IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 852 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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PR. COMMISSIONER OF INCOME TAX(EXEMPTIONS)....Appellant(s)

Versus

DAWOODI BOHRA MASJID....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

MR. HARDIK V VORA, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 06/02/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This appeal is filed by the department challenging the judgment of Income Tax Appellate Tribunal dated 2.3.2017. Following question is raised for our consideration :

   "Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal is correct in allowing the appeal of the assessee by holding that looking to the nature of trust no separate trust deed is required as the assessee trust is registered with the Gujarat State Waqf Board as per Bombay Public Trust Act, 195, whereby the Appellate Tribunal ignored that fact that as per Rule 17A of the Income Tax Rules 1962, the applicant is required to produce the original Certificate of Registration, Memorandum of Association and Rules and regulation of the society for verification and in the absence of same the application seeking registration u/s. 12AA of the Act cannot be entertained?

2. Brief facts are as under. The respondent is a Wakf duly registered with the Gujarat State Wakf Board. The respondent applied for registration under section 12AA of the Act. Along with the application for registration, certain documents were produced which included an order dated 20.11.1999 passed by Gujarat State Wakf Board recognising various Daudi Vohra Shiya trusts as registered under the said Board. It also included an annexure which

gives the details of data and number of registration, name of the trust, names of Mutawalli and managers of the trust, objects of the trust and the manner of appointment of Mutawallis.

3. The Principal Commissioner of Income-tax at one stage rejected the application on the ground that the respondent did not have a registered trust deed. The Income Tax Appellate Tribunal remanded the proceedings for fresh consideration by the authority by giving further opportunity. Once again the Commissioner by an order dated 31.3.2015 rejected the application on the ground that the respondent instead of submitting the copy of the trust deed had merely submitted a copy of the order passed by the Gujarat State Wakf Board which cannot be substituted for a trust deed. The matter once again reached the Tribunal. The Tribunal by the impugned judgment allowed the appeal of the assessee as under :

"6. We have heard both the sides and perused the material on record. We noticed that the assessee trust is based on religious tenets under the Quran and according to the religious faith of Islam. Further we noticed that assessee trust has been received with the Gujarat State Wakf Board as per Bombay Public Trust Act, 1950. As per the object of the Wakf surplus income after meeting the administrative expenses and repair work of wakf assets would be used for all the purposes(Religious or charitable). We have noticed that The Wakf Act, 1950, applicable for all over Gujarat State and as per the provision of this act Gujarat state Wakf Board has registered the assessee trust since 1992. We have gone through the registration detail mentioned under the particulars as wakf name and address, Shiya and Sunni, Mutvalli/Manager's name and address, Objects of the Waqf, how to appoint manager and address of Wakf etc.. We observed that the above mentioned information and documents indicate the existence of trust as per the registration certificate of Gujarat State Wakf Board which certify the object of the trust, appointment of managers etc. as elaborated above in this order, therefore, we considered that looking to the nature of trust no separate trust deed is required. In view of above mentioned facts and legal findings, we do not justify the decision of DIT(E) to reject the application of the assessee trust u/s. 12M of the act therefore, the appeal of the assessee is allowed."

4. Learned counsel for the Revenue contended that the assessee failed to produce a registered trust deed though opportunity was granted by the Commissioner, This was therefore, in breach of rule 17A of the Income Tax Rules, 1962.

5. On the other hand, learned counsel Shri Vora for the respondent submitted that rule 17A nowhere requires production of a registered trust deed. The respondent is an old trust and is duly registered by the Gujarat State Wakf Board. The documents in support thereof were produced. Counsel also relied on the judgment of Madhya Pradesh High Court in case of **Laxminarayan Maharaj v. Commissioner of Income-tax** reported in (1984) 150 ITR 465 (Madhya Pradesh),

6. From the materials on record, it can be seen that the Tribunal had gone through the registration details of the respondent trust contained in the order of Wakf Board and was satisfied that full details of the functions of the trust

were available which would establish the existence of the trust, its registration by the Gujarat State Wakf Board which also contained details of objects of the trust, manner of appointment of Mutawalli etc.

7. Clause (a) of rule 17A of the Income Tax Rules requires that the application of registration under section 12A of a charitable or religious trust or institution would be accompanied by the following documents namely, where the trust is created or the institution is established, under an instrument, the instrument in original and where the trust is created or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution. Thus rule 17A nowhere envisages the existence of a trust deed or its registration. The factum of existence of trust can also be established by producing documents evidencing the creation of the trust. This is precisely what has been done in the present case. The order passed by Wakf board dated 20.11.1999 recognises various Daudi Vora trust and in case of present assessee also enlisted the objects of the trust, who would be the managers of the trust and how such managers would be appointed or removed.

8. Madhya Pradesh High Court in case of **Laxminarayan Maharaj**(supra), noted that the assessee was a public religious trust which was created more than 100 years back but not under any instrument or document. The assessee had filed application for registration under section 12A of the Act along with which it had produced revenue

records relating to the lands held by the trust and orders relating to assessment of property tax and affidavits and declaration of citizens in support of the existence of the trust. The High Court overruled the decision of the commissioner rejecting the application holding that the trust is created can be established by producing constructive and evidencial documents. If the trust is created under an instrument, rules require production of documents. However, when the trust is not created, it is impossible to produce any such documents. Hence the rule requires production of evidential documents.

9. In the result, tax appeal is dismissed.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

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