

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI “D” BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.	Appellant	Respondent
743/Mum/2025	Dedhia Music Foundation, Beach Haven I Wing-304 Mumbai, J.T. Road,	CIT (Exemption), 6 th Floor, Cumballa Hill, MTNL TE Building, Pedder Road,
744/Mum/2025	Santacruz (West), Juhu, Mumbai-400049 [PAN: AAKCD4889P]	Dr. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400026

For Assessee :	Shri Aditya Ajgaonkar, Ms. Rupal Shrimal, Shri Sujay Ajgaonkar
For Revenue :	Smt. Sanyogita Nagpal, CIT-DR
Date of Hearing :	27-03-2025
Date of Pronouncement :	02-04-2025

ORDER

PER BENCH :

The assessee has filed these appeals challenging the order(s) passed by the Ld. Commissioner of Income Tax (Exemptions)-Mumbai [Ld.CIT(E)] rejecting the applications filed by the assessee seeking permanent registration u/s. 12AB and Section 80G of the Income Tax Act, 1961 (‘the Act’).

2. Both these appeals are barred by limitation by 32 days. The assessee has filed petitions requesting the Bench to condone the delay. It is stated that the assessee trust was formed in December, 2023 and it was in its early stages with limited resources. It did not have any

in-house legal or tax expert. Hence, after the receipt of impugned orders, it took some time for the assessee trust to understand the legal recourse available to it and to file appeal after consulting the tax counsel. It has resulted in a marginal delay of 32 days in filing these appeals. Accordingly, it is stated that the delay is not intentional and accordingly prayed that the delay may kindly be condoned.

2.1. We heard the Ld.DR on this preliminary issue. Having regard to the submissions made in the affidavit, we are of the view that there was a reasonable cause for the assessee in filing both the appeals belatedly. Accordingly, we condone the delay in filing these appeals and admitted them for hearing.

3. The facts relating to the case are stated in brief. The assessee is a non-profit organization, incorporated u/s. 8 of the Companies Act, 2013 on 08-12-2023. The main objects of the assessee read as under:

*“Promote Indian heritage art such as Indian Classical music, Organize regular concerts and performances by renowned and emerging Indian classical musicians, Establish or support training school or institute to teach Indian classical music to students of all ages and skill levels, to Indian classical musicians to cover the costs of performance, travel, and recording, Organize festivals and conferences that bring together Indian classical musicians and scholars from **around the world.**”*

The assessee was initially granted provisional registration u/s. 12AB as well as u/s 80G of the Act on 29-01-2024 from AYs. 2024-25 to 2026-27. Thereafter, the assessee filed prescribed applications seeking permanent registration u/s.12AB and 80G of the Act. Both the applications filed by the assessee were rejected by the Ld. CIT(E). Hence, the assessee has filed these appeals before the Tribunal.

4. We shall first take up the appeal filed by the assessee in ITA No.743/M/2025 relating to rejection of application seeking registration

u/s 12AB of the Act. The Ld CIT(E) has rejected the said application with the following observations:-

“3. On verification of the application in Form 10AB filed by the assessee, it was found that the application was not complete, and all the documents required to be accompanying the application were not furnished. Hence, a notice was issued to the applicant vide DIN & Notice No. ITBA/EXM/F/EXM43/2024-25/1066838639(1) dated 19.07.2024 requesting the assessee to furnish the complete set of documents mentioned in Rule 11AA(2). In response, the assessee trust has made submission on 22.08.2024. **After a careful perusal of the submission, it is seen from the trust deed/MOA that as per the point no. III(A)(1), the assessee intends to apply funds outside India. This is in violation of section 11 of the Income tax Act.** In view of this, a show cause notice was issued to the applicant vide DIN & Notice No. ITBA/EXM/F/EXM43/2024-25/1069473105(1) dated 05.10.2024 and explanations were called for regarding the above-mentioned violations. Additionally, information regarding proof of expenses, proof of activities and bank statement were called for vide the same notice dated 05.10.2024. The assessee responded vide online submission dated 08.10.2024. The assessee’s reply with respect to violation of section 11 of the Act is reproduced in summarized as below:

“The festivals and conferences which are conducted or organized in India will bring together Indian classical musicians and scholars from around the world. Further, the point 4 of the Memorandum states that “The objects of the company shall extend to the whole of India”therefore we are permitted to apply the funds within Indian territory only.”

The assessee’s submission is not sufficient and necessary compliance as per the provisions of section 12AB of the Income tax Act, 1961 is concerned. The words in the object: “Promote Indian heritage art such as Indian Classical music, Organize regular concerts and performances by renowned and emerging Indian classical musicians, Establish or support training school or institute to teach Indian classical music to students of all ages and skill levels to Indian classical musicians to cover the costs of

performance, travel and recording, Organize festivals and conferences that bring together Indian Classical musicians and scholars from around the world.” **means the assessee intends to utilise the funds outside India while bringing musicians and scholars from outside India to participate in conferences and festivals organized by the assessee. Such objects leave room for any potential future endeavour may be undertaken by the assessee trust which would require expenditure outside India.** Further, the assessee has not presented/submitted any documentary evidence/proof of passing the resolution regarding amendment in trust deed nor has it provided any proof that it has initiated the process for amendment in trust deed/MoA before the competent authority.

Additionally, **proof of activities submitted by the assessee are not justified by the proof of expenses submitted by it.** The assessee has submitted expenses of advertisement in newspaper which do not reflect that the activities undertaken by the assessee are charitable in nature. Further, the assessee has submitted any documentary evidence which establishes that the music concerts organized by the assessee are a work of charity or in the nature of revenue generating (in the way of tickets for attending the concert).

4. Since Registration under section 12AB is to be granted in terms of the provisions of section 12AB(1)(b) of the Act after being satisfied about the objects of the trust or institution, the genuineness of activities, and the compliance of any other law for the time being in force as are material for the purposes of achieving its objects. In view of the facts discussed above, the undersigned is unable to arrive at a satisfactory conclusion on these parameters. The assessee is not fulfilling the stipulated conditions prescribed for approval of application filed in Form 10AB. In view of the above, the undersigned is left with no other options but to reject the application seeking registration under section 12AB of the Act.”

5. In conclusion, this application for grant of registration stands rejected.”

4.1. On a careful perusal of the above said order passed by Ld CIT(E), we notice that the Ld CIT(E) has given following two reasons for rejecting the application filed by the assessee seeking permanent registration u/s 12AB of the Act:-

- (a) The objects of the assessee leave room for any future potential endeavour that may result in incurring expenditure outside India, which is in violation of sec.11 of the Income tax Act.
- (b) The activities claimed to have been done are not justified by the expenses incurred by the assessee.

5. We heard the parties and perused the record. Under the Income tax Act, the income derived by a charitable trust or institution out of properties held under trust is exempt u/s 11 of the Act, subject to the conditions prescribed in the provisions governing the charitable trusts or institutions. Under the scheme of section 11(1) of the Act, income of the charitable trust or charitable institution is exempt “*to the extent to which such income is applied to such purposes in India...*”. For the sake of convenience, section 11(1) is extracted below:-

“11. Income from property held for charitable or religious purposes.

(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

*(a) income derived from property held under trust wholly for charitable or religious purposes, **to the extent to which such income is applied to such purposes in India;** and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;*”

A careful perusal of the above said provisions would show that the entire income of a charitable trust or institution is not exempt automatically, as in the cases covered by sec.10 of the Act. The exemption of income is restricted “to the extent to which such income is applied to charitable purposes in India.” Hence, if any portion of income is applied either for non-charitable purposes or applied outside India, then the assessee is not eligible for exemption u/s 11 of the Act of such portion of income so applied, meaning thereby, the amount so applied for non-charitable purposes or outside India would become taxable.

5.1. However, apart from the quantum of exemption prescribed in in sec.11 of the Act, the assessee is required to fulfil other conditions prescribed in other sections applicable to charitable trusts or institutions. Section 12A of the Act states that the provisions of sec.11 and 12 shall not apply unless the person in receipt of income is registered u/s 12A/12AA/12AB of the Act. As per the amendment made by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, all charitable trusts or institutions, who have been given registration u/s 12A/12AA of the Act and the those who were not registered under the above said old provisions, have to get themselves registered u/s 12AB of the Act w.e.f 01-04-2021. The assessee herein is incorporated in December, 2023 and hence it has applied for registration under the new section of 12AB of the Act, which read as under:-

“12AB. [Procedure for fresh registration.] [Ins. by the Act No. 38 of 2020, w.e.f. 1-4-2021.]

(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 (i),—*

(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.”

As per the scheme of the Act, the charitable trusts or institutions are initially given provisional registration for three years. Then they have to apply for permanent registration within the time prescribed in the Act.

5.2. In the instant case, clause (b) is applicable. As per the provisions of that section, the Ld CIT(E) has to satisfy himself with the following:-

- (a) Objects of the trust or institution
- (b) Genuineness of its Activities
- (c) Compliance of requirements under any other law as mentioned in clause (B) of clause (i) of Sec. 12AB(1)(b).

In the instant case, the ld CIT(E) has cited two reasons for rejecting the application of the assessee seeking permanent registration, viz.,

- (a) The objects of the assessee leave room for any future potential endeavor that may result in incurring expenditure outside India, which is in violation of sec.11 of the Income tax Act.
- (b) The activities claimed to have been done are not justified by the expenses incurred by the assessee.

5.3. We shall examine the validity of the first reason cited by the Ld CIT(E). We noticed earlier that the exemption of income of a charitable trust or institution is granted only “to the extent to which such income is applied to charitable purposes in India.” Hence, if any portion of income of a charitable trust or institution is applied either for non-charitable purposes or applied outside India, then the assessee is not entitled to claim those expenses as exempt u/s 11 of the Act. The amount so spent for non-charitable purposes or outside India would become taxable. The question that arises is whether or not the Ld CIT(E) can take cognizance of object clauses of a charitable trust or institution, which according to him would enable it to apply income outside India, at the time of processing of application u/s 12AB of the Act ?

5.4. The objects of the trust may contain clauses, which may enable a charitable trust or institution to apply its income for activities carried outside India. Whether such objects, if any, would enable the Ld CIT(E) to deny registration u/s 12AB of the Act? We notice that this question has already been answered by co-ordinate bench of Chandigarh in the case of *Sarbat The Bhala Gurmat Mission Charitable Trust v. CIT(E)* [2021] 127 taxmann.com 816 (Chandigarh - Trib.) vis-a-vis the provisions of sec.12AA of the Act. For the sake of convenience, we

extract below the relevant portion of the decision rendered by the co-ordinate bench in the above cited case:-

“6. We have heard both the parties. The issue before us relates to grant of registration u/s 12AA of the Act, for the purposes of claiming exemption u/s 11 & 12 of the Act of incomes applied for charitable purposes.

7. The applicant assessee in the present case has been denied registration for the reason that its incidental and ancillary objects included carrying out the activities outside the India. The Ld.CIT(E) has held that for the aforesaid reason the assessee cannot be said to be indulging in charitable activities. And for holding so he has referred to the provisions of section 11(1)(c) of the Act.

8. The primary argument of the assessee against the order of the Ld.CIT(E) is that for the purposes of granting registration only the conditions mentioned in section 12AA need to be fulfilled and the provisions of section 11(1)(c) are not relevant for the said purpose, being applicable only while determining the income entitled to exemption u/s 11 of the Act. That in any case carrying out charitable activities outside India was not the sole or main object but only incidental/ancillary object of the applicant assessee.

9. What is therefore to be decided is whether the law provides for any such geographical limitation in carrying out charitable activities for the purposes of recognising an entity as charitable and eligible for registration as such u/s 12A of the Act. We have gone through the provisions of the Act relating to charitable entities, relevant for adjudicating the issue before us, i.e section 11, 12, 12A, 12AA & 2(15) of the Act. While section 2(15) defines charitable purposes, section 11 exempts incomes, derived from properties held under trust, to the extent applied for charitable purposes. Section 12A imposes the requirement of seeking registration for the purposes of availing the exemption u/s 11, and the process of granting registration is governed by section 12AA. Since in the present case registration has been denied u/s 12AA of the Act, relying upon provisions of section 11, it is relevant to reproduce both the aforesaid provisions for adjudicating the issue.

"12AA. (1) The [Principal Commissioner or] Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) [or clause (aa) [or clause (ab) of sub-section (1)] of section 12A, shall—

- (a) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and
- (b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he-

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard."

"Income from property held for charitable or religious purposes.

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(c) income derived from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution."

10. As per section 12AA of the Act, the Commissioner, while considering the application of the trust/societies, has to satisfy himself regarding the genuineness of the objects and the activities of the trust/societies, whether they are for charitable purposes or not. Charitable purpose is defined u/s 2(15) of the Act as under:

"S. 2(15)

(15) Charitable purpose includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including water-sheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility.

[**Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, of any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use of application, or retention, of the income from such activity, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]"

11. As is evident from the above, the section lists various activities which qualify as charitable purpose but there is no restriction to the scope of such activities within the geographical boundary of India. It is only section 11, as reproduced above, which places a geographical restriction allowing exemption only to incomes applied to charitable purposes in India. But even the said section does not completely rule out exemption to incomes applied outside India for charitable purposes, granting exemption to certain such applications, as mentioned in section 11(1)(c), subject to being approved by the Board.

12. As is evident from the above, in the scheme of the Act, incomes applied outside India for charitable purposes are not completely and categorically ruled out from being eligible for grant exemption.

13. The Ld. Pr. CIT's order, in the present case, therefore denying registration to the applicant assessee merely for the reason that its objects included application of income outside India, we hold, is not in accordance with law. More particularly when, admittedly, this was not the sole and main object of the applicant assessee, but only its ancillary and incidental object. It is not the case therefore that there is to be no application of income within India at all as per the objects. In fact the main object of the applicant assessee involves carrying out charitable activities in India. In this factual situation, denying registration u/s 12AA of the Act, for the reason that its incidental object entailed application of income outside India, we find, would result in the assessee being denied exemption to income applied in India, which it would otherwise be entitled to under law.

14. Further as rightly pointed out by the Ld. Counsel for the assessee, the provisions of section 11(1)(c) of the Act, which the Ld.CIT(E) has relied upon for holding that only activities carried out in India will qualify as charitable for grant of registration, is only for the purpose of determining the income which qualifies for exemption u/s 11 of the Act. The said section comes into operation

only once registration is granted u/s 12A of the Act and therefore cannot be relevant for the purposes of granting registration u/s 12A of the Act. The scheme of the Act is that all entities carrying out charitable activities, as defined in section 2(15) of the Act, qualify to be registered as charitable entities subject to satisfaction of the concerned officer *vis-a-vis* their objects and activities, but the exemption is provided/restricted only to the extent of income which is applied for charitable purpose in India.

15. The issue we find, is squarely covered in favour of the assessee by the decisions relied upon by the Ld. Counsel for the assessee before us. In the case of *MK Nambyar SAARC Law Charitable Trust (supra)*, we find, the application for grant of registration was rejected on the ground that the applicant itself had admitted that the scholarship could be paid to members even outside India. The Hon'ble High Court held that the application of income outside India is not a relevant criteria for rejecting the application for grant of registration u/s 12AA of the Act and the officer has to only restrict himself to the satisfaction about the objects and genuineness of the activities of the trust while granting registration with no restriction on the activities being carried out inside or outside India. The relevant findings of the Hon'ble High Court is as under:

'The judgment of the court was delivered by

B.C. Patel C.J. - M.K. Nambyar SAARC Law Charitable Trust has filed this petition against the order made by the Director of Income-tax (Exemptions) New Delhi, on February 24, 2004. The aforesaid trust submitted two applications in Form No. 10A for registration under section 12A and recognition under section 80G of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The application was rejected on the ground that the applicant itself has admitted that the scholarships can be paid to the members even outside India. It is in view of this admission that the activities will be extended outside India as per the objects laid down, it was held that the registration cannot be granted under section 12A of the Act and the approval of exemption under section 80G also cannot be granted.

Section 11 of the Act refers to income from property held for charitable or religious purposes. The relevant provisions are reproduced hereunder:

"11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent, of the income from such property; . .

(b)*****

(c) income derived from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India ;

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d)*****

3. So far as the benefit of section 11(1)(a) is concerned, it can be extended only to the extent to which such income is applied to such purposes in India. However, if the income is applied to the purposes outside India, then clause (c) will be applicable and if the permission is granted by the Board either by general or special order then, benefit can be extended. **Section 12AA prescribes the procedure for registration. Reading the section, it becomes clear that after the application is made, the officer has to call for documents or information from the Trust to satisfy himself about the genuineness of the activities of the Trust. He can make further enquiry as he may deem necessary. It is only after satisfying himself about the objects of the Trust and the genuineness of its activities that he has to pass an order in writing registering the Trust or institution. And if he is not satisfied, he can reject the same. This section does not refer to the activities in India or outside India.** It refers to application of income for charitable or religious purposes in India as also with direction or order of the Board for application of income as aforesaid outside India. Reading the order dated 24-2-2004, it is very clear that there is non-application of mind. It was necessary for the Commissioner to examine the purpose for satisfying himself that the activities are genuine. It was open for him to make necessary enquiries in this behalf and to pass an order as per the procedure laid down under section 12AA of the said Act. So far as income which is applied outside India is concerned, is not a relevant criteria for rejecting the application. In absence of order under section 11(1)(a)(c), one cannot seek benefit for application of income for charitable or religious purposes, outside India. Therefore, the order dated 24-2-2004 made by the Director of Income-tax (Exemptions), Annexed at page 32 which is based on irrelevant criteria is quashed and set aside with a direction to consider the application strictly in accordance with law. It is made that even

application under section 80G is required to be considered afresh. It is directed that the application shall be disposed of within a period of four weeks by the Commissioner.

16. The aforesaid decision of the Hon'ble Delhi High Court has been followed by the Coordinate Benches of the Tribunal in the case of *National Informatics Centre Services Inc. (supra)* ([2017] 88 taxmann.com 878 (Delhi))

17. In view of the above, the order passed by the Ld. CIT(E) denying registration u/s 12A of the Act is *set aside* and the Ld.CIT(E) is directed to grant registration as applied for by the assessee.

18. In the result, the appeal of the assessee is allowed.”

6. We may examine whether the ratio of above said decision would also apply to the applications processed by Ld CIT(E) under new provisions of sec.12AB of the Act. Under the provisions of sec.11 to 13 of the Act, which are applicable to charitable trusts or institution, two authorities are involved, viz.,

- (a) the Ld PCIT or CIT is empowered to grant or cancel registration u/s 12A, 12AA or 12AB as the case may be.
- (b) the assessing officer is the authority who assesses the total income of the charitable trust or institution for every assessment year.

7. We shall examine the provisions of sec.12AB of the Act. The authority to grant registration u/s 12AB is the Ld PCIT or CIT. Under sec, 12AB of the Act, the three steps have been prescribed for the process of registration or cancellation of charitable trusts or institution.

- (a) For new charitable trusts or institutions, provisional registration is granted u/s 12AB(1)(c) of the Act for a period of 3 years from the assessment year for which the registration is sought.
- (b) Permanent registration shall be granted u/s 12AB(1)(a)/12AB(1)(b) of the Act for a period of five years,

when the charitable trusts or institutions apply for the same.

- (c) Where a provisional registration or permanent registration is granted u/s 12AB(1) of the Act, the Ld PCIT/CIT is empowered u/s 12AB(4) of the Act to cancel the registration in accordance with that provisions.

8. As noticed earlier, the assessing officer is the authority who is empowered to determine the income of a charitable trust or institution and granting of exemption u/s 11 of the Act. As per sec.11(1), exemption u/s 11 is restricted “to the extent to which such income is applied to charitable purposes in India”. Thus the recognition of geographical jurisdiction wherein the income was applied needs to be recognised or examined while computing total income of the charitable trust or institution. We also noticed that the income applied for non-charitable purposes or applied outside India will not be exempt u/s 11 of the Act, i.e., such income shall be taxable in India.

9. We shall compare the provisions of sec.12AA and sec. 12AB of the Act which prescribe the conditions for granting registration.

(A) SECTION 12AA:-

“12AA. [Procedure for registration.]

(1) The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A, 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; and]

(b) after satisfying himself about the objects of the trust or institution and the genuineness of its activities as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause], he—

(i) shall pass an order in writing registering the trust or institution;

(ii) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant.”

(B) SECTION 12AB

12AB. [Procedure for fresh registration.] [Ins. by the Act No. 38 of 2020, w.e.f. 1-4-2021.]

(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 (i),—

(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.

9.1. We notice that the provisions of sec.12AA(3) and 12AA(4) of the Act describes the power of Ld CIT(E) to cancel the registration. Similarly, the provisions of sec.12AB(4) empowers the Ld CIT(E) to cancel the registration already granted either provisionally or permanently. It can be noticed that the provisions relating to cancellation of registration granted under sec.12AA and sec.12AB are identically worded under the respective provisions. Hence, in our view, the ratio of the decision rendered in the context of sec.12AA can be conveniently applied to the applications processed by Ld CIT(E) u/s 12AB of the Act.

10. However, it is noticed that the provisions of sec.12AB(4) is elaborate vis-a-vis sec.12AA(3) & (4). Even though, in the instant case, the Ld CIT(E) has not specifically invoked the provisions of sec.12AB(4) of the Act, we may examine the applicability of the said provision to the facts of the present case. The provisions of sec.12AB(4) reads as under:-

“(4) Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently, –

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year,

the Principal Commissioner or Commissioner shall –

(i) call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation. – For the purposes of this sub-section, the following shall mean "specified violation", –

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution –

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) 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."

11. It can be noticed from the provisions of sec.12AB(4) of the Act, the registration already granted either provisionally or permanently may be cancelled by Ld CIT(E), if he is satisfied that one or more specified violations have taken place. If he is not satisfied so, he may refuse to cancel the registration granted u/s 12AB of the Act. The expression 'specified violation' is defined in the Explanation. It can be noticed that the said definition is not an "inclusive definition", since it starts the expression "For the purposes of this sub-section, the following **shall mean** "specified violation"". Hence, it is an exhaustive definition. Consequently, if there is any violation other than those stated in the Explanation, then the Ld CIT(E) shall not get power to cancel the registration.

12. In the present case, according to Ld CIT(E), the objects clause enables the assessee to apply its income outside India. According to Ld CIT(E), the same is not permitted under the Act and hence the registration provisionally granted to the assessee may be cancelled. We shall now examine as to whether the existence of objects for carrying out activities outside India or actual application of income outside India in accordance with its objects, would fall under any of the categories of "specified violations" listed out in the Explanation to sec. 12AB(4) of the Act or not.

(i) Clause (a) would be attracted only if any income derived from the property held for charitable purpose is applied other than for the objects of the charitable trust or institution. Hence, so long as any income is applied for the objects of the charitable trust or institution, the clause (a) would not get attracted. Thus, if the objects clause of a charitable Trust or Institution permits carrying on objects outside India and if any income is applied for such objects, then it cannot be considered as application of income "for objects other than the objects

of the charitable trust or institution” falling within the meaning of clause (a). Consequently, the clause (a) would not be attracted.

(ii) Clause (b) would be attracted only if any business or profession is carried on and there is violation as mentioned therein. This clause will not be attracted for application of income for permitted objects outside India.

(iii) Clause (c) would be attracted when income of trust held for private religious purposes is applied for those purposes, which does not ensure for the benefit of public. The assessee herein is not a trust held for private religious purposes and hence this clause will not apply to the assessee herein.

(iv) Clause (d) would be attracted when income of the trust is applied for particular religious community or caste. This clause will also not apply to the assessee herein.

(v) Clause (e) would be attracted when any activity being carried out by the trust or institution –

- (i) is not genuine; or
- (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered.

This clause would be attracted when the activities of the charitable trust or institution is not genuine or in violation of any of the conditions subject to which the registration u/s 12AB was granted. In the instant case, the Ld CIT(E) has stated the activities claimed to have been carried on is not supported by the expenses incurred. According to Ld A.R, the above said observations are against the facts available on record. Hence the above said observations of Ld CIT(E) is dealt with separately infra.

(vi) Clause (f) would be attracted when there is failure to comply with the requirements of “any other law”. Under this clause “any other law” would mean any law other than Income tax Act. This meaning can be understood from the Sub-clause (B) of clause (i) of sec.12AB(1)(b) of the Act, which reads as under:-

“(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”.

The Ld CIT(E) has to ensure that the charitable trust or institution has complied with the requirement of ‘any other law for the time being in force’, as are material for the purpose of achieving its objects. Here, it is pertinent to note that the verification by Ld CIT(E) should be restricted to compliance of those laws as are material for the purpose of achieving its objects.

12.1. It may be noticed that clauses (a),(c),(d) and (e) would be attracted only when there is application of income as mentioned in those clauses. Hence “actual application of income” is the condition to be satisfied for attracting the above said four clauses.

13. In our view, the provisions of sec.11(1) would not fall under the category of “any other law”, since it is only a computation provision. The provisions of sec.11(1) do not require the charitable trust or institution to comply with any requirements, which are essential to achieve the objects of the trust. Further provisions of sec.11(1) do not state that the application of income derived from property held under trust for activities carried outside India results in violation of any law. Sec.11 only states that the exemption under that section is restricted to income applied for charitable purposes in India, i.e., it does not permit exemption of income applied outside India. Hence income, if any, applied for objects outside India cannot be construed to be violation of

‘any other law’ falling within the meaning of clause (f) of Explanation to sec.12AB(4) of the Act.

14. The foregoing discussions would show that the application of income of a charitable trust or institution outside India for carrying out its objects will not fall under any of the categories of “specified violation” as mentioned in the Explanation to sec.12AB(4) of the Act. Hence, the decision rendered by Hon’ble Delhi High Court in the case of M.K. Nambyar Saarf Law Charitable Trust (supra) will apply to the provisions of sec.12AB of the Act also, since the provisions of sec.12AB also do not refer to the activities carried in India or outside India.

15. In view of the foregoing discussions, it can be concluded that existence of any object for carrying out any activity outside India will not enable the Ld CIT(E) to deny registration u/s 12AB of the Act. As observed earlier, such kind of application of income outside India (unless it is permitted by the CBDT) will not be exempted u/s 11 of the Act.

16. Hence, the first reasoning given by Ld CIT(E) is liable to be quashed. On merits of the case, we are unable to agree with the interpretation given by the Ld CIT(E) to the objects clause of the assessee, which reads as under:-

*“Promote Indian heritage art such as Indian Classical music, Organize regular concerts and performances by renowned and emerging Indian classical musicians, Establish or support training school or institute to teach Indian classical music to students of all ages and skill levels, to Indian classical musicians to cover the costs of performance, travel, and recording, Organize festivals and conferences that bring together Indian classical musicians and scholars from **around the world.**”*

A careful perusal of the above cited object clause talks about the organizing festivals and conferences that bring together Indian Classical musicians and scholars from around the world, i.e., it talks about mobilizing the Indian classical musicians and scholars, wherever they are located. It nowhere states that the income of the charitable

trust or institution shall be applied outside India. Even if it is applied outside India, then the assessee, subject to sec. 11(c) of the Act, would not get exemption of the income so applied u/s 11 of the Act. Hence the Ld CIT(E) was not justified in rejecting the application of the on apprehension entertained by him.

17. The second reasoning given by the assessee is that the expenses incurred by the assessee do not prove the activities carried on by it. In this regard, the Ld A.R submitted that the assessee has filed required documents before Ld CIT(E). He further submitted that the assessee has also furnished additional evidences relating to the activities carried on by the assessee. Accordingly, he prayed that these additional evidences may be admitted and the assessee may be provided with an opportunity to present all the details before Ld CIT(E) to prove the activities carried on by it.

17.1. We find merit in the prayer of the assessee. We notice that the observations made by Ld CIT(E) with regard to activities is general in nature, i.e., the Ld CIT(E) did not state the deficiencies noticed by him in the documents furnished by the assessee. Further, the assessee has furnished additional evidences in order to satisfy Ld CIT(E) with regard to the genuineness of activities. Accordingly, in the interest of natural justice, we admit the additional evidences furnished by the assessee.

18. Accordingly, we set aside the impugned order passed by Ld CIT(E) rejecting the application filed by the assessee seeking permanent registration u/s 12AB of the Act and restore all the issues to his file with the direction to process the application of the assessee again afresh in the light of discussions made supra.

19. We shall not adjudicate the appeal filed by the assessee challenging the order passed by Ld CIT(E) rejecting the application filed by the assessee seeking recognition u/s 80G of the Act.

20. We notice that the Ld CIT(E) has rejected the application on the reasoning that the he has denied registration to the assessee u/s 12AB of the Act. In the preceding paragraphs, we have cancelled the order passed by Ld CIT(E) and restored all the issues relating to the registration sought by the assessee u/s 12AB of the Act. Following the said order passed by us in the preceding paragraphs, we set aside the order passed by Ld CIT(E) rejecting the recognition u/s 80G of the Act and restore all the issues to his for examining the application afresh in the light of discussions made supra.

21. Needless to mention, the assessee should be provided with proper opportunity of being heard.

22. In the result, both the appeals of the assessee are treated as allowed.

Order pronounced in the open court on 02-04-2025

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 02-04-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai