

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'B', NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 3190/Del/2015

AY: N.A.

Prem Kumar Memorial Altruistic Trust 27, New Road Dehradun 248 001 PAN: AABTP8569N	vs.	CIT (E) Office of CIT(E) 5, Ashok Marg Lucknow 226 001
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(Appellant)

(Respondent)

Assessee by : : None.

Department by : Ms. Nidhi Srivastava, CIT, D.R.

Date of Hearing : 11/02/2019

Date of Pronouncement: 13/02/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 23/04/2015, passed under section 12AA(1)(b) (ii) of the Income Tax Act, 1961 (the Act) by Ld.CIT (Exemption), Lucknow rejecting application dated 08/10/2014 filed by assessee for registration under section 12(a) of the Act, on following grounds of appeal:

Ground I

1. *On the facts and circumstances of case and as per law, the Learned CIT (Exemptions), Lucknow ("Ld. CIT (E)") erred in rejecting the application seeking for registration u/s 12A(a) of the I.T.Act, 1961 ('the Act') without giving an opportunity of being heard.*

2. The date fixed for hearing before the Ld. CIT(E) was April 17, 2015 i.e. just 13 days before the expiry of the time limit specified in Section 12AA(2) of the Act for granting the registration u/s 12AA of the Act. The date was adjourned to April 23, 2015 due to non availability of the Ld. CIT(E) in the office. The appellant submitted the requisite reply to the queries to the Ld. CIT(E) on April 23, 2015. The Ld. CIT(E) had failed to appreciate and ought to have held that the Proviso to section 12AA(1) of the Act provides that no order of rejection of an application shall be passed without giving the applicant an opportunity of being heard.

3. The appellant therefore prays that the opportunity of being heard as stipulated in the Proviso to section 12AA(1) of the Act be granted to the appellant and the rejection of application u/s 12AA(I)(b)(ii) of the act be held as void.

GROUND II:

1. On the facts and circumstances of case and as per law, the Ld. CIT (E) erred in rejecting the application seeking for registration u/s 12A(a) on the ground that no books of accounts were provided during the hearing.

2. The appellant during the course of the hearing had submitted the books of accounts in original. Accordingly, the ground of rejection as stated by Ld. CIT(E) is denied and devoid of facts.

3. In view of the above, the order of the Ld. CIT(E) bad in law. Therefore it is prayed that the application of the appellant u/s 12A(a) of the Act be reconsidered and the registration be duly granted to the appellant.

GROUND III:

1. On the facts and circumstances of case and as per law, the Ld. CIT (E) erred in rejecting the application seeking for registration u/s 12A(a) on the ground that appellant did not carry out any charitable activity. Not carrying out the charitable activity cannot be a ground for rejection of application of the appellant u/s 12A(a) of the Act, in view of tire judgment in tire case of New Life In Christ Evangelistic Association (NLC) Vs. Commissioner Of Income Tax reported in 246 ITR 532 (Mad.) wherein the Hon'ble High Court held that the CIT is not to examine the application of income. All that he may examine is whether the application is made in accordance with the requirements of section 12A of the Act read

with rule. 17A of the Income Tax Rules, 1962 and whether Form No. 10A has been properly filled up. He may also see whether the objects of the trust are charitable or not. At this stage, it is not proper to examine the application of income.

2. In view of the above, it is very much clear that the performance of charitable activities need not to be verified at time of granting of registration, only the objects of the institution is to be verified i.e. whether they are for charitable purpose or not. The appellant had filled the prescribed form 10A properly in prescribed manner as per the requirement of section 12A of the Act. Further, the objects of the Trust are charitable as may be seen from the Trust deed which was duly filed along with the application in Form 10A. Accordingly, the order of the Ld. CIT(E) is liable to be set aside and is bad in law. Therefore it is prayed that the application of the appellant u/s 12A(a) of the Act be reconsidered and the registration be duly granted to the appellant.

The appellant craves for permission to add to, alter, amend any ground of appeal before or at the time of hearing."

2. Brief facts of case are as under:

Before us today none appeared on behalf of assessee. On perusal of records, it is observed that on previous date also nobody appeared on behalf of assessee, though notice has been issued from this office on 23/08/2018, 13/05/2018 and thereafter on 19/11/2018.

2.1. Looking into manner in which Ld.CIT passed impugned order and having regard to grounds raised by assessee before this Tribunal, we do not find it necessary to keep the appeal pending hearing for reasons stated below.

2.2. From records placed before us, it is observed that due to change in jurisdiction, with effect from 15/11/2014, case was transferred to CIT, Dehradun. Representative of assessee appeared before Ld.CIT and filed some material. Ld.CIT observed that society was created on 20/11/2010.

2.3. Further, on perusal of order impugned, it is observed that Ld.CIT(E) denied registration without granting sufficient opportunity to assessee to file requisite details. It has been submitted in ground of appeal raised by assessee before us that hearing was fixed by Ld.CIT (E) on 17/04/2015 which is just 13 days before expiry of time-limit specified under section 12 AA (2) of the Act for granting registration. Thereafter on 17/04/2015 as Ld.CIT (E) was not available, case was adjourned to 23/04/2015.

3. Ground No.2 has been raised by assessee challenging lack of opportunity by Ld.CIT(E).

4. Ld.CIT(E) is directed to grant proper opportunity to assessee, and to decide issue in light of documents filed by assessee, as per law. Assessee is directed to file requisite details to establish its claim.

4.1. We are therefore inclined to allow this ground raised by assessee and set aside this issue back to Ld.CIT (E), to decide the issue of fresh. Ld.CIT(E) is directed to pass a speaking order, having regard to memorandum and objects filed by assessee.

5. In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 13th February, 2019.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 13th February, 2019

- GMV

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
Draft dictated on	12/02/2019
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	