

आयकर अपीलिय अधिकरण, पीठ "A" , कोलकाता
**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "A" KOLKATA**

समक्ष : श्री संजय गर्ग, न्यायिक सदस्य एवं
श्री श्री मनीष बोरड, लेखा सदस्य

**Before: Shri Sanjay Garg, Judicial Member and
Shri Manish Borad, Accountant Member**

आयकर अपील सं.य/
ITA Nos. 324 & 325/Kol/2022
Assessment Year: 2017-18

Druk Jetavan Charitable Trust Monastery, Tenzing Norkye Road, West Pond Dali, Darjeeling-734101, W.B	<u>बनाम</u> V/s.	CIT (Exemption), Kolkata 6 th Fl., 10B Middleton Row, Kolkata-700 071.
PAN: AACTD 1102G		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		Shri Himanshu Gandhi, CA Ld.AR
प्रत्यर्थी की ओर से/By Respondent		Shri Biswanath Das, Ld.CIT/DR
सुनवाई की तारीख/Date of Hearing		31-10-2022
घोषणा की तारीख/ Date of Pronouncement		03-11-2022

आदेश /O R D E R

PER BENCH :

Both the instant appeals are directed against the separate orders both dt. 15-09-2017 passed u/s. 12AA and 80G of the Income-tax Act, 1961 (hereinafter, referred to as the 'Act' by the Id. Commissioner of

Income-tax (Exemptions), (in short, referred to the Id. CIT (E), Kolkata for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal :-

ITA No. 324/Kol/2022

1. *On the facts and circumstances of the case and the law, the Ld. Commissioner of Income Tax-(Exemption), Kolkata erred in rejecting the application of the trust for registration under Section 12AA of the Income Tax Act, 1961 even though the trust had complied with all the requirements of the provisions of the Income Tax Act in general and provisions of Section 12AA(1)(b)(ii) as well as Section 12A of the said Act in particular.*
2. *On the facts and circumstances of the case and the law, the Ld. Commissioner of Income Tax-(Exemption), Kolkata erred in rejecting the application of the trust for registration under Section 12AA of the Income Tax Act, 1961 without providing any opportunity of being heard which was in gross violation of the principles of natural justice.*
3. *The order rejecting the application for registration u/ s 12AA of the Act is bad in law and deserves to be quashed.*
4. *The appellant craves leave to add, alter, grounds of appeal.*

ITA No. 325/Kol/2022

1. *On the facts and circumstances of the case and the law, the Ld. Commissioner of Income Tax-(Exemption), Kolkata erred in rejecting the application of the trust for registration under Section 80G of the Income Tax Act,1961 even though the trust had complied with all the requirements of the provisions of the Income Tax Act in general and provisions of Section 80G as well as Section 12A of the said Act in particular.*
2. *On the facts and circumstances of the case and the law, the Ld. Commissioner of Income Tax-(Exemption), Kolkata 'erred' in rejecting the application of the trust for registration under Section 80G of the Income Tax Act, 1961 without providing any opportunity of being heard. which was in gross violation of the principles of natural justice.*
3. *The order rejecting the application for registration u/s 80G of the Act is bad in law and deserves to be quashed.*
4. *The appellant craves leave to add, alter, amend, modify or delete any of the aforesaid grounds of appeal.*

3. At the outset before us the Ld. Counsel for the assessee submitted that the assessee did not receive notice of hearing as well as

the impugned orders. The assessee has procured the copy of the impugned orders through RTI (Right to Information Act). Since the assessee did not get adequate opportunity to plead its case before the Id. CIT(E) for the application filed u/s. 12AA & 80G of the Act, the issues raised in the instant appeals under consideration may be restored to the Id. CIT (E) for fresh adjudication.

4. Per contra, the Ld. Departmental Representative stated that sufficient opportunity has been provided, but the assessee failed to appear/avail the same. However, he is fair enough not to oppose the request of the assessee if the issues raised in the instant appeals are restored to the Id. CIT (E) for fresh adjudication.

5. We have heard the rival contentions and perused the record placed before us. The assessee is a trust. It had filed application for registration u/s. 12AA on 17-03-2017 and u/s. 80G of the Act also on 03-17-2017 before the Id. CIT-E, who vide his separate orders both dt. 15-07-2019 rejected both the applications of assessee for non-compliance non-production of documents, annual accounts, relevant documents for verification and genuineness and nature of charitable activities. Before us the Ld. Counsel for the assessee has stated that the assessee trust is located in the remote area near Darjeeling and due to unrest in the local area, prevailing for a long time, it could not receive any communication nor was in position to furnish the details. Also the assessee was not served with the impugned order and was able to procure the same through RTI application and necessary correspondence of the same is placed on record.

6. We, therefore, under the given facts and circumstances of the case find merit in the contention of the Id. Counsel for the assessee and therefore, in the interest of justice and being fair to both the parties restore all the issues raised in the instant appeals pertaining to the registration u/s. 12AA as well as approval u/s. 80G of the Act to the Id. CIT-Exemptions for fresh adjudication and for which reasonable opportunity of being heard should be provided to the assessee. We also direct the assessee to file all necessary documentary evidence including financial statements and charitable activities carried out in support of its applications filed u/s. 12AA & 80G of the Act before the Id. CIT-E, who shall decide the issue(s) raised in the instant appeals afresh in accordance with law considering the submissions of the assessee. Thus, grounds raised by the assessee in both the appeals are allowed for statistical purpose.

परिणामतः निर्धारिती की अपील (ITA No. 324 & 325/Kol/2022 for the A.Y 2017-18) सांख्यिकी उद्देश्य से मंजूर की जाती है।

7. In the result, both the appeals of assessee are allowed for statistical purpose.

आदेश खुले न्यायपीठ में दिनांक 03 -11-2022 को उद्घोषित।
Order pronounced in the open court on 03 -11-2022

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

**PP/SPS

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 03 -11-2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/: Druk JetavanCharitableTrust, Monastery,
Tenzing Norkye Road, West Pond Dali, Darjeeling-734101,
W.B

2. प्रत्यर्थी/Respondent/:CIT (Exemption), Kolkata, 6th Fl., 10B
Middleton Row, Kolkata-700 071.

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT,
Kolkata

6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata