

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No. 2993/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2024-25)

Shree Bhiloda Dholwani Sunsar Balev Committee C-1, 2 nd Floor, Huns Co-op Housing Society, Dawood Baug Road, Anderi East- 400066.	बनाम/ Vs.	CIT(Exemptions) Room No. 601, 6 th Floor, Cumballa Hill MTNL TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa-400026.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTS8871N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Avinash N. Joshi	
Revenue by:	Shri Ashok Kumar Ambastha (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 12/12/2023
घोषणा की तारीख /Date of Pronouncement: 19/12/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee trust against the order of the Ld. Commissioner of Income Tax (Exemptions) [hereinafter “CIT(E)], Mumbai dated 27.06.2023 rejecting application filed u/s 12AB of the Income Tax Act, 1961 (hereinafter “the Act”).

2. The main grievance of the assessee is against the action of the Ld. CIT(E) rejecting the application for registration u/s 12AB of the Act without giving proper opportunity of hearing.

3. Brief facts are that assessee trust was established on 06.04.1998 as a Public Charitable Trust with Charity Commissioner, Mumbai and enjoys registration under section 12A of the Act from 16.02.2000. Pursuant to the amendment brought in by Finance Act, 2021, the



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assessee applied for approval for registration u/s 12AB of the Act which was granted provisionally for a period of three (3) years vide order dated 24.06.2022 from AY 2023-24 to AY 2025-26. Thereafter, the assessee has applied for registration in Form 10AB dated 17.12.2022 for registration u/s 12A(1)(ac)(iii) of the Act. Pursuant thereto, the Ld. CIT(E) directed assessee to file certain details and documents which was uploaded on the portal and also e-mailed to e-mail id (Mumbai.cit.exempt@incometax.gov.in) along with following documents: -

- (i) Financial Statements of the appellant for the last three years ended on March 2022, and
- (ii) Memorandum of Association of the Trust (Based on which Approval was granted).

4. The Ld. CIT(E) after considering the application along with documents (supra) was pleased to hold that the application for grant registration u/s 12A of the Act was not maintainable on the ground that the assessee trust is specifically for a particular religious community, which activities and objectives of the trust fall under the “*specified violation*” mentioned in the Explanation of section 12AB(4) of the Act i.e for the development of Trivedi Mewada Barishi Brahmin Fellows of Bhiloda Dholwani and Sunsar. Aggrieved, the assessee trust is before us.



5. Assailing the action of Ld. CIT(E), the Ld. AR submitted that the conclusion made by Ld. CIT(E) is erroneous. According to him, the Ld. CIT(E) has only taken note of few objectives of the trust to arrive at erroneous conclusion that assessee is only created for the benefit of particular religious' community or caste and applied its income for the benefit of that community. According to Ld. AR, perusal of the objective of the Trust would reveal that assessee has been established for charitable purpose for the general public and not for a particular community. According to the Ld. AR, in case if the Ld. CIT(E) nursed any doubts regarding purpose/objective of the assessee, then, he should have sought an explanation from the assessee and only after clearing the doubt, he should have taken the impugned decision. Omission to give an opportunity to assessee, according to Ld. AR, vitiates the impugned action of Ld. CIT(E). Therefore, the Ld. AR pleads that one more opportunity may be given to the assessee for explaining the objective/purpose for which the assessee was established.

6. Per contra, the Ld. DR submitted that assessee was given proper opportunity by the Ld. CIT(E) before passing the impugned order. Therefore, the assessee should not be given another innings.

7. We have heard both the parties and perused the records. We note that the assessee trust was established in the year 1998 as a Public Charitable Trust and granted u/s 12A registration in the year 2000. Pursuant to the amendment brought in by Finance Act, 2021,



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the assessee applied for approval for registration u/s 12AB of the Act which was granted provisionally for a period of three (3) years vide order dated 24.06.2022 from AY 2023-24 to AY 2025-26. Thereafter, the assessee has applied for registration in Form 10AB dated 17.12.2022 for registration u/s 12A(1)(ac)(iii) of the Act. Pursuant thereto, the Ld. CIT(E) directed assessee to file certain details and documents which were uploaded on the portal which included the documents noted (supra). The Ld. CIT(E) after perusal of the documents submitted by assessee passed the impugned order holding that the application for grant of registration was not maintainable on the ground that the activities of the assessee trust is specifically for a particular religious community; and thus the activities and objectives of the trust fall under the “*specified violation*” mentioned in the Explanation of section 12AB(4) of the Act i.e. for the development of Trivedi Mewada Barishi Brahmin Fellows of Bhiloda Dholwani and Sunsar.

8. According to the Ld. AR, from the documents submitted before the Ld. CIT(A), he could not have arrived at a such a conclusion that assessee is only created for the benefit of any particular religious community or caste, rather objective of assessee is for the benefit of public. According to the Ld. AR, after perusal of the documents submitted by assessee, in case if the Ld. CIT(E) nursed any doubts regarding purpose/objective of the assessee, then, he should have sought explanation from the assessee. According to Ld. AR, the



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impugned action of the Ld. CIT(E) of not giving an opportunity to the assessee vitiates the order. The Ld. AR pointed out that assessee is enjoying the registration granted u/s 12A of the Act for last two decades and before passing the impugned order, the Ld. CIT(E) ought to have given an opportunity to assessee to explain and dispel any doubts if any lingering in his mind.

9. In the light of the aforesaid discussion, we find force in the submission of the Ld. AR that the assessee did not get proper opportunity before the Ld. CIT(E) to the dispel any doubts regarding the purpose/objective of the assessee trust. Therefore, in the interest of justice and fair play, we are inclined to set aside the impugned order of the Ld. CIT(E) and direct him to denovo decide the application for registration u/s 12AB of the Act. The assessee is directed to file the relevant documents to substantiate that it is a Public Charitable Trust involved in philanthropist/charitable activities for the general public. And the Ld. CIT(E) to pass order on the application filed by assessee for grant of registration after hearing the assessee in accordance to law.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19/12/2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 19/12/2023.
Vijay Pal Singh, (Sr. PS)

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**