

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

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

I.T.A. No.542/Ahd/2020
(Assessment Year: N.A.)

Bhavnagar Mandap Contractors Association, Plot No. 2, Hada Nagar, C/o. Shiv Mandap Service, Bhavnagar, Gujarat-364002	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
[PAN No.AABAB7145B]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sarju Mehta, A.R.
Respondent by:	Shri A. P. Singh, CIT DR

Date of Hearing	07.10.2024
Date of Pronouncement	21.11.2024

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 dated 22.01.2020.

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

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax has erred in rejecting the application of assessee filed u/s 12A(1) of the I.T. Act 1961 thereby refusing to grant registration to assessee u/s 12AA of the I.T. Act, 1961.

2. It is therefore prayed that the above action of learned Commissioner of Income Tax in refusing to grant registration u/s 12AA of the I.T. Act may kindly be held to be invalid and registration may kindly be directed to be granted to assessee.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. At the outset, we observe that there is a delay of 233 days in filing of the present appeal. At the time of hearing, the Counsel for the assessee

submitted that the order of Ld. CIT(E) was served on 22.01.2020 and the due date of filing of appeal was falling within the Covid period and hence, there was no delay in filing of the present appeal on part of the assessee.

4. On going through the facts of the instant case, we observe that since the due date of filing of appeal was falling within the Covid period, the delay in filing of the present appeal is hereby condoned in the interest of justice.

On Merits:

5. The brief facts of the case are that the assessee / applicant filed application for registration of Trust under Section 12AA of the Act on 10.07.2019 in Form No. 10A under Rule 11AA along with certain details / documents. Upon review of the details / documents submitted by the assessee / applicant CIT(E) observed that the applicant trust's Memorandum of Association indicated that the objects of the trust were primarily for the benefit of a specific group of individuals viz. Mandap Contractors operating in the Bhavnagar jurisdiction and the objects were not for general public. The CIT(E) observed that the applicant's objectives primarily focused on knowledge sharing, organizing events, encouraging trades amongst its members, who were all aimed at only benefitting the members of the trust and not public at large. Further, Ld. CIT(E) observed that the applicant trusts also charged members entry fees of Rs. 5,000/- and had also fixed annual member's dues, which further demonstrated that the activities of the trust were primary of "mutual nature", limited to its members and not for public charitable purposes. The Ld. CIT(E) further observed that since the assessee / applicant trust has not been registered as a charitable trust with the Charity Commissioner or any other competent authority and has admitted to being an "association or person" which

further disqualified the applicant trust from the benefits of Section 12AA of the Act. Accordingly, Ld. CIT(E) held that given the fact that the trust's activities were not for charitable purposes, and were governed by the principle of mutuality, the application for grant of registration under Section 12AA of the Act was liable to be rejected. Therefore, Ld. CIT(E), in light of the above observation rejected the application for registration filed by the assessee / applicant trust in Form No. 10A.

6. The assessee / applicant trust is in appeal before us against the aforesaid order passed by Ld. CIT(E).

7. Before us, the Counsel for the assessee submitted that Ld. CIT(E) has clearly erred in holding that the fact that trust has not been registered as a charitable trust with the Charity Commissioner, disqualified it from the benefits of Section 12AA of the Act. The Counsel for the assessee placed reliance on the decision of **Panchkva Cloth Marchant Association VS. CIT(E), Ahmedabad 128 taxmann.com 391 (Ahmedabad – Trib.)**, wherein the Ahmedabad Tribunal held that for allowing the application of 12AA of the Act, it is nowhere envisaged that the assessee / applicant trust should have been registered with the Charity Commissioner / Registrar or Registrar of Companies etc. Secondly, the Counsel for the assessee submitted that if the argument of the Ld. CIT(E) that the applicant trust is aimed only for the benefit of Mandap Contractor whose business was situated in the jurisdiction of Bhavnagar, falls within the definition of trust formed only on the benefit of a “particular set of persons” were to be accepted, then on this reasoning, all trades associations would become ineligible for grant of registration under Section 12AA of the Act. Accordingly, the Counsel for the assessee submitted that looking into the instant facts, Ld. CIT(E) has grossly erred in facts and in law in denying grant of registration under Section 12AA of the Act.

8. In response, Ld. D.R. submitted that Ld. CIT(E) has correctly observed that the assessee has been charging both admission fees as well as compulsory annual membership fees which clearly goes on to demonstrate that the assessee is not engaged in carrying on any charitable activities. Ld. D.R. placed reliance on the observations made by the Ld. CIT(E).

9. We have heard the rival contentions and perused the material on record.

10. We observe that in the case of **Panchkuva Cloth Merchant Association vs. CIT(E), Ahmedabad 128 taxmann.com 391 (Ahmedabad –Trib.)**, the Tribunal has made the following observations which support the fact that for being eligible for claim of deduction under Section 12AA of the Act, it is not a pre-requisite that the applicant trust should be registered with the Charity Commissioner or any other competent authority. The Ahmedabad Tribunal made the following observations in this regard:

“The ld. CIT (Exemption) stated that the assessee association was not registered with any competent authorities i.e. Charity Commissioner/Registered Registrar of Societies/Registrar of Companies etc.. In this regard, we have perused the provision of section 12A of the Act r.w.s. Rule 17A of the I.T. Rule, 1962. The clause (a) of rule 17A of Income-tax Rules requires that the application of registration under section 12A of a charitable or religious trust or institution would be accompanied by the following documents namely, where the trust is created or the institution is established, under an instrument, the instrument in original and where the trust is created or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution. Thus, rule 17A nowhere envisages the existence of a trust deed or its registration. The factum of existence of trust can also be established by producing documents evidencing the creation of the trust. Section 12AA lays down the procedure for granting Registration. Rule 17(A)(a) show that when the trust is not created under an instrument it is impossible to produce any constitutive document hence the rule requires production of evidential documents i.e. the document evidencing the creation of trust. We observe that specific evidential documents furnished by the assessee in the paper book as referred above in this order has not been verified and examined by the ld. CIT(Exemption) in the context of evidential documents. In view of the above facts and circumstances, we would deem it proper to set aside the impugned order to the file of the ld. CIT(Exemption) for deciding afresh

*after considering the specific documents placed in the paper books as referred above. **Therefore, we restore the issue to the file of the ld. CIT (exemption) for adjudicating afresh after taking into consideration the observation of the Hon'ble High Court of Gujarat and clause (a) in rule 17A of the I.T. Rule, 1962. Accordingly, the appeal of the assessee is allowed for statistical purposes.***"

11. In the case **Federation of Trade Association of Pune 132 taxmann.com 87 (Pune - Trib.)**, the assessee moved an application for grant of registration under section 12A of the Act. The Commissioner (Exemption) after considering aims and objects of trust, held that trust was a members' association and all activities were limited to its members and not to general public at large so as to fall within clause 'advancement of any other object of general public utility'. Ld. CIT(E), therefore, denied registration to the applicant Trust. The Tribunal, on going through objects of assessee-trust, found that the assessee / applicant Trust had been set up to promote, develop and protect interests of trade and commerce which falls within scope of 'advancement of any other object of general public utility' Further, bifurcation of revenue and expenses showed that none of activity was in nature of trade, commerce or business and thus, assessee satisfied condition, namely, objects of trust should be of advancement of any other object of general public utility and secondly, no activity in nature of trade and commerce or business, etc., should be carried on by it. The Tribunal held that on these facts, assessee fulfilled requisite conditions for falling under head 'charitable purpose' as defined under section 2(15) of the Act.

12. In the case of **Fertilizers Association of India 99 taxmann.com 387 (Delhi)**, the High Court held that that mere charging of fee from members or non-members for rendering services like training, conducting seminars would not ipso facto lead to denial of exemption when the dominant object of the assessee remained charitable and the aforesaid activities were only incidental to the main activity of the assessee.

- 6 -

13. In the case of **Confederation of Pharma Dealers Association 137 taxmann.com 117 (Raipur - Trib.)**, the where assessee-society was engaged in promotion of trade and commerce related to pharma business and protecting rights and interests of its members, case of assessee got covered in fourth limb of section 2(15), i.e. 'advancement of any other object of general public utility', and it would be entitled to registration under section 12A of the Act.

14. Accordingly, in our considered view, in light of the above judicial precedents and facts of the assessee's case, in our considered view Ld. CIT(E) has erred in facts and in law in denying grant of registration to the assessee / applicant trust under Section 12AA of the Act. Accordingly, the issue is resotred to the file of Ld. CIT(E) to consider the case of the assessee fresh, after giving due opportunity to the assessee to present it's case on merits with all supporting details / documents and not to disentitle the assessee / applicant grant of registration on the basis of reasons mentioned above.

15. In the result, the appeal of the assessee / applicant trust is allowed for statistical purposes.

This Order pronounced in Open Court on	21/11/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 21/11/2024

TANMAY, Sr. PS

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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.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

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