

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER And
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos.679 & 680/Ahd/2018

(निर्धारण वर्ष / Assessment Years : -)

Jan Mangal Pharmacy Foundation C/o.Shri Ghanshyam R.Parekh 203, Aakar Complex-1 Above Monika Ice-cream Tiothal Road, Valsad-01	बनाम/ Vs.	The Commissioner of Income tax (Exemption) Ahmedabad-380 009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCJ 9244 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Mehul K. Patel, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Samir Tekriwal, CIT-DR

सुनवाई की तारीख / Date of Hearing	02/03/2020
घोषणा की तारीख/Date of Pronouncement	02/03/2020

आदेश / O R D E R

PER SHRI SANDEEP GOSAIN, JUDICIAL MEMBER :

The Assessee is in appeals before us against the separate orders of Ld.Commissioner of Income Tax(Exemptions), Ahmedabad [‘CIT(E)’ in short] identically dated 31/01/2018.



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2. The assessee in ITA No.679/Ahd/2018 raised the following grounds of appeal:

- (1) That on facts, and in law, the learned CIT(Exemptions) Ahmedabad has grievously erred in not granting sufficient and reasonable opportunity to the appellant.*
- (2) That on facts, and in law, the learned CIT(Exemptions) Ahmedabad has grievously erred in rejecting the application for registration u/s.12AA of the Act.*
- (3) That on facts, and in law, the registration ought to have been granted u/s.12AA of the Act as prayed for.*

3. Brief facts of the case are that the assessee, in the present case, had applied for registration of trust u/s.12AA of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) before the Id.CIT(E), Ahmedabad, however the said application for registration u/s.12AA of the Act was rejected by the CIT(E), Ahmedabad by holding that assessee failed to file documentary evidences to enable him to bring satisfaction about the genuineness of the assessee-trust activities.

4. The Ld.AR submitted before us that assessee had already submitted all the required documents which were not considered by Id.CIT(E). It was also submitted that Id.CIT(E) had sought details of activities actually carried out by the assessee-trust and in the absence of provisional account, it was held that nature of activities of the assessee were not clear. However, in this respect, Id.AR relied upon the decision



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of Hon'ble Gujarat High Court in the case of Director of Income-tax vs. Panna Lalbhai Foundation reported at (2013) 35 taxmann.com 104 (Gujarat) wherein it was held as under:

“Section 12AA of the Income-tax Act, 1961 – Charitable or religious trust – Procedure for registration [Denial of registration] – Whether where there was no material to conclude that objects of trust or activities of trust were not genuine or any doubt arose in respect of genuineness of activities, registration under section 12AA could not be denied – Held, yes – Whether only because trust has not commenced activities, Commissioner would have no authority to Ipso facto reject application made under section 12A for registration under section 12AA – Held, yes [Paras 5 & 6] [in favour of assessee].”

And submitted that, the CIT(E) could not indicate any material to conclude that the objects of the trust or the activities of the trust were “not genuine”. It was also submitted that since the Trust has not commenced its activities, the Commissioner had no authority to *ipso facto* reject application for registration.

5. After hearing both the parties at length, we found that assessee could not appear before Id.CIT(E) when the case was called for and in the absence of the assessee, the Ld.CIT(E) while relying upon the decision of Hon'ble Supreme Court in the case of CIT vs. Dawoodi Bohara Jamat (Civil Appeal No.2492 of 2014) had decided the application for registration of Trust u/s.12AA of the Act filed by the assessee.



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6. Be that as it may, after considering the rival submissions, we are of the view that matter requires reconsideration at the level of Ld.CIT(E). Since according to assessee, the assessee had already submitted the required documents before Ld.CIT(E), but the same do not find mention in the order. Therefore, it can be inferred that those documents filed by the assessee were not considered. The principle of *audi alteram partem* is the basic concept of natural justice. The expression “*audi alteram partem*” implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. The right to notice, right to present case and evidence, right to rebut adverse evidence, right to cross examination, right to legal representation, disclosure of evidence to party, report of enquiry to be shown to the other party and reasoned decisions or speaking orders. We took this guidance for right of hearing, from the ratio as is laid down by the Hon'ble Supreme Court in the case of Maneka Gandhi v. Union of India, wherein Hon'ble Supreme Court has laid down that rule of fair hearing is necessary before passing any order. We find that it is pre-decision hearing standard of norm of rule of *audi alteram partem*. We are, therefore, of the view that matter requires reconsideration at the level of Ld.CIT(E). Thus, while setting aside the order of Ld.CIT(E), we restore it back to Ld.CIT(E) and direct that all the documents filed by the assessee be considered and assessee be given one more opportunity of



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being heard and to file any other documents before the Ld.CIT(E), Ahmedabad as called for and the Ld.CIT(E) is also directed to decide the application for registration filed by the assessee, keeping in view the principles laid down in the aforesaid judgements while passing a fresh order, if the assessee wants to submit any document, he is at liberty to submit before the Ld.CIT(E). Accordingly, the appeal of the assessee is set aside to the file of Ld.CIT(E) for statistical purposes.

7. In the result, appeal of the assessee in ITA No.679/Ahd/2018 is allowed for statistical purposes.

ITA No.680/Ahd/2018

8. The assessee in ITA No.680/Ahd/2018 raised the following grounds of appeal:

- (1) *That on facts, and in law, the entire order passed by learned CIT(Exemptions) is bad in law, invalid and void ab initio as it is unsigned.*
- (2) *That on facts, and in law, the learned CIT(Exemptions) Ahmedabad has grievously erred in not granting sufficient and reasonable opportunity to the appellant.*
- (3) *That on facts, and in law, the learned CIT(Exemptions) Ahmedabad has grievously erred in rejecting the application for approval u/s.80G(5) of the Act.*
- (4) *That on facts, and in law, the approval granted u/s.80G(5) of the Act ought to have been continued as prayed for.*



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9. Brief facts of the case are that assessee had applied for registration of trust u/s.80G(5) of the Income Tax Act, 1961 before the Ld.CIT(E), Ahmedabad, however, the said application for registration u/s.80G(5) of the Act was rejected by the CIT(E), Ahmedabad by holding that assessee failed to file documentary evidences to enable him to bring satisfaction about the genuineness of the assessee-rust activities.

10. Both the sides consented that identical issue is involved in this appeal as well. Thus, for parity of reasons noted above, our view in ITA No.679/Ahd/2018(supra) shall apply *mutatis mutandis* to this appeal captioned above. As a result, the appeal of the Assessee in ITA No.680/Ahd/2018 is also allowed for statistical purposes.

11. In the combined result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on	02 -03-2020	at Ahmedabad
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Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Ahmedabad; Dated 02/ 03 /2020
टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(E), Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad