

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No.3029/Del/2019  
Assessment Year: 2019-20

Om Prakash Sohan Lal Trust, 135/1, Dwarka Puri, New Mandi, Muzaffarnagar, Uttar Pradesh	<b>Vs.</b>	CIT(Exemption), Lucknow, Uttar Pradesh
<b>PAN :AAWTS3882N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Ankit Gupta, Adv.
Respondent by	Shri S.S. Rana, CIT(DR)

Date of hearing	16.07.2019
Date of pronouncement	23.07.2019

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against order dated 7/02/2019 passed by the Commissioner of Income Tax (Exemption), Lucknow, [in short 'the Ld. CIT'] rejecting the registration under section 12AA(1)(b)(ii) of the Income-tax Act, 1961 (in short 'the Act').

**2.** The grounds raised in the appeal by the assessee are reproduced as under:

- 1) *That, the impugned order passed by the CIT Exemption, Lucknow U/s 12AA of the Income Tax Act, 1961 is arbitrary, erroneous, unreasonable and opposed to the facts and circumstances of the law.*
- 2) *That, the CIT Exemption has erred in passing the impugned order in an ex-party manner, without appreciating, that, the notice issued has been received by the assessee trust on 2<sup>nd</sup> Feb., 2019 raising 25 queries and*

*listed the hearing on 7<sup>th</sup> Feb., 2019 which is highly arbitrary and unjustified and against the principle of natural justice.*

- 3) That, the CIT Exemption has erred in rejecting the application for registration of trust U/s 12AA of the Income Tax Act, 1961 merely on the ground, that, no further details has been filed by the assessee trust, therefore, the Registration U/s 12AA has not been granted, which is highly arbitrary and unjustified.*
- 4) That, the CIT Exemption has erred in passing the order without appreciating, that, the assessee is required some time to collect the details as per the queries issued and send it to Lucknow, which approximately 600 KM. away from the city of Muzaffarnagar.*
- 5) That, the CIT Exemption has erred in not providing the adequate and reasonable opportunity of hearing to the assessee trust to place the details required by CIT Exemption to substantiate its claim during the proceedings.*
- 6) That, the explanation given and evidence produced, material placed and available on record have not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.*

**3.** Before us, the Ld. counsel of the assessee filed a paperbook containing pages 1-76 along with an application under Rule 29 of ITAT Rules, 1963 for admitting affidavit of one of the Trustees and a security officer of the assessee trust.

**4.** He submitted that the assessee trust having its office at Muzaffarnagar, (Uttar Pradesh) came into inception on 17/09/2018 and filed its application for registration of charitable institution under relevant clause of section 12A of the Act in prescribed form on 25/09/2018 before the Ld. CIT. He submitted that the Ld. CIT issued a notice raising various queries on 12/01/2019, and fixed the hearing for 07/02/2019 at Lucknow. According to the assessee, this notice was received on 04/02/2019 by a security officer, namely, Sh. Shyam Vir Pandey at the premises of the assessee. The assessee has filed an affidavit from said security officer in the form of additional evidence, which is available on page 4 of the paperbook. According to the security officer, said notice was provided to the accountant of the assessee

trust on 8/02/2019. An affidavit has also been filed by the trustee of the assessee. According to the Ld. Counsel, in view of the above facts, the assessee could not represent before the Ld. CIT on 7/02/2019.

**5.** As none attended on the date of hearing i.e. 7/02/2019 before the Ld. CIT and nor filed any replies, the Ld. CIT held that no books of accounts or voucher etc. were filed supporting the activities carried out by the assessee, which could establish charitable nature of the activities and accordingly, rejected the registration under section 12AA(1(b) of the Act.

**6.** Before us, the Ld. DR, however, pointed out that the notice issued by the Ld. CIT was served on the assessee on 02/02/2019, as pointed out by the learned CIT in the impugned order, which is not in conformity with the date of receipt claimed by the security officer i.e. 4/02/2019. According to the Ld. DR, in view of the limitation for passing the order, the Ld. CIT was justified in rejecting the registration of the assessee trust.

**7.** We have heard the rival submission and perused the relevant material on record. In our opinion, the additional evidence filed by the assessee is of vital importance for deciding the issue in dispute and accordingly, we admitted the same. It is undisputed that the Ld. CIT has passed order *ex parte* without any representation on behalf of the assessee. The difference of date of the receipt recorded by the Ld. CIT and mentioned by the security officer in his affidavit, which has been highlighted before us by the Ld. DR, is of trivial nature and cannot eclipse the right of substantial justice of the assessee. Before us, the assessee has explained and justified the reasons for non-appearance before the Ld. CIT. In our opinion, the assessee was prevented by sufficient

reasons to appear before the Ld. CIT and submit requisite replies of the queries raised by the Ld. CIT. In view of the facts and circumstances and in the interest of the substantial justice, we feel it appropriate to set aside the order of the Ld. CIT and remit the matter back to him for deciding afresh in accordance with law. It is needless to mention that adequate opportunity of being heard shall be provided to the assessee. Accordingly, the grounds of the appeal are allowed for statistical purposes.

**8.** In the result, the appeal of the assessee is allowed for statistical purposes.

***Order is pronounced in the open court on 23<sup>rd</sup> July, 2019.***

Sd/-  
**[K.N. CHARY]**  
**JUDICIAL MEMBER**

**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 23<sup>rd</sup> July, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi