

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 601/SRT/2018
(Virtual hearing in Virtual Court)

Shree Kartikey Yog Ashram 503, Shriji Apartment, City Light Road, Parle Point Surat 395003 PAN : AABTK 3479 L	Vs.	Commissioner of Income Tax (Exemption) 1 st Floor, Room No. 111- 112 Anexy Aayakar Bhavan, Ashram Road, Ahmedabad-380009
APPELLANT		RESPONDEDNT

Appellant by	None
Respondent by	Sh. H. P. Meena, CIT (DR)
Date of hearing	28/03/2022
Date of pronouncement	28/03/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Exemptions), [in short 'Id. CIT(E)], Ahmedabad, dated 28.06.2018. The assessee has raised the following grounds of appeal:

"01) At the outset, it is respectfully submitted that the impugned order is illegal and without jurisdiction for the reason that the learned Commissioner has totally ignored the provisions of Section 12AA (2) of the Income Tax Act 1961 before passing the impugned order. It is respectfully submitted that Section 12AA (2) provides that every order granting or refusing registration

shall be passed before the expiry of six months from the end of the month in which the application was received.

It is submitted that in the instant case, the Appellants had filed online application for registration under Section 12A on 10.5.2017 (please refer to EXB-II of this appeal) and hence the learned Commissioner has no authority to pass order after 30.11.2017. Since the impugned order has been passed on 28.6.2018 i.e. after one year from the date of application, the impugned order is illegal and without jurisdiction as it is passed in violation of deeming provisions of Section 12AA(2).

It is submitted that in the impugned order, in the opening para, the learned Commissioner has mentioned that the application for registration under Section 12AA was received on 18.12.2017 which is wrong. It is submitted that letter dated 12.12,2017 of the Appellant was received by the learned Commissioner on 18.12.2017 and he had misconstrued it as an application under Section 12AA. As discussed above, application for registration under Section 12AA was filed by the Appellant on 10.5.2017 (and not on 18.12.2017)

In view of above, the Appellants respectfully pray that the impugned order may be quashed in limine without further ceremony.

02) That the order of the learned Commissioner is unjust and arbitrary as it is not based on facts and not in accordance with law.

02) That the learned Commissioner has erred passing the impugned order in violation of principles of natural justice as he has not properly considered the information/ evidence brought on the records by the appellants.

03) That the learned Commissioner has erred in not completely considering the replies to the notices/ letters issued by him. The said replies contain all the necessary information/ clarification in as much as the Appellant had

submitted all the necessary documentary evidences with the said replies. It is submitted that the learned Commissioner has grossly erred in mentioning at para No.4 that the applicant had submitted details in part on 22.02.2018 instead of precisely mentioning what information or documents were missing. It is submitted since the learned Commissioner has demanded the similar details / documents in both his letters dated 05.01.2018 and dated 07.05.2018 inspite of all the details/ documents were submitted with the application dated 12.12.2017 and then with the submissions dated 12.02.2018. Therefore it is submitted that the learned Commissioner has passed the impugned order in violation of principles of natural justice and is required to be set aside by the Hon'ble Tribunal.

04) The learned Commissioner has grossly erred in rejecting the application for registration under Section 12AA on the ground that the Appellants had failed to submit trust deed duly certified by the trustee. It is submitted that the Appellant had already submitted the trust deed alongwith application dated 12.12.2017 for registration under Section 12AA. It is submitted that in the opening para of the impugned order, the learned Commissioner has clearly mentioned that application for registration was received on 18.12.2017. Therefore, it is submitted that when the learned Commissioner has not denied receipt of application for registration, he cannot deny that trust deed enclosed with the said application was not received by him. This clearly shows that the learned Commissioner has not applied his mind before rejecting the subject application of the Appellant.

05) That the learned Commissioner has erred in holding that the Appellant has failed to satisfy him about the genuineness of their activities. It is submitted that when the learned Commissioner has not properly considered the details/ documents submitted by the Appellants with the application and submissions filed later on, the decision arrived at and opinion formed by the learned Commissioner is totally wrong, unjust and ill-founded. Therefore, the Appellants respectfully pray that the impugned order may be set aside and

the matter may be sent back for denovo consideration by the learned Adjudicating Authority.

Prayer :

The Appellants respectfully pray to the Hon'ble Tribunal

- a) to set aside the impugned order in toto with immediate effect*
- b) to grant personal hearing before finalisation of the present appeal*
- c) to allow us to add, alter, delete and modify the submissions made in the instant appeal*
- d) to grant any other relief as may be deemed fit.”*

2. Brief facts of the case are that the assessee-trust or registration under section 12AA in form 10A rule 11AA on 18.12.2017. The ld. CIT(E) vide its letter dated 05.01.2018 called certain details as mentioned in the order. The ld. CIT(E) recorded that the assessee in its reply dated 22.02.2018, furnished details in part. Accordingly keeping in view, the principle of natural justice, final opportunity was given to the assessee furnished the details and fixed the hearing on 25.05.2018. In the said notice, it was made clear that non-compliance of notice will lead to rejection of application for want of details. The assessee filed its reply and contended that of all desire information has already been furnished vide reply dated 22.02.2018. The ld. CIT(E) recorded that on that the copy of trust deed is not duly certified by trustee. Moreover, on perusal of audit account, it was noted that for Financial Year 2013-14 to 2016-17, the assessee has not carried out any activities as per the objects of the trust. The assessee has neither carried out any

charitable/religious activities nor established corpus to undertake the charitable activities. Thus, it clearly indicates that the applicant does not have intention even to start charitable/religious activities. Further, no details were provided and were verification of the objects as per the trust deed. Therefore, the genuineness of the activities were not established. On the aforesaid observation that the assessee were to furnish documentary evidence to satisfy the genuineness of activities and that those activities are in consonance with the objects of the trust or institution. Accordingly, the ld. CIT(E) rejected the application vide order dated 28.02.2018. Admit by order of the ld. CIT(E), the assessee has filed present appeal before this Tribunal.

3. None appeared of the assessee despite, the service of notices through registered post one more occasions. Therefore, we left no option accepted the hearing the submission of ld. Commissioner of Income tax-departmental representative (Ld. CIT-DR) for revenue and to decide the appeal on the basis of material available on record.
4. The ld. CIT-DR for the revenue submits that in para 6 of the impugned order, ld. CIT(E) clearly held that the assessee has not furnished the relevant document to prove that the activities carried out by the assessee in accordance with object of the assessee-trust. The assessee was given ample opportunity to prove the genuineness of

activities as per the object of assessee trust. The assessee failed to prove the genuineness of activities in accordance with object of the trust. Therefore, registration was declined. Further, ld. CIT-DR submits that the assessee has not come forward to prove the genuineness of activities. Mere filing in appeal, It is not sufficient to seek the relief.

5. We have considered the submission of ld. CIT-DR for the revenue and perused the order of ld. CIT-DR. We find merit in the submission of ld. CIT-DR for the revenue that assessee failed to prove necessary evidence to prove the genuineness of activities, if any carried out by the assessee in accordance with objects. Moreover, on perusal of the audited account for three preceding year source that assessee has not carried out any activities as per the object of the trust. Therefore, in view of the aforesaid observations, we do not find any merit in the grounds of appeal raised by the assessee. We have also seen that the present application is filed in the office of Ld. CIT(E) only on 18.12.2107 and the impugned order was passed on 28.06.2018, thus the order was passed within six months from the end of month when the application was filed. Therefore, the assessee has no case on legal issue as well. In the result, the grounds of appeal raised by the assessee are dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced on 28/03/2022, in open court and result was placed on notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28 /03/2022
Ganesh Kumar

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar, ITAT, Surat

	Date	Initial	
Draft order was prepared by author himself			
Draft placed before author			
Draft proposed & placed before the second member			
Draft discussed/approved by Second Member.			
Approved Draft comes to the Sr.PS/PS			
Kept for pronouncement on			
File sent to the Bench Clerk			
Date on which file goes to the AR			
Date on which file goes to the Head Clerk.			
Date of dispatch of Order.			
Draft dictation sheets are attached			