

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

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 265/PUN/2020

Shree Govindanand Shreeram Mandir,
Shree Govindanand Shree Ram Mandir,
Station Road, Ramnagar,
Opp. Bhagyodaya Bldg.
Dombivali (East)-421 201.
PAN: AAMTS3777Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Commissioner of Income Tax (Exemptions),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rohan Dedhia
Revenue by : Smt. Kesang Y. Sherpa

सुनवाई की तारीख / Date of Hearing : 25.08.2020

घोषणा की तारीख / Date of Pronouncement : 25.08.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Exemption), Pune dated 31.12.2019 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. On the facts and in the circumstances of the case the Ld. CIT(E) has erred in exceeding the jurisdiction bestowed upon the Ld. CIT(E) in as much as the Ld. CIT(E) has sought to make assessment of Income of the Trust for prior years at the time of registration U/s.12AA .*
- 2. On the facts and in the circumstances of the case the Ld. CIT(E) has erred in holding that registration U/s.12AA cannot be granted unless tax is paid on the income assessed at the time of 12AA proceedings.*
- 3. On the facts and in the circumstances of the case the Ld. CIT(E) has erred in making incorrect assessment of income of the Trust without following the law and established judicial precedents.*
- 4. On the facts and in the circumstances of the case the Ld.CIT(E) has erred in exceeding the jurisdiction bestowed upon the Ld.CIT(E) in as much as the Ld. CIT(E) has sought details of sources of income of the Trust whereas the Ld. CIT(E) is to merely look into the application of such Income.*
- 5. On the facts and in the circumstances of the case the Ld. CIT(E) has erred in holding that the objects are not charitable in nature and thereby refusing to grant registration U/s.12AA.*
- 6. On the facts and in the circumstances of the case the Ld. CIT(E) has erred in holding that the activities are not genuine in nature and thereby refusing to grant registration U/s.12AA.”*

2. Though the assessee has raised multiple grounds of appeal, the crux of the grievance of the assessee in this appeal before us is rejection of application for granting registration u/s.12AA of the Act.

3. The brief facts of the case are that the assessee has made an online application in Form No.10A for approval of the Trust/Institution u/s.12AA of the Act under the category of charitable trust/institution. The assessee was registered under Bombay Public Trust Act, 1950 with registration number A-664/THANE dated 15.09.1971. The application was carefully perused and considered along with its annexures. Thereafter, a letter was issued through ITBA portal to the assessee on 06.08.2019 requesting to upload certain other information/clarification by 23.08.2019 in order to process the said application. The assessee submitted its compliance on ITBA portal in response to the said notice. The assessee was established in 1979 and

claimed to be engaged in religious activities such as running and maintaining a temple. It was noticed that the assessee had previously applied for registration u/s.12AA of the Act on 17.10.2018 and the same was rejected vide order dated 30.04.2019. The assessee trust has not filed return of income for the assessment years 2016-17, 2017-18 and 2018-19. Further, the assessee trust is entitled to claim exemption from corpus donation as per the provision of section 11(1) (d) of the Act.

4. During the First Appellate Proceedings, the Ld. CIT(Exemption) vide order dated 31.12.2019 had rejected the application for registration u/s.12AA of the Act of the assessee Trust/ Institution as per reasons appearing in his order.

5. The contentions of the Ld. AR of the assessee before us is that at the time of granting registration u/s.12AA of the Act, the jurisdiction of the Ld. CIT(Exemption) demands to examine the charitable nature of the objects of the assessee Trust/Institution and also to examine the genuineness of the activities conducted by the assessee Trust/Institution. In this case, the Ld. CIT(Exemption) had taken role of a Assessing Officer while rejecting the application for registration u/s.12AA of the Act.

6. Per contra, the Ld. DR placing reliance on the order of the Ld. CIT(Exemption) submitted that the assessee Trust has not provided any details of the activities carried out, details of income and expenses and other relevant documents were not furnished as called for by the Ld. CIT(Exemption). Therefore, the Ld. CIT(Exemption) was unable to examine the genuineness of the activities performed by the assessee Trust/Institution and

also was unable to examine the charitable nature of the objects of the assessee Trust/Institution.

7. We have perused the case records and heard the rival contentions. When we peruse the order of the Ld. CIT(Exemption) at Page 3, it is stated that “ *during the present proceedings also, the applicant has not brought on record any new facts which were not put before during the earlier proceedings. As regards the amount of Earmarked Funds, the applicant has not paid any taxes on the said amount till date.*”

Further, at Page 5 of the said order it is on record that “ *the applicant has not furnished any list of in respect of the donations received towards corpus though it was specifically requested for vide Point No.9 of the notice dated 06.08.2019 and also in subsequent notice issued to it.*”

8. In the entire order, the Ld. CIT(Exemption) has analyzed legal periferi of exemption u/s.11 of the Act and registration u/s.12AA of the Act. He has not brought on record the examination of Memorandum of Articles of the assessee Trust/ Institution. Further, the Ld. CIT(Exemption) in his entire order has not dealt with the examination of the objects of the assessee Trust/Institution and has also not given specific findings on the genuineness of the activities carried on by the Trust vis-à-vis facts as well as documents on records. This is more so, because the assessee Trust/Institution has not furnished the requisite details as called for by the Ld. CIT(Exemption) and therefore, we are of considered view, in the interest of justice, the Ld. CIT(Exemption) should re-adjudicate the matter on examining facts viz. **(i) charitable nature of the objects of the assessee Trust/Institution** **(ii) genuineness of the activities carried on by the assessee Trust/Institution.**

Therefore, considering the totality of facts and circumstances, we set aside the order of the Ld. CIT(Exemption) and remit the matter back to his file for adjudicating the same as per directions mentioned aforesaid following the principles of natural justice. At the same time, the assessee Trust/Institution is directed to furnish requisite details as called for by the Ld. CIT(Exemption) for determining the case on merits. The Ld. CIT(Exemption) should come out with a speaking order. The matter is therefore, restored to the file of the Ld. CIT(Exemption).

9. In the result, **appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 25th day of August, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th August, 2020.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	25.08.2020	Sr.PS/PS
2	Draft placed before author	25.08.2020	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		