

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. No.861/Chny/2024

Jains Green Acres Flat Owners
Association, No. 91, Jains Green Acres,
Dargha Road, Zamin Pallavaram,
Chennai 600 043.

Vs. The Commissioner of Income
Tax (Exemption), Aayakar Bhavan, -
Annexe Building, No. 121, Mahatma
Gandhi Road, Nungambakkam,
Chennai 600 034.

[PAN: AABTJ1803F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Shrenik Chordia, C.A.

प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/ Date of hearing : 14.08.2024

घोषणा की तारीख /Date of Pronouncement : 23.08.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 29.01.2024 passed by the Id. Commissioner of Income Tax, (Exemption), Chennai.

2. The assessee trust filed an online application on 04.07.2023 in Form No. 10AB under section 12A(1)(ac)(iii) of the Income Tax Act, 1961 ["Act" in short] seeking registration under section 12AB of the Act. Accordingly, the assessee was requested to furnish relevant details/

documents and its clarifications. Upon noticing certain irregularities/ anomalies as recorded at para 5 of the impugned order, the assessee was show-caused. In response to the show-cause notice, the assessee explained that mutuality concept does not come under charity but, the assessee-association is not for the purpose of profit generation and the cooperation among members and serves a broader social purpose by fostering a sense of community and shared responsibility, besides, the flat owner's association protect its members, make facilities to them and not to make profit and it's like a non-profit organization. Upon perusal of the financials of the assessee as reproduced in the impugned order at page 8, the Id. CIT(E) noted that the assessee spent all its income towards common area related expenses and association office expenses and has done nothing towards charitable purposes. The Id. CIT(E) also noted from the details available on record, its members are only the flat owners that means only a group of private families and not public at large to claim it as charitable association. Since the assessee could not explain satisfactorily with supporting documents, the Id. CIT(E) rejected the application in Form No. 10AB filed on 04.07.2023 seeking registration under section 12AB of the Act.

3. Before us, the Id. AR Shri Shrenik Chordia, C.A. reiterated the submissions as made before the Id. CIT(A). Further, he placed on record the decision of the SMC of Delhi ITAT in the case of Swarn Jayanti Rail Nagar Flat Owners Association v. ITO in ITA Nos. 2008 to 2010/Del/2018 & Ors dated 28.11.2018 and submits that the issue on hand is covered by the above order of the Tribunal.

4. The Id. DR Shri R. Clement Ramesh Kumar, CIT placed on record the decision of the Hon'ble High Court of Bombay in the case of Trustees of Shri Kot Hindu Stree Mandal v. CIT 209 ITR 396 and argued that the membership and subscription amount received by the trust/society from its members cannot be characterised as voluntary contribution within the meaning of the said expression under section 12 of the Act.

5. Heard both the parties and perused the material available on record. Admittedly, the assessee by name itself suggests that it is a group of families as flat owners and its activities are related to maintenance of flats and other activities etc. We find that there is no charitable activity to the public at large, which is not disputed by the Id. AR. We also note from the income and expenditure of the assessee as

produced at page 7 reveals that the assessee spent all its income towards common area related expenses and association office expenses and has done nothing towards charitable purposes. The Id. CIT(E) examined the explanation offered by the assessee in support of its claim in getting registration under section 12AB of the Act, but, however, having found that there is no charitable activities undertaken for general public, rejected the said application filed in Form No. 10AB under section 12(1)(ac)(iii) of the Act.

6. On perusal of the order of SMC of Delhi ITAT in the case of Swarn Jayanti Rail Nagar Flat Owners Association v. ITO (supra), we find that the Tribunal held the order of the Id. CIT(A) in confirming the order of the Assessing Officer in taxing the amount arising out of bank interest, interest received on income tax refund and cable operator is bad in law as there was no cancellation of registration under section 12A of the Act. The facts in the above said case are different from the facts on hand. In the present case, the assessee sought for registration under section 12AB of the Act, whereas, before the Delhi SMC Bench of ITAT, the assessee already obtained registration under section 12A of the Act. The difference between the facts related to the present case, are that, in Delhi SMC Bench of ITAT, the fact dealing the issue

of exemption having registration under section 12A of the Act, before the Delhi Benches, whereas, in the present case, seeking registration under section 12A of the Act. Therefore, the finding of the Delhi SMC Bench of ITAT is not applicable to the present case on hand. Thus, we find no infirmity in the order of the Id. CIT(E) in rejecting the application Form No. 10AB filed under section 12(1)(ac)(iii) of the Act seeking registration under section 12AB of the Act. Thus, the grounds raised by the assessee are dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 23rd August, 2024 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 23.08.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.