

## आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में

### **IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष  
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 3951/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2014-15)

Sarva Siddhi Raja Ganapathy Trust, Bhajan Samaj Complex, 90 feet Road, Garodia Nagar, Ghatkopar East, Mumbai-400 077	बनाम/ Vs.	The Asst. Commissioner of Income Tax, (CPC), Bangalore, 1 <sup>st</sup> Floor, Prestige Alpha No.48/1, 48/2, Beratenaagrahara Begur Hobli, Hosur Rd, Bengaluru-560100
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACW1258P		
अपीलार्थी की ओर से/ Appellant by	:	Shri Mehul Shah, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Ajay Singh, DR

सुनवाई की तारीख / Date of hearing:	31.08.2021
घोषणा की तारीख / Date of pronouncement:	17.09.2021

### **आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-1, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-1/8/ACIT9CPC)/2016-17 vide dated 09.04.2019. The Assessment was framed by the Asst. Commissioner of Income Tax, (CPC), Bangalore (in short ACIT / AO) for the A.Y. 2014-15 vide order dated 09.01.2016 under section 143(1) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) in not giving sufficient opportunity of being heard to the assessee. For this, assessee has raised the following grounds:-

*"1. On the facts, and in the circumstances of the case, and in law, the learned Commissioner of Income-tax (Appeal) erred in not giving sufficient opportunity of being heard.*

*2. On the facts, and in circumstances of the case and in law, the learned commissioner of income-tax (Appeal) erred in upholding action of the Assessing Officer in rejecting the claim of the appellant for exemption of income of Trust under section 11 of the income tax Act, 1961 without appreciating that the application for registration was pending with the office of learned DIT(E).*

*3. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in holding that since there was no effective Registration available to the Appellant under section 12A, the Appellant did not qualify to be eligible for exemption under section 11; and not only that, no deduction could be allowed for application of money for charitable objects."*

3. At the outset, the learned Counsel for the assessee stated that the CPC Bangalore sending intimation under section 143(1) of the Act and making prima facie adjustment and actually these are not subject matter of prima facie adjustment being where



gross receipts are to be taxed or net receipts are to be taxed. Secondly, the learned Counsel stated that the CIT(A) has not allowed fresh opportunity of being heard and dismissed the claim of the assessee despite the fact that the DIT(E) neither rejected the application filed under section 12A of the Act nor accepted. When these facts were confronted to the learned Sr. Departmental Representative, Shri Ajay Singh, he fairly conceded that let one more chance given to the assessee. On this, the learned Counsel agreed.

4. After hearing both the sides, we feel that this is fit case for setting aside of the order of CIT(A) and remanding the matter back to his file for fresh adjudication. Needless to say, the DIT (Exemptions) should also take steps to decide the application of the assessee filed under section 12A of the Act. The CIT(A) will allow reasonable opportunity of being heard to the assessee. Hence, the matter is restored back to the file of CIT(A) and the appeal of assessee is allowed for statistical purposes.

**5. In the Result, the appeal of assessee is allowed for statistical purposes.**

Order pronounced in the open court on 17.09.2021.

Sd/-

(एस रिफाउर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated:17.09.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर ,अपीलीय अधिकरण मुंबई ,/  
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप सहायक/पंजीकार/Asstt. Registrar/ व .निजी सचिव/Sr. Private Secretary/  
आयकर अपीलीय अधिकरणमुंबई , / ITAT, Mumbai