

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.11/PUN/2021

Balwant Medical Foundation,
28B/Gharkul, Ganesh Krupa Society,
Paud Road, Pune-411038.

PAN : AAICB9778R

.....अपीलार्थी / Appellant

बनाम / V/s.

CIT (Exemption),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah
Revenue by : Shri Shekhar L. Gajbhiue

सुनवाई की तारीख / Date of Hearing : 08.04.2021

घोषणा की तारीख / Date of Pronouncement : 17.05.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. CIT (Exemption), Pune dated 24.11.2020 as per the following grounds of appeal on record :-

1. The Ld. Pr. CIT (Exemption) erred in not granting Registration u/s 12AA of the I.T. Act.
2. The Ld. Pr. CIT erred in rejecting Registration application made u/s 12AA on the ground of non-submission of certain details, which were never called for from the assessee before passing the order.
3. The Ld. Pr. CIT erred in passing the order (dated 24th November, 2020) before the date by which the assessee was required to submit the details as per notice dated 26-06-2020 (which was to be complied with by 30-11-2020).
4. The Ld. Pr. CIT erred in not considering that some of the details, which are the reason of alleged non-compliance by the assessee were on record (along with the application).
5. Learned Pr. CIT erred in not giving appropriate opportunity to the assessee, particularly when the time was available to him under the COVID situation and in terms of extension of time provided under the law.
6. The appellant craves its right to add to or alter the Grounds of Appeal at any time before or during the course of hearing of the case."

2. Brief facts of the case are that the assessee filed an application in Form No.10A for grant of registration u/s 12AA of the Income Tax Act, 1961 ('the Act') on 06.05.2020. The Ld. CIT (Exemption), on perusal of the said application, issued a letter through ITBA portal on 26.06.2020 calling upon the assessee to file/upload certain other information/clarification. The assessee had not complied with the said notice.

3. On perusal of the information/submission uploaded along with the application in Form No.10A, the Ld. CIT (Exemption) held that the assessee had failed to file credible evidence in support of activities carried out as required under the provisions of section 12AA(1)(a) of the Act. Since the assessee did not respond to the notice dated 26.06.2020, another notice dated 03.11.2020 was issued through ITBA portal requesting the assessee to file certain information/clarification by 10.11.2020. However, again the assessee has not complied with the said notice dated 03.11.2020. In these circumstances, the Ld. CIT (Exemption) held that the genuineness of activities of the trust/institution cannot be examined and, accordingly, rejected the grant of registration u/s 12AA of the Act vide order dated 24.11.2020.

4. Being aggrieved by the order of Ld. CIT (Exemption), the assessee is in appeal before us with the above extracted grounds of appeal.

5. Before us, the crux of the grievance of the assessee in this appeal is the rejection of granting of registration u/s 12AA of the Act by the Ld. CIT (Exemption). At the time of hearing, the assessee vehemently argued that he was not given proper opportunity by the Ld. CIT (Exemption). Demonstrating this fact, he drew our attention to pages 20, 21 & 22 of the Paper Book wherein the screenshot of notice has been given, the ld. Counsel submitted

that the date therein for giving response was 30.11.2020 but the order of the Ld. CIT (Exemption) u/s 12AA of the Act was pronounced on 24.11.2020. Therefore, the ld. Counsel for the assessee submitted that with these kinds of discrepancies in the records, it is evident that the principles of natural justice were not complied with by the Department while considering the application for grant of registration u/s 12AA of the assessee.

6. *Per contra*, the ld. DR placed strong reliance on the findings of the Ld. CIT (Exemption). The ld. DR submitted that as evident from the order of the Ld. CIT (Exemption) at para 3 and 4 that certain details were asked from the assessee to be uploaded in the ITBA portal. The assessee has however not furnished those requisite details and the satisfaction regarding the charitable nature of objects and the genuineness of the activities of the trust could not be arrived at by the Ld. CIT (Exemption). Therefore, he has rightly rejected the application for grant of registration u/s 12AA of the assessee.

7. We have perused the case records, heard the rival contentions and considered the entire facts and circumstances in this case. We find, on one hand the assessee contends that the provisions of principles of natural justices were not followed by the Department and the opportunity of hearing was not properly accorded to the assessee in this case and on the other hand, the facts demonstrate as from the order of the Ld. CIT (Exemption) that he could not arrive at proper satisfaction as regards the genuineness of the activities of the trust since the relevant details as called for by the Ld. CIT (Exemption) were not uploaded in the ITBA portal by the assessee. The provision of section 12AA of the Act mandates that the satisfaction has to be arrived at by the Ld. CIT (Exemption) before granting any registration under the said provisions. The satisfaction can only be arrived at once all the

relevant details are placed before him. Taking the totality of facts and circumstances of the case into consideration, we are of the considered view that one more opportunity should be given to the assessee and accordingly, we set-aside the order of the Ld. CIT (Exemption) and restore the matter back to his file for re-adjudication while complying with the principles of natural justice and at the same time, we direct the assessee to furnish all relevant details as called for by the Department so that the case can be represented on merits. We further find that the Hon'ble Apex Court in the case of Ananda Social and Educational Trust vs. CIT, 272 Taxman 7 has laid down the specific guidelines, which are as follows :-

*“We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant – Director of Income Tax and find that it is not possible to agree with the same. The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. **In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.***

*Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term ‘activities’ in the provision includes ‘proposed activities’. **That is to say, a Commissioner is bound to consider whether the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust.** In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.*

We therefore find that the view of the Delhi High Court in the impugned judgment is correct and liable to be upheld.

Ms. Bhati, learned Senior Counsel for the appellant, fairly drew our attention to a judgment of the Allahabad High Court in IT Appeal No.36 of 2013 titled as “Commissioner of Income Tax-II vs. R.S. Bajaj Society” which has taken the same view as that of the Delhi High Court in the impugned judgment. The Allahabad High Court has also referred to a similar view taken by the High Courts of Karnataka and Punjab & Haryana.”

8. The Ld. CIT (Exemption) while re-adjudicating the matter should follow the said guidelines as laid down by the Hon'ble Apex Court in the aforesaid decision (supra).

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

Order pronounced on this 17th day of May, 2021.

Sd/-

Sd/-

(INTURI RAMA RAO)

(PARTHA SARATHI CHAUDHURY)

लेखा सदस्य/ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th May, 2021.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.