

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 416/Srt/2019
(Assessment Year: Not applicable)
(Physical hearing)

Domadia Raiyaben Muljibhai Charitable Trust, A/-2, Parth Baunglow, Opp. Subham Apart, Nr. Hotel Get Way, Athwalines, Surat, Gujarat-395001. PAN No. AABTD 3862 E	Vs.	CIT(Exemption), Ahmedabad.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Rushi Parekh, AR
Department represented by	Shri Ashok B. Koli CIT-DR
Date of hearing	24/11/2022
Date of pronouncement	16/12/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Exemptions), Ahmedabad (in short, the Id. CIT(E)) dated 19/06/2019 wherein the assessee has raised following grounds of appeal:

- "1. That the CIT(Exemptions), Ahmedabad erred in passing the original order u/s 12AA on 19/06/2019 in compliance of the fresh application of appeal trust on 13/12/2018 in disregard to the appellant trust's original application dated 29/12/2011.*
- 2. That in absence of any order granting or refusing registration in view of provision of Section 12A(2), the order for registration u/s 12AA is deemed to have been passed on expiry of the six months from the end of the month in which the application is received by CIT i.e. expiry of six months ends on 30/06/2012.*

3. *That it is prayed to consider the registration to the appellant trust as deemed to have been granted on expiry of above said period of 30/06/2012 and the fresh application on 13/12/2018 may kindly be treated as receded or treated as withdrawn/cancelled.*
 4. *The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of appeal."*
2. Brief facts of the case are that the assessee is claiming itself to be registered as a public charitable trust. The Trust was set up on 13/01/2010. The applicant Trust filed an application for registration under Section 12AA of the Income Tax Act, 1961 (in short, the Act) on 13/12/2018. The assessee trust was granted registration under Section 12AA vide order dated 19/06/2019 w.e.f. 13/12/2018 i.e. from the date of application. Still aggrieved by the action of Id. CIT(E) in granting registration from the date of application, the assessee trust has filed the present appeal before this Tribunal, raising various grounds of appeal which we have recorded above.
3. We have heard the submissions of learned Authorised Representative (Id.AR) of the assessee and the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits that initially the assessee trust, filed an application for its registration on 29/12/2011 before the Id. CIT(E), Surat. Alongwith registration application, the assessee furnished certificate of Assistant Charity Commissioner granted on 22/03/2011. No intimation of any kind was received nor any detail was sought from the assessee. The assessee on safer side moved fresh application on 13/12/2018 before the Id.

CIT(E), Ahmedabad for granting registration under Section 12AA of the Act. The registration was granted from date of application which is 13.12.2018 i.e. from A.Y. 2019-20. During the intervening period i.e. A.Y. 2011-12 to 2018-19, the Assessing Officer scrutinize and passed assessment orders. In A.Y. 2016-17, the Assessing Officer disallowed the expenditure claimed to be exempt on the ground of non-registration under Section 12AA of the Act. The Id. AR further submits that the assessee is a public charitable trust having object of charity consisting of medical health, public health, guiding for education and cottage industry activity. Since the assessee filed an application in December, 2011, the assessee was under bonafide belief that they will be granted registration from A.Y. 2012-13. The Id. AR submits that newly amended Section 12A(2) allowed granting of registration only from the financial year in which registration sought to apply and not the back date since inception of trust by condoning the delay, however, the case of assessee is difference, the case of assessee never falls under clutches of delay as they have applied registration since inception. There was no malafide on the part of assessee for applying registration belatedly. The Id. AR of the assessee submits that they may be granted registration since inception i.e. from Financial year 2011-12. To support its submission, the Id. AR of the assessee relied upon the following decisions:

- (i) Snjeevamma Hanumanthe Gowda Charitable Trust Vs DCIT(Exemption) 285 ITR 327 (Kar).

- (ii) Rama Rao Adik Education Society, Mumbai Vs CIT, ITA No. 5742/Mum/2007 dated 11/02/2008
 - (iii) Saint Kabir Education Trust Vs CIT 41 DTR (Asr)(Trib) 267
 - (iv) Church of our Lady Grace Vs CIT 9 ITR (Trib) 505 (Mum)
 - (v) PCIT Vs Jawaharlal Nehru Technological University ITA No. 1769/Hyd/2019 order dated 27/04/2021.
4. In support of its claim, the assessee also filed copy of trust deed with English translation, Income tax return, computation, auditor's report, profit and loss account and balance sheet from A.Y. 2017-18 to A.Y. 2020-21, application for registration of trust under Form 10A for registration under Section 12A dated 29/12/2011.
5. On the other hand, the Id. CIT-DR for the revenue submits that there is no infirmity or illegality in granting registration under Section 12AA of the Act vide order dated 19/06/2019. The Assessee trust filed an application under Form 10A on 23/12/2018. The Id. CIT(E) granted registration from the date of application. The assessee is eligible for registration only from the date of application and not for retrospective date i.e. date of inception of assessee trust. The Id CIT-DR for the revenue submits that Hon'ble Supreme Court in a recent decision in in Harshit Foundation Vs CIT (2022) 447 ITR 372 (SC) held that there is no provision of deemed registration in the income tax Act, so the assessee cannot claim on the basis of application allegedly filed on 29.12.2011 for deemed registration on registration from retrospective date. The Id. CIT-DR prayed for dismissal of this appeal.

6. We have considered the submissions of both the parties and have gone through the order of Id. CIT(E). We have also deliberated on various case laws relied by the Id. AR of the assessee. We find that the assessee applied for registration vide application dated 19/12/2018. The Id. CIT(E) while granting registration, granted registration from the date of application. The assessee has not filed copy of application filed in Form-10A dated 19.12.2018 for registration under section 12AA, nor any evidence that the assessee made any request before Id CIT(E) for claiming registration from alleged earlier application file in 2011. On the other hand, the Id. AR of the assessee is claiming for registration from the Financial year 2011-12 on the ground that they initially applied for registration on 29/12/2011. To support such submission, the Id. AR relied on various case laws and urged that when the genuineness of activities are not in doubt and the reasons for delay in filing application was not found to be false or untrue, the registration may have been allowed from the inception of trust or from the date of first application.
7. We find that though, the assessee is claiming to have filed application for registration under Section 12AA of the Act in the year 2011 and also furnished copy of such application. However, the Id. AR of the assessee failed to furnish any evidence whether such application was registered in the office of Id. CIT(E) or not or any further query was raised by the Id. CIT(E). In our view, one sided correspondence, unless it is acknowledged

by other party would not be considered as the application of assessee was pending or not for similar registration. As recorded above, the assessee was allowed registration under Section 12AA from the date of application, which we find in order.

8. The ratio of decisions of various case laws relied by the Id. AR of the assessee are not helpful to him. The ratio of all those case laws are altogether different. In none of the case law, the assessee was allowed registration from retrospective date.
9. The case law relied by Id. CIT-DR for the revenue in Harshit Foundation Vs CIT 447 ITR 372 (SC) wherein the Hon'ble Supreme Court has held that there is no specific provision in the Income Tax Act that non-deciding the registration application under Section 12AA within a period of six months there shall be a deemed registration. Thus, the ratio of this decision is directly applicable on the facts of the present case. Even otherwise, the law declared by the Hon'ble Apex Court is a binding precedent by virtue of Article 141 of the Constitution of India. Thus, we do not find any merit in various grounds of appeal raised by assessee.
10. In the result, this appeal of assessee is dismissed.

Order pronounced in the open court on 16th December, 2022.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated:16/12/2022
**Ranjan*

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat