

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**AND**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.2161/M/2021**

**Assessment Years: 2022-23 to 2026-27**

M/s. Lady Tata Memorial Trust, Bombay House, 24 Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001 <b>PAN: AAATL0052B</b>	Vs.	Commissioner of Income Tax (Exemptions), 6 <sup>th</sup> Floor, Cumballa Hill, MTNL Building, Pedder Road, Mumbai - 400026
(Appellant)		(Respondent)

**ITA No.2158/M/2021**

**Assessment Years: 2022-23 to 2026-27**

M/s. Lady Meherbai D. Tata Education Trust, Bombay House, 24 Homi Mody Street, Fort, Mumbai, Maharashtra – 400 001 <b>PAN: AAATL0053A</b>	Vs.	Commissioner of Income Tax (Exemptions), 6 <sup>th</sup> Floor, Cumballa Hill, MTNL Building, Pedder Road, Mumbai - 400026
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Atul T Suraiya, A.R.  
Revenue by : Shri Shailaja Rai, D.R.

Date of Hearing : 11 . 08 . 2022

Date of Pronouncement : 25 . 08 . 2022

## O R D E R

**Per : Kuldip Singh, Judicial Member:**

Since common questions of facts and law have been raised in both the inter-connected appeals, the same are being disposed of by way of consolidated order to avoid repetition of discussion.

2. The appellants, M/s. Lady Tata Memorial Trust & M/s. Lady Meherbai D. Tata Education Trust (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned order dated 24.09.2021 passed by Principal Commissioner of Income Tax, Mumbai [hereinafter referred to as the PCIT] qua the assessment year 2022-23 to 2026-27 on the grounds inter alia that :-

*“1. The Learned Principal Commissioner of Income-Tax (PCIT)/ Commissioner of Income-Tax (CIT) grossly erred in issuing order granting registration under section 12AB of the Income Tax Act, 1961 (ITA) dated 24.09.2021 which imposed conditions on the basis of which the registration was granted even though there is no provision in the ITA which permits the PCIT to grant conditional registration.*

*2. The PCIT grossly erred in holding that the order granting registration is liable to be withdrawn in the circumstances specified in the order.*

*3. The appellant craves leave to add to, alter, amend and/or delete in all the foregoing grounds of appeal.”*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : both the assessee M/s. Lady Tata Memorial Trust & M/s. Lady Meherbai D. Tata Education Trust being a charitable trust sought to grant the registration under section 12A of the Income Tax Act, 1961 (for short ‘the Act’) for assessment year 2022-23 to AY. 2026-27 after complying with the

necessary formalities. However, the Ld. PCIT vide impugned order granted the registration under section 12AB of the Act which is now under challenge before the Bench.

3. The sole issue arises for determination in both the aforesaid appeals is *“as to whether the Ld. PCIT is empowered to grant the registration under section 12AB of the Act subject to the conditions to be complied with by the assessee.”*

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The Ld. PCIT granted the registration applied for by the assesseees subject to certain conditions as under:

*“a. As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner of Income Tax shall be sought along with the draft of the amended deed and no such amendment shall be effected until and unless the approval is accorded.*

*b. In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.*

*c. In case the trust/institution is converted into any form, merged into any other entity or dissolved in any previous year in terms of provisions of section 115TD, the applicant shall be liable to pay tax and interest in respect of accreted income within specified time as per provisions of section 115TD to 115TF of the Income Tax Act, 1961 unless the application for fresh registration under section 12AB for the said previous year is granted by the Commissioner.*

*d. The Trust/ Institution should quote the PAN in all its communications with the Department.*

***e. The registration u/s 12AB of the Income Tax Act, 1961 does not automatically confer any right on the donors to claim deduction u/s 80G.***

***f. Order u/s 12AB read with section 12A does not confer any right of exemption upon the applicant u/s 11 and 12 of Income Tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each Financial Year relevant to the Assessment Year and all the provisions of law acted upon. This will be further subject to provisions of section 2(15) of the Income Tax Act, 1961.***

***g. No change in terms of Trust Deed/ Memorandum of Association shall be effected without due procedure of law and its intimation shall be given immediately to Office of the Jurisdictional Commissioner of Income Tax. The registering authority reserves the right to consider whether any such alteration in objects would be consistent with the definition of "charitable purpose" under the Act and in conformity with the requirement of continuity of registration.***

***h. The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(l)(b) of the Income Tax Act, 1961. Seperate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/ to be carried on and the target group (s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organisation.***

***i. The Trust/ Institution shall furnish a return of income every year within the time limit prescribed under the Income Tax Act, 1961.***

***j. Seperate accounts in respect of profits and gains of business incidental to attainment of objects shall be maintained in compliance to section 11 (4 A) of Income Tax Act, 1961.***

***k. The registered office or the principal place of activity of the applicant should not be transferred outside the jurisdiction of Jurisdictional Commissioner of Income Tax except with the prior approval.***

***l. No asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/ Non Profit Company etc.***

***m. The registration so granted is liable to be cancelled at any point of time if the registering authority is satisfied that activities of the Trust/ Institution/ Non Profit Company are not genuine or are not being***

*carried out in accordance with the objects of the Trust/ Institution/ Non Profit Company.*

*n. If it is found later on that the registration has been obtained fraudulently by misrepresentation or suppression of any fact, the registration so granted is cancelled as per the provision u/s section 12AB(4) of the Act.*

*o. This certificate cannot be used as a basis for claiming non-deduction of tax at source in respect of investments etc. relating to the Trust/ Institution.*

*p. All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to Office of the Jurisdictional Commissioner of Income Tax.*

*q. The applicant shall comply with the provisions of the Income Tax Act, 1961 read with the Income Tax Rules, 1962.*

*r. The registration and the Unique registration number has been instantly granted and if, at any point of time, it is noticed that form for registration has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rule (1) or (2) of rule 17A or by not complying with the requirements of sub- rule (3) or (4) of the said rule, the registration and Unique Registration Number (URN), shall be cancelled and the registration and URN shall be deemed to have never been granted or issued.”*

6. When we examine the questions raised by the assessee according registration under section 12A by the Ld. PCIT subject to certain conditions in the light of the provisions contained in the scheme of the Income Tax Act, 1961, registration under section 12A cannot be subjected to any condition as there is an “inbuilt mechanism” to be complied with by the assessee after getting the registration under section 12AA of the Act. Furthermore, compliance of the conditions by the assessee is to be examined by the Assessing Officer (AO) during the assessment proceedings. The role of the Ld. PCIT while according registration under section 12A is only to make himself satisfied about the genuineness of the

activities to be carried out by the assessee trust and the compliance of such requirement of any other law for the time being in force by the trust or institution material to achieve its object and then to accord the registration. So we are of the considered view that conditions imposed by the Ld. PCIT while according registration under section 12A of the Act are not sustainable in the eyes of law. Identical issue has also been decided by the co-ordinate Bench of the Tribunal in case of Bai Hirabai Jamshetji Tata Navsari Charitable Institution vs. CIT (E), Mumbai order dated 29.07.2022.

7. In view of what has been discussed above registration accorded by the Ld. PCIT under section 12A to the assesseees is made absolute sans conditions laid down in para 10 of the impugned order. Consequently, both the appeals filed by the assesseees are allowed.

**Order pronounced in the open court on 25.08.2022.**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**  
Mumbai, Dated: 25.08.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.