

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 319/SRT/2017
(Hearing in Virtual Court)

Bilimora Modh Ganchi Samast Panch, Bangiya Faliya, Bilimora, Tal : Gandevi, Dist. Navsari-396321 PAN : AAATB 2677 A	Vs	Principal Commissioner of Income Tax (Exemptions), 1 st Floor, Room No.111- 112, Annexy, Aaykar Bhavan, Ashram Road, Ahmedabad
Assessee / appellant		Revenue / respondent

Assessee by	Shri Akshay M. Modi, C.A
Revenue by	Shri S.T. Bidari – CIT-DR
Date of hearing	21.09.2021
Date of pronouncement	23.09.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Principal Commissioner of Income tax (Exemptions), Ahmedabad (PCIT(E) for short) dated 18.09.2017 passed under section 12AA of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). The assessee has raised the following grounds of appeal:-

“(1) The learned Pr. CIT(Exemptions), Ahmedabad’s order is contradictory to law and facts of the case and hence, liable to be quashed.

(2) The learned Pr. CIT (Exemptions), Ahmedabad has erred in denying for registration u/s 12AA of the Act without considering on merits the documentary evidences/explanations furnished before him to satisfy himself about the objects and genuineness of the charitable and public activities carried out towards the objects of the trust by the appellant trust and hence,

the Pr. CIT's action in refusing for registration is arbitrary, without jurisdiction, bad in law and not justified."

2. Brief facts of the case are that assessee is a trust. The assessee filed application for seeking registration before learned Principal Commissioner of Income Tax (Exemption) "Ld PCIT(E)" under section 12AA of the Act in prescribed form on 09.03.2017. The Ld. PCIT(E) on receipt of application issued notice to the assessee to furnish detail note of the activities actually carried out by the assessee-trust along with documents. The details of documents required by Ld. PCIT(E) is mentioned in para-2 of its order. The assessee-trust furnished its reply on 15.05.2017. The Ld. PCIT(E) recorded that on verification of application as well as reply it was observed that trust is formed for Ganchi Community which is specifically stated by the assessee. There is no dissolution clause in the trust deed. Further, out of total receipt of Rs. 968,815/- the assessee has shown as rental income of Rs. 418630/-, but no details substantiating the same as charitable is furnished. Accordingly, Ld. PCIT(E) issued show-cause notice for giving one more opportunity vide notice dated 01.8.2017. The assessee replied vide its reply dated 24.08.2017. The PCIT(E) recorded that on perusal of reply it is seen that assessee failed to furnish required details. Therefore, he proceeded to decide application on the materials available on record.

3. The Ld. PCIT(E) recorded that neither the assessee carried out any charitable / religious activity nor established corpus to undertake the charitable activities. This clearly indicate that the assessee does not have intention to start charitable / religious activities. The Ld. PCIT(E) rejected the application by taking the view that assessee has failed to filed documentary evidence to satisfy about the genuineness of activities in consonance with its object in its order dated 18.09.2017. Thus, aggrieved by the order of Ld. PCIT(E) assessee has filed present appeal before us.
4. We have heard the submission of Ld. Authorized Representative (AR) for the assessee and Ld. Commissioner of Income Tax-Departmental Representative (CIT-DR) for Revenue. The Ld. AR of the assessee submits that while filing application under section 12AA on 08.03.2017 the assessee furnish complete details as required under Form 10A r.w.s. Rule 11AA of Income tax Rules. The assessee explained its object to help poor and note book sales to students at cost price. The assessee received notice dated 03.05.2017 form the officer of ld PCIT(E). In response to said notice, the assessee furnished its reply dated 11.05.2017. The copy of reply filed by the assessee duly noted by Ld. PCIT(E) received on 15.05.2017. The assessee again furnished complete details as required by Ld. PCIT(E). The Ld. AR of the assessee further submits that another notice dated 01.08.2017, which was

reply by assessee vide its reply dated 19.08.2017 and submitted that they have already filed details on 08.03.2017 and again on 11.05.2017. The Ld. AR of the assessee submits that the Ld. PCIT(E) rejected the application of assessee for want of documentary evidence. The Ld. AR for the assessee submits that assessee has a good case on merit if one more opportunity is given to furnish further documentary evidence to prove the genuineness of activities and charitable object, the assessee will succeed. The assessee would again furnish complete details to the satisfaction of Ld PCIT(E). To support his contention, Ld. AR of the assessee relied upon the decision of Tribunal in the case of *Panchkva Cloth Merchant Association vs. CIT (Exemption), Ahmedabad* [2021] 128 taxmann.com 391 (Ahmedabad-Trib.), wherein the Tribunal has held the order of CIT (E) denying application u/s. 12AA on ground that assessee failed to file documentary evidences so as to satisfy him about genuineness of its creation and its activities to be set aside if documents filed by assessee in this regard were not verified by him.

5. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld. PCIT(E). The Ld. CIT-DR for the revenue submits that Ld. PCIT(E) in para-4 to 6 that impugned order clearly held that assessee failed to furnish requisite details. The Ld. PCIT(E) passed the impugned order on the basis of material available on record. The assessee has not carried out any charitable

activity nor establish for the purpose to undertake the charitable activity. It is clearly held that assessee-trust has no intention to start charitable or religious activity and in absence of any documentary evidence, Ld. PCIT(E) was not satisfied himself about the genuineness of activities in consonance with its object.

6. We have considered the rival submission of both the parties and perused the material available and order of Ld. PCIT(E). We have also seen various documentary evidence filed by assessee-trust alongwith appeal memo. We may note that documents filed alongwith appeal memo is not in consonance with Income Tax Tribunal Rule, 1963. The assessee-trust was required to file document with separate list of documents with a certificate, certifying that these documents were furnished before the lower authorities. However, we instead of going into such technicality find that assessee was filed application under section 12AA and furnished required details with the said application. The assessee-trust again in response to show cause notice dated 03.05.2017 filed its reply on 11.05.2017. The reply of assessee is duly acknowledged by Ld. PCIT(E) in its order. We find that the assessee instead of filing detail explanatory submission relied on various documents furnished alongwith original application. The Ld. PCIT(E) again issued final show cause notice dated 01.08.2017 seeking various details as mentioned

therein. The assessee instead of giving para-wise reply filed his short and cryptic reply dated 19.08.2017, which was received by Ld. PCIT(E) on 24.08.2017. The Ld. PCIT(E) rejected the application of assessee by taking view that assessee-trust failed to file documentary evidence about the genuineness of activities in consonance with object. Considering the fact that the assessee-trust has furnished almost or requisite detail vide reply dated 11.05.2017, the Ld. PCIT(E) instead of referring all those documentary evidence rejected the application of the assessee-trust. Therefore, considering the facts and circumstances, we deem it appropriate to set aside the impugned order of Ld. PCIT(E) and restore the mater back to the file of Ld. PCIT(E) for considering the application afresh and order in accordance with law. The assessee is also directed to provide complete detail with explanatory note to substantiate the object and genuineness of activities carried out in accordance with its object.

7. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced on 23/09/2021 by placing the result on the notice board.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 23/09/2021
Dkp. Out Sourcing Sr.P.S

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Appellant-Bilimora Modh Ganchi Samast Panch, Bangiya Faliya, Bilimora, Tal: Gandevi
Dist. Navsari-396321
2. Respondent- PCIT(Ex) 1st Fl. Room No.111-112, Annexy, Aaykar Bhavan, Ashram Road
Ahmedabad
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// TRUE COPY //

Assistant Registrar, ITAT, Surat