
(2008) 218 CTR 30 : (2008) 307 ITR 226 : (2008) 4 RLW 2889

Rajasthan High Court

Case No: None

Umaid Charitable Trust

APPELLANT

Vs

The Union of India
(UOI) and Others

RESPONDENT

Date of Decision: May 2, 2008

Acts Referred:

COMPANIES ACT, 1956 " Section 25#Constitution of India, 1950 " Article 25#Income Tax Act, 1961 " Section 1, 10, 11, 12, 12A

Citation: (2008) 218 CTR 30 : (2008) 307 ITR 226 : (2008) 4 RLW 2889

Hon'ble Judges: Vineet Kothari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Vineet Kothari, J.

This writ petition has been filed by the petitioner Umaid Charitable Trust, Pali being aggrieved by the order passed by

the Commissioner of Income Tax-I, Jodhpur dated 16.12.2004 refusing to renew the registration of exemption of the petitioner - Trust by the

impugned order passed u/s 80G(5(vi) of the Income Tax Act, 1961. According to the said order, exemption certificate granted to the petitioner

Trust u/s 80G of the Act by order dated 20.3.2002 was effective for a period from 1.4.2001 to 31.3.2004 and the petitioner - Trust by

application for renewal of said exemption on the prescribed form No. 10G on 23.8.2004. However, the learned Commissioner found that in

income and expenditure statement of the trust for the period ended on 31.3.2004, the trust had spent a sum of Rs. 20,000/- for repairing and

colouring of Lord Vishnu's temple out of its total income for the said previous year of Rs. 26,727/- and therefore since the petitioner - Trust had

incurred expenditure exceeding 5% of its total income of that year on a particular religion, according to the learned Commissioner, the said Trust

was not entitled to renewal of exemption u/s 80G of the Act as per provisions of Section 80G(5)(B) of the Act and therefore, following the

decision of Hon'ble Supreme Court in the case of Upper Ganges Sugar Mills Ltd. Vs. Commissioner of Income Tax, Calcutta, the learned

Commissioner rejected the said application for renewal.

2. The petitioner approached this Court by way of present writ petition being aggrieved of the said order.

3. Mr. Mahendra Gargeiya learned Counsel for the petitioner urged that petitioner - trust is wholly a charitable trust and the object clause of the

said trust-deed clearly shows that said trust had undertaken activities of charitable nature and it is not meant for any particular religion and

therefore, the learned CIT (A) has erred in rejecting the application for renewal of exemption u/s 80G of the Income Tax Act. He submits that said

expenditure of Rs. 20,000/- was by way of donation to another trust which carried out repair and renovation of Lord Vishnu's temple. He also

raised the contention that the said expenditure was out of accumulated fund of the said trust carried forward from last year and therefore, the

conditions of Section 80G(5) of the Act were not violated by the petitioner - trust. He relied upon the various judgments in support of his

contention.

4. On the side opposite, Mr. K.K. Bissa, appearing for the respondent Income Tax Department urged that since the petitioner - trust had spent

more than 5% of its total income for the previous year ending on 31.3.2004 for repair and renovation work of temple of a particular region i.e.

Hindu religion, the petitioner Trust had violated the condition of renewal and therefore, the learned Commissioner was justified in passing the

impugned order. He relied upon the judgment of Hon"ble Supreme Court in Upper Ganges Case (supra) along with two decision of this Court,

reference to which will be made hereinafter.

5. That before considering the various judgments on this aspect of the matter, it would be appropriate to reproduce the relevant provisions of

Section 80G of the Act to the extent the same are relevant for the controversy involved in the present case.

Deduction in respect of donations to certain funds, charitable institutions, etc.

80G. (1) ...

(2) The sums referred to in Sub-section (1) shall be the following, namely:

(a)(i) to (iiijh)

(iv) any other fund or any institution to which this section applies; or

(v) to (viii)(a) to (d)

(3) ...

(4) ...

(5) This section applies to donations to any institution or fund referred to in Sub-clause (iv) of Clause (a) of Sub-section (2), only if it is established

in India for a charitable purpose and if it fulfills the following conditions, namely:

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of Sections

11 and 12 or Clause (23AA) or Clause (23C) of Section 10:

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be

liable to inclusion in its total income under the provisions of Section 11 shall not apply in relation to such income, if-

(a) the institution or fund maintains separate books of account in respect of such business;

(b) the donations made to the institutions or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of

such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any

provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purposes other

than a charitable purposes.

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or

under any law corresponding to that Act in force in any part of India or u/s 25 of the Companies Act, 1956 (1 of 1956), or is a University

established by law, or is any other educational institution recognized by the Government or by a University established by law, or affiliated to any

University established by law, or is an institution financed wholly or in part by the Government or a local authority; and

(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in

accordance with the rules made in this behalf; Provided that any approval shall have effect for such assessment year or years, not exceeding (five)

assessment years, as may be specified in the approval.

(5A) Where a deduction under this section is claimed and allowed for any assessment year in respect of any sum specified in Sub-section (2), the

sum in respect of which deduction is so allowed shall not qualify for deduction under any other provision of this Act for the same or any other

assessment year.

(5B) Notwithstanding anything contained in Clause (ii) of Sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during

any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed

to be an institution or fund to which the provisions of this section apply.

5C...

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) ...

Explanation 1:...

Explanation 2:...

(i) ...

(ii) ...

Explanation 3:

In this section ""charitable purpose"" does not include any purpose the whole or substantially the whole of which is of a religious nature.

Explanation 4:....

Explanatin 5:....

6. The learned Counsel for the petitioner also relied upon Rule 11AA of the Income Tax Rules, 1962 particularly Sub-Rule 4 to 6 of the said Rule

11AA, which are reproduced hereunder:

Requirements for approval of an institution or fund u/s 80G.

(1) ...

(2) ...

(3) ...

(4) Where the Commissioner is satisfied that all the conditions laid down in Clause (i) to (v) of sub-section

(5) of Section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund

specifying the assessment year or years for which the approval is valid.

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in Clauses (i) to (v) of Sub- section 5 of Section 80G are not

fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing:

Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six

months from the date on which such application was made:

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner

under Sub-rule (3) shall be excluded.

7. Now a scrutiny of relevant case laws on the controversy involved in the present case is considered expedient at this stage. From the side of the

assessee - petitioner, following case laws are relied upon which are noticed with relevant extract from the same as below:

8. In Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, the Hon"ble Apex Court held that

where the main or primary objects are distributive, each and every objects must be charitable in order that the trust or institution may be upheld as

a valid charity. But if primary and dominant purpose of the trust is charitable, another object which by itself may not be charitable but which is

merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity. It was

observed that the primary and dominant purpose in the present case was promotion of commerce and trade in art silk etc., was an object of public

utility not involving the carrying on of any activity for profit within the meaning of Section 2(15); and that the assessee was entitled to exemption.

9. In CIT, Bombay City - V, Bombay v. K.H. Kusumgar (1988) 169 ITR 370 the Bombay High Court observed that where the object of a

charitable trust was, inter alia, imparting of education and encouragement and promotion of the study and practice of the Shewatamber Jain

Murtipujak religion amongst students of ashrams, boarding - houses, gurukuls, vidyalayas, pathshalas and shravikashramas and also amongst all

persons without distinction of sex, caste, creed, place or religion, a gift of immovable property made to such charitable trust could not be said to be

for a purpose the whole or substantially the whole of which was of a religious nature and the gift would be entitled to exemption u/s 5(1)(v) of the

Gift Tax Act.

10. In Tirumala Tirupathi Devasthanam Vs. Chief Commissioner of Income Tax and Another, , the petitioner institution maintained 10 temples and

22 educational institutions, peer home and bala mandir specified in Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments

Act, 1987. The petitioner provided free food, free accommodation, free transport to the pilgrims irrespective of caste and religion on the simple

declaration of faith in the Lord. The Hon"ble High Court, while allowing the writ petition and setting aside the order of the Commissioner of not

granting exemption to the petitioner and directing him to consider the application do novo in light of Hon"ble Court"s order, held that ""Section 80G

of the Income Tax Act, 1861, provides for deduction in respect of donations to certain funds and institutions. It applies to donations to any

institution or fund established in India for charitable purpose and if it fulfills the following conditions, namely the instrument under which the

institution is constituted does not or rules governing the institution or fund do not, contain any provision for the transfer or application at any time of

the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose. Sub-section 5 read with

Explanation 3 makes it clear that the Commissioner can refuse to grant recognition u/s 80G of the Act only in the event of finding that the claimed

charitable purpose includes any purpose the whole or substantially the whole of which is of a religious nature." It was held that in the present case

there was no such finding and hence the Commissioner ought not have refused the claim of petitioner.

11. In Sri Ramakrishna Seva Ashrama Vs. Commissioner of Income Tax, the petitioner, a registered society, had many objects including those

charitable in nature, to diffuse scientific knowledge on Vedanta and the promotion of science, literature and fine arts. One of the objects was

preaching ideals of Hinduism. It was granted approval for deduction u/s 80G but its subsequent applications for approval were rejected by the

Commissioner on the ground that preaching of ideals of Hinduism and other religions amounted to an object of religious nature. The Hon"ble High

Court, while setting aside the rejection and restoring the matter before Commissioner held that although the aims and objects of the petitioner did

not include some purely religious activities, they also included many temporal and secular activities such as to diffuse scientific and technical

knowledge on Vedanta and also for promotion of science, literature, fine arts, charitable institutions in educational, technical, social and scientific

fields to carry on spiritual and cultural works, study of philosophies of different cultures and civilizations, etc. The rejection of Commissioner did

not satisfy the requirements of a reasoned decision or speaking order. The Commissioner had to consider the applications of the petitioner u/s 80G

and apply his mind to the material placed before him and take a decision by a reasoned order. It was also observed that when the Commissioner

grants or refuses to grant approval to an institution u/s 80G, he acts as a quasi-judicial statutory authority: the conclusion reached and the findings

recorded by him have to be supported by reasons. Past Activities of Applicant to be seen

12. In Kirti Chand Tarawati Charitable Trust v. Director of Income Tax (Exemption) and Ors. (1999) 152 CTR (DelHI) 322 the Delhi High Court

observed that ""for the purpose of construing the purpose of the trust, one need not remain necessarily confined to the objects of the trust and set

out in the deed of declaration. The real purpose of the establishment of the trust has to be found out and spelled out. "Purpose" means that which

one sets before him to accomplish or attend, an intention or aim, object, plan, project; the term is synonymous with the ends sought and an object to

attain, an intention, etc. Purpose must obviously be construed as a real purpose and not a purpose as it outwardly appears to be. Any other

interpretation would permit a fraud being played on the law permitting exemption from taxation. If the argument of counsel of petitioner were to be

accepted then a trust may be established with a purpose as set out in the deed of declaration which appears to be highly charitable but the trust

may in fact be engaged in such activities which cannot even remotely be called charitable, and yet the donations made to it would enjoy exemption.

The authority conferred with the power to grant exemption is not debarred from finding out the real purpose as distinguished from the ostensible

purpose and if it may find that the purpose of the trust was other than charitable then nothing debars the authority from denying the approval. The

purpose of the establishment - the real purpose as distinguished from the ostensible purpose- is germane to the inquiry, which the CIT has to hold

while granting or refusal to grant approval.

13. In Hiralal Bhagwati Vs. Commissioner of Income Tax, it was observed by the Gujarat Court that an object beneficial to a section of the public

is an object of ""general public utility."" To serve as a charitable purpose, it is not necessary that the object must be to serve the whole of mankind or

all persons living in a country or province. The Hon"ble Court further opined that the CIT has to examine the objects of creating the trust as well as

an empirical study of the past activities of the appellant has to be done. The CIT has to examine that it is really a charitable trust or institution

entitled for registration.

14. In Commissioner of Income Tax, West Bengal III Vs. Sri Jagannath Jee (through Shebait), the Hon"ble Supreme Court speaking through

Krishna Iyer J. held at page 19 as under:

The law is set out thus by B.K. Mukherjea:

The fact that property is ordinarily described as debutter is certainly a piece of evidence in favour of dedication, but not conclusive. In Binod

Behari v. Manmatha (1915) 21 CLJ 42 , Cox. J. observed as follows:

The fact that the property is called debutter is a doubtless evidence in the plaintiff's favour but it does not relieve them of the whole burden of

proving that the land was dedicated and is inalienable.

Though inconclusive, it carries weight in the light of what we may call the mission of the disposition which is inspired by devotion to ""my Thakoor

and animated by a general religious fulfillment. It must be remembered that the donor was not tied down by bigotry to performance of pujas,

important though they were. A more cosmic and liberal view of Hinduism informed his soul and so in his declaration of dedication of Sree

Jagannathjee he addressed to the managers many directions of a broadly religious and charitable character. His injunction to feed the poor was

Narayana seva, for worship of God through service of man in a land where the divinity in daridra Narayana is conceptually common place and,

while it is overtly secular, its motive springs from spiritual sources. It is religion to love the poor. Likewise his insistence on the aviary and the

menagerie and throwing open both to the people to see and delight is not a mundane mania but has deeper religious roots. Hinduism worships all

creation:

^^"ka uks vLrq f}ins "ka prq""ins^^

(Peace be unto all bipeds and even so to all quadrupeds). Indeed, the love of sum-human brethren is high religion. For

He prayeth best, who loveth best

All things both great and small For

the dear God who loveth us. He

made and loveth all.

(Coleridge, in Ancient Mariner)

From the Buddha and Mahavira to St. Francis of Assisi and Gandhiji, compassion for living creatures is a profound religious motivation. The

sublime mind of Mullick was obviously in religious sympathy with fellow beings of the lower order when he showed this tenderness to birds and

beasts and shared it with the public. The art gallery too had link with religion in its wider connotation although it is plainer to regard it as a gesture

of aesthetics and charitable disposition. God is Truth. Truth is beauty, beauty is Truth. A thing of beauty is a joy for ever. In fact for a highly

elevated Indian mind, this conceptual nexus is not far-fetched. The garden and the love of flowers strike a psychic chord at once beautiful and

religiously mystical, as any reader of Wordsworth or other great poet in English or Sanskrit will agree. The point is that the multiform dispositions

had been united by a spiritual thirst and if read in their integrality, could be designated religious-cum-charitable. In sum, the primary intendment was

to dedicate as debutter and to direct fulfilment of uplifting religious and para-religious purposes, the focus being on worship of Sree Jagannathjee

and the fall-out some subsidiary, yet significant, charitable items. The finer note struck by the felt necessities of his soul was divinised and

humanised, the central object being Sree Jagannathjee, the Lord of the Universe.

15. In CIT, Gujarat v. Swastik Textile Trading Company Pvt. Ltd. (1978) 113 ITR 853 , the Gujarat high Court observed that compassion for

living creatures, although it motivates all true religion, is also practical spirituality as it has an elevating moral influence, fostering a deep sense of

fellow feeling and fraternity. Such acts not only fulfill our cherished human values but they equally promote public goods and welfare and are,

therefore, dominantly religio-charitable, it was further held that the Tribunal was right in holding that the donations to the trust could be deducted.

The Hon^{ble} Court, while quiting Commissioner of Income Tax, West Bengal III Vs. Sri Jagannath Jee (through Shebait), where the amounts

spent for religious and charitable purposes such as feeding of poor were excluded from the total income, observed on page 865, "it is religion to

love the poor.

16. In S.P. Mittal v. UIO : [1983]1SCR729 the Hon^{ble} Supreme Court discussed the definition of religion. It was observed by Chinappa Reddy

J. in para 12 at page 5 that "Constitution views religion, as comparing thought, expression, belief, faith or worship, as involving the conscience

and as something which may be professed, practiced and propagated and which is any man's attribute in the same manner as race, sex, language,

residence etc. We also see that economic, financial, political or other secular activity may be associated with religious practice though such activity

is not covered by the guarantee of freedom of conscience and the right freely to profess, practice and propagate religion. So, the Constitution

considers religion as a matter of thought, expression, belief, faith and worship, a matter involving the conscience and a matter which may be

professed, practiced and propagated by anyone and which may even have some secular activity associated with it.

Hon^{ble} Reddy J., on page 6 para 13 further observed, "Religion is certainly a matter of faith with individuals or communities and it is not necessary

theistic. There are well known religion in India like Buddhism and Jainism that do not believe in God or intelligent first cause.

The Hon^{ble} Court observed at page 20 "Religion is squarely human life with superhuman life. Belief in a superhuman power and such an

adjustment of human activities to the requirement of that power as may enable the individual believer to exist more happily is common to all

"religions".

17. In Commissioner of Income Tax Vs. Social Service Centre, the Andhra Pradesh High Court opined, "We do not find that donation to a church

or construction of a church is not a purpose which is not of general public utility.

Therefore, the contention of the Department that the expenditure

on religious activities could not be given exemption cannot be accepted particularly in the context of our polity. We are aware that most of the

religious and charitable activities go together in this country." The assessee, which was a registered u/s 12A of the Income Tax Act, 1961, as a

charitable trust was granted exemption /sections 11 and 12 of the Act.

Charitable purpose includes benefit of a section of public.

18. In Commissioner of Income Tax, Madras Vs. Andhra Chamber of Commerce, , the Hon"ble Supreme Court observed that the expression

object of general public utility" was not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of public was an

object of general public utility. To serve as a charitable purpose, it was not necessary that object should be to benefit the whole of mankind or

even all persons living in a particular country or province. It was sufficient if the intention was to benefit a section of the public as distinguished from

specified individuals. The section of the community sought to be benefited must undoubtedly be sufficiently defined and identifiable by some

common quality of a public or impersonal nature. The Court further observed that if the primary purpose be advancement of objects of general

public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose was there. It was also held

that advancement or promotion of trade, commerce and industry leading to economic prosperity enured for the benefit of the entire community.

That prosperity would be shared also by those who engaged in trade, commerce and industry, but on that account the purpose was not rendered

any the less an object of general public utility.

19. In Commissioner of Income Tax, Gujarat I Vs. Ahmedabad Rana Caste Association, , the Gujarat High Court observed that a purpose would

be charitable if it is for the ""advancement of any other object of general public utility.""

""Public"" means the body of people at large including any

class of the public and ""utility"" means usefulness. Therefore, the advancement of any object beneficial to the public or a section of the public as

distinguished from an individual or a group of individuals would be a charitable purpose.""

On appeal, this judgment has been affirmed by the Apex

Court in Commissioner of Income Tax, Gujarat-III, Ahmedabad Vs. Ahmedabad Rana Caste Association,

20. In Commissioner of Income Tax Vs. Rajneesh Foundation, , the Bombay High Court observed that charitable purpose includes relief of the

poor, education, medical relief and advancement of any other object of general public utility. Not only in India, meditation and yoga are being

accepted in the western countries also as a great source for physical and mental health and spiritual attainment. When a large number of people feel

that meditation is a great source for physical, mental and spiritual well-being it must be held to be an activity for the advancement of general public

utility. Rule of Consistency

21. In M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax, , the Apex Court observed ""that in the absence of any

material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the

assessee appellant should not have been reopened. Strictly speaking, res judicata does not apply to income tax proceedings. Though, each

assessment year being a unit, what was decided in one year might not apply in the following year; where a fundamental aspect permeating through

the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not

challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

22. In Director of Income Tax (Exemption) Vs. Lovely Bal Shiksha Parishad, , the Delhi High Court observed that in view of the fact that no

change in the nature of activities had been pointed out and the assessee had been granted exemption u/s 10(22) of the Income Tax Act, 1961, not

only in respect of the earlier years but subsequent years as well, the assessee was entitled to exemption in the assessment year 1991-92.

23. In Commissioner of Income Tax Vs. Mathew, , the Kerala High Court observed that in Income Tax Proceedings difference should not be

made between assessees in similar situation and between different assessment years of same assessee.

24. In Orpat Charitable Trust Vs. Commissioner of Income Tax, the Gujarat High Court observed that setting aside the order of the Commissioner

refusing grant of approval, that even if the ground about contravention of Section 11(5) was validly taken by the Commissioner, that would have

bearing only at the point of time of the assessment of the petitioner and would not be a material consideration in so far as granting approval u/s

80G(5) was concerned. That might be a material factor, but that could not be the sole determinative factor for the purpose of deciding whether the

certificate of approval had to be granted to the petitioner or not. Further it had been pointed out to the Commissioner that the trustee through

whom the deposits had been made had paid up the funds deposited in those institutions to the petitioner and, so far as the petitioner was

concerned, the technical breach ought not to have weighed with the Commissioner.

25. In Suresh Sunderrao Nayak, a trustee of the Sree Taram Trust Vs. M.K. Pandey, Director of Income Tax (Exemption), A.K. Gowda,

Income tax Officer (OSD II) Director of Income Tax (Exemption) and A.B. Joshi, Assistant Director of Income Tax (Exemption), the Bombay

High Court observed that the fact that some of the devotees has been given small amounts on monthly basis does not mean that all the beneficiaries

were identifiable. Some of the devotees who were poor and needed assistance were being given, assistance monthly basis. The fact that some of

the devotees were given cash assistance could not be a ground to hold that all the beneficiaries were identifiable. That apart, much more money of

the trusts was being spent for the medical benefits, poor feeding and education assistance to a larger number of persons. It was not possible to say

that it was more in the nature of a private trust and the benefit to the public was incidental or insignificant. It was also material to note that in the

earlier assessments of this very trust, the objectives of the trust were accepted and the assessment orders had been passed even after 1992 to the

effect that the trust was a public charitable trust. The order of the Income Tax Officer was not valid and was liable to be quashed.

26. In Commissioner of Income Tax Vs. Thanthi Trust, the Hon"ble Supreme Court observed that dismissing the appeal, that the question herein

was essentially a question of fact. A college was run, not by the assessee trust, but by another registered charitable Society. The High Court had

found that the conduct of the educational institution is drawing from the assessee - trust larger sums than what had been credited by the trust in its

favour in 1969-70 showed that it was fully aware of its credit with the assessee- trust and the funds that had been made available to it by the trust.

It was no part of the Revenue"s case at any point of time that the credit entries made in the assessee"s books of accounts were not genuine or the

trust or that they were make-believe or bogus. The Income Tax Officer had not doubted the said entries and called upon the assessee to produce

the accounts of the college. The High Court was right in holding that the assessee was entitled to exemption u/s 1 of the Income Tax Act, 1961.

27. In CIT v. Indian National Theater Trust (2008) 214 CTR (Delhi) 641 the Delhi High Court held that as far as the third question is concerned,

on examining the orders passed by the authorities, in which the objects of both the assessee Trust as well as the Shriram Central for Art and

cultural have been discussed, we are of the considered view that the Tribunal was correct in its conclusion that the sum of Rs. 50,000/- deposited

with Shri Ram Center for Art and Culture should be treated as an application of the income of the Trust. The work ""application"" has to be given a

wider interpretation keeping in view the purpose for which the provision has been introduced.

28. On the side opposite, Mr. K.K. Bissa, learned Counsel for the respondent relied upon the judgment of the Hon"ble Supreme Court in the case

of Upper Ganges" case (supra). He also relied upon the decision of this Court in the case of Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti

Trust Vs. Union of India (UOI) and Another, in which this Court held as under:

Section 80G of the Income Tax Act, 1961, applies to donations to any institution or fund established in India for a charitable purpose. Charitable

purpose, for the purpose of the section, does not include any purpose the whole or substantially the whole of which is of a religious nature. For the

purpose of applying Explanation 3 to Section 80G each and every object of the Trust has to be read and the trust deed is not to be (sic ! read) as

a whole. Sub-Section (5B) of Section 80G inserted with effect from April 1, 2000 does not have retrospective effect and is not applicable to

earlier assessment years. The petitioner - trust was recognized as a trust wholly and substantially for charitable purposes. But the Commissioner

denied the special deduction u/s 80G(5) for its donors for the assessment years 1994-95 to 1997-98 on the ground that some of the clauses of the

petitioner - trust pertained to wholly religious purposes. On a writ petition:

Dismissing the petition, that the Commissioner had quoted object items 1 to 5 and Sub-clause (4) of other objects and also the preamble to the

petitioner -trust which showed that the petitioner - trust had many objects which were wholly and substantially religious. Therefore, the mere fact

that insignificant amount had been spent on religious charity, did not entitle the donors to claim deduction u/s 80G.

29. Another decision relied upon by the learned Counsel for the Revenue in the case of Mishrilal Gordhanlal Batra Charitable Trust v. Union of

India and Anr. D.B. Civil Writ Petition No. 4287/1998 decided on 6.12.2007 in which the case the Court merely remitted the case back to the

Commissioner for reconsideration of the application for renewal w.e.f. 1.4.2000 uninfluenced by the order rejecting the renewal for the previous

period 1995-2000. This judgment is of no help to the learned Counsel for the respondents.

30. I have heard the learned Counsel for the parties at length and given my thoughtful consideration to the facts of the present case and the case

laws cited at the Bar. 31. This Court is of the considered opinion that mere one contribution by the charitable trust to another trust which carried

out repair and renovation of Lord Vishnu's Temple does not disentitle the petitioner - Trust from renewal of its exemption certificate u/s 80G of the

Act. The line of distinction between religious purposes and charitable purposes is very thin and and no water tight compartment between the two

activities can be very well established. Unless objective of the charitable trust in question itself is for spending its income for a particular religion and

it is so found in the trust-deed, the Income Tax Department cannot reject the renewal of the Trust as Charitable Trust u/s 80G of the Act merely

because one particular expenditure is for an activity which may be termed as spending for a particular religion. In the present case the repair and

renovation of Lord Vishnu's temple does not necessarily mean that expenditure in question was for a particular religion only.

31. All people who have faith in Lord Vishnu's temple belong to different sects and have faith in different religions and also visit such temple of

Lord Vishnu. The Revenue has not shown that entry in the said temple was restricted to the persons of one particular community or sect practicing

one religion. Hinduism is not one particular religion and different sects following Hindu philosophy do visit temples of Lord Vishnu, be that Jains,

Sikhs, Brahmins etc. There is no water tight compartment between different castes or sects following one particular religion. Freedom of religion is

guaranteed in the Constitution of India under Article 25 of the Constitution of India.

Therefore, taking such a pedantic and narrow approach, it

cannot be said that character of the Charitable Trust is lost if one particular expenditure is made for repair and renovation of Lord Vishnu's temple

and that too by way of contribution to another Trust. A perusal of the Trust-deed of the petitioner produced on record shows that objective of the

trust was clearly charitable and was not for any particular religion even wholly or substantially. Nothing has been pointed out in the impugned order

that the petitioner trust has been constantly spending money for a particular religion. One should discern and imbibe with great respects the

observations of Hon"ble Supreme Court in Sri Jagannath Jew"s case cited supra.

32. This Court does not see any leaning in favour of any particular religion in trust-deed of the petitioner- trust and therefore, once such exemption

was granted to the petitioner trust, upon scrutiny of its application and it held the field for atleast three years as is shown by the impugned order

itself and trust-deed indicates that said Trust was constituted long back on 27.8.1963 and has been carrying on such charitable activities, this Court

finds no justification for rejecting its renewal u/s 80G of the Act which is a matter of right. The conditions of Section 80G(5) read with Explanation

3 does not stand violated in the present case.

33. The learned Counsel for the Revenue relied upon the decision of the Supreme Court in the case of Upper Ganges" case (supra), which has

been relied upon by the learned CIT (A) also in the impugned order, it was held on the basis of one particular Clause (2) (h) of the trust-deed

which read ""to establish, maintain and to grant and/or aid to public places of worship and prayer halls. The Hon"ble Supreme Court dealing with

Explanation 4 of Section 80G(5) held as under:

To reiterate, Explanation 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund"s charitable

purpose is of religious nature. If it did, it would read differently. It requires the ascertainment of whether there is one purpose within the institution

or fund's overall charitable purpose which is wholly, or substantially wholly, of a religious nature. There is little doubt that Clause 2(h) of the trust

deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of

religious nature, and this has not been seriously disputed. Therefore, in our view, the trust and the donation by the assessee to it fall outside the

scope of Section 80G. The aforesaid case is clearly distinguishable from the facts of the present case as there is no clause in the trust-deed in the

present case which indicates that income of the petitioner trust was to be applied wholly or substantially for any particular religion. Therefore, the

said case has been clearly wrongly applied by the learned CIT (A) in the present case. In Marudhar Kesri's case also relied upon by the learned

Counsel for the Revenue, the facts of the case were distinguishable in the said case. Thus, the judgments cited and relied upon by the learned

Counsel for the Revenue are distinguishable on facts and do not support the case of the respondents. Since the law in the case of Upper Gange's

case (supra) was laid down while dealing the case of deduction u/s 80G of the Act in the hands of donor so also in the case of Marudhar Kesri by

this Court, those judgments do not advance cause of the Revenue. On the other hand, the case laws relied upon by the learned Counsel for the

petitioner fully support the case of the petitioner when the Courts have consistently held that it is the dominant object of the trust which is important

and contribution and expenditure incurred by the petitioner - trust has to be viewed in light of the objects with which charitable trust in question

was constituted.

34. Consequently, this writ petition is allowed and the impugned order Annex.10 dated 16.12.2004 is quashed and set aside and the petitioner -

trust shall be deemed to be registered u/s 80G of the Act throughout the period after 1.4.2004 with all consequential benefits.

35. With these observations, this writ petition is allowed with no order as to costs.