

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3032/M/2022
Assessment Year: 2022-23**

M/s. D.B. Skills Foundation, 602-B-Wing, Ballerina, 3 rd Cross Lane, Lokhandwala Complex, Azad Nagar, Andheri, Mumbai – 400 053 PAN: AADTD4856E	Vs.	Commissioner of Income Tax (Exemptions), 601 Cumballa Hill, MTNL Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Mumbai – 400 026
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satyaprakash Singh, A.R.
Revenue by : Smt. Riddhi Mishra, D.R.

Date of Hearing : 15 . 03 . 2023

Date of Pronouncement : 18 . 04 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the appellant M/s. D.B. Skills Foundation (hereinafter referred to as the assessee) that there is a delay of one day in filing the present appeal which was caused due to miscalculation of the period of limitation. Keeping in view the fact that there is only a delay of one day which ordinarily can be caused due to mistake of facts while calculating the limitation, hence we

find sufficient cause to condone the delay and appeal is ordered to be registered.

2. The assessee by filing the present appeal, sought to set aside the impugned order dated 30.09.2022 passed by Commissioner of Income Tax (Exemptions), Mumbai [hereinafter referred to as the CIT(E)] qua the assessment year 2022-23 on the grounds inter-alia that :-

“1. The Learned CIT erred in holding that the object of the Assessee includes many clauses which allow the foundation to undertake commercial activities like setting up institution for skill development and training without considering that the Assessee is a Charitable Trust/Society registered Public charitable Trust / Society under the Bombay Public Trust act/Section 25 Company under the Companies Act having licence issued by the Central Government stating the objects of the Assessee are Charitable in nature.

2. The Learned CIT erred in considering setting up an institution for skill development and training as a commercial activity.

3. The Learned CTT erred in considering that only because the receipts of the Assessee comprise of receipt in the form of Training Workshop and Project Fees from Mahindra Finance under the CSR compliance provisions, the same forms a non-charitable activity, completely ignoring the provisions and the purpose of the CSR provisions incorporated under the Companies Act, 2013.

4. The Learned CII without any basis has erred in considering that skill training activity provided by the Assessee is an activity subservient to the need of the Mahindra Group for trained test drivers and thus the said activity was closely aligned with commercial interest with the Mahindra group.

5. Without prejudice to the above, the main activity of the Assessee was to develop skill including training drivers to drive vehicles, however, the Learned CIT's contention that the trained driver could only be a driver for vehicles manufactured by Mahindra group and vehicle sales financed by the Mahindra group and hence activity of the Assessee was subservient to the commercial interest of the Mahindra Group is without any logic, far-fetched and baseless.

6. The Learned CIT erred in misemploying the judgement of Hon'ble Supreme Court in the case of CTT vs Andhra Chamber of Commerce 55 ITR 722(SC) wherein it has been that the Chamber of Commerce did

not cease to be charitable merely because the members of the chamber were incidentally benefited in carrying out its main charitable purpose, in fact it is the case of the Assessee that where individuals are trained by them to drive vehicles and generate employment for themselves and to improve their Standard of living and if the such Drivers become capable to drive vehicles belonging to the Mahindra group, then only by the reasoning that they were recruited by Mahindra group, the Assessee in such scenario shall not cease to remain charitable.

7. The Learned CIT has erred in holding that training people to run commercial vehicle for livelihood and this subset of beneficiaries are very closely aligned with the target customer of Mahindra group is against the cardinal principal of charity that is altruism in thought only and in action the same is not fulfilled.

8. The Learned CTT erred in holding that the objects and the activities of the Assessee do not meet the definition of "charitable purpose" as within the meaning of Section 2(15) of the Act and that the activities of the Assessee are subservient to the commercial interest of Mahindra and Mahindra group and do not serve a charitable purpose."

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : applicant's application filed in form 10AB seeking registration under section 12AB and 12A of the Income Tax Act, 1961 (for short 'the Act') was rejected by the Ld. CIT(E) on the ground that the entire activities of the applicant are for training people who are running commercial vehicles for livelihood and this set of beneficiaries are very closely aligned with the target customer of Mahindra Finance for its vehicle loans and as such the cardinal principle of charity i.e. altruism is not fulfilled. The Ld. CIT(E) further recorded that "the appellant further sought more time for making further submission. As the current proceeding being getting barred by limitation on 30.09.2022, the applicant's contention for further time beyond the limitation date cannot be acceded to."

4. Feeling aggrieved with the impugned order passed by the Ld. CIT(E) the assessee has come up before the Tribunal by way of filing present appeal.

5. At the very outset it is brought to the notice of the Bench by the Ld. A.Rs for the parties to the appeal that as per para 5 of the impugned order passed by the Ld. CIT(E) adequate opportunity has not been given to the applicant.

6. We have perused para 5 of the impugned order from which it is proved that the assessee has sought some time to make further submissions and to bring on record certain documents which was not given to the assessee the current proceedings being getting time barred on 30.09.2022. Now the assessee has brought on record all the documents viz. copy of trust deed, tripartite agreement between Mahindra Finance CSR Foundation, Mahindra & Mahindra Financial Services Ltd. and Terna Public Charitable Trust for implimenting driver training programme all over India, MOU between Shriram Seva Sankalp Foundation and the applicant trust, letter of Logistics Skill Council (available from page 13 to 67 of the paper book) which are required to be examined by the Ld. CIT(E) to arrive at the logical conclusion as the assessee was not given adequate opportunity during the first round of filing application.

7. So in these circumstances the impugned order passed by the Ld. CIT(E) is set aside and remitted back to decide afresh after providing opportunity of being heard to the assessee by the Ld. CIT(E).

8. Resultantly the appeal filed by the applicant is hereby allowed for statistical purposes.

Order pronounced in the open court on 18.04.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 18.04.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.