BEFORE THE NATIONAL FACELESS APPEAL CENTRE (NFAC)

Appellant Name: M C Modi Educational Trust;
Appellant PAN: AAATM5488Q;
Appeal no: NFAC/2017-18/10008096;
AY: 2018-19

WRITTEN SUBMISSION

M C Modi Educational Trust (referred to as Assesee/Appellant) is a charitable trust registered u/s 12A of the Income Tax Act, 1961 ("Act"). Appellant filed its return of Income for the assessment year 2018-19 on 31/10/2018, declaring Total Income of Rs. Nil/- after claiming exemption u/s 11 of the Act. The case was taken up for scrutiny assessment and an order u/s 143(3) of the Act was passed on 12.04.2021 in the office of National Faceless Assesment Centre, Delhi. The assessment was completed by the treating the assessee as an "AOP" instead of a Charitable Trust registered u/s 12A of the Act and total income is assessed at Rs. 78,99,722/- by denying the exemption u/s 11.

Aggrieved by the order passed by AO, assesse has preferred this appeal. We hereby give a written submission providing an explanation for the various grounds on which the appeal is filed.

Ground 1: The order of the learned Assessing Officer, in so far as it is prejudicial to the interest of the applicant, is against law, weightage of evidence and probability of the case and the following grounds are intent prejudice to each other.

Ground 2: The learned Assessing Officer on the peculiar facts and circumstances of the case has erred in taking a view that the Trust is an Association of Person (AOP) and not a Trust registered u/s 12A of the Income Tax Act and to assess the income of the Trust as applicable to an association of persons.

The assessing officer has treated the assessee as an AOP on the basis that assessee is not registered u/s 12A of the Act. In this regard we wish to bring the following facts to your good-self kind notice, which are relevant for deciding the issue.

M. C. Modi Educational Trust ("Trust") was created/settled by Late Shri Manilal Chhaganlal Modi vide trust deed dated 15.11.1955. The trust has been settled as a Public Charitable Trust with the charitable objective of advancing the cause of education of the needy section of the society. The trust is registered u/s 12A of the Act by virtue of order dated 01.06.1968 in Letter no. V/9/67-68. **<u>This evident from the copy return of income filed wherein the 12A registration details are mentioned and supported by the orders passed u/s 143(1) accepting the return of income.</u>**

Right from the inception of the trust, activities of the trust have been carried out in accordance with the charitable objects of the Trust. The trust has been maintaining regular books of accounts and duly getting them audited by an Auditor. The trust has also consistently complied with all the conditions applicable for claiming the exemption u/s 11 of the Act. This is evident from the various assessment orders which are available on record with the trust. **<u>Copies of assessment orders which includes both orders passed u/s 143(1) as well as 143(3) of the Act (wherein after due verification of the records, the officer have held that Trust has complied with all the condition for claim of exemption u/s 11) are attached</u>**.

The is in existence for over 65 years now and with such huge passage of time the persons managing the activities have changed quite a number of times due to demise of the founder trustees, second generation trustees. Now the trust is being run by third generation of the settlor and founder trustees. With the lapse of such a huge time period and several changes of person in-charge, certain vital documents (such as original trust deed, original registration certificate) of the trust got misplaced and were not traceable. However **<u>while searching all the available old records we have been able to trace out certain vital documents which prove beyond any doubt that the trust has been registered u/s 12A and has consistently complied with all the conditions for claim of exemption u/s 11</u>**.

We have been able to trace the assessment orders for **<u>AY 1980-81</u>**, **<u>AY 1982-83</u>**, **<u>AY 1983-84</u>**, **<u>AY 1984-85</u>**, **<u>AY 1997-98</u>**, **<u>AY 1998-99</u>**, AY 2001-02, AY 2002-03, AY 2004-05 and AY 2005-06 of which the years mentioned in bold are passed u/s 143(3) which definitely **<u>proves that the trust is holding a valid registration u/s 12A of the Act</u>**. In the **<u>assessment order for AY 1997-98 passed u/s 143(3) it is very clearly mentioned that the assessee is registered u/s 12A of the Act</u>**. Further in all the other orders passed u/s 143(3) it is clearly mentioned that the **<u>income of trust is exempted u/s 11 of the Act implying that trust is registered u/s 12A of the act and is</u>**

consistently complying with all the conditions applicable for exemption u/s 11 of the Act.

We also wish to bring to your good-self kind notice that **the fact of misplacing the original 12A a registration certificate was brought on record vide letter dated 20.10.2005 submitted along-with the return of income for AY 2005-06 to the assessing officer (ADIT Exemption)**. Vide this letter **it was intimated that the trust had misplaced the registration certificate issued u/s 12A and it was also requested to accept the return by considering this fact**. The **return was accepted vide intimation order 20.03.2006 passed u/s 143(1)**. (**Copy of letter along-with the order passed u/s 143(1) is enclosed for your kind reference**).

All the above mentioned facts supported by the documents attached, **very well establishes the fact that the trust is registered u/s 12A** and accordingly the **assessee should be assessed as a Charitable Trust registered u/s 12A**. Further as all other conditions such as maintaining of books of accounts, getting them audited, filing of return and audit report in form 10B within the due date and filing of form 10 for accumulation of unspent amount have been duly complied as well, **exemption u/s 11 as claimed in return of income should be granted**.

It is only a case of misplacement of a document i.e. 12A registration certificate. However, **mere non availability of registration certificate in present record will not make the trust an unregistered trust especially when there are so many assessment orders on record confirming the fact that the assessee is registered u/s 12A**. In this regard we also wish to draw your good-self kind attention to the following case laws having the similar facts wherein the respective tribunals have very categorically held that "when there are sufficient evidences to show that the trust is registered, then merely for non-availability of the registration certificate, the trust cannot be treated as unregistered.

1. **ITAT Indore** in the case of Shri Jain Shwetamber Murtipujak Sukrat Fund Vs. CIT (Exemption) in **ITA No. 849/Ind/2018, order dated 29.09.2020**

   In this case the assessee had misplaced the 12A registration certificate and to substantiate the claim, assessee furnished copy of assessment orders for several years wherein the assessments were completed by granting exemption u/s 11. Taking note of this, the hon'ble tribunal held that "**all the documents are sufficient**

<u>enough to prove that the claim of the assessee being registered u/s 12A of the Act is a charitable trust since 13.8.1973 has sufficient merit</u>."

2. **<u>ITAT Ahmedabad</u>** in the case of Sardar Bhavan Trust Vs. Income Tax Officer, Ward 5(1), in **<u>ITA No. 876 TO 881/AHD/2010</u>**

   Similarly in this case as well, where the assesee was able to establish the existence of 12A registration by submitting the copy of old assessment orders, the hon'ble tribunal held that "in a case of charitable trust where assessment has been framed and exemption provided under the act has been allowed to the Assessee, the presumption is that the Assessee trust was registered u/s 12A 12AA of the act till the same is rebutted by the Department by adducing documentary evidence to the contrary. The Revenue could not bring any evidence on record to prove that the assessee was not granted registration u/s. 12A of the Act. We are therefore of the view that a mere statement that the relevant registers are not available with the Department could not be considered against the assessee. Considering the totality of the facts, we of the view that the assessee should be considered to be having registration u/s. 12A in all the assessment years under appeal and therefore all these appeals are allowed".

3. **<u>ITAT Pune</u>** in the case of Rotary Club of Poona Downtown Charitable Trust Vs. The Income Tax Officer (Exemption) Ward-2, Pune in **<u>ITA No.1853/PUN/2018, order dated 16.04.2019</u>**

   In this case hon'ble ITAT has held that the onus is on the revenue to prove that assessee is not registered u/s 12A and without that assessee cannot be penalized.

In view of the above mentioned facts, supporting documents attached and the case laws having identical issue, it is humbly requested before your good-self that the assessment made by the assessing officer may please be set-aside and the return file as a Charitable Trust be accepted.

Ground 3: The learned Assessing Officer on the facts and circumstances of the case has erred in computing gross rental receipt of Rs. 48,93,403/- under the head Income from house Property without allowing deduction on account of

municipal tax paid and standard deduction at 30 per cent u/s 24(a) of the Income Tax Act, 1961 and therefore same is bad in law.

Ground 4: The learned Assessing Officer on the facts and circumstances of the case has erred in computing gross interest receipts of Rs. 20,71,319/- under the head Income from other Sources without allowing deduction of certain expenses incurred and therefore the same is bad in law.

Ground 5: The learned Assessing Officer on the facts and circumstances of the case has erred in considering the donations given of Rs. 9,35,000/- as Income instead of allowing eligible deduction u/s 80G of the Income Tax Act, 1961.

The main issue involved in appeal is whether the assessee is to be assessed as a Charitable Trust or as an AOP. This issue has been elaborately dealt in ground no. 2 and after taking note of the above submissions along-with the supporting documents attached, if it is held that the assessee is to be assessed as a 12A registered Trust then the additions/disallowances made by assessing officer will not sustain and accordingly ground no. 3, 4 & 5 will become infructuous.

List of documents enclosed

1. Assessment Order dated 29.11.1980 passed u/s 143(3) for AY 1980-81. – Pg. no. 7
2. Assessment Order dated 15.02.1985 passed u/s 143(3) for AY 1982-83. – Pg. no. 8, 9
3. Assessment Order dated 15.02.1985 passed u/s 143(3) for AY 1983-84. – Pg. no. 10
4. Assessment Order dated 15.02.1985 passed u/s 143(3) for AY 1984-85. – Pg. no. 11
5. Assessment Order dated 20.01.2000 passed u/s 143(3) for AY 1997-98. – Pg. no. 12 & 13
6. Assessment Order dated 15.11.2000 passed u/s 143(3) for AY 1998-99. – Pg. no. 14
7. Acknowledgement of return of income and Intimation order dated 14.02.2002 passed u/s 143(1) for AY 2001-02. – Pg. no. 15 & 16
8. Acknowledgement of return of income and Intimation order dated 19.12.2003 passed u/s 143(1) for AY 2002-03. – Pg. no. 17 & 18
9. Acknowledgement of return of income and Intimation order dated 17.02.2005 passed u/s 143(1) for AY 2004-05. – Pg. no. 19 & 20

10. Acknowledgement of return of income and Letter dated 20.10.2005 evidencing that the fact of misplacement of 12A registration was intimated while filing of return for AY 2005-06. – Pg. no. 21 & 22

11. Intimation order dated 20.03.2006 passed u/s 143(1) for AY 2005-06 evidencing that the return was accepted as filed after considering the fact of misplacement of 12A registration certificate. – Pg. no. 23

12. Copy of letter filed with the CIT(E) requesting to provide copy of 12A certificate along-with copy of reply received from CIT(E). – Pg.no. 24 & 25

<u>Case Laws</u>

1. **<u>ITAT Indore</u>** in the case of Shri Jain Shwetamber Murtipujak Sukrat Fund Vs. CIT (Exemption) in **<u>ITA No. 849/Ind/2018, order dated 29.09.2020 – Pg. no. 26 to 38</u>**

2. **<u>ITAT Ahmedabad</u>** in the case of Sardar Bhavan Trust Vs. Income Tax Officer, Ward 5(1), in **<u>ITA No. 876 TO 881/AHD/2010 – Pg. no. 39 to 48</u>**

For M C Modi Educational Trust

Soham Modi
Trustee

Date: 31/08/2021
Place: Hyderabad