

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3101/MUM/2022
(Assessment Year: 2022-23)**

Brahman Sabha,
Lokmanya Tilak Path,
Dombivli (East)- 421201
[PAN: AAATB7436K]

..... Appellant

Commissioner of Income Tax
(Exemption), Pune,
Room No. 322, 3rd Floor,
Income Tax Office, PMT Building,
Shankar Seth Road,
Pune - 411037

Vs

..... Respondent

Appearances

For the Appellant/Assessee : None
For the Respondent/Department : Dr. Mahesh Akhade

Date of conclusion of hearing : 08.02.2023
Date of pronouncement of order : 10.02.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 30.09.2022, passed by the Ld. Commissioner of Income Tax (Exemptions), Pune [hereinafter referred to as 'the CIT(E)'] rejecting application [Application No. : CIT EXEMPTION PUNE/2022-23/12AA/11157, dated 31.03.2022] filed by the Appellant for seeking approval under Section 12AB read with Section 80G(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

1.1. There is a delay 9 days in filing the appeal. Perusal of the

record shows that the appeal was filed with Pune, Benches. In response to the defect notice, dated 05.01.2022, issued by the registry, the Appellant has filed reply, dated 10.01.2023, wherein it has been explained that appeal was filed within limitation on 29.11.2022 before Pune Benches, of the Tribunal on account of information/belief that the jurisdiction lay with the Pune Benches of the Tribunal. The appeal was received by registry at Pune and thereafter, forwarded to registry at Mumbai since the jurisdiction was with Mumbai, Benches of the Tribunal. We note that copy of the aforesaid forwarding letter issued by the registry at Pune is on record and has been perused. In view of the aforesaid facts and circumstances, the delay of 9 days in filing the appeals is condoned.

2. The Appellant has raised following grounds of appeal:

"1 Order passed by the Learned Commissioner of Income-Tax, Exemption, Pune U/s 12AB rws 80G(5)(iii) dated 30.09.2022 [DIN : ITBA/EXM/F/EXM45/2022-23/1046138717(1) is bad in law as (a) it seems that the Judicial Mind has not been applied, (b) the Proper Reasonable Opportunity of being Heard has not been given & (c) Rejected only for the want of Note on the Activities of the Trust or Rebutting the same for its compliance and ignoring the fact that the registration under section 12AB has been granted and therefore the aforesaid Original Order passed may please be restored."

3. When the appeal was taken up for hearing, the Ld. Departmental Representative apprised the Bench about the adjournment application moved by the Appellant. On perusal of the grounds of appeal raised by the Appellant we noted that the Appellant has, inter alia, contended that the Appellant was not granted a reasonable opportunity of being heard and that the CIT(E) has passed the order without application of mind. After perusing the record we rejected the adjournment

application moved by the Appellant and proceed to examine contention raised by the Appellant in view of the material on record including the written submission, dated 30.01.2023, placed on record by the Appellant even though none appeared for the Appellant.

4. In response to the query from the Bench in relation to opportunity granted by the CIT(E) to the Appellant to make out his case, the Ld. Departmental Representative submitted that the Appellant failed to furnish necessary details and documents to prove the nature of activities carried on by the Appellant despite sufficient opportunities having been granted to the Appellant. He submitted that CIT(E) has returned clear finding that despite service of notice the Appellant failed to comply with the same and furnish any tangible material including note on the activities carried out by the Appellant specifically asked for by the CIT(E). Therefore, the CIT(E) was correct in rejecting the application seeking approval filed by the Appellant and the contention of the Appellant that reasonable opportunity was not granted is without any merit. He relied upon the order passed by the CIT(E) in order to support his contention.
5. We have perused the material on record and have taken into consideration the submissions advanced by the Learned Departmental Representative and written submission, dated 30.01.2023, filed by the Appellant.
6. The Appellant is a trust registered under the Bombay Public Trust Act, 1950 with registration No. A/52 dated 06.01.1953, and has also been granted registration under Section 12A(1)(ac)(i) of the Act for Assessment Year 2022-23 to Assessment Year 2026-27. The Appellant-trust was also

granted provisional approval under Section 80G(5)(iv) of the Act for the period commencing w.e.f. 24.09.2021 till Assessment Year 2024-25. The Appellant is aggrieved by the order of the CIT(E) dismissing the application filed by the Appellant in Form 10AB for seeking approval under Clause (iii) of the First Proviso to Section 80G(5) of the Act.

7. We find that 2 notices were issued to the Appellant by the CIT(E). Both the notices were served on the Appellant through Income Tax Business Application (ITBA) portal. First notice, dated 03.08.2022, was issued fixing 18.08.2022 as the date for compliance. In compliance with the same, the Appellant filed response. A copy of e-proceedings response acknowledgement bearing acknowledgment number 430901861170822 has been placed on record. Thereafter, the second notice dated 17.09.2022 was issued fixing 23.09.2022 as the date for compliance. In compliance with the same, the Appellant filed response. A copy of e-proceedings response acknowledgement bearing acknowledgment number 502654051170922 has been placed on record. A perusal of the aforesaid e-proceedings response acknowledgement shows that a number of documents were annexed to the same which, inter alia, including copy of the trust deed and the financials for the financial year 2018-19, 2019-20 and 2020-21. A perusal of order passed by the CIT(E) impugned by way of present appeal shows that no reference has been made to the response submitted by the Appellant. The reply/documents furnished by the Appellant have not been considered by the CIT(E). We are also of the view that sufficient opportunity of being heard has not been granted to the Appellant and the Appellant has been, in effect, proceeded ex-parte. We, therefore, set aside the

order dated 30.09.2022, passed by the CIT(E) and direct the CIT(E) to pass a fresh order on the application filed by the Appellant [Application No. : CIT EXEMPTION PUNE/2022-23/12AA/11157, dated 31.03.2022] after taking into consideration the documents/details filed by the Appellant and after giving Appellant a reasonable opportunity of being heard. The CIT(E) would be at liberty to call for such further information and details as he deems fit for decide the aforesaid application filed by the Appellant as per law. In view of the aforesaid, Ground No. 1 raised by the Appellant is allowed for statistical purposes.

8. In result the appeal is allowed for statistical purposes.

Order pronounced on 10.02.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 10.02.2023
Alindra, 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 /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai