



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
&
SHRI DIESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.96/RJT/2025
निर्धारणवर्ष/Assessment Year: (NA)

Dasha Shrimali Kandoi Gnati, 10, Diwanpara, Rajkot 360001	Vs.	CIT(Exemption), Room No: 609, Aaykar Bhawan, 100 Feet Road, Anandnagar Prahladnagar Road, Ahmedabad 380015
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACTD6910C		
(Appellant)		(Respondent)

Appellant by : Shri Kamal Bhambhani, Ld. AR
Respondent by : Shri Sanjay Punglia, Ld. SR. DR
Date of Hearing : 02/06/2025
Date of Pronouncement : 18/08/2025

आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee pertaining to Assessment Year NA, is directed against order passed by Commissioner of Income Tax (Exemption), vide order dated 20/12/2024, u/s 12AB(1)(b)(ii) of the Income Tax Act, 1961.

2. Grounds of appeal raised by the assessee, are as followed:

1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*
2. *The Commissioner of Income Tax (Exemption) (hereinafter referred to as the "Ld. CIT(E)") erred on facts as also in law by not granting registration*



under section 12A(1) (ac)(iii) of the Income-tax Act, 1961 by not providing proper opportunity of being heard to the appellant trust.

3. Ld. CIT(E) erred on facts as also in law in holding that the appellant does not have valid order of registration under section 12A/12AB of the Act by stating that the appellant trust is working for the benefit of particular caste or community without considering that the appellant trust was established prior to commencement of Income-tax Act, 1961 and therefore, the provisions of the Act are not applicable to the appellant trust. The order of Ld. CIT(E) is baseless and totally unwarranted under the circumstances and facts of the appellant's case and deserves to be quashed and therefore may kindly be quashed

3. Brief facts of the Case that the appellant Trust, established on 24/01/1934, has been dedicated to its charitable mission for over nine decades. The trust has been lawfully registered under the Bombay Public Trust Act, 1950 Vide the Registration No. A/279/RAJKOT dated 16/10/1962 at the Public Trust Registration Office in Rajkot. The primary activities of this Trust are dedicated to Relief to Poor, Education, Medical Relief, Advancement of General Public Utility, all of which align with its objectives and the needs of the community. Thereafter and by virtue of the amendment made by insertion of section 12AB requiring fresh registration with effect from 01/04/2021, the appellant trust, applied for the provisional registration on 15/02/2022 and provisional registration was granted on 22/02/2022. The appellant trust applied for the registration in form no. 10AB on 22/08/2022 for AY 2022-23. However, the registration application of the trust was rejected by CIT(E) on 27/02/2023 under section 12AB of the Act. CIT(E) considered the date of registration of the trust viz. 16th October, 1962 as date of establishment of the trust and rejected the application of registration of the trust under section 12AB of the Act. The application was rejected by stating that the appellant trust is working for the benefit of any particular religious community or caste. Ld. CIT(E) has failed to take note of the fact that the trust was established in 1934. This fact has also been mentioned in form no. 10AB that the land and building held by the trust were acquired on 1934. The appellant Trust reapplied for registration for AY



2024-25 in Form 10AB on 28/06/2024 under section 12A(1)(ac) (iii) of the Act. The notices asking the appellant to furnish the details were issued on 27/08/2024, 16/10/2024 07/11/2024 and 29/11/2024. The appellant trust furnished the replies on 29/10/2024, 10/11/2024 and 03/12/2024. The requisite details called for regarding nature of activities, property deed, public trust register (PTR) in English as well as in vernacular language, Audit reports, Form no. 10B, List of the persons from whom donation received, Bills and vouchers of expenses, Form no. 10AC, Affidavit of Trustee, Bank statement, Bank book, PAN & Aadhar of Trustees, Ledger accounts of expenses, Electricity bill and undertaking of trustees were furnished by the appellant trust. The assessee society has a submission on dated 29-10-2024 it was pointed out in the object of the trust that the trust has run the activities in the name of Dasha Shrimali Kandoi Gnatiare not for the benefit of public at large and the objects do not fall under the category of charitable objects as per the provisions of section 2(15) of the IT Act. the assessee submitted replay:

"The objects of the trust are charitable for a particular cast, i.e. Dasha Shrimali Kandoi Ganti. However, as per the Explanation 2 of Section 13 of the Income Tax Act, 1961, the trust is not created or established for the benefit of the Scheduled castes, backward classes, scheduled tribes or women and children.

In addition to the above, our trust was created or established before the commencement of the Income Tax Act, 1961. The trust has been in operation since 1933 for that, we are submitted herewith the documents related to that the properties purchased by our Trust before the commencement of the Act are as per Annexure 8 and all the details are also in filed Form 10AB. Therefore, the provision of section 13(1)(b) of the Income Tax Act, 1961 is not applicable to our trust even though the trust created or established for the benefit of the particular cast, creed and religious community."

Looking the above fact our trust was created in 1933 which is before the commencement of Income Tax Act, the assessee requested to kindly consider the above facts and grant the Registration under section 12A(1)(ac)(iii). The appellant trust had applied for registration in form 10AB u/s 12A(1)(ac) (iii) of the Act. However, the rejection order was



passed on 20/12/2024 of the Act. The rejection order dated 20/12/2024 is produced as under:

“Therefore, the applicant does not have any valid order for registration u/s. 12A/12. In Form No.10AD or in Form No. 10AC. Under similar circumstances, where the have valid registration u/s 12A of the Act, the Hon'ble Gujarat High Court in (Exemptions) vs. Shree Tapeshwar Hanumanji Bajrang Charity Trust, reported in 12 has held that the registration u/s 12A of the Act is a pre-requisite for grant of appearance u/s. 80G of the Act. In absence of valid registration certificate u/s 12A of the Act, approval u/s 80G could not be granted”

4. Ld. CIT(E) held that the appellant does not have valid order of registration under section 12A/12AB of the Act and thereby rejected the application of the trust u/s. 80G

5. That the assessee filed an appeal against the impugned order dated 20.12.2024 before these Tribunal.

6. During the course of argument, the Ld. AR has submitted all the documents related to Trust showing the *Bona-fide* 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 an opportunity to explain the case may kindly be granted.

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



8. 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. The legal issue even though raised for the first time before the ITAT 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 which goes to the very root of the matter, the same deserves to be admitted. That the appeal of the provisions of section 13(1)(b) of the Act, are applicable to the assessee is purely a legal issue. The requisite details called for such as details regarding nature of activities, property deed, public trust register (PTR) in English as well as in vernacular language, Audit reports, Form no. 10B, List of the persons from whom donation received, Bills and vouchers of expenses, Form no. 10AC, Affidavit of Trustee, Bank statement, Bank book, PAN & Aadhar of Trustees, Ledger accounts of expenses, Electricity bill and undertaking of trustees were furnished by the appellant trust. As the entire facts relating to incorporation of the assessee-trust were already on record, 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. We note that the entire documents and the requisite details regarding nature of activities, property deed, public trust register (PTR) in English as well as in vernacular language, Audit reports, Form no. 10B, List of the persons from whom donation received, Bills and vouchers of expenses, Form no. 10AC, Affidavit of Trustee, Bank statement, Bank book, PAN & Aadhar of Trustees, Ledger accounts of expenses, Electricity bill and undertaking of trustees were submitted by the appellant Trust. It is worthwhile to mention that 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."

9. In conclusion we are of the opinion that the registration of the Trusts should not be denied to the assessee trust, since the 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. That assessee trust had never appeared before the Ld. CIT(E) for registration of trust u/s. 12AB(1)(b)(ii) of the Act. Therefore, we grant one more opportunity to the assessee trust to appear before the Ld. CIT(E) and to furnish the relevant documents for registration u/s. 12AB(1)(b)(ii) of the Act.

10. In result the appeal of the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 18/08/2025.

Sd/-

**(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Sd/-

**(DINESH MOHAN SINHA)
JUDICAL MEMBER**

Rajkot

दिनांक/ Date: 18/08/2025

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