

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No. 1571/Ahd/2024

Shri Soudharma Brihad Tapogachchiya Tristutik Jain Sangha Samarpanam 602, Amrapali Apartment, Near Jainnagar, Paldi, Ahmedabad-380007 PAN: ABHTS0110M (Appellant)	Vs	CIT(Exemption), Ahmedabad (Respondent)
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**Assessee Represented: Shri Hardik Vora, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR**

Date of hearing : 30-12-2024
Date of pronouncement : 03-01-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the order dated 27.07.2024 passed by the Commissioner of Income Tax (Exemption), Ahmedabad denying registration under section 12AB of the Income Tax Act, 1961 [herein after referred as 'the Act'] on the ground that the objects of the Trust exclusively for Jain Community which is violation of clause (d) to Explanation of Section 12AB(4) of the Act r.w.s. 13(1)(b) of the Act.

2. Brief facts of the case is that the assessee is a Trust created on 05-01-2023 with the following objects:

“(4) Objects:-

The Trust will follow the principles of lord Mahavira and will confirm to his main objectives, subsidiary objectives and principles of Jainism

(1) Jainism has seven spheres and it will act accordingly keeping the seven spheres before the Centre.

1.- Jain mandir:

This organization will construct, assist in constructing Jin temples conforming to the tenets of Jainism as required and property administer and maintain existing-ancient Jin temples

2. Jain Pratima:

Keeping Jain Muni's advice in center, the Jain idol will be created.

3. Shrut Gyan:

Trust involved in activity of development and shrut gran for the purpose of awareness and spreading of Jain shrut gnan. Recreation of ancient new jain scriptures with ancient method.

4. Sadhu Sadhvi Valyavacha:

Creation of Vaiyavacha Khatu for regular and special study of dixarthis, sadhu, sadhviji, Acharya Bhagwant, etc, of Jainism and collection of donations keeping in corpus for fulfillment of religious requirement for sadhu and sadhvis.

5. Sadharmik Bhakti:

Program and planning for all Jain followers-Shravak and shravika for the purpose of creating **internal sense of devotions of Jainism**. Moreover, supporting in life living requirements and promoting them in society whose income follows under less income category-Poor families. Support and service to future dixarthis and Mumukshs.

6. Jivdaya:

One of the aims of Jainism is jivdaya, any innocent lives will be protected and, providing them required ghascharas-grains-pulses etc. Rescue animals-birds from butchers and support them to save them and creating and raising funds for the same.

7. Anukampa:

As per the principles of Jainism carrying all activities of Anukampa Support to all humans without any bias. One of the aim is to create

gratitude towards Jainism in general society. Creating and growing love and brotherhood among all.

(2) Construction of Derasar-upashraya:

This institution will construct Derasar, Upashraya, Pathashala, Gnanmandir, Pushadashala and canteen. So, the Shravakas who come for darshan and worship will get support and adopt the shrines and upashrayas and repair them.

(3) Dev Dravya:

Creating fund of dev Dravya as per guidance of Acharya Bhagwant and as per principles of Jainism. Creating ornaments of tirthankara (Jain god), creating new Jain Idols and Jain temple from collection of income from Ashtaparakari puja. Anjan Salaka will take action in accordance with the existing law in the works of repair, improvement, increase etc. and allot the surplus amount to other Jain Sangh as required. Devdravya will be used according to the principles of Jainism.

(4) Creation of a separate fund according to principles of Jainism: -

According to Jain principles, for the Ashtaparakari worship of God, different funds like Phulpooja, Sukhadpooja, Prakshal etc. will be collected and spent.

(5) Consolidated Fund (Common Fund):

Create a fund for the upkeep and maintenance of the institution and establish an idol of God as per the constitution of the institution. Anjan will perform Salaka and conduct.

(6) This Trust runs according to the principles of Jainism and will act accordingly and will seek the advice of Acharya Bhagwant wherever necessary.

(7) This trust will construct Derasar, Gnan Mandir, Pathshala, Bhojanshala, Upashrayo, Vaiyavacha Bhavan, Ayambil Shala, Yatrik Bhavan, Library (Books of Jainism) etc. Will maintain and repair when necessary.

(8) This Trust will greet all the shravak and shravikas who believes in jain sangh and jainism. According to the principles of Jainism, all necessary steps will be taken to inculcate Jain rites in the children. Will organize religious tours. Conducts camps, will work to inculcate rites in children and Adults.

(9) This Trust will request for the chaturmas of Acharya Bhagwant and will make the do chaturmas according to the conveniency and will take

benefit to gain knowledge from Acharya Bhagwant, Sadhus and sadhviji in paryushan and will endeavor to disseminate it.

(10) To inculcate the religious spirit in the children, services of religious experts will be taken and the children studying in the school will be encouraged. Create and promote a library of religious books.

The Trust shall act in accordance with the principles of Jainism and existing laws and shall raise necessary funds (donations) for the same and plan expenditure as per the provision in the Constitution as necessary and allocate the amount as per the provisions of the Constitution and principles of Jainism as necessary to the organization with the same purpose.

(11) Notwithstanding anything not stated in this trust deed, the Acharya may take discretionary decisions and act according to the advice of the Lords in accordance with the principles of Jainism. All the activities of this organization like Derasaro- Upashrayo-Paushadshalas-Prachan Hall Murtipratistha, Anjan Shalaka etc. will be done according to the prevailing principles of Jainism.”

3. The assessee filed application for registration in Form 10AB on 13-01-2024 before Ld. CIT(E) for registration u/s.12AB of the Act. The assessee was called upon to furnish details of documents vide notices dated 30-04-2024, 06-06-2024. In response, the assessee furnished partial details. Therefore a show cause notice dated 24-07-2024 was issued by the Ld CIT[E] that the objects of the Trust are confined to the benefit of particular religious community or caste namely “Jains” which is specific violation as defined in Explanation to Section 12AB(4) of the Act and why the registration should not be rejected to the assessee Trust. The assessee neither filed reply nor sought for any adjournment. Therefore the Ld. CIT(E) denied registration by observing as follows:

“ ... 9. From the above it is clear that trust or institution established prior to commencement of this Act are excluded from the provisions of clause(d) below explanation to section 12AB(4) of Income Tax Act, 1961. On perusal of the Registration certificate issued by the Asst/Dy. Charity

commissioner Ahmedabad, the trust is registered on 04.05.2023 with registration number E/23860/Ahmedabad. Since the assessee is registered after commencement of the act it has committed specific violation under clause(d) of section 12AB(4) of Income Tax Act, 1961.

9.1. Further, the Hon'ble High Court of Allahabad in the similar matter while relying on the above judgment of the Hon'ble Apex court, has dismissed the appeal of the assessee filed in ITA No. - 64 of 2014 in the case of Shri Agrawal Sabha (Regd.) vs. Commissioner of Income Tax-1. Agra reported in (2014) 45 taxmann.com 273 (Allahabad) and held that:

"... 7. In a recent judgment of the Supreme Court in CIT v. Dawoodi Bohara Jamat [2014] 43. taxmann.com 243, it has been held that Sections 11 and 12 are substantive provisions which provide for exemptions to religious or charitable trusts. Sections 12A and 12AA lay down the procedural requirements. Section 13 sets out the circumstances in which the exemption would not be available to a religious or charitable trust. One restriction is where the trust or institution is created or established for the benefit of any particular religious community or caste [Section 13(1)(b)]. In this context, while interpreting the scheme of these provisions, the Supreme Court has held that Section 13 has to be read in conjunction with the provisions of Sections 11 and 12 for determining the eligibility of a trust to claim exemption under the aforesaid provisions:

"16. Therefore, under the scheme of the Act. Sections 11 and 12 are substantive provisions which provide for exemptions available to a religious or charitable trust. Income derived from property held by such public trust as well as voluntary contributions received by the said trust are the subject-matter of exemptions from the taxation under the Act. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemption under Sections 11 or 12 by the assessee and the grant or rejection of such application by the Commissioner. A conjoint reading of Sections 11, 12, 12A and 12AA makes it clear that registration under Sections 12A and 12AA is a condition precedent for availing benefit under Sections 11 and 12. Unless an institution is registered under the aforesaid provisions, it cannot claim the benefit of Sections 11 and 12. Section 13 enlists the circumstances wherein the exemption would not be available to a religious or charitable trust otherwise falling under Section 11 or 12 and therefore, requires to be read in conjunction with the provisions of Sections 11 and 12 towards determination of eligibility of a trust to claim exemption under the aforesaid provisions."

