

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.811/PUN/2019

Satidevi Sansthan,  
A/P, Wadangli, Tal.-Sinnar,  
Nashik – 422103

PAN : AALTS1864K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

CIT, Exemption,  
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Mahavir Atal  
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 09-07-2021

घोषणा की तारीख / Date of Pronouncement : 26-07-2021

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 29-03-2019 passed by the Commissioner of Income Tax (Exemption), Pune wherein he rejected the application filed seeking registration u/s. 12AA of the Act.

2. The assessee raised as many as 5 grounds amongst which the only issue emanates is as to whether the CIT(Exemption) justified in rejecting the application filed seeking registration u/s. 12AA of the Act in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. The assessee registered as a trust under Bombay Public Trust Act, 1950 vide registration No. A-552. The assessee filed Form 10AA seeking registration u/s. 12A of the Act through online on 20-09-2018. In support of seeking registration the assessee also uploaded trust deed, copy of trust registration and financial statements for the last 3 years. In the said process, the CIT(Exemption) called for certain other information vide letter dated 25-09-2018, in response to which the assessee uploaded its submissions on 06-12-2018. We note that on examination of income and expenditure statements, the CIT(Exemption) found surplus of Rs.1,61,519/-, Rs.2,23,892/- and Rs.2,59,020/- and held that no evidences showing utilization of such surplus funds towards objects of the trust. Further, he held no return of income as required u/s. 12A(b) of the Act were filed from A.Y. 2018-19. We find that the CIT(Exemption) did not find the activities of the assessee trust are not genuine and objects of the trust not charitable. The only contention was that no details concerning the surplus in the last 3 years were filed and for non-filing the same he rejected the application seeking registration u/s. 12AA of the Act. We find that the duty cast upon, the CIT(Exemption) under 12AA proceedings is only to examine the objects of the trust are charitable in nature or not, but examination of financial statements relating to income and expenditure is, in our opinion, duty of the AO during the course of assessment proceedings claiming the exemption u/s. 11 of the Act, therefore, rejecting the application u/s. 12AA of the Act on the basis of non-submissions of utilization of surplus funds is not warranted and is not justified.

4. Further, the CIT(Exemption) mentioned another reason for rejection, is non-filing of return of income from A.Y. 2018-19. We note that the assessee filed acknowledgment showing filing of return of income on 27-

09-2018 for A.Y. 2018-19 and therefore the findings of CIT(Exemption) to the extent that the assessee did not file the return of income from A.Y. 2018-19 is incorrect. It is pertinent to note that proceedings u/s. 12AA and claiming exemption u/s. 11 are distinct and separate proceedings. Therefore, we are of the opinion, that the impugned order of CIT(Exemption) in rejecting the application seeking registration u/s. 12AA of the Act only on the ground of non-filing of details of utilization of surplus funds is not correct and it is the duty of AO during the course of assessment proceedings.

5. Further, we note from the impugned order as rightly pointed by the ld. AR that the CIT(Exemption) did not point out the activities of the assessee are non-genuine and he rejected only on the ground that the assessee accumulated funds, did not utilize the same for the objects of the trust. This Tribunal in the case of Sant Zolebaba Sansthan Chikhali held the issue of grant of registration and the assessment of income of trust are distinct and separate, by placing reliance in the case of Ananda Social and Educational Trust Vs. CIT reported in 272 Taxman 7 of Hon'ble Supreme Court which held the mandate of the provisions u/s. 12AA of the Act is to examine whether objects of the trust are charitable in nature are not and the activities of the trust are genuine, but however, in the present case as discussed above the CIT(Exemption) did not point out anything against the objects and genuineness of the activities of the trust but however rejected the registration on the basis of financial statements of the assessee for the last three years by holding the assessee has made surplus funds. We find that it is a settled principle that the grant of registration and the assessment proceedings or exemption u/s. 11 of the Act is separate and distinct. The process of registration is not on occasion for deciding the issue of exemption u/s. 11 of the Act. The issue of exemption cannot be

examined during the process of registration u/s. 12AA of the Act. Therefore, in our opinion, the order of CIT(Exemption) in denying the registration u/s. 12AA of the Act cannot be sustained and the impugned order is set aside.

6. In view of the above, the assessee is entitled to have registration u/s. 12AA of the Act in terms of decision of Hon'ble Supreme Court in the case of Ananda Social and Educational Trust (supra) as relied on by this Tribunal in the case of Sant Zolebaba Sansthan Chikhali. Accordingly, we direct the CIT(Exemption) to grant registration u/s. 12AA of the Act to the assessee from the date of application.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> July, 2021.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> July, 2021.

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune