

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

(Through Virtual Court)

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 572/PUN/2020

Shri Lad Shakhiya Wani Samaj Kalyan
& Shikshan Prasarak Mandal
189, Rohitra, Samarthnagar,
Aurangabad-431 001
PAN : AACTS5656A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Exemption)
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik

Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 05.01.2021

घोषणा की तारीख / Date of Pronouncement : 05.01.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. CIT (Exemption) Pune dated 21.09.2020 passed u/s.12AA(1)(b)(ii) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) as per the following grounds of appeal on record:

“1. Commissioner of Income Tax (Exemption) has erred in rejecting registration to Trust u/s.12AA. Appellant prays for grant of registration.

2. Appellant prays to add, alter, amend, take additional grounds, submit additional evidence and /or during or pending proceeding.”

2. The brief facts of the case are that the assessee trust made an online application in Form No.10A for approval of the Trust/Institution u/s.12AA of the Act on 11.11.2019 under the category of charitable trust/institution as per CBDT Notification No. S.O 2033 (E) dated 24.06.2020 read with provisions of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020, No. 2 of 2020 dated 31.03.2020. The assessee is registered under Bombay Public Trust Act, 1950 with registration Number F-701/AU/dated 04.10.1980. The application was carefully perused and considered along with its annexures. Thereafter, a letter was issued through ITBA portal to the assessee on 24.12.2019 requesting to upload certain other information/clarification by 10.01.2020 in order to process the application. The assessee submitted its compliance on ITBA portal in response to the said notice.

3. The assessee trust was established in 1980 and claims to be engaged in activities such as blood donation camp, felicitation of students, tree plantation etc. On perusal of Financial statements uploaded on the ITBA Portal, it was observed by the Ld. CIT(Exemption) that the assessee has shown addition of Rs.3.82 lacs, Rs.8.22 lacs and Rs.8.14 lacs under the head “Building Fund” during the Financial Year 2016-17, 2017-18 and 2018-19 respectively directly credited to the respective reserve without routing it through the income and Expenditure account. Since the assessee has not submitted any details of taxes paid on the said funds, it was found that it has claimed the same as exempt and the assessee accordingly claimed exemption

u/s.11(1)(d) of the Act in the years before the year in which it has applied for grant of registration.

4. The Ld. CIT(Exemption) rejected the application of the assessee for grant of registration u/s.12AA(1)(b)(ii) of the Act by observing as follows:

“3.4 Before the period of grant of registration, all voluntary contributions - including the ones with specific direction that they shall form part of the corpus - is income of a charitable, religious or charitable cum religious trust. Hence, after taking donation under the head Building Fund" as income, if the applicant becomes liable to pay tax, then the registration u/s 12AA cannot be granted unless the tax is paid.

3.5. Registration u/s 12AA of the IT Act is pre-condition to claim exemption u/s 11(1)(d) of the IT Act as distinguished from the present case. Therefore, the applicant trust has escaped amount of donation from taxation by not showing amount of donation under the head "Building Fund" in the total income for the FY's 2016-17, 2017-18 and 2018-19. No proper explanation to explain the discrepancy is submitted. These facts of the case prima facie indicate that the applicant trust indulge in such activities from which huge receipt has been generated and thus charitable/religious object of trust is not proved.

4. Considering the above facts, I am not satisfied about the charitable nature of objects as well as the genuineness of activities of the trust/institution and hence, the request for grant of registration u/s.12AA of the Income Tax Act, 1961 cannot be accepted.”

5. The Ld. Counsel for the assessee at the time of hearing submitted that Ld. CIT(Exemption) was not justified in rejecting the grant of registration and the Ld. CIT(Exemption) is only expected to examine whether the objects of the trust are charitable in nature and examine whether the activities of the trust are genuine or not. The Ld. Counsel for the assessee placed reliance on the following decisions:

(a) Anand Social and Educational Trust Vs. CIT, 272 Taxman 7 (SC)

(b) Commissioner of Income Tax (Exemption) Vs. Manekji Mota Charitable Trust, (2019) 267 TAXMAN 0016 (Bombay)

(c) Kai Shri Mahadebrao Naykude Dnyanvikas Prabhodhini Trust Vs. Commissioner of Income Tax (Exemption), (2020) 208 TTJ (Pune) 296

6. On the other hand, the Ld. DR placed strong reliance on the order of the Ld. CIT(Exemption).

7. We have heard the rival contentions and perused the material available on record. We have also considered the findings of the Ld. CIT(Exemption). That as evident from Para 3.4 of the Ld. CIT(Exemption)'s order that the sole reason for denial of grant of registration u/s.12AA of the Act to the assessee trust is because for the reason that whatever donations, the assessee trust has taken as "Building Fund", according to the Ld. CIT(Exemption), the relevant taxes have not been paid in relation to those donations received under the head "Building Fund", as income. The Ld. CIT(Exemption) further held that until and unless, taxes were paid, registration u/s.12AA cannot be granted to the assessee trust.

8. That further, the Department has not disputed the objects of the trust or genuineness of activities conducted by the assessee trust. In this scenario, it was observed by the Pune Bench of the Tribunal in the case of **Kai Shri Mahadebrao Naykude Dnyanvikas Prabhodhini Trust Vs. Commissioner of Income Tax (Exemption) (supra.)** that when the objects of the trust were not disputed by the Department, nor they have disputed genuineness of activities of the assessee trust, then non filing of return u/s. 139(4A) of the Act cannot be the ground to deny registration u/s.12AA of the Act to the assessee. It is only at the assessment proceedings, the Assessing Officer can take appropriate steps as per law regarding the non filing of return. However, at the time of granting registration, the object of the assessee trust has to be looked into and genuineness of the activities of the assessee trust should be considered.

9. Reverting to the facts of the present case, the Ld. CIT(Exemption) has not granted registration u/s.12AA of the Act since whatever donations were received by the assessee trust, included under the head “Building Fund”, as income, the taxes were not paid and on this threshold, the registration u/s.12AA cannot be denied. It is left always to the Assessing Officer to take appropriate step at the time of assessment proceedings.

10. The Hon’ble Supreme Court in the case of **Anand Social and Educational Trust Vs. CIT (supra.)** has held that even in the absence of any activities a trust can be considered for registration u/s.12AA of the Act and the term ‘activities’ contemplated u/s.12AA of the Act includes ‘proposed activities’. At the time of granting registration, the only issue to be examined by the Ld. CIT(Exemption) is regarding the true nature of the objects of the trust i.e. whether charitable or not.

11. In the present case, the objects of the trust are not doubted by the Department and they have also not disputed the charitable nature of the activities conducted by the assessee trust. In these two areas, in fact, there has been no examination/verification conducted by the Ld.CIT(Exemption). Meaning thereby, all the relevant records were submitted before the Revenue Authorities and they have verified the same and were satisfied on this aspect.

12. Further, the Hon’ble Bombay High Court in the case of **CIT Vs. Manekji Mota Charitable Trust (supra.)** has held “at the time of the registration of the trust u/s.12A, the question of application of income of the trust is premature.” Thus, whether taxes are due to be paid on any income received that issue has to be looked into only at the time of assessment proceeding.

Considering the aforesaid judicial pronouncements, facts and circumstances in this case, we are of the considered view that when all the requirements of registration u/s.12AA of the Act has been satisfied by the assessee trust, registration therein should be granted. In view thereof, we set aside the order of the Ld. CIT(Exemption) and direct the Department to grant registration u/s. 12AA of the Act to the assessee trust. It will always be open to the Assessing Officer to decide the taxes issues of the income of the assessee trust at the time of assessment proceedings.

13. In the result, **appeal of the assessee is allowed.**

Order pronounced on 05th day of January, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th January, 2021
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Exemption), Pune.
4. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	05.01.2021	Sr.PS/PS
2	Draft placed before author	05.01.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		