

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “ए” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE
(Through – VIRTUAL COURT)

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT (KZ) AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील स / ITA Nos.943 & 944/PUN/2019

Kai Shri Mahadevrao Naykude,
Dnyanvikas Prabhodhini Trust,
Abdul Lat, Tal- Shirol Dist.,
Kolhapur, Maharashtra – 416143.

..... अपीलार्थी /
Appellant.

PAN : AADTK0727H.

बनाम v/s

The Commissioner of Income Tax
(Exemption), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Smt. Kesang Y. Sherpa.

सुनवाई की तारीख / Date of Hearing : 17.09.2020
घोषणा की तारीख / Date of Pronouncement : 21.09.2020

आदेश / ORDER

PER SHRI PARTHA SARATHI CHAUDHURY,

These appeals preferred by the assessee emanates from the respective orders of the ld. CIT(Exemption), Pune dated 30.05.2019 and 29.05.2019, relating to assessee’s application for registration u/s 12AA of the Act and also corresponding application for grant of exemption u/s 80G of the Act as per the grounds of appeal on record :

“On the facts and circumstances of the case and in law the ld. CIT erred in not granting registration u/s 12AA on the ground of not having been satisfied about the charitable nature of activities of the trust or genuineness of its activities in spite of the fact that :

- a. *The appellant trust is exclusively engaged in the activity of "Education which is quite evident from the audited accounts as submitted to the ld. CIT and*
- b. *The appellant having submitted all documents as called for by the ld. CIT in this respect."*

2. That in respect of the application for registration u/s 12AA of the Act, the objects of the assessee trust as annexed at Page 21 of the Paper Book is to promote and provide education and even to conduct school for Blind, Handicapped, Orthopedic Disabled, Mentally Retarded, Activity Workshops, Hostels and to help the handicapped students in their development. The objects also include to give education in the fields of Science, Technical, Military, Agriculture, Medical, Management etc., and to make available necessary premises required for school, buildings, etc. The ld. CIT(Exemption) in his order has observed that the assessee trust was required to file return of income as per Sec.139(4A) of the Act since the assessee trust has shown receipts exceeding the maximum amount which is not chargeable to income tax. The ld. CIT(Exemption) was of the opinion that these facts raise serious concern on the genuineness of the activities of the trust to be carried out. However, at Para 3 of his order, ld. CIT(Exemption) noted at the same time that whatever queries were asked to the assessee trust, they have uploaded the same on ITBA Portal on 05.01.2019. Therefore, it is evident from the facts that whatever the details were called for from the assessee trust, they have all been furnished by the assessee to the Department. That at the time of granting registration u/s 12AA of the Act, it is a settled norm that the ld. CIT(Exemption) should look into two areas i.e., (1) Objects of the trust; and (2) Genuineness of the activities carried out by the trust. The objects of the trust were not disputed by the Department nor they have disputed the genuineness of the

activities conducted by the assessee trust. The only reason for not granting exemption u/s 12AA of the Act was that the return under Sec.139(4A) of the Act was not filed by the assessee and in our considered view, merely non-filing of return under the said provision cannot be the ground to deny registration u/s 12AA of the Act to the assessee when the genuineness of the activities is not disputed by the Department and when the objects are clearly laid out and all the details were uploaded by the assessee trust in the ITBA Portal. That at the time of hearing, the learned Departmental Representative could not refute these facts on record. It is well settled law that at the time of granting registration of the Trust u/s 12AA of the Act, the Id. CIT(Exemption) is required to look into the objects of the trust and the activities carried out by the trust whether genuine or not and nothing else.

3. We find that our view is fortified by the judgment of the Hon'ble Allahabad High Court reported in (1990) 185 ITR 634 wherein it was held that

"3. It is evident that at this stage, the Commissioner is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of section 12A read with rule 17A and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not At this stage, it is not proper to examine the application of income.

4. Again, the Hon'ble Allahabad High Court in the case of CIT Vs Red Rose School (2007) 163 Taxman 19 (Allahabad) held that:

"Section 12AA, which lays down the procedure for registration, does not speak anywhere that the Commissioner, while considering the application for registration, shall also see that the income derived by the trust or the institution is either not being spent for charitable purpose or such institution is earning profit. The language used in the section only requires that activities of the trust or the institution must be genuine, which accordingly would mean that they are in consonance with the objects of the trust/institution, and are not mere camouflage but are real, pure and sincere and not against the proposed objects. The profit earning or misuse of the income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income but cannot be

taken to be a synonym to the genuineness of the activities of the trust or the institution. [Para 34]

5. Similar view was reiterated in the case of CIT Vs Babu Ram Education Society reported in (2018) 96 taxmann.com 606 wherein the Hon'ble Allahabad High Court held as under:

“Section 12A of the Income-tax Act, 1961 - Charitable or religious trust - Registration of (General) - Whether registration of trust does not involve enquiry into actual activities or application of funds, etc. and at that stage, only enquiry required to be conducted is with respect to object of trust alone and if assessee is found to have been actually engaged in any non-charitable activity, benefit of exemption may be denied in manner provided by Act - Held, yes - [Para 7] [In favour of assessee] (Head Note)

12. The Hon'ble High Court, in the above referred case held that registration of the trust does not involve enquiry into the actual activities or application of funds, etc. The Tribunal has committed no error in following the earlier order. At that stage, the only enquiry required to be conducted was with respect to the object of the trust alone. The objections raised by the Commissioner pertain to matters that may be examined at the stage of assessment. At that stage, if the assessee were to be found to have actually engaged in any non-charitable activity, the benefit of exemption may be denied at that stage in the manner provided by the Act.

6. Our view is also supported by the judgment of Hon'ble Supreme Court in the case of [CIT v. Babu Ram Education Society](#) reported at [2018] 96 taxmann.com 606 (All) in which SLP has been dismissed by the Hon'ble Supreme Court by observing as under:

"4. Being aggrieved, the assessee carried the matter in appeal before the Tribunal. The Tribunal vide its order dated 26.07.2013 has allowed the assessee's appeal by following the judgment of a division bench of this Court in the case of [Hardayal Charitable and Educational Trust v. CIT](#) [2013] 32 taxmann.com 341/214 Taxman Mahavir Foundation v. Pr. CIT (E) Ahmedabad /I.T.A.No. 2831&2832/2017 6 655/355 ITR 534. In that judgment that is quoted by the Tribunal in its order, this Court had held as below:

"The preponderance of the judicial opinion of all the High Court including this court is that at the time of registration under [Section 12AA](#) of the Income-tax Act, which is necessary for claiming exemption under [Sections 11 & 12](#) of the Act, the Commissioner of Income Tax is not required to look into the activities, where such activities have not or are in the process of its initiation. Where a trust set up to achieve its objects of establishing educational institution, is in the process of establishing such institutions, and receives donations, the registration

under Section 12AA cannot be refused, on the ground that the trust has not yet commenced the charitable or religious activity. Any enquiry of the nature would amount to putting the cart before the horse. At a stage only the genuineness of the objects has to be tasted and not the activities, which have not commenced. The enquiry of the Commissioner of Income Tax at such preliminary stage should be restricted to genuineness of the objects and not the activities unless such activities have commenced. The Trust or society cannot claim exemption, unless it is registered under Section 12AA of the Act and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused.”

7. Placing reliance on the decisions of Hon'ble Apex Court and Hon'ble High Court cited supra and reverting to the facts of the assessee's case, we find that non-filing of return under Sec.139(4A) of the Act, cannot be the ground to demonstrate that the activities of the trust were not genuine. That even from the order of the Id. CIT(Exemption), it is evident that he has not conducted any specific enquiry or verification on facts before coming to conclusion of rejecting the application of the assessee trust.

8. Furthermore, the purpose of return under Sec.139(4A) of the Act, is that the assessee has shown receipts exceeding the maximum amount which is exempt from tax. Now this return is to be filed in relation to the claiming of the benefits of Sections 10 & 11 of the Act. Since the assessee has not filed any return therefore there is no question of getting any exemption under Sec.10 and 11 of the Act and hence, there is no jeopardy caused to the Revenue. However, the learned Assessing Officer at the time of assessment proceedings, can take appropriate steps as per law regarding the non-filing of return under Sec.139(4A) of the Act. Considering the totality of the facts and circumstances in this case and following the judicial pronouncements cited supra, we are of the considered view that registration under Sec.12AA of the Act should be granted to the assessee

trust. Accordingly, we reverse the order of the ld. CIT(Exemption) and direct him to grant registration u/s 12AA of the Act to the assessee.

9. In the result, the appeal of the assessee in ITA No.943/PUN/2019 is allowed.

10. With regard to ITA No.944/PUN/2019, in respect of application for exemption u/s 80G(5)(vi) of the Act, it is evident at Para 4 of the ld. CIT(Exemption) in his order that as being asked to upload various details in ITBA Portal, the assessee trust has not uploaded / submitted any evidence i.e., school permission letter, fees, salary structure, details of expenditure incurred to run primary and secondary schools and utilization of income from property held under trust towards charitable objects of the trust. That further at Para 5 of the order of ld. CIT(Exemption) observes that the application of the assessee trust cannot be processed as no verifiable details / proof have been furnished to substantiate the genuineness of the charitable activities of the trust. Thus, the assessee has failed to prove necessary documents required by Rule 11AA(2)(ii) of the Income Tax Rules 1962, and hence, the exemption under Sec.80G(5)(vi) of the Act was rejected.

11. The purpose of getting exemption u/s 80G of the Act is first to facilitate receiving donations from various donors whereby the trust having exemption under Sec.80G can issue a certificate of such donations to the donor and the donor gets the benefit of exemption while filing his return of income. The provision of Sec.80G(5)(vi) read with Rule 11AA is very specific and the essence of this provision is that the concerned authority i.e., ld. CIT(E) in this case, in order to be satisfied about the genuineness

of charitable activities performed by the assessee trust can call for any relevant documents / evidences for factual verification. In this case, the assessee has failed to furnish requisite details and supporting evidences to the revenue authorities for verification and substantiating its charitable activities. That at the time of hearing before us, the learned Authorised Representative prayed for one final opportunity so that he will produce all the relevant details as called for before the Id. CIT(Exemption). That considering our decision, directing the Id. CIT(Exemption) to grant registration u/s 12AA of the Act, in the totality of the justice, we find it appropriate to provide another opportunity to the assessee and therefore we set aside the order of the Id. CIT(Exemption) dated 29.05.2019 and restore the matter back to his file to adjudicate the issue and we direct the assessee at the same time to represent the case on merits and substantiate the genuineness of the charitable activities before Id. CIT(Exemption) by filing supporting documents / evidences / relevant documents as and when called for by him. The Id. CIT(Exemption) shall comply with the principles of natural justice while deciding the matter. This appeal of the assessee in ITA No.944/PUN/2019 is allowed for statistical purposes.

12. In the result, the appeal of assessee in ITA No.943/PUN/2019 is allowed and ITA No.944/PUN/2019 is allowed for statistical purposes.

Order pronounced on 21st day of September, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 21st September, 2020.
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Exemption), Pune.
4. Addl/Joint Commissioner of Income Tax,
Exemption Range, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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