

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'B' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 2880/Mum/2022 (A.Y. 2022-23)

Nenawat Chhogmal Jethamal Jain Memorial Trust C/o. Amritlal Porwal 201, 2 <sup>nd</sup> Floor, Rajshila, A 597, J.S. S. Road, Chira Bazar, Mumbai-400 002.  PAN : AAATN7216R (Appellant)	Vs.	CIT(Exemption) 601, Cumballa Hill MTNL TE Building Peddar Road Dr. Gopalrao Deshmukh Marg Mumbai-400 026.  (Respondent)
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Assessee by	Shri Amritlal Porwal
Department by	Dr. Mahesh Akhade
Date of Hearing	14.02.2023
Date of Pronouncement	14.02.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 30.9.2022 passed by the learned CIT(Exemption), Mumbai rejecting the application filed by the assessee seeking permanent registration under section 12AB of the I.T. Act.

2. The assessee Trust was formed on 7.10.2000 at Ahore, Rajasthan by Shri Ghisalal Poonamchandji Jain & Shri Amritlal Poonamchand Porwal (Settlers). The assessee was granted provisional registration under section 12AB of the Act in form 10AC on 28.5.2021. Thereafter the assessee filed application in form No.10AB seeking registration under section 12AB of the Act. The learned CIT(Exemption) noticed that, as per Clause 6 of the Trust deed, the activities of the trust were directed towards Tristutik Jain Samaj. Accordingly he took the view that the trust has been created for the benefit of

a particular religious committee or caste, which is one of the specified violation prescribed in Explanation under 12AB of the Act. When questioned about the same, assessee was submitted that the Trust deed has since been amended to remove the defect pointed by the learned CIT(Exemption). The learned CIT(Exemption) noticed that the trust deed has been amended, vide addendum dated 12.3.2020, but approval obtained from the Charity Commissioner for the above said amendment has not been placed on record.

3. Before learned CIT(Exemption), the assessee placed reliance on various case laws to submit that it is eligible for registration under section 12AB of the Act even under pre-amended trust deed also and in support of the same, the assessee took support of certain case laws. The learned CIT(Exemption) did not accept the contentions of the assessee and also held that the decisions relied upon by the assessee are not applicable to the registration process. Accordingly, the Ld CIT(E) rejected the application of the assessee with the following observations :-

“8. On careful consideration, it is observed that the trust as per clause 6 of the non amended trust deed specifically uses the word 'only' with regards to all social, charitable philanthropic, religious and educational purposes, programme and functions to limit the benefit of these activities to a particular religious community specifically Tristutik Jain Samaj. Therefore, the above clause is not in consonance of the conditions of registration under section 12AB of the Act. The cases laws relied upon by the applicant are on denial of exemptions due to the applicability of section 13(1)(b), and not on grant of registration. Hence the same are not of relevance. However, it may be stated that the changes proposed by the applicant would bring its objects in line with the decision of the Hon'ble Gujarat High Court (294 ITR 86) relied upon by the applicant. The objects as it stands on date are restrictive, and mandate that "the trust property shall be used and allowed to be used only for social, charitable, philanthropic, religious and educational purposes, programme and functions related to Tristutik Jain Samaj."

9. In view of the above, this application for grant of registration stands rejected. However, the assessee is at liberty to reapply in Form 10AB after the amendment vide addendum is approved by the Charity Commissioner.”

3. The Learned AR reiterated the contentions made before the learned CIT(Exemption). He also contended that the assessee may be granted registration under pre-amended trust deed also.

4. We heard Ld D.R and perused the record. The fact remains that the assessee has amended its trust deed by preparing an addendum dated 12.3.2020. Hence the trust deed in vogue as on today is the “amended trust deed”. Hence, there is no requirement to refer to pre-amended trust deed at all. Accordingly, the contention of the assessee that it is eligible for registration under section 12AB of the Act even under pre-amended deed is liable to be rejected. In this view of the matter, the assessee cannot take support of various case laws relied upon by it.

5. The only defect pointed out by the learned CIT(Exemption) is that the approval obtained from the Charity Commissioner for the amendment made to the Trust deed by way of addendum has not been placed on record. In this regard learned AR submitted that the assessee has already submitted addendum to the Charity Commissioner, Jodhpur by way of registered post. In our view, mere submission of amendment by post to the Charity Commissioner cannot be considered to be the due registration with the Charity Commissioner. What is required to be shown by the assessee is that the amendment carried out to the trust deed has been registered with the Charity Commissioner and his approval has been obtained.

6. In view of the above facts, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to furnish the details of registration of the amendment carried out by the assessee to the Trust deed with the Charity Commissioner. Accordingly, we set aside the impugned order passed by Ld CIT(E) and restore all the issues to his file for examining it afresh in accordance with the law. The assessee is also directed

to furnish the details of registration/approval of the amendment made to the Trust deed by the Charity commissioner.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 14.2.2023.

Sd/-  
(KAVITHA RAJAGOPAL)  
Judicial Member

Sd/-  
(B.R. BASAKARAN)  
Accountant Member

Mumbai; Dated : 14/02/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS