

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIAKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 503/Mum/2023 (A.Y.2022-23)**  
&  
**ITA No. 504/Mum/2023 (A.Y.2022-23)**

**Brahman Mahasangh Dombivali**

C/o- Mr. Pradnyesh Arun Prabhughate,  
Ushakal, Nityhanand Society,  
Devi Chowk, Shastri Nagar,  
Dombivali(W)  
Maharashtra-421202

**PAN: AAETB0316L**

..... Appellant

Vs.

**CIT(Exemp)**

R. No. 322, 3<sup>rd</sup> floor,  
ITO, PMT Building, Shankar  
Seth Road, Pune-411037

..... Respondent

Appellant by	:	None
Respondent by	:	Shri Jagdish Jangid, Ld. CIT-DR
Date of hearing	:	25/04/2023
Date of pronouncement	:	12/06/2023

## **ORDER**

### **PER GAGAN GOYAL, A.M.:**

These appeals by assessee are directed against the order of Ld. CIT(Exem.) dated 31.01.2023 u/s. 12AB and 80G(5) of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2022-23. The assessee has raised the following grounds of appeal in ITA No. 503/Mum/2023:-

*1. Order passed by the Learned Commissioner of Income-Tax, Exemption, Pune U/s 12AB(1)(b)(ii)(B) dated 31/1 / 2023 [DIN: ITBA/EXM/F/EXM45/2022-23/1049265558(1)] is Bad in law as (a) it seems that the Judicial Mind has not been applied, (b) the Proper Reasonable Opportunity of being Heard has not been given & (c) Erroneously raising doubt about genuineness of activities carried out by the Trust to be charitable and therefore the provisional registration granted U / s. 12A(1)(ac)(vi) vide URN: AAETB0316LE20221 may please be restored.*

2. Further the assessee has raised the following grounds in ITA No. 504/Mum/2023:-

*1. Order passed by the Learned Commissioner of Income-Tax, Exemption, Pune U/s 12AB r.w.s 80G(5)(iii) dated 31/1 / 2023 [DIN:ITBA/EXM/F/EXM45/2022-23/1049268450(1)] is Bad in law as (a) it seems that the Judicial Mind has not been applied, (b) the Proper Reasonable Opportunity of being Heard has not been given & (c) Erroneously raising doubt about genuineness of activities carried out by the Trust to be charitable and therefore the provisional registration granted U / S. 80G(5)(iv) vide URN: AAETB0316LF20221 may please be restored.*

3. The brief facts of the case are that assessee trust filed an application for registration u/s. 12A (1) and 80G (5). The same were provisionally

approved by the office of Ld.CIT (E), Pune w.e.f 22-06-2022 to A.Y. 25-26. Thereafter as per clause-j para-10 of form no. 10AC (order for provisional registration)

*“The trust or institution shall apply for registration within 6 months of commencement of the activities or at least 6 months prior to the expiry of period of provisional registration, whichever is earlier.”*

4. In compliance to this clause a notice dated 06-12-2022 was issued through ITBA portal seeking certain information/ clarification to be complied by 21-12-2022. Assessee trust responded to this notice vide dated 21-12-2022. Ld.CIT (E) was not satisfied with the submissions of the assessee trust and cancelled the provisional registration granted earlier u/s. 12A (1) and 80G (5) vide order dated 31-01-2023. Assessee being aggrieved with this order of Ld.CIT (E) approached this tribunal through appeal to restore its registration u/s. 12A (1) and 80G (5) respectively.

5. We have gone through the provisional registration certificate, form 10AD (order for cancellation of registration) and submissions of the assessee along with audited financials filed before us. For sake of clarity and ready reference we are re-producing herein below the copies of form no. 10AC issued by the Ld.CIT (E) both for provisional registration u/s. 12A (1) and 80G (5):

## FORM NO. 10AC

(See rule 17A/11AA/2C)  
Order for provisional registration

1	PAN	AAETB0316L
2	Name	BRAHMAN MAHASANGH DOMBIVALI
2a	Address	
	Flat/Door/Building	C/o. Mr. Pradnyesh Arun Prabhughate
	Name of premises/Building/Village	Ushakal, Nityanand Society, Devi Chowk, Shashtrinagar, DOMB
	Road/Street/Post Office	Vishnunagar S.O
	Area/Locality	Kalyan
	Town/City/District	THANE
	State	Maharashtra
	Country	INDIA
	Pin Code/Zip Code	421202
3	Document Identification Number	AAETB0316LE2022101
4	Application Number	640500240300522
5	Unique Registration Number	AAETB0316LE20221
6	Section/sub-section/clause/sub-clause/proviso in which provisional registration is being granted	02-Sub clause (vi) of clause (ac) of sub-section (1) of section 12A
7	Date of provisional registration	22-06-2022
8	Assessment year or years for which the trust or institution is provisionally registered	From AY 2023-24 to AY 2025- 2026
9	<p><b>Order for provisional registration:</b></p> <p>a. After considering the application of the applicant and the material available on record, the applicant is hereby granted provisional registration with effect from the assessment year mentioned at serial no 8 above subject to the conditions mentioned in row number 10.</p> <p>b. The taxability, or otherwise, of the income of the applicant would be separately considered as per the provisions of the Income Tax Act, 1961.</p> <p>c. This order is liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the provisional registration by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961.</p>	
10	<p><b>The registration is granted subject to the following conditions:-</b></p> <p>a. Any income derived from property held under trust, wholly or in part for charitable or religious purposes, shall not be applied, other than for the objects of the trust or institution.</p>	

