

HC order quashing rejection of Section 12AB approvals over 'irrevocability' clause

Judgement

1. This writ petition challenges the Income Tax Commissioner's decision to reject renewal of registration under Section 12AB. The main issue is about rejection of renewal applications under Section 12AB of the Income Tax Act. The Commissioner rejected the applications mainly for two reasons: **first, the trust deeds did not clearly mention that the trusts are irrevocable or explain how they would be dissolved; second, in Form 10AB,**

the applicants answered "Yes" to a question about irrevocability even though the trust deeds were silent, which was treated as incorrect information and used as a ground for rejection. The aggrieved petitioners filed this case before the High Court under Article 226 of the Constitution.



2. The Senior Advocate for the Petitioners argued that the law (Sections 12AA and 12AB) does not require a trust to have an “irrevocability clause” for registration. Insisting on it is beyond the powers given by law.
- Trusts had earlier been granted registration without such a clause, and even after the new Section 12AB came into force, they were initially registered in the same way. So, there is no change in law or facts to justify the new rejection.
 - The Respondent wrongly relied on Sections 60 to 63, which deal with tax avoidance and revocable transfers and these provisions are not relevant for deciding registration under Section 12AB.
 - Even otherwise, a transfer is “revocable” only if the trust deed clearly allows assets to be taken back, which is not the case here since the deeds are silent.
 - As per settled law, a trust is considered irrevocable unless the deed specifically allows revocation. So, absence of an “irrevocability clause” does not matter.
 - Under the Maharashtra Public Trusts Act, once a public trust is created, its assets cannot go back to the settlor and must be used for similar charitable purposes. This makes such trusts effectively irrevocable by law.
 - The online registration system forces applicants to wrongly answer “Yes” to the question about irrevocability, otherwise the form cannot be submitted. This unfair system is then used to reject applications.
 - The Income Tax Act already has safeguards (like Sections 13 and 115TD) to prevent misuse of trust assets, so additional requirements like an irrevocability clause are unnecessary.

3. For the above reasons, the senior counsel representing the Petitioners argued that both grounds used to reject registration under Section 12AB are incorrect and have no legal basis. Therefore, he requested that the Court grant the reliefs sought in the Petition to which the respondents defended the rejection and filed an affidavit.

4. The Court held that Section 12AB does not require an express “irrevocability clause” in a trust deed for registration. **The only requirements are satisfaction with the trust’s objects, genuineness of activities, and legal compliance.** The Court found that the Respondent wrongly added a condition not mentioned in the law. It also clarified that Sections 60 to 63 apply to exemption under Section 11, not to registration under Section 12AB.

5. **The Court held that public charitable trusts are deemed irrevocable by law unless the trust deed explicitly allows revocation. Mere absence of an irrevocability clause does not make a trust revocable. Once property is dedicated to a trust, it cannot revert to the settler.** Sections 12AA and 12AB, along with provisions in the MPT Act (Sections 55, 22(3A), 22(3B)), ensure that trust property is used only for charitable purposes, even if the trust is dissolved.



6. The High Court held that a public charitable trust is **irrevocable by law** unless the trust deed explicitly allows revocation. **Lack of an irrevocability clause cannot be a reason to reject registration or renewal under Section 12AB of the Income Tax Act.** Even if a revocability clause exists, trusts registered under the MPT Act remain irrevocable under the Income Tax Act. The Court found the actions of Respondent to be **arbitrary and contrary to law and judicial precedents**, disrupting the functioning of charitable trusts, which play a key role in nation-building and must be treated fairly by the revenue authorities.
7. Respondents **cannot reject registration or renewal under Section 12AB solely** because the Trust Deed lacks an irrevocability or dissolution clause. Answering “Yes” to Row 6 of Form 10AB **without an explicit irrevocability clause is not false information and cannot be a ground for rejection.** Respondents cannot **reject registration or renewal under Section 12AB solely** because the Trust Deed lacks an irrevocability or dissolution clause.

High Court stated that form 10A/10AB should be updated to allow correct declarations regarding irrevocability. All prior orders rejecting registration under Sections 12AB or 80G on these grounds are quashed and set aside.

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