

BEFORE COMMISSIONER OF INCOME TAX (APPEALS) -9/HYD

IN THE MATTER OF

M.C. Modi Educational Trust

vs.

Income Tax Officer –Exemption Ward 1(2)/Hyderabad

APPEAL NO. 9/10298/2018-19

ASST. YEAR 2016-17

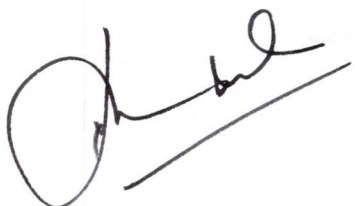
BEFORE COMMISSIONER OF INCOME TAX (APPEALS) -9/HYD

M.C. Modi Educational Trust 5-4-187/3 &4, Soham Mansion M.G. Road, SECUNDERABAD – 500 003.		Income Tax officer, Exemption Ward 1(2)/ Hyderabad.
Appellant	V/s.	Respondent

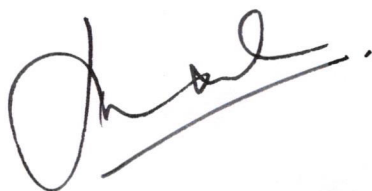
Appeal NO. 9/10298/2018-19
Asst. Year 2016-17

In connection with the above appeal the following submissions are made before YOUR HONOURS for kind consideration.

1. The appellant is a Public Charitable Trust evidenced under a Trust Deed dated 15-11-1955. Copy enclosed – **Annexure 1**.
2. The trust was settled more than 60 years ago by Late Shri. Manilal Chhaganlal Modi (M C Modi). The founder Trustees were Late Shri. Manilal Chhaganlal Modi, Late Shri. Chhaganlal Modi and Late Shri. Occhavilal Maganlal Parikh.
3. For past several years upon demise of settlor/founder trustees, the trustees of the trust were Mr. Pramod Modi, Mr. Satish Modi. The day to day affairs of the trust were managed by them from their respective offices. Shri. Pramod Modi died on 04-06-2012 and Shri. Satish Modi died on 20-01-2016. Both the trustees were healthy and unexpectedly died of heart attacks.
4. The present trustees are Mr. Om Prakash, S/o Late Praveen Chandra Modi, Mr. Ashish Modi, S/o. Late Pramod Modi and Mr. Soham Modi, S/o. Late Satish Modi. They are the grand children of late Mr. Manilal C Modi and his brother Late Mr. Chhaganlal C Modi.
5. The present Trustees namely Mr. Om Prakash, Mr. Ashish Modi and Mr. Soham Modi have executed a Supplementary Trust Deed dated 01.04.2016 which is registered as Document No 137/IV/2017 with S.R.O. Secunderabad. Copy enclosed- **Annexure 2**.
6. The above said Supplementary Trust Deed got executed so as to enable the Trustees to have the ease of carrying out the Trust activities more efficiently and effectively and also to re-write the objects of the Trust in line with the larger philanthropic motive and desire of the Settlor at the time of settling the Trust 60 years ago.
7. The trust has been carrying out his charitable activities implacably for over 60 years.
8. The Trust is registered u/s 12A of the IT Act, 1961 vide Letter No. V/19/67-68 dated 01-06-1968.



9. The above registration letter and also the Original Trust Deed has been lost/misplaced.
10. Due to the sudden demise of late Mr. Pramod Modi and Late Mr. Satish Modi, all records pertaining to the trust could not be handed over to the present trustees. Accordingly, several documents pertaining to exemptions under IT act and others are no longer traceable. The premises from which the operations of the trust were handled by late Mr. Pramod Modi is no longer being used by the present trustees and many documents were lost in transferring the files from the old office of the trust.
11. The Trust has requested Commissioner of Income Tax (Exemption) /Hyd to issue a duplicate Registration certificate as that may be available with their records. Copy of Letter dated 12.06.2017 filed on 19.06.2017 is enclosed- **Annexure 3.**
12. We have received a communication dated 21.06.2017 from Commissioner of Income Tax (Exemption) /Hyd that there is no such provision to issue a duplicate registration certificate. Copy of Letter dated 21.06.2017 is enclosed- **Annexure 4.**
13. In view of this background and left with no alternative, and under peculiar facts and circumstances, we have applied for a registration u/s 12AA afresh. The application was electronically filed on 26-02-2018. Copy of Ack is enclosed -**Annexure 5.**
14. Vide Order u/s 12AA(1)(b)(ii) F.No CIT(E)/Hyd/68(02)/12A/2017-18 dated 27-08-2018, the registration is denied and the application in Form 10A got rejected. **The only ground of rejection is due to non-submission of certain documents/information requested for in the course of hearing could not be furnished within time allowed.**
15. The application filed in Form 10A on 26-02-2018 was required to be disposed off within a period of 6 months i.e., by 31-08-2018. Since the group accountant was pre-occupied with finalization of various IT returns to be filed on or before 31-08-2018 and also with the tax audit works, could not attend to and furnish the required information. As the matter was getting time barred, the application got rejected.
16. It may be noted that the rejection of registration is during the FY 2018-19 which has to take effect for Assessment Year 2019-20. The rejection order does not ipso facto apply for Assessment Year 2016-17. Further, the rejection is operative with prospective date and not with retrospective date.
17. **The Trust is therefore deemed to be a Registered Trust u/s 12A/AA for Assessment Year 2016-17 vide Letter No. V/19/67-68 dated 01-06-1968.**
18. The Trust has been regularly filing its Return of Income under the Status of AOP (Trust) for past several years.



19. For Assessment Year 2016-17, the Return of Income was filed vide acknowledgement number 456707481210916 on 21-09-2016 admitting income of Rs.29,51,794/-
20. The Income is computed in accordance with the provision of Section 11 and 12 of I.T Act, 1961.
21. The copy of ITR Ack, Computation of Income, Annual accounts and Audit Report in Form 10B is enclosed herewith- **Annexure 6**.
22. The Learned Assessing Officer while passing assessment order u/s 143(3) in para 8 has made and observation that the Trust Deed dated 16.11.1955 is an unsigned deed and in absence of original deed containing the signatures of the settlor and witnesses the trust deed cannot be accepted as valid trust deed.

In this is regard we wish to submit and clarify that deed is a copy of the deed which is

// TRUE COPY//

Certified by Asst. Commissioner, Endowment Dept, TWIN CITIES, Hyderabad.

The Trust is registered with the Endowment Dept and we were in search of the Original of the Trust deed. It appears that when we approached them, they have provided with us the True Copy of the Deed reproduced on the 'Copy Stamp' Papers and therefore the deed do not contain the signatures but only the names of the Settlor and the witnesses.

23. In view of the above said peculiar facts and circumstances under which the Trust is placed , it is pleaded that the Trust be considered as a registered Trust under the relevant provisions of the Income tax Act and thus the taxable income should be computed in accordance with the provisions u/s 11 and 12.
24. Without prejudiced to the above submissions, it is pleaded the tax liability should not be computed at maximum marginal rate of 30 percent but as applicable to AOP (i.e the rate applicable to an Individual at progressive slab rate applicable. Section 164(2) contains the provision to tax the Charitable /Religious Trust as AOP and under certain circumstances at the maximum marginal rate (MMR).For the sake of convenience Section 164(2) is reproduced as under:

164(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub- clause (iia) of clause (24) of section 2, or which is of the nature referred to in sub- section (4A) of section 11, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12, as if the relevant income not so exempt were the income of an association of persons:



Provided that in a case where the whole or any part of the relevant income is not exempt under section 11 or section 12 by virtue of the provisions contained in clause (c) or clause (d) of sub- section (1) of section 13, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

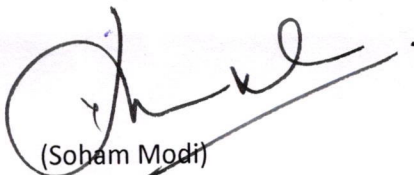
25. It will be clear from the plain reading of Section 164(2) that it provides that in the case of relevant income which is derived from property held under trust wholly for religious purposes, tax shall be charged on so much of the relevant income as is not exempt under section 11 or section 12 as of the relevant income not so exempt were the income of the association of the persons.

The proviso to sub section 2 to section 164 provides that where the relevant income is not exempt under Section 11 or 12 by virtue of provisions contained in section 13(1) (c) or 13(1) (d), then only the income of the charitable /religious Trust has to be taxed at MMR and not otherwise.

Thus it is pleaded that the MMR is not applicable to the appellant Trust as the income of the Trust is not exempt for the reason that the Trust is not a registered Trust and not for the provisions contained in section 13(1) (c) or 13(1) (d).

Your HONOURS, it is pleaded to allow the appeal granting the relief prayed for.

For M.C. Modi Educational Trust



(Soham Modi)
Trustee

(APPELLANT)