

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.2901/PUN/2017

Jain Shwetambar Mandir Trust,  
At Post: Ghoti, Taluka: Igatpuri,  
District: Nashik.

PAN : AABTJ7192H

.....अपीलार्थी / Appellant

बनाम / V/s.

CIT (Exemptions),  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Shekhar L. Gajbhiye

सुनवाई की तारीख / Date of Hearing : 03.11.2020  
घोषणा की तारीख / Date of Pronouncement : 04.11.2020

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee trust directed against the order of the Id. Commissioner of Income Tax (Exemptions), Pune dated 28.09.2017 passed u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 (for short "the Act") denying the registration u/s 12AA of the Act.

2. The appellant society raised the following grounds of appeal :-

"1. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income-Tax (Exemptions), Pune is not justified in not granting registration u/s 12AA of the Act to the Appellant Trust.

2. The Appellant craves for addition to, alternation, modification, change of the above ground of appeal."

3. The brief facts of the case are as under :-

The appellant society had applied for registration u/s 12AA of the Act in Form 10A on 29.03.2017. The ld. Commissioner of Income Tax (Exemptions) had called upon the appellant society to furnish certain information/clarification vide his letter dated 30.05.2017. In response to the same, the appellant society had filed the required information on 11.09.2017. The ld. Commissioner of Income Tax (Exemptions) on perusal of the said information had come to the conclusion that the activities of the trust are prima-facie appeared to be religious in nature and in the absence of dissolution clause of the trust had denied the registration vide order dated 28.09.2017.

4. Being aggrieved by the order of ld. Commissioner of Income Tax (Exemptions), the appellant society is before us in the present appeal.

5. Before us, when the matter was called none appeared on behalf of the assessee. On the other hand, ld. CIT-DR had relied on the order of the ld. Commissioner of Income Tax (Exemptions).

6. We heard the ld. CIT-DR and perused the material on record. The only issue involved in the present appeal relates to the grant of registration u/s 12AA of the Act. The ld. Commissioner of Income Tax (Exemptions) had denied the registration primarily on the ground that the object of the trust prima-facie appears to be religious in nature and there was no dissolution clause in the instrument creating the trust. The tenability of the reasoning of the ld. Commissioner of Income Tax (Exemptions) requires to be adjudged for touchstone of the law and the decision of the Hon'ble Supreme Court in the case of Fazlul Rabbi Pradhan vs. State of West Bengal, AIR 1965 SC 1722 held that the words "trust for charitable purposes" would include even trust for advancement of religious. The Hon'ble Supreme Court's decision was

relied upon in the case of CIT vs. Barkate Saifiyah Society, 213 ITR 492 (Guj.) where it was held that the words “trust for charitable purposes” would include even trust for advancement of religious. The words “trust for charitable purposes” would also include even trust for advancement of religious in the following decisions :-

- (i) CIT vs. Jaipur Charitable Trust , 81 ITR 1;
- (ii) Zenith Tin Works Charitable Trust vs. CIT, 102 ITR 119;
- (iii) CIT vs. Ahmedabad Rana Caste Association, 88 ITR 354; and,
- (iv) CIT vs. Chandra Charitable Trust, 294 ITR 86.

7. The reasoning of the Id. Commissioner of Income Tax (Exemptions) that in the absence of dissolution clause the appellant trust does not entitle for registration u/s 12AA of the Act is also required to be adjudged in view of the decision of the Hon’ble Gujarat High Court in the cases of (i) DCIT vs. Vanchhara Thirthadhipati Chintamani Paraswaprwabhu, 233 Taxman 01 (Guj.) and (ii) CIT vs. Taapagachha Sangh Mota, 232 Taxman 715 (Guj.)

8. Further, the provisions of section 13(1)(b) of the Act had carved out exception to the exemption available u/s 11 and 12 of the Act. One of those exception is that the exemption u/s 11 and 12 would not be available in case any income of trust or institution is created or established for the benefit of any particular religious, community or caste. The Hon’ble Supreme Court in the case of CIT vs. Dawoodi Bohra Jamat, 364 ITR 31 after exhaustively referring to the earlier precedent, held that where the objects of a trust are both charitable and religious, the trust shall be eligible for registration u/s 12AA of the Act. The section only requires to be established that such charitable purpose is not for the benefit of a particular religious community

or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large. In the present case, Id. Commissioner of Income Tax (Exemptions) had obviously not embarked upon enquiry into this aspect. Therefore, in our considered opinion, in the interests of justice, the matter requires remission to the file of the Id. Commissioner of Income Tax (Exemptions) for fresh adjudication keeping in view the legal position discussed above after affording reasonable opportunity of being heard to the appellant society. Accordingly, the matter is set aside to the file of the Id. Commissioner of Income Tax (Exemptions) for fresh adjudication.

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

Order pronounced on this 04<sup>th</sup> day of November, 2020.

**Sd/-**

**(S. S. VISWANETHRA RAVI)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

**(INTURI RAMA RAO)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 04<sup>th</sup> November, 2020.

Sujeet

**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.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.