

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE SHRI SIDDHARTHA NAUTIYAL, ACCOUNTANT MEMBER
AND
SHRI MAKARAND VASANT MAHADEOKAR, JUDICIAL MEMBER

ITA No.487/Ahd/2024

Assessment Year : -

National Real Estate Development Council Gujarat B-807, Times Square-2 Nr.Avlon Hotel, Thaltej Ahmedabad. PAN : AAGAN 1280 J	Vs.	Commissioner of Income-tax (Exemption) Ahmedabad.
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Assessee by :	Shri Dhinal Shah, CA
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख / **Date of Hearing** : **04/06/2024**

घोषणा की तारीख / **Date of Pronouncement**: **02/07/2024**

आदेश / O R D E R

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income-tax (Exemption), Ahmedabad 21.02.2024 rejecting application for registration of the Trust under section 12AB of the Income Tax Act, 1961 ("the Act" for short).

2. The assessee has taken the following grounds of appeal:

- 1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Exemption) ("CIT (Exemption)") erred in rejecting the registration of the Appellant under section 12AB of the Act on the ground that trust is formed for the benefit of the members of the trust and not for the benefit of the general public.*
- 2. On the facts and in the circumstances of the case and in law, the learned CIT (Exemption) erred in rejecting the registration of the Appellant under section 12AB of the Act stating that the trust is formed as an association to protect the business interest and welfare of its members and therefore can not be considered as charitable in nature for the purpose of General Public Utility without appreciating the fact that trust has open membership policy and there is no restrictions imposed on any person on the eligibility for membership.*

3. Brief facts of the case are that the assessee-trust filed an application for registration of trust under section 12AB of the Act on 21.8.2023 in Form No.10AB under Rule 17A of the Income Tax Rules, 1962. In response to the application filed by the applicant, the applicant was required to submit certain details/documents in response to which the applicant filed certain details. On perusal of the Memorandum of Association of the applicant/assessee, the CIT(Exemption), Ahmedabad observed that the objects of the applicant are for the benefit of members of National Real Estate Development Council Gujarat (NREDC-Gujarat). On perusal of the objects of the applicant trust, the CIT(Exemption) was of the view that the objects of the assessee-trust are confined/restricted for the members of National Real Estate Development Council Gujarat, which is in contravention to the provisions of section 13(3) of the Act. The CIT was of the view that on going through the objects of the trust, the same are not for the benefit of public at large but trust has been incorporated to take care of the interest of the members. Therefore, the prime focus of the object is only to safeguard the interest of the members of NREDC, Gujarat and not any section of public or public at large. Whenever, there is a conflict of interest, then preference will be given to the interest of it's members only. The membership of the Association is limited to people dealing in real estate development, land development, lay-out planning, development of township, architecture, estate finance etc. The applicant trust does not include the members who represent the interest of customers as such. Therefore, looking into the instant fact, it cannot be said that the objects of the assessee-trust are for general public utility or for the benefit of the public at large or for the benefit for a section of the public, without any discrimination. Accordingly, with the above observations, the CIT(Exemption) rejected the application filed by the

assessee/applicant trust in form No.10AB under section 12A of the Act and also cancelled the provisional registration granted to the assessee/applicant trust while dismissing the application filed by the assessee/applicant trust. The relevant observation of the CIT are as under:

"9. From perusal of above referred objects of the applicant/assessee, it is evident that it is formed as an association to protect the business interest and welfare of its members and that hardly can be considered as charitable in nature for the purpose of General Public Utility (GPU). The applicant/ assessee is established and functioning as welfare association or union and also collecting fee from its members in the guise of "Trust Fund" from Founder members, professional members, Realtor Members, Regular Members, special members. Moreover, the welfare activities adopted for its members are in the nature of services being rendered to members as are common in other welfare organizations, which could not be termed for general public utility and charitable purpose. Further, the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Truck Operators Association reported in 9 taxmann.com 267 decided the matter in favour of revenue and held as under.

"9. On examination of the objects and the purpose of the Association in the present case, it emerges that the respondent-Association is union of Truck Operators constituted for facilitating its members to carry on the trade of transportation and not to allow the outsider or non-member to undertake any business activity within the precincts of Hansi Town Village. The Association charges fees from its members before the transportation on the basis of the distance involved. The membership and payment of fees are mandatory and the element of voluntary contribution is missing. The association is vigorously pursuing transportation business by receiving freight charges on behalf of its members. The we/fare activities adopted for the truck drivers, cleaners and mechanics of the truck owners are in the nature of staff welfare activities, as are common in other bus/ness organizations which cannot be termed for general public utility."

10. Therefore, as the aforesaid objects are for the benefit/ welfare/ interest of the members of the association i.e. members of National Real Estate Development Council Gujarat and not for the benefit of the public at large. Therefore, I am not satisfied about the genuineness of activities of trust and is of the considered opinion that the applicant/assessee is not eligible for registration u/s 12A of the Act Therefore in the facts and circumstances of the case, the applicant/assessee cannot be granted registration u/s 12A of the Act.

11. In view of the above, the present application filed in Form No.10AB u/s 12A(1)(ac)(iii) of the Act is rejected and provisional registration stands cancelled."

4. The assessee is in appeal before us against the order of the ld.CIT (Exemption) rejecting the application filed by the assessee/applicant trust. The ld.counsel for the assessee primarily contended before us that in view of various judicial precedents and looking into the objects of the trust, it cannot be inferred that the objects beneficial to a section of the public is an object of general public utility. Further to serve charitable purpose, it is not necessary that the objects should be to benefit the whole of mankind or all persons in a country or state. It is sufficient if the intention is to benefit a section of the public, as distinguished from specified individuals.

4.1 In response, the ld.DR supported the orders of the Revenue authorities.

5. We have heard the rival contentions and perused the material on record. We observe that in the case of **Jamiatul Banaat Tankaria [2024] 160 taxmann.com 358 (Ahmedabad - Trib.)**, the ITAT held that where objects of assessee-trust were primarily charitable rather than favouring any specific religious community, CIT(E) was not justified in denying registration under Section 12A, by invoking Section 13(1)(b) as said provisions would be attracted only at time of assessment and not at time of grant of registration. In the case of **Malik Hasmullah Islamic Educational and Welfare Society [2012] 24 taxmann.com 93/138 ITD 519 (Lucknow)**, the ITAT held that since provisions of Sections 11, 12 and 13 are intended for exercise of jurisdiction by an Assessing Officer in an assessment proceedings, Commissioner is not competent to invoke such provisions for purpose of declining registration under Section 12AA. **In the case of St. Joseph Academy [2014] 50 taxmann.com 216/[2015] 153 ITD 669 (Hyderabad - Trib.)**, the

ITAT held that provisions of Section 13 can be invoked by Assessing Officer while framing assessment and not by Commissioner while considering application for registration under Section 12AA. In the case of Dawoodi Bohara Jamat [2014] 43 taxmann.com 243/268 CTR 1/364 ITR 31/222 Taxman 228 (SC), the Hon'ble Supreme Court made the following observations:

"40. Further, establishment of Madarsa or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of Section 2(15) of the Act. The institutions established to spread religious awareness by means of education though established to promote and further religious thought could not be restricted to religious purposes. The House of Lords in Barralet v. IR 54 TC 446, has observed that "the study and dissemination of ethical principles and the cultivation of rational religious sentiment" would fall in the category of educational purposes. The Madarsa as a Mohomedan institution of teaching does not confine instruction to only dissipation of religious teachings but also contributes to the holistic education of an individual. Therefore, it cannot be said that the object (d) would embody a restrictive purpose of religious activities only. Similarly, assistance by the respondent-trust to the needy and poor for religious activities would not divest the trust of its altruist character.

41. Therefore, the objects of the trust exhibit the dual tenor of religious and charitable purposes and activities. Section 11 of the Act shelters such trust with composite objects to claim exemption from tax as a religious and charitable trust subject to provisions of Section 13. The activities of the trust under such objects would therefore be entitled to exemption accordingly.

*42. We would now proceed to examine the objects under the provisions of Section 13(1)(b) of the Act. **It becomes amply clear from the language employed in the provisions that Section 13 is in the nature of an exemption from applicability of Sections 11 or 12 and the examination of its applicability would only arise at the stage of claim under Sections 11 or 12.** Thus, where the income of a trust is eligible for exemption under Section 11, the eligibility for claiming exemption ought to be tested on the touchstone of the provisions of Section 13. In the instant case, it being established that the respondent-trust is a public charitable and religious trust eligible for claiming exemption under Section 11, it becomes relevant to test it on the anvil of Section 13.*

6. In view of the above judicial precedents, looking into the facts of the instant case, we are of the considered view that the provisions of Section 13 of the Act can be invoked only at the time of assessment while considering the applicability of section 11/12 with respect to

assessee's set of facts and not at the time of grant of registration under Section 12A of the Act. Our view is further supported by the decision of the Hon'ble jurisdictional High Court in the case of **CIT (Exemptions) v. Bayath Kutchhi Dasha Oswal Jain Mahajan Trust [2016] 74 taxmann.com 199/243 Taxman 60 (Gujarat)/[2017] 8 ITR -OL 494 (Guj.)** wherein on the issue of denial of grant of registration u/s 12A of the Act by invoking Section 13(1)(b) of the Act, it was categorically held that the provisions of Section 13 would be attracted only at the time of assessment and not at the time of grant of registration. The relevant finding of the Hon'ble High Court at para 8 of his order is as under:

*"8. Thus, very premise for the Commissioner to come to the conclusion that the objects of the trust were confined for the benefit of a religious community, is incorrect. Thereafter to suggest that the activities were carried out only for such purposes would be entering in the realm of granting exemptions in terms of Section 13 of the Act, which would be the task of the Assessing Officer to be undertaken **at the time of assessment on the basis of material that may be brought on record.**"*

7. In the result, in view of the above observations, the matter is restored to the file of CIT (exemptions), for de novo consideration, after giving due opportunity of being heard and with the direction not to disentitle the assessee for grant of registration only on the grounds as mentioned in its order passed for rejecting the application filed by the assessee trust for grant of registration under section 12A of the Act.

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

Order pronounced in the Court on 2nd July, 2024 at Ahmedabad.

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad, dated 02/07/2024