



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT**  
**BEFORE DR. ARJUN LAL SAINI, AM.**

**&**

**DINESH MOHAN SINHA, JM**

**आयकरअपीलसं./ITA No.325/RJT/2023**

**निर्धारणवर्ष / Assessment Year: (2022-23)**

**(Hybrid Hearing)**

Shri Visha Oswal Mahajan Kharoi, Bhachau – Kutch 370140	<b>Vs.</b>	CIT(Exemption), Room No: 609, 6 <sup>th</sup> floor, Aaykar Bhuvan, (Vejalpur), 100 Feet Road, Anandnagar Prahladnagar Road, Ahmedabad 380015
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AAPTS3740J</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri Darshak Thakkar, Ld. AR  
Respondent by : Shri Sanjay Punglia, Ld. SR. DR  
**Date of Hearing : 02 / 06 /2025**  
**Date of Pronouncement : 09 / 07 /2025**

**आदेश / ORDER**

**PER DINESH MOHAN SINHA JM;**

Captioned appeal filed by assessee pertaining to Assessment Year 2022-23, is directed against order passed by Commissioner of Income Tax (Exemption), vide order dated 28/07/2023, u/s 12AB of the Income Tax Act, 1961.



## **2. GROUNDS OF APPEALS:-**

*1. The Learned CIT(Exemption) has erred in law as well as on fact in framing opinion about the genuineness of the activities as well as its consonance with the objects of the trust.*

*2. The Learned CIT(Exemption) has erred in law as well as on fact in denying claim of the appellant that the provisions of section 13(1)(b) of the income-Tax 1961 are not applicable to the appellant trust. Since the trust was created before 1.4.1962. Hence the impugned order is liable to be quashed.*

*3. Appellant request to allow to add, alter, modify any grounds of appeal during the course of appellate proceedings.*

## **3. Facts of the Case as recorded by The Ld. CIT(A)**

The application for registration of the trust u/s. 12AB of the I.T. Act, 1961 was filed on 14.11.2022. Notices were issued to the applicant on 20.04.2023, 16.06.2023, 25.07.2023 given at first page of order.

In response to the said notice, the applicant has filed its response on 09/05/2023 & 12/06/2023. The applicant has filed Form 10AB u/s 12A(1)(ac)(iii) of the Act on 02/01/2023. The applicant had been granted order for provisional registration in Form No. 10AC issued on 30/11/2022 under section 12A(1)(ac) (vi) for the period commencing from AY 2023-24 to AY 2025-26.

From perusal of details available on record, it is observed that the object enumerated in PTR is "will carry out proper activity for upliftment and development for shree Mahajan and community." Accordingly the applicant was asked to clarify that his activities are for the benefit of particular religious community then why his application should not be rejected.

The applicant furnished his response on 26/07/2023. And filed an affidavit "That SHREE VISHA OSWAL MAHAJAN KHAROI is not religious community. Followers of different religions are members of our trust Shree Visha Oswal Mahajan, kharoi.



That our Trust has been carrying out activities for the benefit of all persons irrespective of caste or religion.

That Our Trust is created on 13/02/1962(i.e. before 01/04/1961) and hence provision of section 13(1)(b) is not applicable to our Trust." However, vide his letter dated 07/07/2023, the applicant has pointed out following activities of the Trust being carried out "Main area of charitable activities is Relief to poor, Medical Relief and Education" The activities carried out by the applicant are in according with the object of the Trust. Without prejudice, another point which remains un-clarified by the applicant is that if the trust is created prior to 13/02/1962, why it has not got any regular registration of Trust since then and has applied for provisional registration under section 12A(1) sub clause(vi) of clause(ac).

Section 12AB makes, it very clear that before granting registration under this section, the Commissioner has to satisfy himself about the genuineness of the activities of the trust or institution and also he has to verify that these activities are in consonance with the objects of the trust or institution. Further, he has to ensure that other laws material for the purpose of achieving objects are complied with.

I am not satisfied about the genuineness of the activities of the trust or institution and these activities are in consonance with the objects of the trust or institution. Application of the assessee under sub-clause(iii) of clause(ac) of sub-section (1) of section 12A is hereby rejected in respect of provisional registration granted to him on 30-11-2022.

4. That the assessee filed an appeal against the impugned order dated 28.07.2023 before these Tribunal.

(i) During the course of argument the Ld AR has submitted that the activities of the trust that the activities of the Trust are genuine all documents related to Trust showing the Bonafide and the genuineness of the activities were placed on record. The Trust is registered with



Bombay Public Charitable Trust Act all provisions related to Trust are being followed by the Trust in day to day business. The books of accounts of the Trust are Audited by a chartered account . The Trust is the owner of the property the details is placed on record (Page No. 19 to 21 paper book) and the Ld. A.R. prayed that the registration of the Trust may kindly be granted.

(ii) On the contrary Ld. D.R. submitted that the Ld. CIT(E) was not satisfied with the genuineness of the activities of the Trust. Trust was never working according to object.

We have heard both the sides details and also perused the records available before us including in Paper Book filed by the assessee. We note that the under-mention document were on record before the Ld. CIT(E) Ahd.

1. Main area of charitable activities is Relief to Poor, Medical Relief and Education. In the Next 02 years trust is having plan to perform all these activities at large scale.
2. Trust has Registered under Bombay Public Trust Act, 1950 on 13/02/1962. Trust has applied for approval u/s 12AA for First time. Activities of trust has been commenced in the year of creation. Audited Accounts of Preceding Years are evidence that activities of the trust has been commence in earlier years.
3. Existing order granting provisional registration under 12A is attached herewith.
4. Registration u/s 12AA/80G has not been refused/rejected.
5. Instrument creating the trust i.e. PT Entry of Trust (Gujarati) duly certified and stamped by the trustee.



6. Document evidencing the creation of the trust i.e. PT Entry of Trust (Gujarati) duly certified and stamped by the trustee.
7. Self-certified Copy of Registration Certificate of Trust under Public Trust.
8. Trust is not registered under the FCRA, 2010.
9. Trust is not registered under Darpan Portal of NITI Aayog.
10. PT Entry of Trust (English) duly certified and stamped by the trustee.
11. Audited Accounts of last 03 years (Le. F.Y. 2019-20, 2020-21 & FY. 2021-22).
12. Details of application of funds during last 03 years in major areas of activities.
13. No any business undertaking held under provisions of section 11(4) or 11(4A).
14. Trust is not approved u/s 35 at present.
15. (a). No object of the Trust are religious in nature.  
b). No Objects of the Trust are Commercial or with profit intent.  
c). Trust is Registered under BPT Act, 1950 as Sarvjanik Trust and carrying out activities for all class of person irrespective of cast or religion. Hence "Trust shall be for the benefit of all persons irrespective of caste, creed or religion". Affidavit regarding inclusion of this clause while preparing the constitutions is attached.
16. Proof of identity of the all trustees of the Trust.
17. No any Part of the income of the trust is used or applied directly or indirectly for the benefit of any person specified u/s 13(3) and 13(1)(C) of the I.T. Act, 1961. Copy of Undertaking to the effect that the provision of section 13(1)(c) are not violated.



18. Undertaking that there will be no infringement to the First proviso to section 2(15) of The Income Tax Act, 1961
19. No other laws (other than Income-Tax) are applicable to the Trust for achievement of objectives.
20. Undertaking to the effect that the trust is complying all the requirements of law as are material for the purpose of its objects as enumerated in the trust deed.
21. Trust is created by the People of Village Kharoi, Tal. Bhachau-Kutch and thus there is no question of revocation of the Trust. Trust is very old and created on 13/02/1962 and constitution was not necessary at the time of Registration. Trust will prepare the constitution as early as possible. Notarized Affidavit regarding inclusion of Irrevocability and dissolution clause in future.
22. Details of donations received exceeding Rs. 10000/- during last 03 years is attached herewith.
23. Details of donations given exceeding Rs. 10000/- during last 03 years.
24. Undertaking stating that there is no specified violation as defined in the explanation to section 12AB (4) of the fact.
25. Bank statement of last 03 years.
26. Form No. 10AC for registration under section 12A of the act.

We find that Deed of Public Trust submitted before us. We note that the assessee Trust. registered since 1962 entry no. 1141/61 dt. 13.02.62. prior to the coming into force of Income-tax Act, 1961. The provisions of section 13(1)(b) are therefore not applicable to the assessee-trust. Documentary evidence with regard to incorporation of the assessee-trust on 13-02-1962, was very much before the



Assessing Officer. The legal issue even though raised for the first time before the CIT(A) is liable to be accepted in view of the verdict of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 wherein it was held that where additional ground raises a purely legal plea which goes to the very root of the matter, the same deserves to be admitted. Whether provisions of section 13(1)(b) are applicable to the assessee is purely a legal issue. As the entire facts relating to incorporation of the assessee-trust were already on record, I do not find any merit in the action of the CIT for declining to accept the legal ground and to adjudicate the same. From the order itself. The Assessing Officer has not controverted this fact which is already on record. I therefore do not find any merit in the action of the CIT(E) for declining the exemption claimed under section 11, by invoking provisions of section 13(1)(b) of the Income-tax Act. Hon'ble Madhya Pradesh High Court in the case of CIT v. Shri Maheshwari Agrawal Marwari Panchayat [1982] 136 ITR 556 held that the Trust established before commencement of 1961 Act for benefit of a particular religious community, bar under section 13(1)(b) would not be applicable, and the trust will be entitled to exemption in respect of its entire income."

In conclusion we are of the opinion that the registration of the Trusts should not be denied on account of present provision are not applicable to the Trust. Therefore we direct the Ld. CIT(E) to adjudicated the issue fresh after giving due opportunity to the assessee. Provided the assessee Trust fulfill the other conditions as mentioned in Section 12AB of the Income Tax Act.

7. In result the appeal of the assessee allowed for statical purpose.

**Order pronounced in the open court on 09 / 07 /2025.**



**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNT MEMBER**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICAL MEMBER**

Rajkot

दिनांक/ Date: 09 / 07/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot