

आयकर अपीलीय अधधकरण "ए" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 568/PUN/2020

Shree Lakadipool Vitthal Mandir  
233 B, SR No.170, 6 Sadashiv Peth,  
Pune-411 030,  
PAN : AALTS3742G

.....अपीलाथी / Appellant

**बनाम / V/s.**

The Commissioner of Income Tax (Exemption)  
Pune.

.....प्रत्यथी / Respondent

Assessee by : Shri Abhay Shastri

Revenue by : Shri Deepak Garg

सुनवाईकी तारीख / Date of Hearing : 25.05.2021

घोषणा की तारीख / Date of Pronouncement : 25.05.2021

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Exemption), Pune dated 01.10.2020 passed u/s.12AA(1)(b)(ii) of the Income Tax Act, 1961 (hereinafter referred to as „the Act“) as per the following grounds of appeal on record :

***"1. The Ld. CIT(E) has erred in rejecting the registration u/s.12AA of the Income Tax Act.***

*2. The Ld. CIT(E) has erred in law and on facts that voluntary contributions (towards corpus) received by the charitable trust are not income as defined vide section 2(24)(ia) of the Act.*

*3. The Ld. CIT(E) has erred in not giving the reasonable opportunity of being heard while rejecting the application made u/s.12AA(1)(b)(ii) of the Act.*

***4. The assessee craves right to add, alter or modify any grounds of appeal before or at the time of hearing of the appeal."***

2. The brief facts in this case are that the assessee has made online application in Form No.10A for approval of the Trust/ Institution u/s.12AA of the Act on 02.03.2020 under the category of Religious cum Charitable trust/institution. The assessee trust is registered under Bombay Public Trust Act, 1950 with Registration Number: A-189/PUNE dated 03.05.1952. In this case, the application for registration u/s.12AA of the Act of the assessee trust has been rejected by the Ld. CIT(Exemption) vide order dated 01.10.2020 and at Para No.3.3, 3.4 and Para No.4 of the said order, the Ld. CIT(Exemption) has enumerated the reasons for rejection of the application for granting registration u/s.12AA of the Act.

3. The assessee trust had collected voluntary contributions and donations. The Ld. CIT(Exemption) was of the opinion that all these voluntary contributions forms a part of the corpus funds of the trust and hence, it is an income of the assessee. Thus on the said income, the assessee trust was liable to pay tax as per law. Since the requisite taxes were not paid by the assessee, the Ld. CIT(Exemption) opined that the requirement of section 12AA of the Act i.e. satisfaction of the Commissioner about objects of the Trust and the genuineness of the activities of the trust could not be determined and hence, the said application for registration u/s.12AA of the Act of the assessee was rejected. Therefore, the ground taken by the Ld. CIT(Exemption)

was that on those voluntary contributions received by the assessee, the taxes should have been paid by the assessee before they applied for registration u/s.12AA of the Act.

4. The Ld. Counsel for the assessee at the time of hearing submitted that Ld. CIT(Exemption) was not justified in rejecting the grant of registration on the aforesaid grounds and that the Ld. CIT(Exemption) was only expected to examine whether the objects of the trust were charitable in nature and examine whether the activities of the trust were genuine or not and gather satisfaction in that regard. The Ld. Counsel for the assessee placed reliance on the following decisions:

*(a) Anand Social and Educational Trust Vs. CIT, 272 Taxman 7 (SC)*

*(b) Commissioner of Income Tax (Exemption) Vs. Manekji Mota Charitable Trust, (2019) 267 TAXMAN 0016 (Bombay)*

*(c) Kai Shri Mahadebrao Naykude Dnyanvikas Prabhodhini Trust Vs. Commissioner of Income Tax (Exemption), (2020) 208 TTJ (Pune) 296*

*(d) Fateh Chand Trust & College Committee, ITA No.406/Agra/2018 dated 27.09.2018*

5. On the other hand, the Ld. DR placed strong reliance on the order of the Ld. CIT(Exemption).

6. We have heard the submissions of rival sides and perused the materials available on record. We are of the considered view that the provisions of Section 12AA of the Act provides that the Ld. CIT(Exemption) at the time of granting registration to the assessee trust or society shall look into the objects of the trust/society and be satisfied about the genuineness of the activities carried out by such applicant trust/ society at the time of granting registration u/s.12AA of the Act. Whether any tax had accrued to be paid or

whether such taxes have been paid or not are to be looked into at the stage of assessment proceedings.

**6.1 The Hon<sup>ble</sup> Allahabad High Court in the case of Fifth Generation**

**Education Society Vs. CIT (1990) 185 ITR 634 (All)** has held that *“the Commissioner is not to examine the application of income at the stage of application made by assessee for granting registration u/s.12AA of the Act. The Commissioner may examine whether the application was made in accordance with the requirements of Section 12AA r.w.r 17A and whether Form 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At that stage, it is not proper to examine the application of income.”*

6.2 That further, the Department in this case before us has not disputed the objects of the trust or genuineness of activities conducted by the assessee trust. In this scenario, it was observed by the Pune Bench of the Tribunal in the case of **Kai Shri Mahadebrao Naykude Dnyanvikas Prabhodhini Trust Vs. Commissioner of Income Tax (Exemption) (2020) 208 TTJ (Pune) 296** that when the objects of the trust were not disputed by the Department, nor they have disputed genuineness of activities of the assessee trust, then non filing of return u/s. 139(4A) of the Act cannot be the ground to deny registration u/s.12AA of the Act to the assessee. It is only at the assessment proceedings, the Assessing Officer can take appropriate steps as per law regarding the non-filing of return. However, at the time of granting registration, the object of the assessee trust has to be looked into and genuineness of the activities of the assessee trust should be considered.

7. Reverting to the facts of the present case, the Ld. CIT(Exemption) has not granted registration u/s.12AA of the Act since whatever donations were received by the assessee trust, the taxes were not paid and on this premise, the registration u/s.12AA cannot be denied. It is left always to the Assessing Officer to take appropriate steps at the time of assessment proceedings with regard to payment of taxes and application of income of the trust/society.

**Further, we find the Hon<sup>ble</sup> Bombay High Court in the case of CIT Vs.**

**Manekji Mota Charitable Trust (2019) 267 TAXMAN 0016 (Bombay) has**

**held "at the time of the registration of the trust u/s.12A, the question of**

**application of income of the trust is premature." Thus, whether taxes are due**

to be paid on any income received that issue has to be looked into only at the time of assessment proceeding.

8. **The Hon<sup>ble</sup> Supreme Court in the case of Anand Social and Educational Trust Vs. CIT, 272 Taxman 7 (SC) has held that even in the absence of any activities a trust can be considered for registration u/s.12AA of the Act and the term „activities“ contemplated u/s.12AA of the Act includes „proposed activities“. At the time of granting registration, the only issue to be examined by the Ld. CIT(Exemption) is regarding the true nature of the objects of the trust i.e. whether charitable or not.**

9. In the present case, the objects of the trust are not doubted by the Department and they have also not disputed the charitable nature of the activities conducted by the assessee trust. Meaning thereby, all the relevant records were submitted before the Ld. CIT(Exemption) and he had verified the same and was satisfied on this aspect fulfilling the requirement of Section 12AA of the Act.

Considering the aforesaid judicial pronouncements, facts and circumstances in this case, we are of the considered view that this is not a fit case for rejection of application for registration u/s.12AA of the Act on the reasons mentioned in the order of the Ld. CIT(Exemption). There is no finding on facts that the activities carried out by the assessee are not genuine. Further, the Ld. CIT(Exemption) has not mentioned in his finding that the objects of the trust were not in order or that the application made for registration was also not in accordance with law. In absence of these findings, just because, the taxes were not paid on the donations/voluntary contributions received cannot be the ground for rejection of application u/s.12AA of the Act. These things can be examined by the Department and scrutinized at the assessment stage. When all the requirements of registration u/s.12AA of the Act have been satisfied by the assessee trust, registration therein should be granted. In view thereof, we set aside the order of the Ld. CIT(Exemption) and direct the Department to grant registration u/s. 12AA of the Act to the assessee trust.

10. In the result, **appeal of the assessee is allowed.**

Order pronounced on 25<sup>th</sup> day of May, 2021.

Sd/-  
**INTURI RAMA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे/ Pune; ददनांक/ Dated : 25<sup>th</sup> May, 2021  
SB

**आदेश की प्रतधलधप अग्रेधषत / Copy of the Order forwarded to :**

1. **अपीलाथी / The Appellant.**
2. **प्रत्यथी / The Respondent.**
3. **The CIT(Exemption), Pune.**
4. **The Jt. CIT, Exemption Range, Pune.**
5. **धवभागीय प्रधतधनधध, आयकर अपीलीय अधधकरण, "ए" बेंच, पुणे/DR, ITAT, "A" Bench, Pune.**
6. **गार्डफ़ाइल / Guard File.**

**आदेशानुसार/ BY ORDER,**

// True Copy //

**धनजी सधचव / Private Secretary  
आयकर अपीलीय अधधकरण, पुणे/ ITAT, Pune.**

		Date	
1	Draft dictated on	25.05.2021	Sr.PS/PS
2	Draft placed before author	25.05.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		