (SC) wherein it is held that to serve a charitable purpose, it is not necessary that object should be to benefit the whole of the mankind or all persons in a particular country or state and it is sufficient if the intention to benefit section of the public as distinguished from a specified individual is present.

(iv) Also relied on the decision of Hon'ble Gujarat High Court in the case of Hiralal Bhagwati Vs CIT (2000) 246 ITR 188 (Guj) wherein the Hon'ble court held that trust formed for the benefit of employee shall also be entitled for benefit of 80G and 12A registration.

4. On the contrary, the Ld. DR relied on the order of the Ld. CIT (exemption) and submitted that payment of gratuity is a statutory requirement of a company and creating a trust for discharging said statutory requirement of a company cannot be a charitable activity. A company by way of contributing to Gratuity Fund has delegated its

responsibility of paying gratuity to employees at the time of their superannuation and thus the group gratuity fund trust, is discharging duty of company namely 'ICRW' which is not in the nature of any welfare or medical facility to the employees, as held in the case of Hiralal Bhagwati (supra). She distinguished the decision in the case of Ahmedabad Rana caste Association (supra) and submitted that in said case the activity of the trust was for the welfare of section of the society, but in instant case instead of activity of welfare of employees, it is a statutory duty of the ICRW, is being carried out by the assessee.

5. We have heard rival submission of the parties on the issue in dispute and perused relevant material on record. As per section 12AA(1)(b) of the Act, for registering the trust or institution, the competent authority must satisfy about the object of the trust or institution and genuineness of its activities. As per section 12AA(1)(a)(ii) of the Act, the competent authority may satisfy about the compliance of such requirement of any other law for the time being in force by the trust or institution, as material for the purpose of achieving its objects. In the case before us, the application for registration under section 12AA of the Act has been rejected by the appropriate authority on the

ground that object of the trust is only for the benefit of worker/employee of the company who has created the trust and does not appear to be for the general charitable cause.

6. The assessee has filed a copy of trust deed before us, which is available from page 6 to page 18 of the paperbook.

7. On perusal of the trust deed we find that the managing director of the company 'ICRW', is the managing trustee of the assessee trust. On page 8 of the paperbook, the object of the trust have been recorded as under:

> 3. *OBJECTS OF THE TRUST:*
>
> *a) To protect and hedge tire financial interest of ail the workers/employees which are working for ICRW with the object of making payment to them of the gratuity amount in accordance with the provisions of the Act;*
>
> *b) To receive the amount of grant, donation or the share of amount from ICRW for the purpose of making payment to the employees of the gratuity amount in accordance with the provisions of the Act;*
>
> *c) To contribute the respective amount of the fund required for creating a corpus that can be utilised for the purpose of making payment to the employees of the gratuity' amount in accordance with the provisions of the*

*Act;*

*d) To enter into arrangements/agreements with the approved Insurance companies for insuring the payment of the gratuity amount to the employees*

*e.) To do all such act{s)which is consequential or incidental to the aforesaid objects."*

8. In the case of Ahmedabad Rana caste Association (supra) Hon'ble Supreme Court held as under:

*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. This Court in Commissioner of Income tax, Madras v. Andhra Chamber of Commerce(l) overruled the view of Beaumont C.J. in Commissioner of Income tax v. Grain Merchants' Association of Bombay(2) on the point. It was, however, observed that the section of the community sought to be benefitted must be sufficiently defined and identifiable by some common quality of a public or impersonal nature. Where there was no common quality uniting the potential beneficiaries into a class the trust might not be regarded as valid. In the various orders the clause relating to the beneficiaries has not been clearly and accurately set out. In the petition of appeal dated October 7, 1968 the* *provisions of the constitution of the assessee are set out and with reference to The community it is stated, "Rana community means natives of Ahmedabad only and the other community brothers accepted by the community as per old rules of the community staying in Ahmedabad". It is common ground that the word " old rules" do not represent the correct translation of the original word in Gujarati which is Riwaj meaning custom. The learned judges of the High Court also, who are conversant with that language, have proceeded on the basis that the correct rendering of the aforesaid word is custom or usage. That is why according to the High Court the definition comprises two classes of members of Rana caste residing in Ahmedabad, one class consisting of those who are natives of Ahmedabad while the other class consists of such persons who are admitted by the Rana caste according to the old custom or usage of the community. The reason which prevailed with the High Court for treating the second class as not being united with the first class by a common characteristic or attribute was that its members have to be accepted by the community according to the old custom or usage and that the entry of the members of this class into the Rana caste residing in Ahmedabad was dependent on the decision of the caste to (1) 55 I.T.R. 722. (2) 61.T.R. 427.*

*admit them. We are altogether unable to concur in the approach or the conclusion of the High Court on the above point.*

*We may usefully refer to the judgment of Lord Greene M.R. in re Compton, Powell v. Compton & Others(l). The Master of Rolls* *declared that no definition of what was meant by "a section of the public" had, so far as he was aware, been laid down. But he indicated that the trust of a public character is one in which the beneficiaries do not enjoy the benefit when they receive it by virtue of their character as individuals but by virtue of their membership of a specified class the common quality, uniting potential beneficiaries into the class being essentially an impersonal one. This common quality he said was "definable by reference to what each has in common with the others and that is something into which their status as individuals does not enter". Andrew, L.C.J. accepted this statement of law without hesitation in Trustees of the Londonderry Presbyterian Church House v. Commissioners of Inland Revenue(2). What has to be seen in the present case is whether the members of the Rana caste who are not natives of Ahmedabad but who come to reside there and are accepted as members of that caste according to its usage and customs can be said to have a relationship which is an impersonal one dependent on their condition as members of the Rana community. We are unable to comprehend how such members of the Rana caste can be regarded as having been introduced into that caste by consideration of their personal status as individuals. As a matter of fact the predominant content and requirement of the clause defining "beneficiaries" in the constitution of the assessee is the factum of their belonging to the Rana community of Ahmedabad. The common quality, therefore, uniting the potential beneficiaries into the class consists of being members of the Rana caste or community of Ahmedabad* *whether as natives or as being admitted to that caste or community under custom or usage. The mere fact that a person of the Rana community who is not an original native of Ahmedabad has to prove his credentials according to the custom and usage of that community to get admitted into that community cannot introduce a personal element. In Oppenheim v. Tobacco Securities Trust Co. Ltd. & Others(l) the trustees were directed to apply certain income in providing for the education of children of employees or "former employees" of a British limited company or any of its subsidiary or allied companies. It was held by the House of Lords by a majority that though the group of persons indicated was numerous, the nexus between them was employment by particular, employers and accordingly the trust did not satisfy the test of public*

*(1) [1945] Ch. 123.*

*(3) [1951] A.C. 297.*

*(2) 27 T.C. 431.*

*750 benefit requisite to establish it as charitable. This is what Lord Simonds observed -*

*"A group of persons relationship which takes a group nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes".*

*The personal element of personal relationship which takes a group out of sestion of the community for charitable purposes is* *of the nature which is, to be found in cases of the aforesaid type. We cannot possibly discover a similar element of personal nature in the members of the Rana community who settle in Ahmedabad and have been accepted by the Rana community of that place as members of that community. As regards the acceptance of such persons as members of the community or caste, according to custom and usage, it is well known that whenever a question arises whether a person belongs to a particular community or caste the custom or usage prevailing in that community must play a decisive and vital part. That cannot be regarded as an element which would detract from the impersonal nature of the common quality.*

*For the reasons given above the appeals are allowed and the answer returned by the High Court is discharged. The matters are remitted to the High Court for returning the answer to the question referred after determining the,- other points which were left undecided. The parties shall bear their own costs in these appeals. Appeals by certificate (i.e. CAs. 2146-2148 of 1968) are dismissed, the certificate being defective for want of reasons.*

9. In the case of Hiralal Bagwati (supra), the trust was created for the benefit of employees of the 16 institutions with the object of providing aid in case of sickness and disablement. The Hon'ble High Court following the decision of Hon'ble Supreme Court in the case of Ahmedabad Rana

caste Association (supra) held that an object beneficial to a section of the public is an object of general public utility.

10. In view of the above decisions, the registration of the assessee trust cannot be rejected merely on the ground that it is for the benefit of a restricted group of employees of the company 'ICRW'. However, we find some merit in the argument of the Ld. DR that trust has been engaged in discharging the statutory obligation of the company "ICRW' of making gratuity payment to their employees. But in this regard the competent authority has not examined the activities actually carried out by the trust, sources of funds and how the same are distributed to the employees, whether by way of creating the trust, the company is getting some benefit of saving of money, whether any activity of welfare of the employees other than making gratuity payment has been carried out by the trust etc. The assessee has also not filed any information with regard to its activities before us. Therefore, examining those issues need enquiry at the end of the Ld.CIT(E). In view of the above facts and circumstances and the interest of substantial justice, we feel it appropriate to restore this issue back to the Ld. CIT(E) for re-examination of the application of the assessee trust as per the provisions of

the law, in the light of the decision of the Hon'ble Supreme Court in the case of Ahmedabad Rana caste Association (supra) and the decision of the Hon'ble High Gujrat of in the case of Hiralal Bhagwati (supra). We accordingly order so. It is needless to mention that adequate opportunity of being heard shall be provided to the assessee. The grounds of the appeal of the assessee are allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 21.10.2021.**

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| Sd/- | Sd/- |
| **(KULDIP SINGH)** | **(O.P. KANT)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 21.10.2021
*Neha*
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

| Sl. No. | Particulars | Date |
|---|---|---|
| 1. | Date of dictation: | 21.10.2021 |
| 2. | Date on which the draft of order is placed before the Dictating Member: | 21.10.2021 |
| 3. | Date on which the draft of order is placed before the other Member: | 21.10.2021 |
| 4. | Date on which the approved draft of order comes to the Sr. PS/PS: | 21.10.2021 |
| 5. | Date of which the fair order is placed before the Dictating Member for pronouncement: | 21.10.2021 |
| 6. | Date on which the final order received after having been singed/pronounced by the Members: | 21.10.2021 |
| 7. | Date on which the final order is uploaded on the website of ITAT: | 21.10.2021 |
| 8. | Date on which the file goes to the Bench Clerk | 21.10.2021 |
| 9. | Date on which files goes to the Head Clerk: | |
| 10. | Date on which file goes to the Assistant Registrar for signature on the order: | |
| 11. | Date of dispatch of order: | |