b. The trust or institution shall not have income from profits and gains of business which is not incidental to the attainment of its objectives.	
c. Separate books of account shall be maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives.	
d. The trust or institution shall not apply any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public.	
e. The trust or institution established for charitable purpose created or established after the commencement of this Act, shall not apply any part of its income for the benefit of any particular religious community or caste.	
f. No non-genuine activity shall be carried out by the trust or institution.	
g. No such activity shall be carried on by the trust or institution which is not in accordance with all or any of the conditions subject to which it was registered.	
h. The trust or institution shall comply with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB.	
i. The form for registration in Form No 10A has been duly filled in by providing all the information or documents and no false or incorrect information or documents have been provided.	
j. The trust or institution shall apply for registration within 6 months of commencement of the activities or at least 6 months prior to the expiry of period of provisional registration, whichever is earlier.	
j. Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, the trust or institution shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution, within a period of thirty days from the date of the said adoption or modification.	
Name and Designation of the Registration Granting Authority	Principal Commissioner of Income Tax/ Commissioner of Income Tax (Digitally signed)

## FORM NO. 10AC

(See rule 17A/11AA/2C)  
Order for provisional approval

1	PAN	AAETB0316L
2	Name	BRAHMAN MAHASANGH DOMBIVALI
2a	Address	
	Flat/Door/Building	C/o. Mr. Pradnyesh Arun Prabhugate
	Name of premises/Building/Village	Ushakal, Nityanand Society, Devi Chowk, Shashtrinagar, DOMB
	Road/Street/Post Office	Vishnunagar S.O
	Area/Locality	Kalyan
	Town/City/District	THANE
	State	Maharashtra
	Country	INDIA
	Pin Code/Zip Code	421202
3	Document Identification Number	AAETB0316LF2022101
4	Application Number	640809590300522
5	Unique Registration Number	AAETB0316LF20221
6	Section/sub-section/clause/sub-clause/proviso in which provisional approval is being granted	12-Clause (iv) of first proviso to sub-section (5) of section 80G
7	Date of provisional approval	22-06-2022
8	Assessment year or years for which the trust or institution is provisionally approved	From 22-06-2022 to AY 2025- 2026
9	Order for provisional approval:	
	a. After considering the application of the applicant and the material available on record, the applicant is hereby granted provisional approval with effect from the assessment year mentioned at serial no 8 above subject to the conditions mentioned in row number 10.	
	b. The taxability, or otherwise, of the income of the applicant would be separately considered as per the provisions of the Income Tax Act, 1961.	
	c. This order is liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the provisional approval by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961.	
10	The approval is granted subject to the following conditions:-	

a. The registration granted under section 12AB or approval granted under clause (23C) of section 10 has not been cancelled by the Principal Commissioner or Commissioner for specified violations as mentioned in sub-section (4) of section 12AB or under fifteenth proviso to clause (23C) of section 10.	
b. The form for approval in Form No. 10A has been duly filled in by providing all the information or document and no false or incorrect information or documents have been provided.	
c. The institution or fund shall apply for approval within 6 months of commencement of the activities or at least 6 months prior to the expiry of period of provisional approval, whichever is earlier.	
d. The registration granted under section 12AB or approval granted under clause (23C) of section 10 has not been cancelled by the Principal Commissioner or Commissioner as authorised by the Board for non-compliance of conditions mentioned in rule 2C or rule 17A of the Income- tax Rules, 1962.	
Name and Designation of the Approving Authority	Principal Commissioner of Income Tax/ Commissioner of Income Tax  (Digitally signed)

6. With reference to the above a reasonable conclusion can be drawn that the provisional certificate issued by the Ld.CIT (E) is of course after through verification of the objects of the trust and they were never under challenge. We have gone through the other clauses of para-10 of the provisional certificate issued vis-à-vis the reasons given by Ld.CIT (E) in his cancellation order in form no. 10AD. We do not find any contravention/ deviation of the conditions prescribed in the provisional registration certificate. The conditions prescribed in form no. 10AC are in consonance with sec 12A (1) (iii). It is pertinent to mention here that assessee trust was formed during the covid period and not very old to have a big corpus, voluntary contribution and assets to serve and operate at very large scale. Moreover, trust is duly registered under the Mumbai Public Trust Act 1950 vides dated 12-02-2020. This ensures that assessee trust is a genuine entity to carry out

the objects of the trust duly recognized by the statute of the state government and even Ld.CIT (E) himself vide provisional registration certificate.

7. The objections raised by Ld.CIT (E) are reproduced herein below for a fair adjudication of the matter in hand.

*The assessee has filed application No.CIT EXEMPTION, PUNE/2022-23/12AA/11699 in Form No.10AB under clause (iii) of section 12A (1)(ac) of the Income Tax Act, 1961 on 05/07/2022.*

*2. The application was carefully perused and considered along with its annexure. With a view to verify the genuineness of activities of the assessee, a notice was issued through ITBA portal on 06/12/2022 requesting him to upload certain other information / clarification viz. date of commencement of activity, date of expiry of provisional registration, details of any other Law applicable for achievement of objectives and the proof of compliance of said Law, proof of identity of main trustees / directors, year-wise list of donations received, note on activities carried out along with supporting credible evidence etc.. The assessee was requested to submit his compliance by 21/12/2022. The assessee was specifically informed that in the event of failure to comply by the due date, the matter will be decided based on material available on record. The notice was duly served on the assessee through e-portal / email.*

*3. However, it is seen that the note on activities furnished by the assessee is not proper and the assessee has also not furnished any satisfactory evidence in support of the activities claimed to have been carried out. The assessee came into existence on 12/02/2020 and claimed to have arranged medical camp for general public during Covid- 19 pandemic, distributed free medicines, hand sanitizers, food grains and masks jointly with local authority to needy and persons below poverty line. However, the assessee has not furnished any details of the beneficiaries and also not furnished any supporting evidence except few photographs which do not show any relation to the assessee trust The assessee has furnished copies of two purchase bills of total Rs. 9,360/- in respect of purchase of soap and 'anchal' which are n related to the activity of distribution of free medicines, hand sanitizer masks*

*or food grains. A total expenditure of Rs. 19,689/- on account other charitable objects and round figure of Rs. 1,00,000/- on account medical relief is shown in the financial statements of F.Y. 2020-21. Out this the amount of Rs. 1, 00,000/- is shown payable as on 31/3 / 2021 and appearing as payable till 31/3 / 2022 also. The assessee has not furnished any credible evidence in support of this medical relief activity except a bill which itself remained payable for two years create doubt about the activity. Further, the assessee has not shown any expenditure on objects during F.Y. 2021-22 although it was having funds to the tune of Rs. 1, 28,461/-in its bank account.*

*3.1 The assessee has also furnished a copy of donation receipt made to Rs. 10, 329/- one Shree Swami Samarth Vedalaya Va Annaprasad for Mahaprasad on account of Covid-19. The assessee has not submitted any details about of the objects of the said entity. It is not clear as to whether the objects of the said entity to which donation is given were similar to that of the assessee trust. However, the name the said entity - Shree Swami Samarth Vedalaya Va Annaprasad itself suggests to be in the nature of religious objectives.*

*3.2 In view of the above, undersigned is unable to draw any satisfactory conclusion about genuineness of activities of the assessee and has left no alternative but to rejection.*

*4. Accordingly, the application filed by the assessee is hereby rejected.*

8. In view of the above we found that objections of the Ld.CIT (E) Vis a Vis provisions of sec. 12A (1) are not in harmony. Ld.CIT (E) has failed to make out the case for rejection/ cancellation of the provisional registration certificate issued in form no. 10AC. It is further observed that the basic objections of the Ld.CIT (E) are not with reference to any violation of the objects of the trust and conditions prescribed in form no. 10AC but with reference to certain transactions of the assessee trust. For which as a matter of natural justice he is duty bound to give a fair opportunity to assessee trust to clarify. It is also observed that the Ld.CIT (E)

taken a final decision based on submissions of assessee filed on 12-12-2022. Thereafter there was no communication from the side of Ld.CIT (E) if he has any doubt or clarification required. Rather, he passed an order on the last day, which is 31-01-2023 without any opportunity to the assessee. This approach of Ld.CIT (E) is against the spirit of principle of natural justice and fatal to the scheme of sec 12A. This approach of Ld.CIT (E) towards a newly formed trust that is to very small in size and trying to take off is not appreciable at all. In view of this we set aside the orders of Ld.CIT(E) with reference to sec 12A (1) and 80G (5) set aside and direct the Ld. CIT(E) to issue the fresh order granting exemption u/s. 12A and 80G(5) consequentially. Grounds of appeal in both the ITA No. 503 & 504/Mum/2023 are allowed.

**9. In the result both the appeals filed by the assessee are allowed.**

Order pronounced in the open court on 12<sup>th</sup> day of June, 2023.

Sd/-

(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/06/2023

*Sr. PS (Dhananjay)*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai