

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

**ITA No. 480/Ind/2024**  
**A.Y. : 2023-24**

Bisa Neema Panchayat Bhawan Trust, 285, M.G. Road, Indore (Assessee/Appellant)	<b><u>बनाम/</u></b> Vs.	Commissioner of Income- tax (Exemption), Bhopal (Revenue/Respondent)
<b>PAN: AACTB4287E</b>		
Assessee by	Shri S.S.Deshpande, C.A. & AR	
Revenue by	Shri V.K. Singh, CIT-DR	
Date of Hearing	27.11.2024	
Date of Pronouncement	29.11.2024	

**आदेश / ORDER**

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

Feeling aggrieved by order dated 19.02.2024 passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] by which the assessee's provisional registration u/s 12AB of Income-tax Act, 1961 has been cancelled and also application for grant of final registration u/s 12AB has been rejected, the assessee has filed this appeal.

2. The registry has informed that the present appeal is delayed by 42 days and therefore time-barred. Ld. AR for assessee submitted that the President of assessee-trust, Shri Rajesh Kothana, has filed an affidavit and prays for condonation of delay, the same is scanned and re-produced below:



I, Rajesh Kothana S/O Madanlal Kothana aged 62 Years resident of 1/1, Lokmanya Nagar, Indore 452009 here by solemnly affirm as under:

I, Rajesh Kothana, President of Shri Bisa Neema Panchayat Bhawan Trust, Indore (PAN No. AACTB4287E) a religious trust, maintaining Radhakrishna Mandir at Shri Krishna Nagar, Indore hereby declare that the all work regarding accounts and income tax related work was handled by our honourable trustee Mr. Mohanlal Gopikishan Neema and unfortunately he has been died on 09.04.2024 after suffering from cancer. Due to his illness and suffering from cancer, notices from the Income tax commissioner exemption Bhopal regarding registration could not be trace by us or not come to our knowledge being Mohanlalji Neema was looking after all mails and accounts matter of the trust. Resulting to that we could not respond to the above notice and appear before the CIT, Exemption, Bhopal on time.

Rajesh Kothana  
Deponent 

Verification

I, the deponent above, do hereby verify the content of above affidavit are true and correct to the best of my knowledge and I have not concealed any material facts.

Verified on 17th May, 2024 **SWORN BEFORE ME**

Rajesh Kothana 

3. Referring to contents of affidavit, Ld. AR submitted that all work regarding accounts and income-tax was handled by trustee Late Shri Mohan Lal Gopikishan Neema who unfortunately expired on 09.04.2024 after suffering from cancer. Therefore, neither the assessee could make effective response to the notices of CIT(E) nor file present appeal in time. Ld. AR very humbly submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submitted that the sole reason of delay is the serious illness leading to death of assessee's key functionary as aforesaid. Ld. AR prayed to condone delay in this situation. Ld. DR for Revenue left the matter to the wisdom of Bench. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a 'sufficient cause' as averred in the affidavit. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a 'sufficient cause' for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of section 253(5) and the decision of Hon'ble Supreme

Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

4. Briefly stated the facts are such that the assessee-trust initially applied for grant of provisional registration u/s 12AB which was granted vide order dated 24.03.2023 in Form No. 10AC. Subsequently, the assessee filed application for grant of final registration u/s 12AB to CIT(E). The CIT(E), however, cancelled the provisional registration and also rejected application for final registration by passing impugned order as follows:

AACTB4287E- BISA NEEMA PANCHAYAT BHAWAN TRUST  
ITBA/EXM/F/EXM45/2023-24/1061129160(1)

**Annexure (mentioned in row-9 above)**

The assessee has applied in Form 10AB for registration u/s 12AB of the Act, under the new provision of Income Tax Act, 1961. Consequently, opportunity letters were issued to the assessee and various documents/details were called for; to process the said application and to verify the objects and activities of the assessee. The details of opportunity letters and response received in compliance thereof are as under;

S.N.	In respect of registration u/s 12AB		
	Date of opportunity letters issued	Hearing fixed on	Date of reply
1.	28.11.2023	07.12.2023	Adjournment Filed
2.	08.12.2023	19.12.2023	No Reply Received
3.	20.12.2023	09.01.2024	Incomplete reply received
4.	02.02.2024	13.02.2024	No reply Received

Vide above referred letters various documents/information were called for. Subsequently, Show-cause notice u/s 12AB was issued on 02.02.2024 to submit the following details:-

*"Please refer to your application in Form 10AB filed for registration/approval u/s 12AB under the new provisions of the Income Tax Act, 1961. As per the By-laws of the trust, it is observed that most of the objects are for the benefit of particular cast which shows that the trust is created/established for the benefit of particular community which attracts violation of section 13(1)(b) of the IT Act.*

AACTB4287E- BISA NEEMA PANCHAYAT BHAWAN TRUST

ITBA/EXM/F/EXM45/2023-24/1061129160(1)

*You are hereby given an opportunity to show-cause why the application in Form 10AB for registration/approval u/s 12AB of the Act should not be rejected. You are also required to show cause why the provisional registration u/s 12AB in Form 10AC vide URN No. **AACTB4287EE20221** dated 24.03.2023 granted by the CPC should not be cancelled on the ibid grounds as per the provisions of section 12AB(1)(b)(ii)(B) of the IT Act."*

3. In response to show cause notice dated 02.02.2024, the assessee has not submitted the required clarification. The assessee has submitted the copy of trust deed wherein the objects are mentioned at Para 3 and most of the objects are related for the benefit of particular cast in violation to section 13(1)(b) of the Act.

4. In view of the above, due to non-compliance of required reply the application of the assessee in Form 10AB for grant of registration u/s 12AB of the Act is hereby rejected and the provisional registration/approval u/s 12AB in Form 10 AC vide **AACTB4287EE20221** dated **24.03.2023** granted by CPC is also hereby cancelled as per the provisions of section 12AB(1)(b)(ii)(B) of the IT Act.



VIJAY KUMAR SONI  
CIT EXEMPTION BHOPAL

Copy to:

1. The Addl./Joint Commissioner of Income Tax- JCIT R-1,INDORE
2. Assessing Officer- ITO 1(1), IND
- 3.The applicant

VIJAY KUMAR SONI  
CIT EXEMPTION BHOPAL

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

This document is digitally signed

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

6. The assessee has raised following effective grounds:

1. *The delay in filing the appeal may please be condoned. Shri Mohanlal Gopikishan Neema was looking after the registration work was seriously ill and ultimately passed away and as such the appeal could not be filed in time.*
2. *The Ld. CIT(E) has erred in rejecting the registration application u/s 12AB of the Income-tax Act, 1961.*
3. *The Ld. CIT(E) has erred in holding that the activity of the assessee trust is related to the benefit of a particular caste in violation of section 13(1)(b) and as such it is not entitled for registration.*
4. *The Ld. CIT(E) has erred in concluding that the assessee's object clause is for activity outside India. The object clause cannot be interpreted of doing any activity outside India. The conclusion drawn are bad in law.*
5. *The activity of the assessee are religious and as such the Trust is entitled for registration u/s 12AB may kindly be directed to be granted. The order of the Ld. CIT(E) rejecting the application for registration u/s 12AB is bad in law and may please be set aside.*
6. *The Ld. CIT(E) please be directed to grant registration u/s 12AB of the Income-tax Act, 1961.*

7. Ground No. 1 is a prayer for condonation of delay which we have already dealt in foregoing part of this order. Ld. AR submitted that the assessee is not pressing Ground No. 4 since the same does not emanate from impugned order. Hence, Ground No. 4 is dismissed as non-pressed. By means of all other grounds, the assessee has raised a single grievance that the CIT(E) was not justified in rejecting assessee's application for final registration u/s 12AB. We proceed to adjudicate this grievance in subsequent discussions.

8. Ld. AR for assessee straightaway carried us to the impugned order passed by CIT(E) as re-produced in foregoing para and submitted that the CIT(E) has passed order against assessee on the sole footing that the assessee is created/established for the benefit of particular community/ caste which is a violation of restriction imposed in section 13(1)(b). Ld. AR then drew us to the provision of section 13(1)(b) reading as under:

*“13(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof –*

*(a) XX*

*(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;*

9. Ld. AR submitted that a bare reading of section 13(1)(b) shows that the restriction provided therein applies only to a ‘trust existing purely for charitable purpose’ and that too if the trust has been created after commencement of Income-tax Act, 1961. Ld. AR made two-fold submissions to show that none of these conditions is satisfied and therefore the CIT(E) is wrong in passing adverse order:

(i) That the assessee-trust is engaged in ‘charitable-cum-religious’ objects/activities which was clearly mentioned in the application filed to CIT(E) in Form No. 10AB [Copy of said application is filed to the office of ITAT immediately after conclusion of hearing in terms of direction given by the bench during hearing]. Further, object No. (J) of the trust-deed, filed to CIT(E) which is duly acknowledged by CIT(E) in

Para 3 of impugned order re-produced above, clearly mentions that the trust is also engaged in religious objects/activities apart from various charitable objects/activities [Page 26 of Paper-Book]. Further, Para 2 of the letter filed by assessee-trust to CIT(E) during proceeding clearly mentions *"Our trust is engaged primarily to maintain temple and ..... Photograph of temple of Radha Krishna Mandir at Shrikrishna Nagar is enclosed for your kind verification"* and vide Para 9 of same letter, the title-deed of Radhakrishna mandir was also submitted to CIT(E) [Page 20-21, 30-32 of Paper-Book]. The audited P&L A/cs of last three years filed to CIT(E) also show debit entries of expenditure captioned as *"Shri Radha Krishna Mandir Expenses"*. All these documents/details filed by assessee to CIT(E) clearly exhibit that the assessee is engaged in dual objects/activities of charitable as well as religious nature. Ld. AR submitted that when the assessee is engaged in both charitable and religious activities, the restrictive provision of section 13(1)(b) is not applicable as held by Hon'ble Jurisdictional High Court in ***CIT Vs. Dawoodi Bohra Jamat (2009) 317 ITR 342 (MP)***.

- (ii) That the present-trust has been created on 10.11.1960 as is mentioned in the first line of trust-deed itself [Page 24 of Paper-Book] which is before commencement of Income-tax Act, 1961. The provision of section 13(1)(b) applies only to a trust or institution created after commencement of Income-tax Act, 1961 and this proposition is also

held by Hon'ble Jurisdictional High Court in *CIT Vs. Shri Maheshwari Agrawal Marwari Panchayat Misc. Civil Case No. 9 of 1979, judgement dated 26.06.1981.*

10. Therefore, on the basis of above submissions, Ld. AR prayed that the CIT(E) has wrongly concluded that there was a violation of section 13(1)(b). Ld. AR strongly prayed that the order of CIT(E) must be quashed and the CIT(E) should be directed to granted registration to assessee as applied.

11. Per contra, Ld. DR for revenue strongly opposed the submission of Ld. AR. He drew us to Page 1 to 3 of trust-deed [Page 24-26 of Paper-Book] to show that (i) the trust was created in the meeting of Panchayat Bhawan of "Jati", (ii) that at various places in the objects clauses, it has been clearly mentioned that the trust is working for "Jati". Therefore, the trust is created/established for the benefit of a particular religious community/caste. Ld. DR submitted that the CIT(E) has rightly inferred that the assessee-trust was existing for a particular religious community/caste which attracted provision of section 13(1)(b), therefore the order passed by CIT(E) rejecting assessee's application is very much correct and must be upheld. Alternatively, Ld. DR strongly emphasized the CIT(E) categorical noting that when the assessee was show-caused vide notice dated 02.02.2024 qua the violation of section 13(1)(b) on the basis that the assessee trust was created/established for the benefit of particular community, the assessee did not file required reply. He submitted that the CIT(E) finally rejected assessee's application due to non-compliance of required reply, therefore the

present case must be restored at the level of CIT(E) by giving a specific direction to assessee to file required reply to CIT(E). This would enable the CIT(E) to reconsider assessee's entire submission and take appropriate view in the matter.

12. 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. So far as the contention raised by Ld. AR that the section 13(1)(b) is not applicable to a trust existing for dual activities of 'charitable-cum-religious' nature, we find that the case of ***CIT Vs. Dawoodi Bohra Jamat (supra)*** relied by Ld. AR was a case of 'religious trust' and not of 'charitable-cum-religious trust'. Further, the same case ultimately travelled before ***Hon'ble Supreme Court in Civil Appeal No. 2492 of 2014*** whereupon, in order dated 20.02.2014, the Hon'ble Supreme Court observed as under:

*"43. Thus, the second issue which arises for our consideration and decision is, whether the respondent-trust is a charitable and religious trust only for the purposes of a particular community and therefore, not eligible for exemption under [Section 11](#) of the Act in view of provisions of [Section 13\(1\)\(b\)](#) of the Act.*

*44. In the instant case, the Tribunal has found on facts after analysing the objects of the trust that the respondent-trust is a public religious trust and its objects are solely religious in nature and being of the opinion that [Section 13\(1\)\(b\)](#) is solely meant for charitable trust for particular community, negated the possibility of applicability of [Section 13\(1\)\(b\)](#) of the Act at the outset. The High Court has also confirmed the aforesaid view in appeal and observed that [Section 13\(1\)\(b\)](#) would only be applicable in case of income of the trust for charitable purpose established for benefit of a particular religious community. In our considered view, the said view may not be the correct interpretation of the provision.*

45. From the phraseology in clause (b) of [section 13\(1\)](#), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. **That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b).** What is intended to be excluded from being eligible for exemption under [Section 11](#) is a trust for charitable purpose which is established for the benefit of any particular religious community or caste.

46. **Such trusts with composite objects would not be expelled out of the purview of [Section 13\(1\)\(b\)](#) per se. The Section requires it to be established that such charitable purpose is not for the benefit of a particular religious community or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large. (Sole Trustee, [Loka Shikshana Trust v. CIT](#), (1975) 101 ITR 234 (SC)). The section of community sought to be benefited must be either sufficiently defined or identifiable by a common quality of a public or impersonal nature. ([CIT v. Andhra Chamber of Commerce](#), 55 ITR 722).**"

[Emphasis supplied]

Therefore, the contention of Ld. AR that the section 13(1)(b) is *per se* not applicable to assessee, being a 'charitable-cum-religious' body is not acceptable as per decision of Hon'ble Supreme Court. The Hon'ble Supreme Court has further held that what needs to be examined is whether or not the objects/activities are for the benefit of a particular religious community/ caste. That is the point for which the CIT(E) precisely show-caused assessee but the assessee has not filed any reply. It is also submitted by assessee in the affidavit for condonation of delay that it could not respond to the notice of CIT(E) due to illness of trustee Late Shri Mohan Lal. Therefore, in the situation, it would be better to give one more opportunity to assessee to make representation before CIT(E). The assessee shall be entitled to make all submissions to CIT(E) qua the section 13(1)(b) including the decision of **CIT**

*Vs. Shri Maheshwari Agrawal Marwari Panchayat* (supra) if so desires.

The CIT(A) shall consider assessee's submission and pass necessary order afresh. Ordered accordingly.

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

*Order pronounced by putting on notice board as per Rule 34 of ITAT Rules, 1963  
on 29.11.2024*

Sd/-  
(DINESH MOHAN SINHA)  
JUDICIAL MEMBER

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

**Indore**

दिनांक /Dated : 29.11.2024  
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