

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**

**ITA.No.1649/Ahd/2012**

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| Shree Sagar Subhechhak Khata<br>Jain Waga, Wadi Sheri<br>Nr. Pandya Sheri<br>Dabhoi 391 110, Dist: Baroda. | Vs | CIT-I, Baroda. |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|
| Assessee by :          | Shri Samir Parikh, AR    |
| Revenue by :           | Shri Jagdish , CIT-DR    |

सुनवाई की तारीख/Date of Hearing : 25/07/2016  
घोषणा की तारीख /Date of Pronouncement: 01/08/2016

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against the order of the Ld.Commissioner of Income-Tax-I, Baroda dated 26.6.2012 passed under section 12AA(1)(b) of the Income Tax Act, 1961.

2. Solitary grievance of the assessee is that the Ld.CIT has erred in rejecting the application of the assessee for grant of registration under section 12A(a) of the Act.

3. Brief facts of the case are that the assessee had filed an application for registration under section 12A(a) of the Act on 27.12.2011. It was

stated that the assessee-trust has been created on 24.3.20153. It was registered with Bombay Charity Commissioner. In order to give a logical end to the proceedings, the Id.Commissioner has called for various information vide letter dated 7.2.2012. The assessee has filed details. The Id.Commissioner, thereafter, called for to clarify the application of its income on the objects of the Trust. After analysis the income application of the Trust, the Id.Commissioner has observed that the assessee did not apply its income for its objects, and therefore, does not entitle for registration under section 12A(a) of the Act. While impugning the order of the Id.CIT, it was contended by the Id.counsel for the assessee that though the assessee has incurred expenditure on the objects of the Trust, but such expenditure have been shown under the head "Establishment expenses". He took us through page no.36 of the paper book and pointed out to Schedule-A, which contained details of the expenditure. He submitted that the assessee had incurred expenditure of Rs.2,890/- of *Ladu Prabhavna* expenses. He also apprised that there are *pooja* expenses. These are for the objects of the Trust, because, the assessee is charitable religious trust. On the strength of the Hon'ble Punjab & Haryana High Court's decision in the case of CIT Vs. Surya Educational & Charitable Trust, 15 taxmann.com 123, he contended that application of income of a Trust for charitable or religious purpose should only be seen at the time of determination of taxable income. At the stage of grant of registration, only objects, and their genuineness is to be seen. The Id.DR, on the other hand, contended that in order to find genuineness of the activities of the assessee, the Id.CIT has verified whether the assessee has incurred any expenditure for its objects. If it fails to incur the expenditure towards fulfillment of

its objects, that will cast a shadow on the existence of the genuineness of its activities. Not only this year, in the last two years also, assessee failed to incur any expenditure for the objects of the Trust.

4. We have duly considered rival contentions and gone through the record carefully. Section 12A provides mechanism for conducting inquiry at the end of the Id.Commissioner before grant of registration to a charitable trust/institution under section 12A of the Income Tax. The relevant part of this section reads as under:

*“12AA. (1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) of sub-section (1)] of section 12A, shall—*

*(a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and*

*(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—*

*(i) shall pass an order in writing registering the trust or institution;*

*(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,*

*and a copy of such order shall be sent to the applicant :*

*Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.*

*[(1A) All applications, pending before the [Principal Chief Commissioner or] Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the [Principal Commissioner or] Commissioner and the [Principal Commissioner or] Commissioner may proceed with such*

*applications under that sub-section from the stage at which they were on that day.]*

*(2) Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) 4[or clause (aa) of sub-section (1)] of section 12A.]*

5. When we asked the Id.counsel for the assessee to show us the objects of the Trust, then, the Id.counsel for the assessee stated that Trust as such has no written deed or MOU. In other words, there is no documentary evidence with the assessee to exhibit its objects. According to the Id.counsel for the assessee it was an old trust, which is managing a *Jain* temple. It was registered under Bombay Public Trust Act in the year 1953 under Registration No.A/604/Baroda. He has shown photo-copy of such registration and also shown photo-copy of ledger where it is alleged that name of the assessee is appearing.

6. A bare perusal of the section 12AA would indicate that Id.Commissioner would call for documents, information from the Trust, as he thinks necessary in order to satisfy himself about the genuineness of activities of the Trust. We have our doubts about the alleged registration certificate of the assessee under Bombay Public Trust Act, 1950. These are photo-state copies of mutilated pages of alleged registration certificate and of register where these registration entries were made. The only information considered by the Id.Commissioner while rejecting the application of the assessee is the application of income on the objects of the Trust. But, firstly it is to be determined what are the objects of the assessee. There is no material on record

exhibiting the objects except oral submission of the assessee as a religious charitable trust. Test for verifying the genuineness of the assessee with the help of application of income towards its objects can be one of the corroborative tests amongst other. It is not sufficient for giving a finding about the nature/genuineness of objects. To our mind, complete material is not available on record, which can demonstrate that assessee is existing as religious charitable institution. We are of the view that a further inquiry is required in this case. Therefore, we set aside the order of the Id.Commissioner and restore this issue to the file of the Id.CIT for re-adjudication. The assessee is directed to supply further material for buttressing its case that it is a charitable religious institution. We allow the appeal of the assessee for statistical purpose.

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

**Order pronounced in the Court on 1<sup>st</sup> August, 2016 at Ahmedabad.**

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 01/08/2016

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**