

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM &DR. A.L.SAINI, AM

आयकर अपील सं./ITA Nos.261/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2022-23)

(Physical Court Hearing)

Renuka Mandir Trust C/o Pramodchandra Mohanlal Chhattriwala, Renuka Sheri, Ranitalao, Surat-395003	Vs.	The Commissioner of Income-Tax (Exemption) Ahmedabad, Room No.609, 6 th Floor, Aaykar Bhawan (Vejalpur), Nr. Schin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AAATR 2387 K		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपील सं./ITA No.262/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2022-23)

Shri Akalamukhi Hanumanji Mandir Trust, Patel Falia, Kadodara, Surat- 394327	Vs.	The Commissioner of Income-Tax (Exemption) Ahmedabad, Room No.609, 6 th Floor, Aaykar Bhawan (Vejalpur), Nr. Schin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: AADTS 2245 Q		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Hiren R. Vepari, C.A

राजस्व की ओर से /Respondent by : Shri SM Keshkamat, CIT-DR

सुनवाईकीतारीख /Date of Hearing : **05/07/2023**

घोषणाकीतारीख/Date of Pronouncement: **17/07/2023**

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned two appeals filed by two separate assesseees, pertaining to same Assessment Year 2022-23, are directed against the separate orders passed by the Commissioner of Income-Tax(Exemption)-Ahmedabad [in short “ld. CIT(Exemption)”] dated 29.03.2023 and 21.03.2023, *wherein* Ld. CIT(Exemption) has denied registration under section 12AB of the Income

Tax Act, 1961, holding that objects and genuineness of the activities were not satisfied by the assessee-trust.

2. Since the issues involved in both the appeals are common and identical; therefore, both these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.262/SRT/2023 for assessment year 2022-23, have been taken into consideration for deciding these two appeals *en masse*.

3. Grounds of appeal raised by the assessee in “*lead*” case in ITA No.262/SRT/2023, are as follows:

“(1) The learned CIT(Exemption) was not justified in rejecting application u/s 12AB, particularly when all the details sought were fully complied.

(2) The learned CIT (Exemption) took a very narrow view in the matter and was driven by extraneous consideration.

(3) The appellant craves leave to add, alter or vary any of the grounds appeal.”

4. Succinctly, the factual panorama of the case is that assessee-trust filed application for registration of the trust u/s 12AB of the Act through electronically and as per data available in ITBA, the same was filed on 22.09.2022 in Form No.10AB under Rule 17A(1) of the Income Tax, Rules, 1962. Thereafter a notice was issued to the assessee-trust on 10.12.2022 and sent through ITBA on the e-mail id given by the assessee-trust in its online application, with a request to furnish detailed note on the activities actually carried out by the assessee-trust as well as certain details/documents as mentioned therein. The above-mentioned inquiry about the actual activities of the trust was necessary in view of the mandatory provision of the procedure for registration u/s 12AB of the Act. However, in response to the said notice, the assessee-trust has submitted part details. Therefore, following the principles of natural justice, final opportunity was given to the

assessee-trust by issuing notice on 03.01.2023, sent through ITBA to furnish pending details. In response to this notice, the assessee-trust has again furnished part details only.

5. The Ld. CIT(E) noted that Rule 17A(2) of the IT Rules states that the assessee-trust is required to attach with the Form No.10AB filed, self-certified copy of instrument of creation or establishing the institution. It has further been stated that assessee-trust's self-certified copy of instrument of creation or establishing the institution is necessary. Further, the assessee-trust in row No.4a of Form No.10AB has mentioned that the assessee-trust is established under an instrument. **However, on perusal of details available on records, it is observed that the assessee trust has filed notarized copy of Form of application for registration of Public Trust instead of instrument of creation of trust approved by the Charity Commissioner. Even the assessee-trust has not submitted self-certified copy of PTR. Therefore, it cannot be ascertained that the objects which are approved by the charity Commissioner are in consonance with activities actually carried out by the assessee.** In spite of specific requisitions, the assessee-trust has not submitted the requisite details. Therefore, no verification of the objects as per the constitution/deed with the activities could be carried out. Thus, the genuineness of the activities does not get established, due to non-compliance by the assessee-trust. Then Ld CIT (Exemption) explains the provisions of Section 12AB of the Act, which makes, it very clear that before granting registration under this section, the Commissioner has to satisfy himself about the genuineness of the activities of the trust or institution and also he has to verify that these activities are in consonance with the objects of the trust or institution. Further Ld. CIT(Exemption) has to ensure that other laws material for the purpose of achieving objects are complied with. Reliance in this regard was placed by ld CIT(Exemption) on

the judgment delivered by the Hon'ble Supreme Court in the case of Commissioner of Income-tax, Ujjain vs Dawoodi Bohara Jamat Civil Appeal No.2492 of 2014, wherein the Hon'ble Apex Court while adjudicating similar provisions u/s 12AA of the Act has held as under:

“Section 12AA lays down the procedure to be followed by the Commissioner for grant or refusal of application for registration made under Section 12A. According to procedure so laid down, the Commissioner shall call for documents and information and conduct any enquiry to satisfy himself of the genuineness of the institution and upon reaching satisfaction of the charitable or religious nature of the objects and the authenticity of the activities of the institution, he would grant the registration. If he is not satisfied of the aforesaid, the request made in the application may be declined.”

6. Further while adjudicating similar provisions u/s 10(23C) of the Act, the Hon'ble Supreme Court in the case of M/s New Noble Educational Society in Civil Appeal No.3795 of 2014 has held as under:

“While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, institution or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set up charities, institutions etc. the proviso under section 10(23C) is not confined to newly set up institution – it also applies to existing one. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.”

7. Therefore, Ld. CIT(E) noted that assessee trust has failed to file documentary evidences to enable Ld. CIT(Exemption) about the genuineness of its activities and to verify whether these activities are in consonance with its objects. Looking to the above facts, Ld. CIT(Exemption) was unable to arrive at the satisfaction of the genuineness of the activities, therefore Form No. 10AB for the registration u/s 12AB of the IT. Act, 1961, was rejected by Ld. CIT(Exemption).

8. Aggrieved by the order of Ld. CIT(Exemption), the assessee is in appeal before us.

9. The Ld. Counsel for the assessee argued that application filed before the Charity Commissioner for the registration of the Trust which was subsequently got approved and the assessee was granted a valid registration certificate. The Ld. Counsel submitted trust deeds, containing name and address of the trustees; method of appointing trustees and managers; objects of the trust; details of movable properties of the trust; details of immovable properties; sources of income of the trust; annual average income and expenses. The Ld. CIT(Exemption) submitted that on the basis of these information, the registration under the Bombay Public Trust Act, 1950 was granted by the Charity Commissioner, Ahmedabad. The registration number granted by the Charity Commissioner Surat-A-1277 have always been stated in all the ITRs even in the earlier years and submitted that the Rule 17A(2)(b) even allows an applicant to get itself registered u/s 12A even in absence of a valid instrument and Rule 6(1)(b) of The Bombay Public Trust Rules, 1961 does not mandate any document to support the registration application for registration. The Ld. Counsel submitted that copy of PTR was not demanded by Id CIT(E), however, copy of the same was furnished by assessee as an additional evidence before the Bench, which is in consonance with the application for registration-cum-trust deed. The Ld Counsel prayed the Bench that such additional evidence may be admitted by the Bench under Rule 29 of the ITAT Rules.

10. Learned Departmental Representative relied upon the order of the Ld. CIT(Exemption) and stated that assessee trust has filed notarized copy of Form of application for registration of Public Trust instead of instrument of creation of trust approved by the Charity Commissioner, which is not acceptable in the eye of law. The assessee-trust has not submitted self-

certified copy of PTR also. Therefore, order passed by the ld CIT(Exemption) may be upheld.

11. We have heard both the parties and perused the materials available on record. We note that assessee has filed additional evidence, before the Bench, as a copy of PTR, which the assessee claims that it is in consonance with application for registration-cum-trust deed. In the interest of justice, we admit this additional evidence. However, we note that such additional evidence has not been verified by ld CIT(Exemption), therefore we remit this additional evidence to the file of Ld. CIT(Exemption) to examine the said additional evidence.

12. Besides, we also note that ld CIT(Exemption) denied the registration under section 12AB of the Act as the assessee-trust has failed to satisfy the genuineness of the activities of the Trust, therefore, we direct the assessee to furnish the documents and evidences, as and when demanded by ld CIT(Exemption) to satisfy the genuineness of the activities of the Trust.

13. Therefore, with these above observations, we deem it fit and proper to set aside the order of the ld. CIT(Exemption) and remit the matter back to the file of the ld. CIT (Exemption) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee (in ITA No.262/SRT/23) is treated as allowed.

14. In assessee's appeal in ITA No.261/SRT/2023 (Renuka Mandir Trust), the main grievance of the assessee, (vide ground No.1 of assessee), is that Ld. CIT(Exemption) did not grant adjournment to the assessee. Had the ld CIT(Exemption) granted adjournment, the assessee would have submitted the documents and evidences, before ld CIT(Exemption), related to objects and activities of the trust. Therefore, ld Counsel contended that ld

CIT(Exemption) has passed the order without hearing assessee, which is not tenable in the eye of law. However, ld DR relied on the order of ld CIT(Exemption). We find merit in the submission of ld Counsel, therefore, we are of the view that considering the principle of natural justice and fair play, one more opportunity should be given to the assessee-trust to submit the relevant details and documents before Ld. CIT(Exemption).

15. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead its case successfully before the ld. CIT(Exemption). Hence it is a violation of principle of natural justice. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest its case. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(Exemption) and remit the matter back to the file of the ld. CIT(Exemption) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee (in ITA No.261/SRT/23) is treated as allowed.

16. In combined result, both appeals filed by the assessee (ITA No.262/SRT/2023 & ITA No.261/SRT/2023) are treated as allowed for statistical purposes.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced on 17/07/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूत /Surat/दिनांक/ Date: 17/07/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Senior Private Secretary/Private
Secretary/Assistant Registrar, ITAT,
Surat