

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE – VIRTUAL COURT**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

ITA No. 1313/PUN/2019

Bhauseheb Harnarayan Rathi Bahuuddeshiya Vikas Foundation, Ramhari Niwas, Parekh Park, Onkar Nagar, Jalgaon PAN : AAATB3441L	Vs.	CIT (Exemption), Pune
Appellant		Respondent

Assessee by	Smt. Deepa Khare
Revenue by	Smt. Divya Bajpai

Date of hearing	09-12-2020
Date of pronouncement	09-12-2020

आदेश / ORDER

This appeal by the assessee emanates from the order passed by the CIT(Exemption), Pune on 24-07-2019.

2. The only issue raised in this appeal is against the denial of registration by the ld. CIT(Exemption) u/s 12AA of the Income-tax Act, 1961 (hereinafter also called ‘the Act’).

3. Briefly stated, the facts of the case are that the assessee was set up in 1999 by claiming itself as a Charitable and educational trust. The assessee e-filed application for its registration u/s.12A of the Act on 31-01-2019. The ld. CIT(E) called for certain details. On perusal of such details, he observed that during the last three financial years ending on 31-03-2016, 31-03-2017 and

31-03-2018, the assessee did not incur any expenditure on charitable activities. He further observed that the assessee had FDRs of Rs.2.00 crore in the F.Y. 2015-16 but income was not declared in the Income and Expenditure Account. Similar position was found anent to the FDRs and income not offered for earlier years as well. That is how, the ld. CIT(E) came to the conclusion that the assessee did not satisfy the nature of activities as charitable for enabling granting of the registration u/s.12AA and thus turned down the registration. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions through virtual court and gone through the relevant material on record. The ld. AR vehemently argued that the ld. CIT(E) was not justified in examining the activities of the trust for the purpose of granting or refusing the registration. In this regard, we find that section 12AA of the Act deals with the procedure for registration. Sub-section (1) provides that the CIT, on receipt of an application for registration, shall: `(a) call for such documents or information from the trust or institution as he thinks necessary in order to *satisfy himself about*, - (i) *the genuineness of activities of the trust or*

institution; and (ii) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects, and *may also make such inquiries as he may deem necessary in this behalf*’.

Clause (b) of sub-section (1) states that: “*after satisfying himself about the objects of the trust or institution and the genuineness of its activities...*” he shall pass an order in writing granting or refusing the registration. Thus, it is evident from the prescription of section 12AA of the Act that the power of CIT(E) extends, *inter alia*, to examining the genuineness of the activities carried out by the trust before granting any registration.

5. The contention of the Id. AR limiting the power of the Id. CIT(E) in not examining the activities of the trust before granting registration, in our considered opinion, is partly correct. There can be two situations, viz., first, where the trust is newly set up and seeks registration and second, where the trust is already set up and seeks registration after sometime. In the first situation, there can be no question of examination of genuineness of activities at the time of registration because the activities have not taken place and a trust is entitled in law to seek registration at any time even before

undertaking the activities. In such circumstances, CIT(E) can examine the proposed activities of the trust with reference to its objects. However, in a case where the trust is already set up for a number of years and thereafter an application is filed for registration of the trust, no fault can be found with CIT(E) examining the genuineness of the activities actually carried out by the assessee for ascertaining whether or not the requisites of charitable nature of activities are fulfilled. Both the clauses (a) and (b) of section 12AA(1) of the Act emphasize on CIT(E) satisfying himself, *inter alia*, about the genuineness of activities. Acceptance of the contention of the Id. AR in all circumstances and across the board would mean negating the mandate of section 12AA, which is patently unwarranted. We are confronted with an instance of the second situation. The assessee was set up in the year 1999 and the application for registration was moved twenty years down the line on 31-03-2019. In such a situation, we cannot take an exception to the Id. CIT(E) examining the activities of the assessee w.r.t. the annual accounts for earlier years.

6. Now let us examine the view canvassed by the Id. CIT(E) on merits on the examination of annual accounts of the assessee that

no charitable activity was traceable as there was no expenditure on the carrying out of the charitable activities and further the assessee was not properly showing requisite interest income from FDRs. Per contra, the Id. AR submitted that the assessee was following a peculiar system of accounting in which interest income was not fully routed through the Income and Expenditure account but 95% of the same was simply credited to the respective funds in the balance sheet and only 5% was taken to the Income and Expenditure Account. She tried to explain with reference to the assessee's balance sheet as on 31.3.2016 that the amount shown under the head "Add : Current" in the 3 funds represented interest income on FDRs in the proportion of 75%:10%:10%, which was taken directly to these funds. She further submitted that the term "Less – utilized" represented the amount of expenditure incurred on activities carried out for the purpose. It was her submission that 5% of interest income on FDRs was taken to the Income & Expenditure account.

7. Reflection of interest income in the manner the assessee is showing is beyond our comprehension and breaches all the accounting norms. Interest income, or for that matter, any income

needs to necessarily taken to the Income and Expenditure account. It is impermissible to take items of income straight to the Balance sheet. Further, there is nothing in the Annual accounts to demonstrate that 'Add : Current' represents interest income credited to the Fund account and 'Less : Utilised' shows the actually expenditure incurred on the charitable activities.

8. The ld. AR strenuously emphasized that the assessee was not accorded adequate opportunity of hearing inasmuch as the ld. CIT(E), just after obtaining information from the assessee, passed the impugned order without confronting with his point of view or seeking clarifications from the assessee as to carrying or non-carrying out of any charitable activities. A prayer was made that another opportunity may be granted to explain the factual matrix in detail before the ld. CIT(E). No serious objection was raised by the ld. DR in this regard. In view of the position as obtaining in the instant case, we are satisfied that it would be in the fitness of things if the impugned order is set-aside and the matter is restored to the file of the ld. CIT(E). We order accordingly and direct him to decide the issue afresh after allowing reasonable opportunity of hearing to the assessee. No observation made in this order should

ITA No.1313/PUN/2019
Bhausahab Harnarayan Rathi
Bahuuddeshiya Vikas Foundation

be construed as a vindication of the stand either of the Revenue or the assessee.

9. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 09th December, 2020.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 09th December, 2020
 सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(E), Pune
4. The CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
 “ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

ITA No.1313/PUN/2019
Bhausahab Harnarayan Rathi
Bahuuddeshiya Vikas Foundation

		Date	
1.	Draft dictated on	09-12-2020	Sr.PS
2.	Draft placed before author	09-12-2020	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.		

*