

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'E', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 2866 & 2867/Mum/2024
Assessment Year: 2022-23**

Late Shri Harishchandra Nathuji Kothmire Education Trust		CIT Exemption Pune, Pune
Kothmire House, Balkum Pada No. 2, Mumbai – 400608.	vs	
PAN: AAATL 5844 M		
(Appellant)		(Respondent)

Present for:

Assessee by : None

Revenue by : Shri Solg Jose T. Kottaram, CIT, DR

Date of Hearing : 25.07.2024

Date of Pronouncement : 28.08.2024

ORDER

PER AMARJIT SINGH, AM:

Both the appeals of the assessee are directed against the order of dated 26.03.2024 passed by the ld. CIT(Exemption), Pune for the A.Y. 2022-23.

2. On perusal of the appeal filed and submission of the ld. DR, it is observed that assessee has filed two appeals in duplication on the same issue of not granting registration u/s 12A of the Act by the ld. CIT(E) vide order dated 26.03.2024 passed u/s 12AB(1)(b)(ii) of the Income Tax Act. In view of the duplication in filing appeal, one appeal of the assessee bearing ITA No. 2867/M/2024 is treated as dismissed.

3. The other appeal filed by the assessee vide ITA No. 2866/M/2024 is adjudicated as under:

“The Appellant above named most respectfully begs to submit grounds of appeal against the rejection order dated 26/03/2024 vide

Application No. CIT EXEMPTION, PUNE/2023-24/12AA/12617 dated 21/09/2023 as under:-

1) The learned CIT (Exemption) Pune erred in law and on facts in not granting registration u/s 12A of ITA, 1961, and rejecting the Application for the same.

2) The Ld. CIT Exemption Pune is not considering the submission made on 21/09/2023 and further submission on 05/03/2024 reply given to notice dated 27/02/2024 which has been explained about the loan permission of section 36A. The trust takes the nominal amount from the trustee (Anamat) for giving salaries to teachers and other nominal expenses small amount from some years and RTE to students of weaker section not considered.

3) The application was filed on 21/09/23. The Notice for hearing was given on 27/02/2024 for compliance on or before 05/03/2024. Thus the learned CIT (Exemption) Pune given very short notice to compliance of queries raised in the notice. Hence the learned CIT (Exemption) Pune erred in law and on facts in not granting sufficient opportunity to the appellant to submit the details/information thereby violating the principles of natural justice.

4) The appellant contends that learned CIT(E) ought to have decided the matters on merits i.e., on the tests of bona fide objects, genuine educational activity, etc. instead of the hyper-technical aspect of section / sub-section opted during the filing of application vide form 10AB for registration u/s 12A of ITA, 1961.

5) The appellant craves leave before Hon'ble ITAT to add, alter, clarify, explain, modify or delete any of the grounds of appeal, set aside and to seek any just and fair relief."

4. Fact in brief is that assessee has filed Application No. CIT(E), Pune, 2023-24/12AA/12617 in Form No. 10AB under clause (iii) of section 12A(1)(ac) of the Income Tax Act, 1961 on 23.09.2023. The ld. CIT(E) has requested the assessee to furnish the various details. However, on verification of details submitted, the ld. CIT(E) noticed various discrepancies and asked the assessee for making further

submission. The relevant part of the extract of the order of Id. CIT(E) is reproduced as under:

"3.1 The submission made is duly considered. From the reply, it is seen that the trust has not obtained permission under section 36A of the Maharashtra Public Trust Act, 1950 from the Charity Commissioner. Taking loan to meet the funds requirement cannot be accepted as an excuse for non-compliance as sec. 36A(3A) provides that "notwithstanding anything contained in sub-section (3), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (3) results in hardship to the trust, beneficiary or bonafide third party, the Charity Commissioner may grant ex-post- facto sanction to borrow moneys from any nationalized bank or the Scheduled Bank, by the trustees.]" Thus, the trust could have obtain ex-post facto permission from the Charity Commissioner. The assessee has failed to compliance to requirements of any other law.

4. Further, in reply, the assessee has stated that no admission has been given to students from financially weaker sections of society and no RTE norms are applicable. It has not made clear as to how the trust has followed RTE norms which actually mandates admission to students from financially weaker sections of society. It thus. appears that the trust has not complied with the provisions of RTE Act.

4.1 In this regard, the provisions of "The Right of Children to Free and Compulsory Education Act, 2009' is perused. Sec. 12 of Chapter (responsibilities of Schools and Teachers) of said Act prescribes extent of school's responsibility for free and compulsory education. For ready reference, the relevant part of the provision is reproduced as under:

CHAPTER IV

RESPONSIBILITIES OF SCHOOLS AND TEACHERS

12. Extent of school's responsibility for free and compulsory education-
(1) For the purposes of this Act, a school,-

(a) specified in sub-clause () of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion:"

4.2 As per clause (c) a school specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least Twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion. Sub-clauses (iii) and (iv) of Clause (n) which defines school is reproduced as under:

Sec. 2(n) "school" means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority:"

4.3 It can be seen that the assessee trust's case is covered by clause (iv) of said sec. 2(n) of the Act. Therefore, the assessee is bound to grant admissions to students from financially weaker sections of society. The assessee has, however, failed to comply with the provision.

5. Further, the assessee has not submitted the details of salaries. The assessee simply stated that every month the trust pays salaries to teachers from the bank. The number of staff is limited hence the trust

does not apply to the provident fund and the salary of the teacher is also not cross the limit of tax deducted under section 192 of the Income Tax Act 1961 hence we show the salary in the financial statement. The details are called for under the provisions of section 12AB(1)(b)(i) of the Income Tax Act, 1961. The assessee has failed to do, so. Therefore, the undersigned is unable to draw any satisfactory conclusion about the genuineness of activities of the assessee and compliance of requirements of any other law for the time bring in force by the assessee as are material for the purpose of achieving its object.

6. In view of the above, the application filed by the assessee is hereby rejected and the provisional registration granted on 08.02.2022 under section 12AB read with section 12A(1)(ac)(vi) of the Income Tax Act, 1961 is hereby cancelled.”

5. For want of further compliance as referred above, the application of the assessee was rejected and the provisional registration granted on 08.02.2022 under section 12AB read with section 12(1)(ac)(vi) of the Act was also cancelled. The assessee in its written submission filed before us submitted that ld. CIT(E) has not considered the submission made by the assessee on 21.09.2023 and 05.03.2024 respectively. The assessee also submitted that notice for hearing was given on 27.02.2024 for making compliance on or before 05.03.2024 and the ld. CIT(E) has given short notice for making compliance to the various queries raised in the notice.

6. Looking to the above facts and circumstances, we consider it appropriate to restore this case of the assessee to the file of ld. CIT(E) for deciding a fresh on merit after providing adequate opportunity to the assessee to make submission on the various queries raised by the ld. CIT(E). The assessee is also directed to make due compliance before the ld. CIT(E) without any failure. Accordingly, the appeal of the assessee is allowed for statistical purposes.

7. In the result, appeal vide ITA No. 2867/Mum/2024 is dismissed and appeal vide ITA No. 2866/Mum/2024 is allowed for statistical purposes.

Order pronounced in the open court on 28.08.2024.

Sd/-

Sd/-

**(ANIKESH BANERJEE)
JUDICIAL MEMBER**

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 28.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai