

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

**BEFORE SHRI PRASHANT MAHARISHI (ACCOUNTANT MEMBER)
AND
SHRI KULDIP SINGH (JUDICIAL MEMBER)**

ITAs No.3103 & 3104/Mum/2022
(Assessment Year 2022-23)

Jeevan Adhar G-5, Ravideep CHS, Tilak Road Near Sarvesh Hall, Dombivli (E)-421 201 PAN : AAETJ1349K	vs	CIT (Exemption), Pune Room No.322, 3 rd Floor, Income-tax Office, PMT Building, Shankar Seth Road, Pune-411 307
APPELLANT		RESPONDENT

Assessee represented by	Shri Hunnargirkar (Adv) / Madhav K Khisti (CA)
Department represented by	Amrita Singh, CIT DR

Date of hearing	06/02/2023
Date of pronouncement	23/02/2023

ORDER

Per: Kuldip Singh (JM):

At the very outset, the Ld.AR for the assessee brought to the notice of the Bench that as per memo issued by the Registry, Appeal No.3103/um/2022 is stated to be time barred by 10 days, which is not a fact as is apparent from record. Because this appeal was initially presented at ITAT, Pune on 29/11/2022 as CIT(Exemption), Pune has passed the order under appeal. However, subsequently, all the appeals filed at ITAT, Pune

were transferred to ITAT, Mumbai vide communication received on 08th December, 2022 from ITAT, Pune and as such, the present appeal was filed well within limitation.

2. We have perused the defect memo dated 05/01/2023 issued by the Registry, Income-tax Appellate Tribunal, stating therein that appeal is time barred by 10 days, perused filing of the appeal at ITAT, Pune on 29/11/2022 and communication received by the assessee from ITAT, Pune dated 01/12/2022 that the appeal under consideration having been filed on 29/11/2022 stood transferred to ITAT, Mumbai Benches, Mumbai. All these facts apparently go to prove that the present appeal filed by the assessee was well within limitation and the memo dated 05/01/2023 was wrongly issued by the Registry.

3. The Appellant, Jeevan Adhar, Dombivli, Thane (hereinafter referred to as the 'assessee') by filing the present appeals, sought to set aside the impugned orders dated 29/09/2022 and 27/10/2022 passed under section 12AB(1)(b)(ii)(B) and under section 12AB read with section 80G(5)(Iiii) respectively on the grounds interalia that:

ITA 3103/Mum/2022

“1. Order passed by the Learned Commissioner of Income-Tax, Exemption, Pune U/s 12AB(1)(b)(ii)(B) dated 29/09/2022 [DIN: ITBA/EXM/F/EXM45/2022-23/1046101473(I)] 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 therefore the aforesaid Original Order passed may please be restored.

2. The appellant craves to leave, add, alter, amend and/or delete any of the above referred grounds of appeal at the time of the hearing of the appeal.”

ITA 3103/Mum/2022

“1. Order passed by the Learned Commissioner of Income-Tax, Exemption, Pune U/s 12AB rws 80G(5)(iii) dated 27/10/2022[DIN: ITBA/EXM/F/EXM45/2022-23/1046495679(I)] 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 therefore the aforesaid Original Order passed may please be restored,

2. The appellants craves to leave, add, alter, amend and/or delete any of the above referred grounds of appeal at the time of the hearing of the appeal.”

4. Briefly stated, facts necessary for adjudication of the issues at hand are:

Appellant, Jeevan Adhar, being a society registered under Societies Registration Act, 1950 being into the charitable services / to establish, conduct and manage schools, colleges, professional and technical institutions imparting minority as well as general primary, pre-primary, higher secondary, graduate and post graduate education in all branches of Arts, Commerce, Science, agriculture, law, vocation, politics, literary, religion, culture, fine arts, crafts, journalism, engineering, medicines, and information technology, etc. and also to establish, conduct and manage Residential Schools and Colleges including hostels for students coming from different parts of states / countries for education, sought to issue the registration under section 12A of the Income-tax Act and consequent registration under section 80G by moving an application in Form 10A and 10AC respectively to the Commissioner of Income-tax (Exemption). Commissioner of Income-tax (Exemption) denied the registration sought for by the Appellant under section 12A and 80G of the Act.

5. Feeling aggrieved with the impugned orders passed by Ld.CIT(E), the Appellant has come up before the Tribunal by way of filing present appeals.

6. We have heard the Ld.AR and the Ld.DR for the Revenue, perused the order passed by learned lower authorities and material available on record in the light of law applicable thereto.

7. Undisputedly, on the basis of application moved by the Appellant in prescribed forms, Ld.CIT(E) was required to verify the genuineness of the activities of the trust / institution and to verify the compliance to requirement of any other law for the time being in force, by the trust. No doubt, assessee has brought on record the object and activities of the Society / trust to establish, conduct and manage schools, colleges, professional and technical institutions imparting minority as well as general primary, pre-primary, higher secondary, graduate and post graduate education in all branches of Arts, Commerce, Science, agriculture, law, vocation, politics, literary, religion, culture, fine arts, crafts, journalism, engineering, medicines, and information technology, etc. and to establish, conduct and manage Residential Schools and Colleges including hostels for students coming from different parts of states / countries for education but before Ld.CIT(E), Appellant has failed to bring on record the requisite documents called for by the Ld.CIT(E) in order to verify the genuineness of the activities of the trust as required under the law and consequently Appellant was proceeded exparte and Ld.CIT(A) has rejected the application for want of filing supporting documents / evidences by the Appellant.

8. We have perused the order passed by the Ld.CIT(E) which shows that initially notice was issued to the Appellant through ITBA portal on 22/07/2022 for making compliance by 08/08/2022 but none appeared on

behalf of the assessee and thereafter one more opportunity was given to the assessee vide notice dated 14/09/2022 requesting him to submit his compliance by 21/09/2022 and again on failure of the assessee, applications moved by the assessee were rejected for want of having supporting documents / evidence.

9. We are of the considered view that from the impugned order, there is not an iota of material on record if the notice stated to be issued by Ld.CIT(E) were ever served upon the assessee. To decide the issue once for all and to stop the multiplicity of the proceedings, adequate opportunity is required to be given to the Appellant.

10. Consequently, appeals filed by the assessee bearing No.3103 & 3103/Mum/2022 seeking registration under section 12AA is allowed for statistical purpose directing the Ld.CIT(E) to decide afresh after providing opportunity of being heard to the Appellant. Appellant has also ensured the Bench that it will appear before the Ld.CIT(E) on the date fixed.

11. Since registration sought for by the Appellant under section 12A has been declined for want of filing documents / evidence; filing of an application for approval under section 80G was premature which was to accorded after granting registration under section 12A of the Act.

12. Resultantly, both the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 23/02/2023.

sd/-

sd/-

(PRASHANT MAHARISHI)	(KULDIP SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 23rd February, 2023 / Pavanan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR, SMC Bench
6. Guard File
(True Copy)

By order

Dy.Registrar / Asst.Registrar
ITAT, Mumbai Benches