



\$~5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

DECIDED ON: 04.03.2014

+

ITA 1359/2009

DIRECTOR OF INCOME TAX Appellant
 Through: Mr. Rohit Madan with
 Mr. P. Roychoudhry and Mr. Akash Vajpai,
 Advocates.

versus

THE GURU HARKISHAN MEDICAL TRUST Respondent
 Through: Ms. Rashmi Chopra, Advocate for
 Committee.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. This appeal under Section 260A of the Income Tax Act, 1961 (*“the Act”*), is preferred by the revenue, against an order dated 20.11.2008 of the Income Tax Appellate Tribunal (*“ITAT”*) whereby the DIT (Exemption) was directed to grant registration to the assessee under Section 12A of the Act. The ITAT held that Section 24 (iv) of the Delhi Sikh Gurudwara Act, 1971 empowered the Delhi Sikh Gurudwara Management Committee (*“the Committee”*) to constitute a trust for effecting one of its aims and objectives, i.e. provision of medical treatment.



2. The brief facts are that the Committee is constituted under the Act; it had constructed a hospital at Gurudara Bala Saheb. During the hospital's construction, the Committee's President proposed, by a letter dated 4th May, 2006, that the hospital be managed by an independent trust settled by the Committee, whose trustees would be decided upon by the Committee itself. The proposal was accepted, and accordingly, the Guru Harkishen Medical Trust, the respondent herein ("*the Trust*"), was created. A trust deed dated 3rd May, 2007, was drawn up, by which the Committee was described as the settler. The Deed also stated that the Committee was running a number of charitable institutions, and that it was interested in establishing a specialty hospital to provide medical services at affordable rates. The Deed further stated that the trust is being established to run and operate the hospital either by itself or in collaboration with other organizations with experience and expertise in this field. The deed also indicates that to fulfil these objectives, a sum of Rs. 1 lakh had been settled to the trustees. The trust deed further states that:

“to effectuate the said desire, the Settlor has made over the said specialty hospital buildings being constructed at Gurudwara Bala Sahib, New Delhi, to hold the same together with all other properties that may be acquired out of the same or otherwise and may hereinafter in pursuance of the said desire and for carrying out such desire into effect the Settlor doth hereby grant, transfer and assign upto the trustees only the rights to manage



said specialty hospital building along with all other movables, such as plant, machinery, equipments, etc. and to have and to hold the said specialty hospital unto the trustees but upon and subject to the trust's powers and provisions hereinafter declared and expressed of and concerning the same."

3. Clause 8 states that the aims and objects of the trust are to do welfare activities for the benefit of public at large, and more specifically for economically poorer sections of the society, physically challenged persons, persons suffering from any type of physical or mental ailments, old age persons, economically poor students or children in particular, without any profit motive. Further, Clause 35 declares that none of the trust fund or property or its income shall be applied for any other purpose which is not consistent with the aims and objects of the Trust and the provisions of the deed shall be construed accordingly. The Trust, after its constitution, entered into a collaboration agreement with Manipal Health Systems Pvt. Ltd., in terms of which the hospital was to be run by the latter, with a certain part of the revenue paid to the Trust.
4. The Trust filed an application in Form 10A, dated 7th July, 2007, seeking registration under Section 12A of the Act, which exempted income earned by the trust. The DIT (Exemption) rejected the application, on the ground that the Delhi Sikh Gurudwara Act, 1971, especially Section 24, concerning the powers of the Committee, did not empower the Committee to create a trust. A show-cause notice was earlier issued to the



appellant on this issue, and two replies – dated 28th and 29th January, 2008 – were filed and disposed off by the DIT (Exemption). Since the creation of the trust itself was contrary to law, registration under Section 12A was denied. Section 24 reads as follows:

“24. Powers and functions of the Committee. Subject to the provisions of this Act and the rules made thereunder, the control, direction and general superintendence over all the Gurdwaras and Gurdwara property in Delhi shall vest in the Committee, and it shall be the duty of the Committee-

- (i) to arrange for the proper performance of the religious rites and ceremonies in the Gurdwaras,*
- (ii) to provide facilities for worship by the devotees at the Gurdwaras,*
- (iii) to ensure safe custody of its funds, movable and immovable properties, deposits, offerings in cash or kind,*
- (iv) to do all such things as may be incidental and conducive to the efficient management of the affairs of Gurdwaras, educational and other institutions under the Committee and their properties or to the convenience of devotees,*
- (v) to provide suitable accommodation and facilities for pilgrims,*
- (vi) to maintain free langars,*
- (vii) to manage the historic and other Gurdwaras, educational and other institutions and their properties in such a way as to make them inspiring centres of the Sikh tradition, culture and religion,*
- (viii) to ensure maintenance of order, discipline and proper hygienic conditions in Gurdwaras, educational and other institutions under its management,*
- (ix) to open free dispensaries,*
- (x) to spread education, especially the knowledge of Punjabi, in Gurmukhi script,*



(xi) to establish educational institutions, research centres and libraries.

(xii) to render financial assistance to religious and educational institutions, societies and needy persons,

(xiii) to give stipends to needy and deserving students,

(xiv) to render help in the case of the uplift of the Sikh community and propagation of Sikh religion,

(xv) to perform such other functions and to do such religious or charitable acts, as may be prescribed by regulations for carrying out the purposes of this Act.

5. The Trust carried the matter in appeal to the Income Tax Appellate Tribunal, which reversed the decision, and held that the Committee did have such powers under sub-clause (iv) of Section 24. The Revenue impugns this decision of the ITAT in the present proceedings, arguing that the powers outlined in Section 24 are specific and exhaustive, such that the creation of a trust and transfer of property are not contemplated to lie within the powers of the Committee, which – as a creation of statute – cannot exceed the permissible limits.
6. Learned counsel for the Revenue has drawn the attention of the Court to CS 252/2012 in the Patiala House Court, by which this very issue – concerning the legality of the Trust – was agitated and decided by a Civil Judge, holding that the establishment of the trust was illegal and contrary to law. There is no dispute today that if the creation of the Trust is held to be illegal, no exemption can be granted under Section 12A. The dispute between the parties before the ITAT concerned the question of its legality vis-à-vis the powers of the Committee under Section



24. Given this development, i.e. the issue concerning the legality of the Trust having been decided in a civil proceeding instituted for that purpose, and a judgment *in rem* having been delivered, this Court is of the opinion that the matter, as regards the present proceedings, stands decided, subject to any further appellate interference with the decision of the Civil Judge. There is no mandate to question or re-appreciate the decision of the Civil Judge in the present proceedings under the limited domain of the appeal under the Income Tax Act, 1961.

7. Furthermore, even on an independent consideration of the facts in this case, it is evident that the Committee is a creation of the statute; its functions – in the nature of obligations, or duties, are outlined in Section 24 of the Act. The reliance placed by ITAT on Section 24 (iv) of the Act, in this court's opinion, is misplaced. That empowers the Committee to do all incidental acts and things necessary to carry out the duties of the Committee itself under section 24 (ix) one of the duties of such committee is to establish and manage "free clinics"; Section 24 (xi) enables the maintenance of "*research centres*". Neither Section 24 nor Section 40 (which empowers the Committee to frame regulations) enables the Committee to efface their duties and create other entities for carrying out their functions. Even more importantly, such creations cannot do what Committees are not permitted to perform, i.e utilize Committees' properties or monies through the device of trusts and societies, to engage in indirect commercial activity, - which the trust was authorized



and created to indulge in the present case. As a consequence, the ITAT clearly fell into error in holding that the Act permitted the Committee to enter into the agreement which enabled it to set up a joint venture for a hospital, on revenue sharing basis. Clearly such trust was *ultra vires* the Committee's powers and beyond its statutory mandate.

8. Accordingly, for the above reasons, this appeal has to succeed. The order of the ITAT is hereby set aside, and the denial of exemption under Section 12A by the DIT (Exemptions) is restored. There shall be no order as to costs.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

MARCH 04, 2014