8. In the case before the Supreme Court, it has further been held as follows:

"45.... What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste."

9. In the present case, the CIT has held that the dominant nature underlying the setting up of a **trust was to benefit only the Agrawal community**. The CIT relied upon such material as was produced by the assessee. If according to the assessee, the trust exists not merely for the benefit of the Agrawal community or for a particular religious group **but for the benefit of the general public for a charitable or religious purpose, it would be necessary for the assessee to satisfy the Commissioner about the activities of the trust or the genuineness of its objects**. Such a requirement is expressly incorporated in clauses (a) and (b) of sub section (1) of Section 12AA.

10. The assessee having failed to discharge the burden, the Tribunal in our view was justified in confirming the decision of the Commissioner. At the same time, it has been left open to the assessee to move a fresh application for registration before the Commissioner. We need only to clarify that if this is done, it shall be duly considered in accordance with law on the basis of the materials that will be produced by the assessee.

11. Learned counsel appearing on behalf of the assessee relied upon an earlier judgment of the Supreme Court in Ahmedabad Rana Caste Association v. CIT (1971) 82 ITR 704. The judgment of the Supreme Court may not be of much assistance to the appellant since the position under the 1922 Act was materially different from the Act of 1961, as would be apparent from the following extract of the judgment:

"4... Under the Act 1922 a trust for the benefit of any particular religious community or caste was entitled to exemption but under the Act of 1961, a charitable trust which is created for such benefit on or after the first day of April, 1962, would be disentitled to the exemption. In the present case the trust was created prior to 1st April, 1962,

and, therefore, no question arises of its not being entitled to the exemption if other conditions were satisfied even though it was created for the benefit of the Rana caste of Ahmedabad,"

12. In the circumstances, on the basis of the material which was produced by the assessee on the record of the Commissioner and before the Tribunal, we are of the view that no substantial question of law would arise in this appeal so as to warrant the Interference of this Court. However, while dismissing the appeal, we clarify that this would not affect the liberty which has been granted to the society to file a fresh application for registration."

9.2 It is also important to go through the provisions of sec 13(1)(b) of the Act is applicable in the present case which are reproduced as under:

"13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

(a) any part of the income from the property held under a trust **for private religious purposes which does not ensure for the benefit of the public;**

(b) in the case of a trust for charitable purposes or a charitable institution **created or established after the commencement of this Act**, any income thereof if the trust or institution is created or **established for the benefit of any particular religious community or caste;**"

From the above it can be gathered that, the provision of sec 13(1)(b) of the Act is applicable only in a case of charitable trust/institution created or established after commencement of this Act and is created or established for the benefit of any particular religious community or caste. However, some courts had held that in case of composite trust/institution, ie, charitable cum religious, the provision of sec 13(1)(b) of the Act is not applicable. However, the said controversy was resolved by the Hon'ble Supreme Court in the case of CIT vs Dawoodi Bohara Jamat, reported in 43 taxmann.com 243, wherein the Hon'ble Apex Court held that the provision of sec 13(1)(b) of the Act is applicable even to a composite trust/institution and held as under.

"45. From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts

established for charitable purposes. **That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b).** What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste."

Accordingly, as per the Registration Certificate issued by the Deputy/ Asst. Charity Commissioner, Ahmedabad vide certificate bearing registration number E/23860/Ahmedabad it is verifiable that the trust is registered on 04.05.2023 and the above referred object of the assessee trust is "composite" in nature. To fortify this finding, on perusal of Form 10AB at para/point 5 the applicant itself has opted other charitable objects in addition to the "Religious object.

10. From the above referred discussion and objects of the applicant/assessee **it is evident that it is a Composite trust and above referred object number 5 is restricted to benefit of a particular religious community or caste ie. Jain, which is a specific violation under clause (d) below explanation to section 12AB(4) of Income Tax Act, 1961 r.w.s 13(1)(b) of Income Tax Act, 1961.**

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. Aggrieved against the rejection order, assessee is in appeal before us raising the following Grounds of Appeal:

"1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 12AB of the Act.

2. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in cancelling the provisional registration of the assessee-trust.

3. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in invoking the provisions of Section 13(1)(b) of the Act without considering that assessee-trust is

religious-cum-charitable trust and section 13(1)(b) of the Act is applicable only to the charitable trust.

4. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in holding that assessee-trust has conducted 'specified violations' as per the explanation to section 12AB(4) of the Act without considering that objects of assessee trust are not limited to benefit of people following Jainism for a private group but is extended to all the people following Jainism.

5. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in not considering that provisions of Section 13 of the Act can be invoked only at the time of assessment and not at the time of grant of registration.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.

5. Ld. Counsel Shri Hardik Vora appearing for the assessee submitted before us a Paper Book containing the Trust Deed with translated English Copy and relied upon judgements of Hon'ble Gujarat High Court and others as follows:

(i) CIT(E) -Vs- Bayath Kutchhi Dasha Oswal Jain Mahajan Trust
(2016) 74 taxmann.com 199 (Gujarat)

(ii) CIT, Rajkot -Vs- Leuva Patel Seva Samaj Trust (2014)
42 taxmann.com 181 (Gujarat)

(iii) Jamiatul Tankaria -Vs- CIT(E) [2024] 160 taxmann.com
358 (Ahmedabad-Trib.) and

(iv) Bhojalram Leuva Patel Seva Samaj Trust -Vs- CIT(E) [2024]
162 taxmann.com 270 (Ahmedabad-Trib.)

Thus Ld Counsel requested to set aside the order passed by the Ld. CIT(E) and direct him to grant Registration u/s. 12AB of the Act to the assessee trust.

6. Per contra Ld. CIT-DR Shri Kamlesh Makwana appearing for the Revenue supported the order passed by Ld. CIT(E) and submitted that the Trust is created and registered on 05-04-2023. Hence the new provision of Section 12AB(4) with Explanation [d] will be squarely applicable to the facts of the present case. Since the objects of the Trust is exclusively for particular community namely "Jains" which is a specified violation as per Explanation [d] of Section 12AB(4) of the Act. Thus, the assessee Trust is not entitled for registration and the order passed by the Ld. CIT(E) does not require any interference. Therefore the appeal filed by the assessee is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. Section 12 to 12AB has undergone various changes from time to time. More particularly after 01.04.2021 the procedure for making reference to CIT(E) for cancellation of registration granted earlier has changed under section 12AB(4) of the Act. For ready reference the same is reproduced as under:

" (4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 124A, as the case may be, and subsequently-

(a) the Principal Commissioner of Commissioner has noticed occurrence of one or more specified violations during any previous year, or

(b) the Principal Commissioner of Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year,

The Principal Commissioner of Commissioner shall-

(i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation,

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations,

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation- For the purposes of this sub-section, the following shall mean "**specified violation**"-

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution, or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect its objectives; or of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution **has applied any part of its income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public, or**

(d) **the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste, or**

(e) any activity being carried out by the trust or institution,-
(i) is not genuine, or
(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered: or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (8) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred has either not been disputed or has attained finality of

(g) the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information. “

7.1. It is undisputed fact that the Assessee Trust is created on 05-01-2023 and the new provisions of section 12AB which is applicable from 01.04.2021. Perusal of the above provisions more particularly Clause (d) to Explanation of Section 12AB(4) of the Act clearly laid down that registration of the Trust or Institution established for charitable purpose **created or established after the commencement of this Act, wherein the trust has applied any part of its income for the benefit of any particular religious community or caste can be cancelled.** In this context perusal of the main objects of the Trust, which are reproduced in paragraph 2 of this order, makes it abundantly clear that all the objects enumerated therein are related to religious activities more particularly relating to “Jain Community” and to propagate “Jainism” i.e. charitable cum religious in nature is for the benefit

of "Jain" caste which is a specific violation under clauses [c] and (d) to Explanation to Section 12AB(4) of the Act.

7.2. Further section 13[1][b] of the Act exclude the benefit of section 11 and 12 to a charitable institution created or established after commencement of the Act, income thereof the trust for the benefit of any particular religious community or caste. The Hon'ble Supreme Court in the case of CIT vs Dawoodi Bohara Jamat reported in 43 taxmann.com 243, held that the provision of section 13(1)(b) of the Act is applicable even to a composite trust/ institution having both religious and charitable objects, by observing as follows:

"... 45. From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. **That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b).** What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose **which is established for the benefit of any particular religious community or caste.**"

7.3. Thus a conjoint reading of Sections 11, 12, 12A and 12AA of the Act makes it clear that registration under sections 12A and 12AA is a condition precedent for availing benefit under Sections 11 and 12. Unless an institution is registered under the aforesaid provisions, it cannot claim the benefit of Sections 11 and 12. Section 13[1][b] prescribes the circumstances wherein **the exemption would not be available to a Religious or Charitable trust** otherwise falling under Section 11 or 12. Therefore, it requires to be read in conjunction with the provisions of Sections

11 and 12 towards determination of eligibility of a Trust to claim exemption under the aforesaid provisions, while granting registration.

7.4. Further Ld CIT [E] has considered the provisions of sec 13(1)(b) of the Act which is applicable only in a case of Charitable Trust or Institution created or established after commencement of this Act and only for the benefit of any particular religious community or caste namely "Jains" and thereby denied the registration, which in our considered view is well within the provision of amended law and therefore the order denying registration passed by Ld CIT[E] does not require any interference.

8. Next coming to the case laws relied by the Ld Counsel for the assessee namely Bayath Kutuchhi Dasha Oswal Jain Mahajan Trust (cited supra) wherein Hon'ble Jurisdictional High Court held that the Trust had **large number of other objects for the benefit of General Public apart from objects for benefit of Religious Community**, therefore held that the Tribunal was correct in allowing Registration to the Trust by observing as follows:

"... 7. It can thus be seen that the Commissioner focused his attention to clause 4.2 of the objects of the trust to come to the conclusion that the same were for the benefit of a certain religious communities only, in the process ignoring various other objects, for e.g. as per clause 4.1, the trust would engage itself in activities relating to education by maintaining and running education centers, infant schools, primary secondary and high schools, colleges etc., to run hostels, training centers for creating awareness in the common people and to make the education available for the public. It would also engage in imparting training in computers. As per clause 4.3, the trust would engage in doing all activities for medical help and to establish and administer dispensaries, hospitals and laboratories etc. It would also help the

patients by supplying medicines and financial assistance. Likewise in clause 4.4 the trust could engage in rural development schemes. As per clause 4.5, the trust would engage in literary and cultural activities by making efforts for the development and protection of Indian culture. Clause 4.6 which pertains to other included activities such as running cow shelters, to provide food, cloth and financial help for economically weaker persons, to help during natural or other calamities, to serve humans and animals etc.

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. "

8.1. Thus the ratio of the above judgment will not be applicable to the facts of the assessee case, since the objects of the Assessee Trust which is meant only for the religious activities of Jain Community.

9. Next case law relied by the Ld Counsel for the assessee namely Leuva Patel Seva Samaj Trust (cited supra), this judgment is rendered by Hon'ble High Court in 2012 pertaining to the old provisions of Section 12A of the Act. In the present case, we are dealing with the amended provisions of Section 12AB of the Act which is effective from 01-04-2021. Therefore, in our humble and considered view, the above ratio of the judgment will not be applicable to the facts of the present case. Similar is the cases relating to the Co-ordinate Bench decisions relied upon by the Assessee Counsel which are not applicable to the facts of the present case. The Assessee Trust being purely a religious activities of particular Community is not entitled for registration as a specified violation under Explanation [d] of Section 12AB(4) of the Act.

10. In the result, **the appeal filed by the Assessee is devoid of merits and the same is hereby dismissed.**

Order pronounced in the open court on 03-01-2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad :
Dated 03/01/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद