

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH:COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.543/Coch/2024

AssessmentYear:NA

Naughtys Pet Sanctuary 113, Spasra, Second Puthen Street Manacaud, Thiruvananthapuram Kerala 695 009  <b>PAN NO : AADTN8887H</b>	<b>Vs.</b>	CIT(Exemption) Kochi Kerala
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Sunil Jain, A.R.
<b>Respondent by</b>	:	Smt. Leena Lal, Sr. D.R.

<b>Date of Hearing</b>	:	19.02.2025
<b>Date of Pronouncement</b>	:	24.04.2025

**O R D E R**

**PERKESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of the Id. CIT(Exemption), Kochi dated 22.3.2024 vide DIN & Notice No.ITBA/EXM/F/EXM45/2023-24/1063147683(1) rejecting the application for registration filed in Form 10AB.

**2.** The assessee has raised the following grounds of appeal:

- The Appellant submits before the Hon'ble Tribunal that the impugned order of the Ld. Commissioner suffers from incurable defect as it is passed by violating the principles of natural justice. In reply filed by the Appellant on 22<sup>nd</sup> Feb 2024 a specific request has been made to grant a personal hearing to explain the submissions. No personal hearing was granted, and the order has been passed arbitrarily. The Appellant submits that the impugned order must be struck down by this Hon'ble Tribunal on this ground alone.*
- The Appellant submits before the Hon'ble Tribunal that the objection of the Department that there is violation of the provision of section 13(3) is baseless and lacks evidence. Without prejudice to the basic*

*contention, that the section 13(3) cannot be pressed into play while processing the application under section 12A, the appellant submits that the trust has NOT paid salaries to the trustees. The fact of non-payment of salaries is not in dispute. Hence the Appellant urge the Hon'ble Tribunal to hold that the provisions of section 13(3) of the Income Tax Act, 1961 are not violated. Attention of the Hon'ble Tribunal is drawn to the provisions of section 13(3) that makes it abundantly clear that for pressing into play the provisions of section 13 what is critical is to the trust must of made payments to persons mentioned in the section 13(3) of the Income Tax Act, 1961.*

- 3. The Appellant submits that the provisions of section 13 provide exceptional circumstances under which section 11 or 12 shall not operate so as to exclude from the total income (certain amounts) of the previous year. Reading of the section 13 makes it abundantly clear that the provisions of section 13 are to be applied at the time of assessment of income / exemption under section 11/12 of the income Tax Act, 1961. it is humbly submitted by the Appellant that the provisions of section 13 cannot be called upon to reject that application filed under section 12A of the income Tax Act, 1961.*
- 4. The Appellant humbly submits that the order has been passed in hasty and no fair opportunity was provided to the Appellant to cure the alleged defect in the trust deed. Also, the provisions of section 13 have not been violated because no payment were made to any person referred to in section 13(3). in the absence of any payment of salaries to persons referred to in section 13(3) allegation of violation of the provisions is illegal and the impugned order deserves to be set aside by the Hon'ble Tribunal.*
- 5. The Appellant submits that the various amendments were to the trust deed on the instruction of the Department vide its letter dated 25<sup>th</sup> Oct 2023. in the letter dated 25<sup>th</sup> Oct 2023 no objection was raised in respect of the clause that is under question now. Further the notice of the CIT dated 4<sup>th</sup> Jan 2024 also did not have any mention regarding the clause of the Trust deed based on which the application is rejected. The Appellant submits that the application has been rejected arbitrarily and in haste. Hence the order of the CIT (Exemption) Kochi merits to be set aside by the Hon'ble Tribunal.*
- 6. Appellant humbly submits that if the provisions of the Trust deed were in violation of any provision of the law a fair opportunity must have been provided to the Appellant to cure the defect. Without providing such opportunity rejecting the application is unjust and is in violation of principles of natural justice. Hence the impugned order merits to be set aside by the Hon'ble Tribunal.*

7. *The Appellant draw Hon'ble Tribunal's attention to the provision of section 13 quoting which the application is rejected. It is humbly submitted that the said section can be pressed into play at the time of assessment of the income for any year and not during the processing or application under section 12A. There is no condition in the provisions of section 12 A that suggest that the trust deed of the trust must not provide for payment of honorarium to the trustees. This is without prejudice to the basic contention that in the instant case no honorarium has been paid to e trustees. The reasoning accorded by the Ld. Commissioner are legally flawed due to the following reasons:*
- a. *The provision of section 13 can be pressed into play only during the assessment of income to ascertain whether the said honorarium can form part of application of income or not.*
  - b. *As there was no honorarium paid there was no contravention at all.*
8. *The Founder of the Trust Smt. Sangeetha has been working very hard and has dedicated her life for the welfare of animal and environment. This rejection of the application without valid reason is causing extraordinary hardship. Donations from public is the source of resources to run the operations. If the impugned order is up-held it will jeopardize the both the legal and the social intent/objectivity.*
10. *Along with detailed point by point reply and all the documents in support of application were filed' at the CIT (Exemption), KOCHI office on 29<sup>th</sup> Jan 2024 during the personal hearing.*
11. *The personal hearing was conducted by ITO (Exemption) KOCHI. Following objection was raised during the personal hearing.*
- "The Applicant trust is having provision for paying honorarium to the trustee (para 5(8) of the trust deed) in violation of section 13(3) of the Act. And that hence the application filed in form IOAB under section12A (1) (ac) (iii) is liable for rejection"*
- The applicant was asked to file its objections if any on or before 26<sup>th</sup> Feb 2024.*
12. *The Appellant field its objections with the office the CIT (exemption)— KOCHI vide letter dated 22<sup>nd</sup> Feb 2024 filed at the CIT office by speed post- dated 22<sup>nd</sup> Feb 2024. (This objection was received by the CIT office as acknowledged in the older in form 10AD).*

*13. Surprisingly the Appellant Trust received a communication from the Office of ITO Exemption ward TVM vide ITBA/COM/F/17/202324/1061843015(1) dated 1<sup>st</sup> March 2024 asking for bank statement and also some clarification regarding a particular clause in the trust deed.*

**3.** Brief facts of the case are that Naughty's Pet Sanctuary, Thiruvananthapuram, is a public charitable trust registered in the state of Kerala with PAN AADTN8887H and is committed to preservation of environment including watersheds, forests, and wildlife and to animal welfare.

**3.1** The Assessee Trust filed an application for final registration/approval under section 12A of the Act in form 10ABvide acknowledgment number 354853000300923 dated 30<sup>th</sup>September,2023.

**3.2** The Id. CIT(E)on verification of the documents as submitted by the assessee found that the trust deed of the assessee is having the following clause under the head "Powers of Trustees" which is violation of section 13(3) of the Act:

*(8) To receive honorarium or salary against his/her services or involvement in any of the project or programs run by the Trust, which must be decided by the Trustee and approved by the Board of Trustees."*

**3.3** Thereafter, the assessee was given the opportunity to file any objections, if any, on or before 26/02/2024. The assessee filed reply vide letter dated 22/02/2024 relevant part of which is reproduced below:

*"2. It is humbly submitted that the section 13(3) can be pressed into play only at the time of assessment of income for each year and if in any previous year there is payment of salary to the specified person the exemption can be denied only and only if payment of such salary is in excess of what may be reasonably paid for such services rendered by specified person, We submit that this provision cannot be pressed into play to decide the eligibility of registration filed in the form*

*IOAB. Even if it is assumed that this provision can be pressed into play we re-iterate that no salary has been paid to any trustee.”*

**3.4** The reply of the assessee was not accepted by the ld. CIT (Exemption) on the ground that when the said clause is in the trust deed of the assessee, which is in violation of section 13(3) of the Act, regardless of whether any payment in honorarium or salary is made to specified persons, the assessee is ineligible for registration u/s 12A of the Act.

**3.5** In view of the above, the application in Form 10AB filed u/s. 12A(1)(ac)(iii) of the Act by the assessee was rejected and the provisional approval u/s 12A in Form in 10AC was also cancelled by the ld. CIT (Exemption).

**4.** Aggrieved by the order of ld. CIT(E), Kochi the assessee has filed the present appeal before this Tribunal.

**5.** Before us, ld. A.R. of the assessee vehemently submitted that the order passed by ld. CIT(E) suffers from incurable defects as it is passed by violating the principles of natural justice as no personal hearing was granted. Further, ld. A.R. of the assessee submitted that the ld. CIT(E) erred in law in rejecting the application for registration specially when there is no actual violation of provision of section 13(3) of the Act and the ld. CIT(E) rejected the application for registration merely on the ground that there is a clause in the Trust deed for paying Honorarium or salary to the trustee against his/her services or involvement in any of the project or programs run by the trust.

**6.** The ld. D.R., on the other hand, vehemently supported the order of the ld. CIT(E), Kochi.

**7.** We have heard the rival submissions and perused the materials available on record. On going through the annexure to Form 10AD dated 22/03/2024, we take a note of the fact that the ld. CIT(E) rejected the application for registration/approval on the ground that eventhere is a clause in the Trust deed for paying Honorarium or salary to the trustee against his/her services or involvement in any of the project or programs run by the trust, which is in violation of section 13(3) of the Act regardless of the fact that whether any payment in honorarium or salary is made to specified persons, the applicant is ineligible for registration u/s 12A of the Act.

**7.1** We are of the considered opinion that for the purpose of granting registration/approval, the ld. CIT(E) should call for all the relevant documents/information from the trust or make such enquiries **in order to satisfy himself** about the genuineness of the activity of the trust and the compliance of such requirement of any other law for time being in force by the trust as are material for the purpose of achieving its object and shall pass an order in writing either by granting the registration of the trust or cancelling its registration after affording a reasonable opportunity of being heard. Section 12AB undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuinethat is to say notcharitable

the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

**7.2**In the present case, the Id. CIT(E) found in the trust deed that under the head **“Powers of Trustees”** there exist clause regarding payment of honorarium or salary to the trustee against the services or involvement which in his opinion is in violation of section 13(3) of the Act. The CIT(E) is of the view that the assessee is ineligible for registration u/s 12A of the Act regardless of whether any payment of honorarium or salary is made to the specified persons or not. We are of the considered view that mere fact that the trust deed is having clause under the head “Powers of the Trustees” to receive honorarium or salary against the services or involvement by the trustee does not render the trust non-genuine or its activity becomes ineligible for registration u/s 12AB of the Act. Further, as rightly contended by the Id. A.R. of the assessee, as per provisions contained in section 13(2)(c) of the Act, if any amount is actually paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services then the income of the property shall be deemed to have been used or applied for the benefit of a person referred to in section 13(3) of the Act. In the present case, as contended by the Id. AR of the assessee, no salary has been actually paid to any of the trustee. Therefore, we are of the opinion that merely because there is a clause in the trust deed regarding payment of honorarium or salary to the trustee for his services or involvement in any of the project or programme run by the trust, the application for registration/approval cannot be rejected on this sole ground

especially when it has nothing to do with the object & activity of the trust.

**7.3** Further, we are of the opinion that the provisions of section 13(3) of the Act will trigger only in cases where the amount so paid to the trustee by way of salary or allowance or otherwise out of the resources of the trust or institution for services rendered by that person is in excess of what may be reasonably paid for such services. Therefore, merely by paying the salary or honorarium for the services or involvement in any of the project or program run by the trust which are paid reasonably for the services rendered will not violate the conditions for applicability of section 11 & 12. The law pertaining to remuneration or fees paid to Trustees or Board Members is very enabling and allows reasonable remuneration to Trustees or Board Members under section 13(1)(c) read with section 13(2)(c) of the Act. The Supreme Court in CIT Vs Kamala Town Trust [2005] 279 ITR89 (All) held that section 13 of the Act, carves out an exception to the general exemption granted under sections 11 and 12 of the Act, to the income derived by a trust / charitable institution. The onus lies on the Revenue to bring on record cogent material / evidence to establish that the trust / charitable institution is hit by the provisions of section 13.

**7.4** Further We are of the considered opinion that any contractual compensation against services rendered is permissible, however any benefit paid / provided is not permissible. A benefit means something which is not due to a person. Under this understanding any unreasonable over and above what is reasonably due shall be treated as a benefit. Forfeiture under section 13(1)(c) of the Act can be done only if any benefit is provided to the Board members or interested functionaries. Section 13(1)(c) does not

prohibit payment of remuneration; it gets attracted if any benefit is provided to interested persons. If the functionary is a salaried employee under an employment contract and therefore, is being paid salary which is a contractual obligation on the part of the Trust then such remuneration is permissible. There has to be a reason or cause of action to infer and conclude that any benefit was provided to the functionary. A benefit implies payment of anything which is not legally due to a person, therefore, the salaries paid cannot be treated as a benefit. It may also be noted that payment of salary per se is not a benefit. To establish that some benefit was passed under section 13(1)(c) of the Act, it will be incumbent on the AO to have reasons to believe that the remuneration were legally not due to the employees/functionaries. Once the legal eligibility of the trustees/board members to receive salary as full time employee is not disputed, then the only option available is to see the reasonableness of the salaries under section 13(2)(c) of the Act. Therefore, we agree with the contention of the Id. A.R. of the assessee that the provision of section 13(3) of the Act cannot be pressed into play to decide the eligibility of registration of the Trust. In view of the above discussion, we set aside the order of the rejection passed by the Id. CIT(E), Kochi and direct to grant the registration to the assessee as sought vide application in form 10AB dated 30/09/2023.

**7.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> Apr, 2025

**Sd/-**  
**(Inturi Rama Rao)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 24<sup>th</sup> Apr, 2025.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,  
ITAT, Cochin.**