

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

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

आयकर अपील सं. / ITA No.239/PUN/2023

Mr. & Mrs. S.M. Batha Education Trust, Batha High School, Chesson Road, Panchagani, Dist. Satara, Maharashtra – 412 805 PAN : AACTS7892J	Vs.	CIT(Exemption), Pune
Appellant		Respondent

Assessee by : Shri Percy Pardiwala,
Shri Vishnu Bhutada &
Smt. Arati Sathe
Revenue by : Shri Ajay kumar Kesari
Date of hearing : 12.01.2024
Date of pronouncement : 19.01.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee trust directed against the order of Id. Commissioner of Income Tax, Exemption, Pune [the CIT (Exemption)] dated 31-12-2022 cancelling the registration granted u/s. 12AB(4) of the Income Tax Act, 1961 ('the Act'). The appellant raised the following grounds of appeal :

"On the facts and circumstances of the case and in law, the Ld. CIT(E) has:-

1. *Erred in cancelling the registration granted to the assessee under section 12AA of the Act from the AY 2006-07 relevant to FY 2005-06.*

2. *Erred in consequently holding that since the registration under section 12AA is cancelled, the Appellant is ineligible for registration under section 12AB of the Act and, hence, cancelling/withdrawing ab-initio the registration under section 12AB, granted on 24th September, 2021.*
3. *Erred in not appreciating that the Appellant is engaged in the activity of providing secular education to all sections of society irrespective of caste, creed & religion since past 60(+) years and there was no material and/or documentary evidence on record to establish that trust was being run contrary to its objects. It is submitted that the Department has accepted the charitable nature of the Appellant since the last several years and, there has been no change in facts of the case or objects of the Appellant and, therefore, the impugned order has to be quashed on this ground alone.*
4. *Erred in holding that there has been a violation of provisions of section 12AB(4) of the Act specifically clauses (b) and (c) of the sub-section thereto, inasmuch as there has been no violation of any nature by the Appellant of the said provisions.*
5. *Erred in not appreciating that the clauses in the Trust Deed providing various benefits to the Settlor of the Trust have become infructuous and has no relevance since the Settlor died in the year 1964 therefore, there has been no violation of provisions of section 13(3) of the Act. It is further submitted that even the sister of the Settlor/Trustee has passed away in the year 1966 and till date the trust premises have never been used by the sister or any other relative of the Trustee for their residential purpose. The impugned order has been passed on an mis-interpretation of the facts of the case and, hence, is liable to be set aside on this ground alone.*
6. *It is further submitted that the Trust is running two hostels for school students as per objects of the Trust with a residential facility for rector, matron and principal and the provision of free residence and food is only to avoid putting up the Trustees in a hotel and incurring additional expenditure and costs when they visit Panchgani for monitoring the trust activities. The impugned order has been passed without appreciating the facts of the case and is, therefore, liable to be set aside on this ground alone.*
7. *Erred in not appreciating that the investment in mutual funds was made to meet the statutory requirement of section 11(5) read with rule 17(C) of the ITAT Rules. It is further submitted that the investments made in Mutual Funds are out of accumulations and corpus donations. The accretions in investments are on account of re-investing income generated from such investments, and, hence, the allegation of the Department that the Trust is engaged in the trading of Mutual funds is baseless and the impugned order has failed to take the same into consideration and, therefore, is liable to be set aside on this ground alone.*

8. *Erred in not appreciating that none of the Trustees possessed skills to make financial investments and ensure returns at a reasonable rate and, therefore, the services of professional financial advisor/broker were availed of to look after investments of the Appellant.*

9. *Erred in holding the investment portfolio in Mutual Funds of the Appellant as 'trading asset' when the same have been consistently shown as 'capital asset' by the Appellant in its books of accounts.*

10. *Erred in not appreciating that the corpus donation in the form of Fixed Maturity Plan (FMP) mutual funds, received from Mr. Kanga through a 'Deed of Gift-Settlement', cannot be redeemed unless the period of maturity is over and, therefore, it was in these circumstances not recorded in the books of accounts till the redemption proceeds crystallized.*

11. *Erred in not appreciating that the Trust was solely engaged in the activity of 'education' which was charitable in nature and, hence, there was no question of any violation of the provisions which warranted cancellation/ revocation of the registration under section 12AA of the Act.*

12. *The CIT(A) erred in not appreciating that Appellant was always registered under section 12A of the Act and had further made an application for grant of registration before the Pr.CIT as per sub clause (i) of clause no.(ac) of subsection (1) of section 12A of the Act and therefore the provisions of section 12AB(4) of the Act which became applicable from 1.04.2022 and applies prospectively cannot be invoked in the facts of the present case.*

13. *Erred in holding that the Appellant was a Revocable Trust. The CIT(E) erred in holding that even though the Trust is running a school the overall arrangement of the provisions of Trust Deed indicate that they are for the benefit of persons covered under section 13(3) and hence, the activity cannot be considered as a genuine educational activity.*

14. *Erred in holding that the activity of frequent investment and redemptions of mutual fund is not in line with the objective of the Appellant.*

15. *Erred in holding that the expenditure on the objects of the Trust is very meagre as compared to the profits earned from the alleged business activity of investment in Mutual Fund."*

2. Briefly, the facts of the case are that the appellant is a trust incorporated in the year 1961 with the object of imparting education. The appellant trust had applied for grant of registration u/s.12A of the

Act on 20-09-2005 which remained undisposed of. Then the appellant trust filed another application u/s.12AA of the Act on 26-03-2007 which came to be rejected vide order dated 21-09-2007. Being aggrieved by the said order, an appeal was filed before this Tribunal. The Tribunal vide order dated 15-04-2009 in ITA No.1421/PUN/2007 allowed the appeal.

3. Pursuant to the order of this Tribunal, the appellant trust was granted registration u/s.12AA of the Act vide order dated 09-12-2020. Subsequent to the grant of registration u/s.12A, the Id. CIT(Exemption) noticed occurrence of certain violations attracting the cancellation of registration. Therefore, he issued a show cause notice to the assessee for cancellation of registration through e-portal. The violations as noticed by the Id. CIT(Exemption) are that : (i) Clause (3) of the trust deed provided that settlor shall be entitled to reside, use a portion of property for herself, family and guests during her life time; (ii) Clause (4) of the trust deed had made a provision for payment of honorarium to the settlor; (iii) Clause (12) of the trust deed had also provided for power to revoke the trust deed at her discretion; and (iv) The appellant trust is engaged in the business of investment, redemption of mutual funds.

4. On receipt of the show cause notice, the assessee submitted that the question of utilising the trust property for the benefit of the settlor does not arise as the settlor had passed away in the year 1965. It is further submitted that the clauses in trust deed providing for accommodation to the settlor of the trust had become infructuous since the settlor had expired in the year 1965 itself. Therefore, there was no scope for the violation of provisions of section 13(3) of the Act. As regards to the violation of objects of the trust deed, it was submitted that the investment in the mutual funds are only made in order to meet statutory requirement of section 11(5) of the Act. However, all the above contentions were rejected by the CIT(Exemption) vide order dated 31-12-2022. Being aggrieved by the order of Id. CIT(Exemption), the appellant is in appeal before us in the present appeal.

5. Before us, the assessee contended that the trust deed providing accommodation to the settlor had become infructuous since the settlor passed away way back in the year 1965. Investments in the mutual funds are made out of the accumulations and corpus donations and not out of any borrowed funds. Therefore, the assessee making investment in the mutual funds out of the accumulated surplus in the manner prescribed u/s.11(5) of the Act does not lead to a conclusion that the

assessee is engaged in the business of activity of investment in mutual funds. Finally, the assessee submitted that the CIT(Exemption) ought not to have passed the impugned order, inasmuch as, there is nothing on record to show that the activities of the trust are not genuine and are not carried out in accordance with the objects of the trust/institution.

6. On the other hand, the Id. CIT-DR vehemently opposed the submissions made on behalf of the appellant trust and pleads that the very fact that the appellant trust made huge investments in mutual funds goes to show that the objects of the trust are not genuine and are not charitable in nature. Therefore, the Id. CIT(Exemption) was justified in cancelling the grant of registration u/s.12AA of the Act.

7. We heard the rival submissions and perused the material on record. The solitary issue that arises for consideration before us is whether or not the Id. CIT(Exemption) was justified in cancelling the registration granted u/s.12AA of the Act. The provisions of section 12AA(3) empower the CIT to cancel the registration granted u/s.12A of the Act only on the existence of one of the two conditions in the said section, i.e., (1) the activities of the trust are not genuine; and (2) the activities of the trust are not being carried out in accordance with the objects of the trust.

8. On a mere reading of the impugned order, it would reveal that the entire proceedings of the Id. CIT(Exemption) are based on the covenants of the trust deed but not based on the actual activities carried out by the appellant trust. Mere fact that the trust deed contain a covenant that enables the settlor to utilize the premises for her use or family use, cannot empower the CIT to cancel the registration, as it does not lead to any conclusion that either the activities of the trust are not genuine or the activities are not being carried out in accordance with the objects of the trust. Similarly, the fact that huge investments are made in mutual funds, cannot also lead to the conclusion that the activities of the trust are not genuine. It is an admitted fact that the settlor died in the year 1965, therefore, the relevant clause had become infructuous and thus there is no question of violation of provisions of section 13(3). The investments in mutual funds are only in order to meet the statutory requirements of section 11(5) of the Act. The reasons assigned for cancellation of registration as enumerated above neither lead to conclusion that the activities of the trust are not genuine and are not carried out in accordance with the objects of the trust. The Hon'ble jurisdictional High Court in the *CIT Vs. Institute Management Committee of Industrial Training Institute (2017) 393 ITR 161 (Bom.)* held that exercise of power u/s.12AA(3) can be done by the

CIT(Exemption) only on being satisfied that one of the two conditions satisfied therein. The relevant excerpt from the judgment is reproduced below :

“9. On plain reading of section 12AA(3) of the Act, it is self-evident that the power can only be exercised to cancel the registration only for the two breaches which are mentioned therein. This is not so in the present facts. Thus, no fault can be found with the impugned order setting aside the order of the Commissioner of Income-Tax, cancelling the registration granted to the respondent-assessee.”

9. In view of the above binding precedent by the Hon’ble jurisdictional High Court, we are of the opinion that the impugned order by the CIT(Exemption) cannot be sustained in the eyes of law. The same is therefore, set-side. The appeal filed by the assessee stands allowed.

10. In the result, the appeal is allowed.

Order pronounced on this 19th day of January, 2024.

Sd/- (PARTHA SARATHI CHAUDHURY) JUDICIAL MEMBER	Sd/- (INTURI RAMA RAO) ACCOUNTANT MEMBER
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पुणे / Pune; दिनांक / Dated : 19th January, 2024.

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे
/ DR, ITAT, “B” Bench, Pune.
4. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1.	Draft dictated on	18-01-2024	Sr.PS
2.	Draft placed before author	19-01-2024	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		