

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
&
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.947/Ahd/2024

Shree Kalol Sthanakvasi Jain Mitra Mandal, C/o. Vinodchandra S. Shah, 38, Kalptaru Society, Mirambika Road, Naranpura, Ahmedabad – 382 721.	Vs.	The Commissioner of Income Tax (Exemption), Ahmedabad.
[PAN – AAFTS 3231 A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Vinit N. Shah, AR
Respondent by:	Shri A.P. Singh, CIT-DR

Date of Hearing	07.10.2024
Date of Pronouncement	18.11.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal is filed by the assessee against the order dated 30.03.2024 passed by the Ld. Commissioner of Income Tax (Exemption), (in short “Ld. CIT(E)”), Ahmedabad.

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

1. *The Ld. CIT(E) has erred in points of law and or on facts on the following aspects in refusing to grant the regular registration for five years and in cancelling the provisional registration.*
 - a) *The Ld. CIT(E) has erred in applying all tests of public charitable trust despite his observation in the SCN that the appellant trust is a composite trust. Therefore, the order is passed in contradiction of ground realities.*

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- b) *The Ld. CIT(E) has erred in not considering the submission made by reply letter dt: 18.03.2024 in response to dt: 14.03.2024 though it is stated by him in para 6.3 of the order that reply letter dt: 18.03.2024 is reproduced as under (i.e. in the order).*
- c) *The Ld. CIT(E) has erred in observing that the charitable objects of the Mandal are religious community/caste i.e. Chauhan Community and not for the benefit of public at large and Mandal is created on 12-02-1994. The reference of Chauhan Community has nothing to do with appelland trust.*
- d) *The Ld. CIT(E) has not appreciated the fundamental test of the composite trust i.e. membership is open to any person without distinction of cast, creed, colour, religion or gender. They are the beneficiaries of trust. Any beneficiary who wants to take benefit of the trust has to become a member of the trust on payment of nominal admission fees and life membership fees. The ties between the members of the trust are impersonal in nature. The intent of the trust is to benefit section of the public as distinguished from the specified individuals.*
5. *The Ld. CIT(E) appeal has erred in points of law and facts in refusing to grant regular registration for five assessment year and cancelling the provisional registration without pointing out any defect in the object of the trust or genuineness of the activities of the trust.*

Relief claimed

The regular registration for five years be allowed to the trust and reverse the order for cancelation of provisional registration be reversed."

3. The brief facts of the case are that the assessee / applicant, seeking registration under section 12A of the Income Tax Act, filed an application in Form 10AB on 22.09.2023, for registration under section 12A(1)(ac)(iii) of the Act.. The applicant had previously been granted provisional approval under Form 10AC on 27.05.2021, for the assessment years 2021-22 to 2023-24, under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A. In response to the application, Ld. CIT(E) issued notices, requesting additional information and documents. The applicant replied to these notices on 29.12.2023, providing the requested details. Upon reviewing the applicant's objectives, as outlined in its constitution, Ld. CIT(E) noted that the primary purpose of the trust was to

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benefit the members of the "Shri Kalol Sthanakvasi Jain Mitra Mandal" through social, economic, and religious activities. The trust's objectives included promoting unity among members and providing assistance in their times of need. On 14.03.2024, Ld. CIT(E) issued a show cause notice questioning the eligibility of the trust for registration under section 12A of the Act. The notice pointed out that the objectives of the trust appeared to be restricted to the welfare of its members rather than the public at large. The provisions of section 2(15) of the Income Tax Act, which defines "charitable purpose," include activities aimed at benefiting the public or a section of the public. Since the applicant's activities were limited to its members and did not extend to the public at large, Ld. CIT(E) raised concerns that the trust's objectives would not qualify as "charitable" under the law. The applicant in its response submitted that the membership of the trust was open to any individual residing in Ahmedabad Municipal territory, thus expanding the potential pool of beneficiaries beyond a closed group. The applicant further argued that their activities were for the betterment of their members, who paid a nominal fee to become members, thus qualifying for benefits. However, after reviewing the reply, Ld. CIT(E) observed that the applicant had acknowledged that its members were the sole beneficiaries and that they paid a membership fee to become eligible for welfare benefits. The trust had no broader charitable objectives for the general public. The authorities noted that the welfare activities were typical of "members-only" welfare organizations, which do not fall within the legal definition of a charitable trust. The applicant cited several judicial precedents, including rulings from the Supreme Court in *Ahmedabad Rana Caste Association* and *CIT vs. Dawoodi Bohra Jamat*, to support its case. However, Ld. CIT(E) distinguished these cases, noting that the *Rana Caste Association* case was based on the Income Tax Act of 1922, which had different provisions from the current Act, particularly

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with regard to the eligibility of trusts for exemption under sections 11 and 12. The applicant's case, which involved a trust formed for the benefit of a particular community (the Chauhan community), was not deemed to meet the charitable requirements of the current law. Ld. CIT(E) also referred to a ruling from the Punjab & Haryana High Court in *CIT vs. Truck Operators Association*, where it was held that an organization formed solely for the benefit of its members, even if engaged in some welfare activities, could not be classified as operating for the "general public utility." Given that the trust's activities were confined to the welfare of its members and did not serve a broader public interest, Ld. CIT(E) held that the applicant trust did not meet the charitable criteria outlined in section 2(15) of the Income Tax Act. Accordingly, the application for registration under section 12A was rejected, and the provisional registration granted earlier was cancelled.

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(E) cancelling the registration of the assessee/ applicant.

5. Before us, the Counsel for the assessee the applicant submitted that the membership of the trust is open to any person of Kalol origin residing within the jurisdiction of the Ahmedabad Municipal Corporation. Ld. Counsel for the assessee submitted that membership is not restricted based on religious beliefs or practices, and individuals from any faith can join the trust. Therefore, the membership is not tied to religion and is of an impersonal nature, reflecting a broader community-based membership. Counsel for the assessee also clarified a person becomes a member and ultimately a beneficiary upon paying a nominal admission fee and life membership fee, without the intent of forming an income-generating association. Thus, Counsel for the assessee argued, the trust does not function as a professional or trade-based organization, and the concept of an

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"association" in the traditional sense does not apply. The Counsel for the assessee further pointed out that the name of the trust—*Kalol Sthanakvasi Jain Mitra Mandal*—should not be interpreted as restricting membership to only individuals of the Jain Sthanakvasi faith. Rather, the trust was established by the Jain Mitra Mandal but is open to any individual of Kalol origin who resides in Ahmedabad. The Counsel for the assessee referred to a clause in the trust's constitution, which states that the membership is open to all individuals of Kalol origin, regardless of religious affiliation. This broader interpretation of membership it was argued, further reinforced the applicant's argument that the trust operates in a public, community-focused manner, and not as a sectarian religious organization. In light of these clarifications, the Counsel for the assessee requested that the registration under section 12AB be granted, as the trust's objectives and activities met the requirements of the section. Furthermore, Counsel for the assessee highlighted the procedure for registration under section 12AB(1)(b)(ii), which mandates that the Commissioner of Income Tax (Exemption) must evaluate the objects of the trust and the genuineness of its activities. The applicant argued that if these two criteria are satisfied, the trust should be eligible for registration under section 12AB, and that the issue of membership should not be a determining factor in granting or denying registration.

6. In response, Ld. Departmental Representative placed reliance on the observations made by CIT (E) in the order passed by him.

7. We have heard the rival contentions and perused the material on record. In the case of Bargahe Husaini Trust-Monpar **[2024] 165 taxmann.com 141/208 ITD 158 (Ahmedabad - Trib.)**, the assessee-trust filed application for grant of final registration under section 12A of the Act. The Commissioner

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(Exemption) observed that objects of trust appeared to be restricted to benefit of a particular religious community or caste, which was Khoja Shia Ishna Ashari Samaj and thus, section 13(1)(b) would be applicable and dismissed application for grant of final registration. **The Ahmedabad Tribunal held that provisions of section 13(1)(b) of the Act can be invoked only at time of assessment and not at time of grant of registration under section 12A of the Act.** Therefore, in view of aforesaid legal position, matter was to be restored to file of CIT (Exemptions), for de-novo consideration. While passing the order, the Tribunal made the following observations:

7. We have heard the rival contentions and perused the material on record. In the case of Bhojalram Leuva Patel Seva Samaj Trust v. CIT (Exemptions) [2024] 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 **Jamiatul Banaat Tankaria v. CIT (Exemption) [2024] 160 taxmann.com 358/205 ITD 673 (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.

9. In the case of **Malik Hasmullah Islamic Educational and Welfare Society v. CIT [2012] 24 taxmann.com 93/138 ITD 519 (Lucknow)**, 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.

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10. In the case of **St. Joseph Academy v. DIT (Exemption) [2014] 50 taxmann.com 216/153 ITD 669 (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.

11. 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.

12. 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 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."

13. 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

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rejecting the application filed by the assessee trust. CIT (Exemptions) is directed to look into the merits of the activities of the applicant trust and thereafter pass appropriate orders in accordance with law.

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

This Order pronounced in Open Court on	18/11/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 18/11/2024

PBN/Tanmay

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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