

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.826/Ahd/2023
(Assessment Year: N.A.)

Bargahe Husaini Trust-Monpar, Block No.2, Aabasi Apartment Nutan Nagar, Ambavadi, Mahuva, Gujarat-364290	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
[PAN No.ABATS9354C]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Mohit Balani, A.R.
Respondent by:	Shri Vijay Kumar Jaiswal, CIT DR
Date of Hearing	03.07.2024
Date of Pronouncement	22.07.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Exemption), (in short “Ld. CIT(E)”), Ahmedabad vide order 23.09.2023.

2. The Assessee has taken the following grounds of appeal:-

“1. Learned CIT(E) has erred in law and on the facts of the case in rejection the provisional registration of the Appellant u/s. 12AB of the Act.

2. Your appellant reserves the right to add, delete, modify or revise any ground of appeal.”

3. The brief facts of the case are that the assessee was granted provisional registration of trust on 24.01.2022. Thereafter, the assessee/applicant filed application for grant of final registration in form 10AB on 18.03.2023 under section 12A of the Act. On perusal of the application filed by the assessee, the CIT observed that the objectives/objects of the applicant trust are for the

benefit of a particular community or caste i.e. Khoja Shia Ishna Ashari Samaj. The CIT on analysis of the Constitution of the trust and the objects of the trust observed that the objects of the trust appear to be restricted to the benefit of a particular religious community or caste, which is Khoja Shia Ishna Ashari Samaj. In response to notice issued by CIT, the applicant trust submitted that the trust is charitable cum religious trust, but at the time of application, mistakenly the applicant had selected “charitable activity” instead of “religious cum charitable activity”. The applicant submitted that the premises of the trust are open for all castes like Hindu, Muslim etc. The applicant also appended certain photographs to prove that the trust activities are not for particular religious community or caste, but is open for all people. Accordingly, the applicant submitted that the objects of the trust are both religious as well as charitable and are not restricted only for the benefit of a particular religious community.

4. However, CIT did not accept this contention of the applicant trust and dismissed the application for grant of final registration, with the following observations:

“13. The Hon'ble Supreme Court in the case of Dawoodi Bohara Jamat (supra), which was rendered on 20.02.2014, wherein the Hon'ble Apex Court held that any trust which is composite one, that is one for both religious and charitable purposes, then it does not mean that it would not be covered by sec 13(1)(b) of the Act and the Hon'ble Apex further held that what is intended to be excluded from being eligible for exemption u/s 11 is a trust for charitable purposes which is established for the benefit of any particular religious community or caste. In the present case, it is not the plea/argument of the applicant/assessee that the applicant/assessee's object/objects, which is/are otherwise charitable in nature is/are not restricted for benefit of any particular religious community or caste and therefore, the laws laid down in the cases on which the applicant/assessee has placed reliance are not applicable to the facts of the instant case.

14. From the above referred discussion and objects of the applicant/assessee it is evident that it is not a religious trust, but it is composite trust as admitted by the

assessee in its reply dated 10.09.2023 and above referred object/objects, which is/are in the nature of charitable is restricted to benefit of a particular religious community or caste "Khoja Shia Ishna Ashari Samaj" and therefore as per law laid down by the Hon'ble Apex court in the above referred case, the provision of sec 13(1)(b) would be applicable and therefore the applicant/assessee would not be eligible for exemption u/s 11 of the Act. Therefore in the facts and circumstances of the case, the applicant/assessee cannot be granted registration u/s 12A of the Act.

15. *In view of the above, the present application filed in Form No.10AB u/s 12A(1)(ac)(iii) of the Act is **rejected** and provisional registration is also **cancelled**."*

5. The assessee is in appeal before us against the aforesaid order passed by CIT dismissing the application for grant of final approval filed by the applicant trust. Before us, the counsel for the assessee submitted that the case of the assessee is squarely covered by various decisions rendered by the ITAT Ahmedabad, which on similar facts has held that the provisions of section 13(1)(b) of the Act, (which stipulates that the benefit of provisions of section 11 and 12 of the Act is not available in the case of a trust or a charitable institution created or established for the benefit of any particular religious community or caste) would be required to be seen / analyzed only at the time of assessment of such trust, and section 13(1)(b) of the Act cannot be invoked for the purpose of denial of grant of registration under section 12A of the Act.

6. In response, the Ld. DR placed reliance on the observations made by CIT in the order denying the grant of registration under section 12A of the Act to the assessee/applicant trust.

7. We have heard the rival contentions and perused the material on record. In the case of **Bhojalram Leuva Patel Seva Samaj Trust 162 taxmann.com 270 (Ahmedabad - Trib.)**, the ITAT held that provisions of section 13(1)(b) can be invoked only at the time of assessment and not at the time of grant of registration under section 12A.

8. Again, in the case of **In the case of Jamiatul Banaat Tankaria 160 taxmann.com 358 (Ahmedabad - Trib.)**, the ITAT held that where objects of assessee-trust were primarily charitable rather than favouring any specific religious community, CIT(E) was not justified in denying registration under Section 12A, by invoking Section 13(1)(b) as said provision would be attracted only at time of assessment and not at time of grant of registration. In the case of **Malik Hasmullah Islamic Educational and Welfare Society 24 taxmann.com 93 (Luck.)**, the ITAT held that since provisions of Sections 11, 12 and 13 are intended for exercise of jurisdiction by an Assessing Officer in an assessment proceedings, Commissioner is not competent to invoke such provisions for purpose of declining registration under Section 12AA. In the case of **St. Joseph Academy 50 taxmann.com 216 (Hyderabad - Trib.)**, the ITAT held that provisions of Section 13 can be invoked by Assessing Officer while framing assessment and not by Commissioner while considering application for registration under Section 12AA.

9. In view of the above judicial precedents, looking into the facts of the instant case, we are of the considered view that the provisions of Section 13 of the Act can be invoked only at the time of assessment and not at the time of grant of registration under Section 12A of the Act. Our view is further supported by the decision of the Hon'ble jurisdictional High Court in the case of **CIT (Exemptions) v. Bayath Kutchhi Dasha Oswal Jain Mahajan Trust [2016] 74 taxmann.com 199/243 Taxman 60 (Gujarat)/[2017] 8 ITR-OL 494 (Guj.)** wherein on the issue of denial of grant of registration u/s 12A of the Act by invoking Section 13(1)(b) of the Act, it was categorically held that the provisions of Section 13 would be attracted only at the time of assessment and

- 5-

not at the time of grant of registration. The relevant finding of the Hon'ble High Court at para 8 of his order is as under:

"8. Thus, very premise for the Commissioner to come to the conclusion that the objects of the trust were confined for the benefit of a religious community, is incorrect. Thereafter to suggest that the activities were carried out only for such purposes would be entering in the realm of granting exemptions in terms of Section 13 of the Act, which would be the task of the Assessing Officer to be undertaken at the time of assessment on the basis of material that may be brought on record."

10. In the result, in view of the above observations, the matter is restored to the file of CIT (Exemptions), for de-novo consideration, after giving due opportunity of being heard and with the direction not to disentitle the assessee for grant of registration only on the grounds as mentioned in its order for rejecting the application filed by the assessee trust.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on	22/07/2024
---	-------------------

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 22/07/2024

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad