

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI RAMLAL NEGI, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.4839/Mum/2017

The Mulund Real Estate Agents Association, C/o. Shri Prashant N. Thakur, Shop No. 4, Hare Ram Society, Trimurti Road, Opp. St. Mary's School, Mulund West, Mumbai - 400080	<b>बनाम/</b>  v.	The Commissioner of IncomeTax (Exemptions), Mumbai 6th Floor, Piramal Chambers, Parel, Mumbai-400012
स्थायीलेखासं./PAN:AACAT8039K		
(अपीलार्थी/ <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:	None	
Revenue by:	Dr. Rajeev Harit, (CIT-DR)	

सुनवाई की तारीख/**Date of Hearing** : 19.03.2019

घोषणा की तारीख /**Date of Pronouncement** :17.05.2019

आदेश / ORDER

**PER RAMLAL NEGI, JM:**

This appeal filed by the assessee is directed against the order dated 30.05.2017 passed by the Commissioner of Income Tax (Exemptions) Mumbai, u/s. 12AA(1)(b)(ii), r.w.s. 12A of the Income Tax Act (the Act), whereby the Ld. CIT(E) has rejected the application of the appellant trust for registration u/s. 12A of the Act, holding that the applicant trust has failed to comply with the mandatory requirements prescribed u/s. 14AA r.w.r. 17A in its application for grant of registration.

2. The applicant assessee has challenge impugned order on the following grounds.

*Ground of Appeal No. 1:*

*Whether on the facts and circumstances of the case, the Hon'ble CIT (Exemptions) Mumbai, has erred in concluding that the objects of the Appellant Trust are not charitable in nature while rejecting the application of registration u/s 12AA*

*Ground of Appeal No. 2:*

*Whether on the facts and circumstances of the case, the Hon'ble CIT (Exemptions) Mumbai, has erred in rejecting the registration u/s 12AA despite gathering enough evidences regarding charitable activities of the Trust*

3. This case was fixed for hearing on 19.03.2019. On the said date when the case was called out for hearing none appeared on behalf of the appellant/applicant. Even no application for adjournment was received on behalf of the applicant. We noticed that the assessee did not appear for the last three successive hearings i.e. on 17.09.2018, 15.11.2018 and 17.01.2019 despite service of notices. From the conduct of the applicant we are convinced that the applicant is not interested in pursuing its appeal before the Tribunal. Accordingly we decided to proceed with the appeal and dispose of the same on the basis of material available on record, after hearing the Departmental Representative (DR).

4. We accordingly allowed the Ld. DR to argue the case on behalf of the revenue. The Ld. DR supported the action of Ld. CIT(E) and further submitted that since the applicant has failed to comply with the mandatory requirements prescribed u/s. 12AA r.w.r. 17A. The Ld. CIT(E) has rightly dismissed the application and rejected registration u/s. 12A of the Act. The Ld. DR further pointed out that the object of trust is primarily for the benefit of its members of the association which reflects that the trust has been created mainly for the benefit

for its members who are either real estate agent or real estate agency. Since the object of the society does not fall within the ambit of section 2(15) of the Income Tax Act, the Ld. CIT(E) has rightly rejected the registration.

5. We have gone through the material on record including the impugned order passed by the Ld. CIT(E). We notice that on receiving application for registration of the trust in the prescribed form, the Ld. CIT(E) directed the applicant to furnish details and documents to substantiate its claim. In response thereof, the applicant trust furnished documents/details. From the documents/details furnished by the application the Ld. CIT(E) noticed that the object of the trust is mainly for the benefit members of the society and not for the public at large. Accordingly, the Ld. CIT(E) asked the applicant to show cause as to why the application should not be rejected on the said ground. The applicant filed written submissions and after going through the same, the Ld. CIT(E) rejected application holding as under:-

*7. In view of the above it is evident that the Society is formed mainly for the benefit of its members who are either real estate agents or real estate agency. From the rules and regulation and object of the Memorandum of Association of the Society and its Income and Expenditure Account it is evident that the object of the society is mainly for the members of the society and not for the public at large within the meaning of section 2(15) of the Income tax Act, 1961. I have carefully perused the case law cited by the assessee, however, the same do not come to its rescue as they are distinguishable on facts of the present case. Furthermore the assessee has also not furnished as to how the Object of the assessee's case is similar to the case in which the decision of the Higher Courts has been relied on by the assessee. Therefore, the cases relied upon cannot be applied to the present facts of the case.*

*8. Thus, in view of the above findings I am unable to satisfy myself about the nature of the object of Trust and its genuineness of activity. The Trust is formed only for the benefit and furtherance of business interest of its member who are either real estate agents or real estate agency and not for the benefit of public at large. As the applicant institution has failed to comply with the mandatory*

*requirements prescribed U/S.12AA read with Rule 17A, its application for grant of registration is rejected.*

6. We notice that the Ld. CIT(E) has rejected the application of the appellant trust on the ground that the it has failed to comply with the mandatory requirements prescribed u/s. 12AA of the Act r.w.r. 17A of the income tax rules as the object of the trust does not fall within the definition of charitable purpose explained in section 2(15) of the Act. We further notice that the Ld. CIT(E) has passed the impugned order after affording a reasonable opportunity of being heard to the applicant trust to establish its claim. Since, the Ld. CIT(E) has rejected for the reason that the applicant has failed to comply with the mandatory requirements required for registration of the trust, we do not find any reason to interfere with the findings of the Ld. CIT(E). Accordingly, we uphold the findings of the Ld. CIT(E) and dismiss the appeal filed by the applicant trust.

In the result the appeal filed by the applicant trust is dismissed.

Order pronounced in the open court on 17.05.2019.

*Sd/-*

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Mumbai, dated: 17.05.2019

*Nishant Verma*

*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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*Sd/-*

(RAMLAL NEGI)

JUDICIAL MEMBER

BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI