

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.2156/Mum/2021

(Assessment Year :2022-23 to 2026-27)

Sir Ratan Tata Parsi Matheran Convalescent Home Bombay House 24, Homi Mody Street Fort, Mumbai-400 001	Vs.	Commissioner of Income Tax (Exemptions), Mumbai 6 th Floor, Cumballa Hill MTNL Building Pedder Road Mumbai – 400 026
PAN/GIR No.AABTS7825C		
(Appellant)	..	(Respondent)

ITA No.2205/Mum/2021

(Assessment Year :2022-23 to 2026-27)

Sir Ratan Tata Trust Bombay House 24, Homi Mody Street Fort, Mumbai-400 001	Vs.	Commissioner of Income Tax (Exemptions), Mumbai 6 th Floor, Cumballa Hill MTNL Building Pedder Road Mumbai – 400 026
PAN/GIR No.AAATS1013P		
(Appellant)	..	(Respondent)

ITA No.2207/Mum/2021

(Assessment Year :2022-23 to 2026-27)

Sir Dorabji Tata Trust Bombay House 24, Homi Mody Street Fort, Mumbai-400 001	Vs.	Commissioner of Income Tax (Exemptions), Mumbai 6 th Floor, Cumballa Hill MTNL Building Pedder Road Mumbai – 400 026
PAN/GIR No.AAATS0494G		
(Appellant)	..	(Respondent)

Assessee by	Shri Sukhsagar Syal & Shri Atul Suraiya
Revenue by	Shri P.R. Mane
Date of Hearing	10/08/2022
Date of Pronouncement	17/08/2022

आदेश / O R D E R

PER SANDEEP SINGH KARHAIL:

ITA No.2156/Mum/2021 (A.Y.2022-23 to 2026-27)

This appeal in ITA No.2156/Mum/2021 for A.Y.2022-23 to 2026-27 arise out of the order by the Id. Pr. Commissioner of Income Tax in appeal dated 23/09/2021 (Id. Pr. CIT in short) against the order of assessment passed u/s.12A(1)(ac)(i) of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.2205/Mum/2021 (A.Y.2022-23 to 2026-27)

This appeal in ITA No.2205/Mum/2021 for A.Y.2022-23 to 2026-27 arise out of the order by the Id. Pr. Commissioner of Income Tax in appeal dated 24/09/2021 (Id. Pr. CIT in short) against the order of assessment passed u/s.12A(1)(ac)(i) of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.2207/Mum/2021 (A.Y.2022-23 to 2026-27)

This appeal in ITA No.2207/Mum/2021 for A.Y.2022-23 to 2026-27 arise out of the order by the Id. Pr. Commissioner of Income Tax in appeal dated 24/09/2021 (Id. Pr. CIT in short) against the order of assessment passed u/s.12A(1)(ac)(i) of the Income Tax Act, 1961 (hereinafter referred to as Act).

Identical issues are involved in all these appeals and hence, they are taken up together and disposed of by this common order.

2. At the outset, we find that there is a delay in filing of appeal by the assessee by three days. We find that the order of the Id. PCIT has been passed during Covid-19 pandemic period for all these cases and appeals were preferred before this Tribunal during Covid 19 pandemic. Hence, in view of the relaxation granted by the Hon'ble Supreme Court, the delay in filing of appeals in all these cases are hereby condoned and accordingly the appeals of the assessee are admitted for adjudication.

3. The only identical issue to be decided in these appeals is as to whether the Id. PCIT was justified in granting conditional registration u/s.12AB of the Act by imposing various conditions to be fulfilled by the assessee.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee is a public charitable trust duly registered under erstwhile provisions of Section 12A of the Act. Pursuant to an amendment brought by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01/04/2021, the assessee trust made an application in the prescribed format before the Id. PCIT for seeking fresh registration of the trust u/s.12AB of the Act. Along with said application, the assessee trust furnished all the requisite documents to enable the Id. PCIT to examine the veracity of the application and the genuineness of the activities of the trust. The Id. PCIT passed an order in the Form No.10AC dated 24/09/2021 by granting registration u/s.12AB of the Act. However, the said registration was subject to imposing various conditions on the assessee. The conditions imposed by the Id. PCIT are as under:-

“a. As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner of Income Tax shall be sought along with the draft of the amended deed and no such amendment shall be effected until and unless the approval is accorded.

b. In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.

c. In case the trust/institution is converted into any form, merged into any other entity or dissolved in any previous year in terms of provisions of section 115TD, the applicant shall be liable to pay tax and interest in respect of accreted income within specified time as per provisions of section 115TD to 115TF of the Income Tax Act, 1961 unless the application for fresh registration under section 12AB for the said previous year is granted by the Commissioner.

d. The Trust/ Institution should quote the PAN in all its communications with the Department.

e. The registration u/s 12AB of the Income Tax Act, 1961 does not automatically confer any right on the donors to claim deduction u/s 80G.

f. Order u/s 12AB read with section 124 does not confer any right of exemption upon the applicant u/s 11 and 12 of Income Tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each Financial Year relevant to the Assessment Year and all the provisions of law acted upon. This will be further subject to provisions of section 2(15) of the Income Tax Act, 1961.

g. No change in terms of Trust Deed/ Memorandum of Association shall be effected without due procedure of law and its intimation shall be given immediately to Office of the Jurisdictional Commissioner of Income Tax. The registering authority reserves the right to consider whether any such alteration in objects would be consistent with the definition of "charitable purpose" under the Act and in conformity with the requirement of continuity of registration.

h. The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(1)(b) of the Income Tax Act, 1961. Separate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on to be carried on and the target group(s) (indented beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organization.

i. The Trust/Institution shall furnish a return of income every year within the time limit prescribed under the Income Tax Act, 1961.

J. Separate accounts in respect of profits and gains of business incidental to attainment of objects shall be maintained in compliance to section 11(44) of Income Tax Act, 1961.

k. The registered office or the principal place of activity of the applicant should not be transferred outside the jurisdiction of Jurisdictional Commissioner of Income Tax except with the prior approval.

1. No asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/Non Profit Company etc.

m. The registration so granted is liable to be cancelled at any point of time if the registering authority is satisfied that activities of the Trust/ Institution/Non Profit Company are not genuine or are not being carried out in accordance with the objects of the Trust! Institution/Non Profit Company.

n. If it is found later on that the registration has been obtained fraudulently by misrepresentation or suppression of any fact, the registration so granted is liable to be cancelled as per the provision u/s section 12AB(4) of the Act.

o. This certificate cannot be used as a basis for claiming non-deduction of tax at source in respect of investments etc. relating to the Trust Institution.

p. All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to Office of the Jurisdictional Commissioner of Income Tax.

q. The applicant shall comply with the provisions of the income Tax Act, 1961 read with the Income Tax Rules, 1962.

r. The registration and the Unique registration number has been instantly granted and if, at any point of time, it is noticed that form for registration has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rule (1) or (2) of rule 17A or by not complying with the requirements of sub- rule (3) or (4) of the said rule, the registration and Unique Registration Number (URN), shall be cancelled and the registration and URN shall be deemed to have never been granted or issued.”

3.2. For the sake of convenience, the order granting registration u/s.12AB of the Act is reproduced hereunder:-

FORM NO. 10AC
(See rule 17A/11AA/2C)
Order for registration

9. Order for registration:

a. After considering the application of the applicant and the material available on record, the applicant is hereby granted registration with effect from the assessment year mentioned at serial no 8 above subject to the conditions mentioned in row number 10.

b. The taxability, or otherwise, of the income of the applicant would be separately considered as per the provisions of the Income Tax Act, 1961.

c. This order is liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the registration by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961.”

3.3. The short grievance of the assessee is that whether the Id. PCIT while granting registration was justified in imposing the aforesaid 18 conditions subject to which the registration was granted. The case of the assessee is that there is no provision under the Income Tax Act which permits the Id. PCIT to grant conditional registration and impose the aforesaid conditions. We find that though the registration is granted to the assessee, the order granting registration is challenged by the assessee before us in view of the language used in point No.9C of order for registration as reproduced supra, wherein it is stated that the order granting registration would be liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the registration by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961. The Id. AR stated that this issue was the subject matter of adjudication by the Co-ordinate Bench of this Tribunal in the group case of assessee trust vide order dated 29/07/2022.

3.4. Per contra, the Id. DR vehemently argued that the conditions imposed herein above are only meant for smooth conduct of activities of trust and exercising control over these trusts. In fact, he argued that these are not mere conditions and that they are only relevant provisions of the Income Tax Act which are more of advisory in nature. Hence, he argued that there is nothing wrong in the order of the Registration granted by the Id. PCIT by imposing the aforesaid conditions.

3.5. We find the issue in dispute before us is no longer *res integra* in view of the Co-ordinate Bench decision of this Tribunal in the case of Bal Hirabai Jamsheji Tata Navsari Charitable Institution vs. CIT (Exemptions) in ITA No.2199/Mum/2021 for A.Yrs. 2022-23 to 2026-27 dated 29/07/2022 wherein it was held as under:-

“4. Learned counsel's short plea is that the scheme of the Income Tax Act, 1961, does not visualize the scheme of conditional registration under section 12A. When the law does not visualize any conditions being attached to the registration of a charitable institution, the learned Commissioner does not have the authority to impose such conditions either. It is then pointed out that the cancellation of registration can also only be made as per the provisions of the law; the learned Commissioner cannot supplement these conditions. All these conditions are, according to the learned counsel, stated to be the reasons for which cancellations are made. These reasons are thus not, in any event, valid reasons. We are thus urged to vacate the conditions subject to which the registration is granted. Learned Departmental Representative, on the other hand, vehemently supports the conditions attached to the grant of the registration. It is submitted that the grant of registration cannot be unconditional and that once registration under section 12A is granted, it is the obligation of the institution to comply with the requirements of law scrupulously. Learned Departmental Representative points out that form no. 10AC, as prescribed under the Income Tax Rules 1962, specifically provides for conditions, if any, subject to which registration is granted, and, as such, it cannot be said that the law does not visualize conditions being put to the grant of registration under section 12A. On merits also, learned Departmental Representative justifies and supports each of the condition subject to which registration is granted. He further submits that non-compliance with these conditions deserves to be visited with cancellation of registration. We are thus urged to confirm the action of the learned Commissioner and decline to interfere in the matter.

5. We have heard the rival contentions, perused the material on record, and duly considered the facts of the case in the light of the applicable legal position.

6. Section 12AB, dealing with the procedure for registration of charitable institutions, provides as follows:

Procedure for fresh registration

12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,

(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about

(A) the genuineness of activities of the trust or institution; and
(B) 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;

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (1).

(A) pass an order in writing registering the trust or institution for a period of five years; or

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

(c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be applications made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one

month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.

7. As a plain look at the above statutory provision shows, under the scheme of the Act, all that the Commissioner of Income Tax, or the Principal Commissioner of Income Tax- as the case may be, is empowered, in the process of exercising discretion for the registration of a charitable institution in terms of an application under section 12A(1)(ac)(i)- that the application in question admittedly is, is to "(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about (A) the genuineness of activities of the trust or institution; and (B) 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". Once he does so, he may take a call on grant of registration, or decline to grant the registration, (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i)". The Commissioner has the authority to, upon such exercise being completed, to "(A) pass an order in writing registering the trust or institution for a period of five years; or (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard". So far as the questions of objects of the trust and genuineness of activities are concerned, these are subjective calls, and obviously, there cannot be any conditions attached to the findings thereto; either one is satisfied with the objects of the

trust and about the genuineness of the activities, or one is not. The finding on this aspect cannot be conditional. However, so far as "compliance of the requirements under item (B), of sub-clause (i) (e 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)" is concerned, such a finding can be conditional inasmuch as if a particular registration, say under the Foreign Contribution Regulation Act 2010 (FCRA) is a condition precedent for the trust objects, and the process for that registration is still in process at the point of time when the registration application under section 12A comes up for consideration of the Commissioner, the grant of registration under section 12A can be subject to the FCRA registration being obtained by the applicant. There can also be many other examples as well. Therefore, to say that the law does not visualize conditional registration does not appear to be correct, and we must leave that issue open for adjudication in a fit case.

8. However, on a perusal of conditions subject to which the registration is granted, we find these conditions are with respect to the conduct of the trust and the circumstances in which the registration granted to the appellant can be cancelled. These are the matters which are regulated by the specific provisions of law, and the observations of the learned Commissioner, no matter how well intended, cannot have the independent force of law. If the conditions set out in the registration order have the sanction of the law, irrespective of these conditions being attached to the registration of the trust or not, the law has to take its course, but when the scheme of the law does not visualize these conditions being part of the scheme of the registration being granted to the applicant trust, learned Commissioner cannot supplement the law by laying down these conditions either.

9. Learned Commissioner ought to have realized the limitation of the role he plays when the registration of trust, under section 12A, comes up for his consideration. As we have seen earlier, while looking at the scheme of Section 12AB, there is a limited role that the learned Commissioner could have played under section 12AB(1). It was open to him to "call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about (A) the genuineness of activities of the trust or institution; and (B) 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 then proceed to take a call on whether to grant the registration under section 12A or not "after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i)". As to when and how should cancellation of the registration be made, it is not for the learned Commissioner to decide at the point of time of granting the registration. There are specific provisions of law which govern the cancellation of registration, and these provisions can neither be diluted or supplemented by the learned Commissioner. The consequences of any lapses by the assessee, even with respect to the points covered by these conditions, cannot simply be, or confined to be, cancellation of the registration, as is stated in the impugned, unless the law specifically so provides. To give a simple example, learned Departmental Representative cannot even seriously

argue that if the appellant fails to quote PAN in its communication with the income tax department, this lapse per se can be reason enough for the cancellation of registration under section 12A, but then, going by the words of the impugned order, that is what the impugned order states. That brings home the short point that no matter what the conditions attached to the registration granted under section 12A state, these conditions are to be tested on the scheme of the law, and, if that be so- as indeed is the case, these conditions serve no purpose in law. We are therefore unable to see any legally sustainable merits in the approach adopted by the learned Commissioner.

10. Learned Commissioner's guidance about the conduct of the assessee- which is what in substance, the conditions attached to the registration, signify, cannot be treated, no matter how well intended is it, as a condition attached to the registration, nor this fact per se will govern, or limit, the consequences of lapses in this regard. While the assessee will be well advised to bear in mind and carefully examine his conduct vis-à-vis the points made by the learned Commissioner, these observations cannot be construed as legally binding in the sense that non-compliance with such guidance will not have any consequence, unless and beyond what is specifically envisaged by the statute- such as in Section 12AB(4) and (5) as indeed elsewhere, nor the implications of not doing what is set out in the conditions will remain confined to the cancellation of registration when the law stipulates much harsher consequences. To this extent, and in these terms, the legal effect of these conditions, as visualized in the conditional grant of registration dated 24th September 1991, stands vacated.

11. In the result, the appeal is allowed in the limited terms indicated above, and subject to the observations as above.”

3.6. Respectfully following the same, all the appeals furnished by the assessee are allowed.

4. In the result, all the appeals of the assessee are allowed.

Order pronounced on 17/08/2022 by way of proper mentioning
in the notice board.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Mumbai; Dated
KARUNA, sr.ps

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

17/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai