

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

ITA No. 344/Ind/2024

The Nimar Educational Society, Harsud Road, Civil Lines, East Nimar, Khandwa	<b>बनाम/ Vs.</b>	CIT(Exemption) , Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AABTT1409K		
Assessee by	Shri S.N. Agrawal and Shri Pankaj Mogra, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	20.08.2024	
Date of Pronouncement	20.09.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by order dated 07.03.2024 passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] u/s 12AB(4) of Income-tax Act, 1961 ["the Act"], the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee, an educational society, filed application to CIT(E) u/s 12A(1)(ac)(i) of the Act for grant of registration u/s 12AB and acting thereupon, the

department granted registration vide order dated 24.09.2021 for AY 2022-23 to 2026-27. Subsequently, the CIT(E) issued a show-cause notice u/s 12AB(4) dated 18.12.2023 to assessee for cancellation of registration so granted on the footing that the registration u/s 12A(1)(ac)(i) is applicable only if the assessee had a valid registration u/s 12A/12AA before 01.04.2021 but the assessee had obtained registration u/s 12A(1)(ac)(i) without having registration u/s 12A/12AA before 01.04.2021, therefore the registration received by assessee vide order dated 24.09.2021 in an automatic manner from CPC was invalid. In response to show-cause notice, the assessee submitted that it was already registered u/s 12A vide Registration No. Khandwa 1/83 dated 07.06.1983 and also u/s 80G vide Registration No. F.No. P 2/REGN/KNW/2/83/Bhopal dated 19.06.1985 but the certificates of registration were destroyed due to a fire incident. The assessee also filed two ancillary documents to show that it was having registration u/s 12A & 80G, namely (i) a leaf of "donation-receipts book" used by assessee in earlier year to issue donation-receipts to the donors, which contained the registration details of assessee u/s 12A & 80G, and (ii) copy of an official letter dated 14.09.1988 issued by ACIT-Circle 2(2), Khandwa calling certain documents from assessee in response to an application dated 16.08.1988 filed by assessee for renewal of registration u/s 80G. The assessee also requested the CIT(E) to collect information of assessee's registrations u/s 12A & 80G from the record of department. The

CIT(E) considered assessee's reply but ultimately cancelled the registration of assessee u/s 12A(1)(ac)(i) by passing following order:

*"Comments of the undersigned - The claim of the assessee is not supported by any proper documents. Even it is not mentioned that when the fire incident occurred and why they did not apply for certified copy of registration, if it was already registered. To conform the claim of the assessee, a letter was sent to the PCIT-1, Bhopal, on 25.01.2024 and reply from the O/o PCIT was received on 29.01.2024 and it was informed that no such record is traceable. Further the copy of notice dated 14.09.1988 issued by the ACIT, Circle 2(2), Khandwa, only indicates that the assessee applied for registration u/s 80G on 16.08.1988.*

*- Further as per the ITR's filed by the assessee for assessment year 2013-14 to A.Y. 2021-22 (Available online in system), it is noticed that in each ITR assessee himself declared that he is not registered u/s 12A/12AA and 80G of the Act.*

*- It is from A.Y. 2022-23 only, when the assessee claimed the benefit of registration u/s 12AB of the Act after wrongly obtaining certificate from CPC.*

*- It is also seen from the system that assessment u/s 143(3) for AY 2016-17 was completed on 05.12.2018 wherein the AO in para 2 mentioned that the assessee is not registered u/s 12A of the Act.*

*- Assessment u/s 147 r.w.s. 144 r.w.s. 144B for A.Y. 2017-18 was also completed on 30.03.2022 and 16.05.2023 wherein the assessee claimed before the AO that he is registered u/s 12A and 80G of the Act but did not submit any certificate. Further proceedings u/s 263 of the Act is still pending for A.Y.2017-18 and it is seen that the assessee has mentioned in its ITR as "Not registered u/s 12A" and no exemption was claimed.*

*4. Hence, it is clear from the above facts that after giving sufficient opportunities, the assessee could not produce the registration certificate u/s 12A/12AA of the Act. Thus, the undersigned has noticed occurrence of specified violations i.e. clause (g) of Explanation to Section 12AB(4) of the Act. Therefore, the registration u/s 12AB in Form 10AC vide URN No. AABTT1409KE20219 dated 24.09.2021 granted by the CPC is hereby cancelled w.e.f. A.Y. 2022-23 as per the Section 12AB(4) of the Act as it is required to be cancelled for such previous year and all subsequent previous years."*

Aggrieved by order of CIT(E), the assessee has come in appeal before us.

3. Ld. AR for assessee submitted that the assessee is a very old society and it was in fact having registration u/s 12A as well as 80G of the Act.

However, the certificates of registration were lost in a fire incident. Ld. AR submitted that prior to 01.04.2021, the registration u/s 12A was permanent and the assessee did not feel any necessity to obtain certified copy of registration-certificates from department after loss of original certificate in fire. It is only new system introduced in section 12A from 01.04.2021 that the assessee had to apply for registration afresh and necessity arose to file documents of earlier registration in terms of new provision of 12A(1)(ac)(i).

4. Ld. AR relied heavily upon following documents to show that the assessee was in fact having registration u/s 12A prior to 01.04.2021:

(i) Firstly, he relied upon a leaf of "donation-receipts book" used by assessee in earlier year to issue donation-receipts to the donors, which contains the registration details of assessee u/s 12A & 80G i.e. Registration No. Khandwa 1/83 dated 07.06.1983 u/s 12A and Registration No. F.No. P 2/REGN/KNW/2/83/Bhopal dated 19.06.1985 u/s 80G. The same is scanned and reproduced below:

REGISTERED ESTD. 1946 अमृतं तु विद्या Phone 2557

Under SOCIETY  
Registration Act, XXI of  
1860 Vide No. 75/1945-46  
dt. 13-2-46.

Under INCOME TAX  
Act Section 12-A (A)  
Vide No. Khandwa  
1/83/ dt. 7-6-83.

EXEMPTION u/s  
80 G of the Income Tax  
Act 1961 Vide No. T/No.  
P 2/REGN / KNW/2/83  
/Bhopal dt. 19-6-83

Ref No.

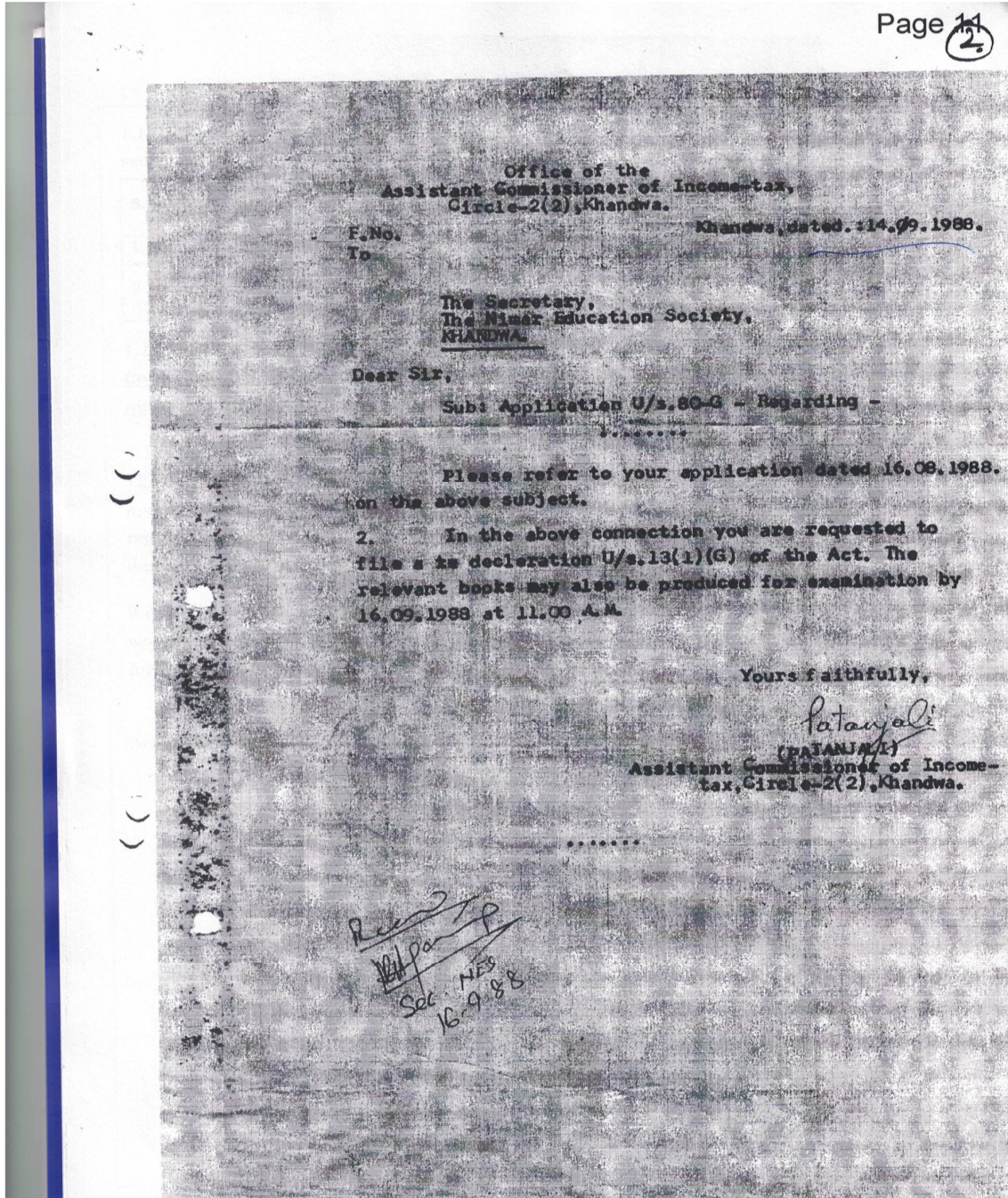
दो निमाड़ एजुकेशनल सोसायटी, खण्डवा (म. प्र.)  
**THE NIMAR EDUCATIONAL SOCIETY, KHANDWA (M. P.)**

PROMOTERS  
SHREE NILKANTHESHWAR P. G. COLLEGE, KHANDWA

PROMOTERS & MANAGERS  
BALLABHDAS ESHWARDAS SUBHASH H. S. SCHOOL  
ARVINKUMAR NITINKUMAR MONT, ENG. SCHOOL  
SMT. SUNDERBAI GUPTA GIRLS H. S. SCHOOL, CIVIL LINES

Date \_\_\_\_\_

(ii) Secondly, he referred a copy of an official letter dated 14.09.1988 issued by ACIT-Circle 2(2), Khandwa calling certain documents from assessee in response to an application dated 16.08.1988 filed by assessee for renewal of registration u/s 80G. The same is scanned and reproduced below:



(iii) Thirdly, he submitted that the assessee has consistently filed return of income in earlier assessment years in Form No. ITR-7 which is meant for section 139(4A) for the persons claiming exemption u/s 11/12 or section

139(4C) for the persons claiming exemption u/s 10(23C)(iiad) as under:

S.No.	Assessment Year	ITR Form as filed	Section under which ITR was filed	Total income shown in the ITR (In Rs. )
1.	2013-14	ITR7 (Page No. 44)	139(4A) Page No. 44)	NIL
2.	2014-15	ITR7 (Page No. 47)	139(4A) Page No. 47)	NIL
3.	2015-16	ITR7 (Page No. 51)	139(4A) Page No. 52)	NIL
4.	2016-17	ITR7 (Page No. 56)	139(4A) Page No. 57)	1,10,930/-
5.	2017-18	ITR7 (Page No. 62)	139(4A) Page No. 62)	1,16,510/-
6.	2018-19	ITR7 (Page No. 71)	139(4A) Page No. 71)	1,08,380/-
7.	2019-20	ITR7 (Page No. 80)	139(4C) Page No. 80)	1,33,080/-
8.	2020-21	ITR7 (Page No. 93)	139(4C) Page No. 94)	1,58,340/-
9.	2021-22	ITR7 (Page No. 104)	139(4C) Page No. 104)	NIL

5. Having submitted thus, Ld. AR relied upon a decision in ***Morbi Plot Jain Tapgachi Sangh Vs. CIT (2021) 129 taxmann.com 84 (Gujrat)*** holding as under:

*"14. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the dispute between the parties should have been resolved amicably. We are at one with Mr. Bhatt, the learned Senior Counsel appearing for the Revenue that in the absence of the registration number, to be mentioned in the course of E-filing of*

*the return, the benefit of exemption u/s 11 of the Act cannot be granted, but, at the same time, we find it difficult to accept the stance of the department that as the record is not available with the Trust as well as with the department, it should be presumed that at no point of time, the certificate of registration u/s 12A of the Act was granted.*

*15. We take notice of the fact that there is contemporaneous record available with the Trust, which should be looked into minutely by the department so as to satisfy itself that the Trust had been issued a registration certificate u/s 12A and had been availing the benefit of exemption over a period of time u/s 11 of the Act. The department is expected to undertake some homework in this regard seriously. The Trust should not be denied the benefit of exemption u/s 11 of the Act only on account of its disability to produce the necessary records, which got destroyed during the floods of 1978. We do not find anything doubtful or fishy as regards the Trust.*

*16. In such circumstances, we are of the view that whatever record is available with the Trust, as on date, should be produced before the department and the department should look into the records minutely and also give an opportunity of hearing to the Trust or its legal representative and take an appropriate decision in accordance with law.*

*17. We dispose of this writ application with a direction that the writ applicant-Trust shall produce the entire record available with it as on date before the department and the department shall look into the entire record closely and threadbare and ascertain whether the Trust being a registered charitable Trust had been issued the registration u/s 12A of the Act, 1961. A practical way needs to be found out in such type of litigation. Let this entire exercise be undertaken at the earliest and be completed within a period of four weeks from the date of receipt of the order by the department.*

*18. Till the appropriate decision is not taken by the department, pursuant to the directions issued by this Court, the interim order passed by this Court dated 30<sup>th</sup> September, 2019 shall continue.*

*19. We hope and trust that the controversy is resolved by the parties amicably and the Trust may not have to come back to this Court."*

6. Ld. AR relied also upon one more decision of **Sardar Bhavan Trust Vs. ITO, ITA No. 876 to 881/Ahd/2010 (ITAT, Ahmedabad)** holding thus:

*"10. We find that when the assessee has claimed that it was granted registration u/s 12A/12AA by the Department and the Department has framed assessment granting the exemption the onus is on the Department to prove that the assessee was not granted registration u/s 12A/12AA of the act. In the present case the assessee has claimed that it was granted*

*registration u/s 12A and the assessments have been framed accordingly in the past. There is nothing on record brought by the Department to contradict the submission of the Assessee that it was not granted registration after assessment year 1983-84 or the certificate granted to the assessee has been withdrawn. The onus cast on Revenue to prove that the trust was not registered cannot be said to be discharged by merely stating that the records of registration are not available with it and the assessee should prove that it was registered. The Registration granted u/s 12A/12AA is permanent in nature and needs no renewal from time to time accordingly the Department is expected to maintain the register records registration of trust etc. u/s 12A/12AA at all points of time the Registrar in which the registration of the trust etc. are entered is an important and permanent document which should have been pressured by Department. The Assessee could not be penalized for the failure of the Department in maintaining the necessary record with it. In our considered view in a case of charitable trust where assessment has been framed and exemption provided under the Act has been allowed to the assessee, the presumption is that the Assessee trust was registered u/s 12A/12AA of the act till the same is rebutted by the Department by adducing documentary evidence to the contrary. The Revenue could not bring any evidence on record to prove that the assessee was not granted registration u/s 12A of the Act. We are, therefore, of the view that a mere statement that the relevant registers are not available with the Department could not be considered against the assessee. Considering the totality of the facts, we are of the view that the assessee should be considered to be having registration u/s 12A in all the assessment years under appeal and, therefore, all these appeals are allowed."*

7. With these submissions, Ld. AR prayed to quash the impugned order passed by CIT(E) and restore the registration of assessee u/s 12A(1)(ac)(i).

8. Ld. DR for revenue opposed the submission of Ld. AR. He submitted that the assessee is giving only registration numbers and not able to file certificate of registration or any contemporary evidence of registration. He submitted that the CIT(E) has categorically noted that in all returns filed by assessee for AY 2013-14 to 2021-22, the assessee has not filed any detail of registration u/s 12A/12AA and 80G of the act. He submitted that in assessment-orders of AY 2016-17 and 2017-18, the AO has observed that the assessee was not registered u/s 12A but the assessee has not

challenged AO's observation. Lastly, he relied upon the order of CIT(E) and prayed to uphold the same.

9. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. The dispute in present case relates to cancellation of registration u/s 12A(1)(ac)(i) which was earlier granted to assessee vide order dated 24.09.2021. Admittedly, the registration u/s 12A(1)(ac)(i) can be granted only if the assessee had registration u/s 12A/12AA prior to 01.04.2021. When the assessee filed application for grant of registration u/s 12A(1)(ac)(i), the same was granted by department through an order dated 24.09.2021 but subsequently when the CIT(E) found that the assessee was not having prior registration u/s 12A/12AA, he proceeded against assessee and ultimately cancelled the registration granted by aforesaid order dated 24.09.2021. The sole basis of such cancellation is that the assessee was not having prior registration u/s 12A/12AA. The assessee, however, claims that it was in fact having registration u/s 12A but the certificate of registration was lost in fire accident. The assessee has filed certain ancillary documents as narrated in earlier part of this order to show that it was having registration u/s 12A vide Registration No. Khandwa 1/83 dated 07.06.1983. Therefore, this is a case where the decisions of ***Morbi Plot Jain Tapgachi Sangh*** and ***Sardar Bhavan Trust (supra)*** can be judiciously applied. Since the assessee has filed registration details of section 12A (and also of section 80G), as narrated in earlier part of this order, we are of the view that the

department should look into the records seriously and minutely and thereafter take an appropriate decision in the matter. We accordingly remit this case back to the file of CIT(E) for consideration afresh. It is expected that the CIT(E) shall make a serious effort to get details from departmental record and decide the case of assessee with a holistic and judicious approach without being influenced by his earlier order. Needless to mention that the CIT(E) shall afford necessary opportunity of hearing to assessee and consider assessee's entire submission including those made before us.

**9. Resultantly, this appeal is allowed for statistical purpose.**

Order pronounced in open court on 20.09.2024

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

*दिनांक* /Dated : 20.09.2024  
CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore