



BOM HC: Quashes rejection of Sec. 12AB approvals over 'irrevocability' clause

Facts of the Case

The petitioners were a body of tax-practitioners registered under the Maharashtra Public Trusts Act, 1950 as a public charitable trust. They held existing registrations u/ss 12A and 12AB and had submitted renewal applications in Form 10AB u/s 12AB, as required under the framework that came into effect from 1st April 2021.

The Commissioner (Exemption) rejected these renewal applications on two primary grounds. First, the trust deeds did not contain an express clause declaring the trust to be irrevocable or specifying the procedure for dissolution. Second, the petitioners had indicated "Yes" in Form 10AB in response to the question on irrevocability, which the Commissioner treated as submission of false or incorrect information. On this basis, the absence of such clauses was categorised as a "specified violation" u/s 12AB(4), resulting in denial of registration.

Observations and Ruling of the High Court

The High Court examined whether the absence of an explicit irrevocability clause in a trust deed could justify rejection of registration u/s 12AB of the Income-tax Act, 1961. It held that section 12AB only requires satisfaction regarding the trust's objects, genuineness of activities, and legal compliance — it imposes no condition mandating an express irrevocability clause. Under settled law, a trust is irrevocable by default unless expressly made revocable. The Maharashtra Public Trusts Act further reinforces this, as trust assets upon revocation never revert to the settlor but are deposited in the Public Trusts Administration Fund.

The Court also rejected the "false information" ground, noting that applicants were technically forced by the online portal to answer "Yes" regarding irrevocability. Penalising applicants for a system-created compulsion was held arbitrary and legally unsustainable. Accordingly, the writ petitions were allowed, impugned rejection orders were quashed, Form 10AB was directed to be amended, and Commissioner (Exemption) was directed to decide applications afresh within six weeks in accordance with the judgment.

Citation:

Chamber of Tax Consultants v. CIT (Exemptions) [TS-373-HC-2026(BOM)]

Our Comments

Many public trusts have been facing the challenge of rejection of applications for approval u/s 12AB of the Income-tax Act, 1961 due to absence of a specific irrevocability clause in the trust deed. The High Court's observation that a trust is irrevocable by default unless expressly made revocable would play an important role doing away with the hurdle in the process of approval of public charitable trusts.