

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 7255/Mum/2019
(Assessment Year: 2013-14)**

Vasant Narayan Patkar Memorial Trust, C/o Gajanand Thakar, Hetal Cut Piece, patkar Trust Building, Kelkar Road, Dombivli (E)- 421201.	बनाम/ Vs.	Centralized Processing Centre, Post Bag No.2, Electronic City Post Office, Bangalore-560100
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATV9771B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Rohan Dedhia, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri S.N. Kabra, DR

सुनवाई की तारीख / Date of Hearing	07/10/2021
घोषणा की तारीख /Date of Pronouncement	30/11/2021

□ देश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed the appeal against the order of the CIT(A)-1, Thane, passed u/s 143(1) and 250 of the Income Tax Act, 1961 (for short ‘the Act’). The assessee has raised the sole ground of appeal:
“ On the facts and in the circumstances of the case the ld.A.O. has erred in disallowing the benefits of sec11 and 12 to the Appellant Trust.”

2. The brief facts of the case are that the assessee is a registered trust and has filed the return of income for the Assessment Year (A.Y) 2013-14 with a total income of Rs.1,340/-on 10.08.2013. The assessee-trust is providing educational help to poor students and medical help to the needy people. Whereas subsequent to the filing of the return of income, the assessee has received intimation under section 143(1) dated 30.03.2015. The D.C.I.T(CPC) has disallowed the amount spent for charitable purpose of Rs. 1,37,561/- and Rs. 3,00,000/- set apart for specific purpose. The assessee was not provided any opportunity of hearing before denying the claim. The A.O. has denied the benefit under section 11 of the Act as the Trust was not registered under section 12AA of the Act during the period. The AO has passed the intimation on 31-03-2015 under section 143(1) of the Act determining the total income of Rs.4,37,561/-.

3. Aggrieved by the Intimation, the assessee has filed an appeal before the CIT(A), the CIT(A) considered the grounds of appeal, submissions of the assessee and the facts of case under section 143(1) of the Act. The assessee has filed the written

submissions referred at Para 5 of the order. The CIT(A) has dealt on provisions of section 12A of the Act and the assessee was granted registration prior to passing of intimation under section 143(1) of the Act but has overlooked these facts and dismissed the assessee's appeal.

4. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal. The Id. Authorized Representative (AR) submitted that the CIT(A) has erred in not considering the vital facts of registration U/sec12A of the Act to the assessee. The assessee has applied for registration under section 12A of the Act in March 2013 with the CIT-II, Thane and the same was pending. The application is not decided within six months from March 2013. The contention of Ld.AR that the assessee was granted registration under section 12AA of the Act on 19-01-2016. The Ld.AR supported the submissions with the paper book and judicial decisions and prayed for allowing the appeal. Contra, the Id. Departmental Representative (DR) supported the order of the CIT(A).

5. We have heard the rival submissions and perused the material available on record. Prima-facie the CIT(A) has confirmed the disallowance under section

143(1) of the Act , where the assessee was denied the claim of deduction of set apart amount and the amount applied for charitable purpose. The contentions raised by the Ld.AR are that the assessee has applied for registration U/sec12 Aa of the Act with the CIT-II Thane and was neither accepted or rejected. Subsequently, the assessee was granted registration on 19-01-2016.

6. We find the facts mentioned by the Ld. AR cannot be overlooked as the Ld.AR has produced the copy of registration granted under section 12A of the Act and the copy of application filed in the year 2013. We find that the intimation U/sec143(1) of the Act was passed on 30-03-2015 and the assessee never had an opportunity to substantiate the case with the material evidences with respect to registration and application of funds for charitable purposes. We considering the principles of natural justice, set aside the order of the CIT(A) and restore the entire issues to the file of the Assessing Officer (A.O) to consider the fact that the assessee trust has applied for registration under section 12A of the Act on 12-3-2013 with the CIT-II Thane, which was pending. We find the Honble Supreme Court in the case of Commissioner of income tax Vs Society for the

promotion of education (2016) 382 ITR 6 (SC) has dealt on the deemed registration/sec12AA of the Act, in case where the application is pending and the revenue has not responded within six months from the date of application, it would be taken that the application is registered under the provisions of the Act. Accordingly, the disputed issue is restored to jurisdictional assessing officer to decide the case afresh on merits and consider the ratio of decision of the Honble Supreme court and grant the relief u/sec11 and 12 of the Act. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and we allow the grounds of appeal of the assessee for statistical purpose.

7. In the result, assessee's appeal is allowed for statistical purpose.

Order pronounced in the open court on 30.11.2021.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai, Dated /11/2021
SK, PS

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. संबंधित □ यकर □ युक्त / The CIT(A)
4. □ यकर □ युक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, □ यकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai