

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. Nos. 3107 & 3108/Mum/2022
(निर्धारण वर्ष / Assessment Year: 2022-23)

Higher Education & Research Society A/2, 503, Punyodaya Park, Near Don Basco School, Adharwadi, Jai Road, Kalyan (West)-421301.	बनाम/ Vs.	CIT(Exemption), Pune Room No. 322, 3 rd Floor, Income Tax Office, PMT Building, Shankar Seth Road, Pune-411037.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTH2529Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Prakash Marathe	
Revenue by:	Dr. Mahesh Akhade (DR)	

सुनवाई की तारीख / Date of Hearing: 01/02/2023
घोषणा की तारीख /Date of Pronouncement: 21/04/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are appeal preferred by the assessee Trust against the action of the Ld. Commissioner of Income Tax (Exemptions), Pune dated 30.09.2022, wherein he was pleased to reject the applications filed by the assessee for registration u/s 12AB of the Income Tax Act, 1961 (hereinafter “the Act”) as well as u/s 80G(5)(iii) of the Act.

2. The main grievance of the assessee Trust is against the action of the Ld. CIT(E) not granting proper opportunity to the assessee before rejecting the application u/s 12AB and 80G of the Act.

3. The Assessee (Higher Education and Research Society) is registered under Societies Registration Act, 1860 vide Registration No. MAH/651/2013/Thane dated 04/04/2013 as well as under Mumbai Public Trust Act, 1950 vide Registration No. F/27205/Thane



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dated 21/02/2014. According to Ld. Counsel, the assessee Trust is engaged in the following charitable activities:-

- a) Promoting and propagating education of every kind in the society as a whole.
- b) Establishing & Opening the Study Centers like Research Centre, Education Centre, Science Centre & Libraries, where higher education can be given.
- c) Conferring awards and rewards to individuals and institutions for various achievements in higher education including social, cultural, political and literary activities.
- d) Providing financial help to publications like books, journals and periodicals.
- e) Conducting Seminars, Conferences, Workshop, Symposiums etc.
- f) Establishing and opening primary, secondary and higher secondary schools of Marathi, English and Hindi mediums anywhere in India.
- g) Establishing and opening Medical and Engineering colleges.

4. The Society/Trust applied in Form 10A for registration under section 12A of the Income-Tax Act, 1961 (herein after 'the Act') on 5th August, 2021 vide ARN:241864970050821; and the application was approved and provisional Registration Certificate u/s 12A(1)(ac)(vi) in Form 10AC was issued vide Unique Registration No.(URN) AABTH2529QE20213 dated 23rd September, 2021.

5. As per the amended provisions of Section 12AB of the Act, for obtaining permanent registration, assessee had to again file application in Form 10AB by uploading the e application in Form 10AB which assessee did vide ARN:489926480300322 dated 29/03/2022.



However, the same (*application for permanent registration*) was rejected by Ld. CIT, (Exemption), Pune vide impugned order under section 12AA(1)(b)(ii) [DIN: ITBA/EXM/F/EXM45/2022-23/104614660(1)] dated 30th September, 2022 by observing as under:

The assessee has filed application No.CIT EXEMPTION, PUNE/2022-23/12AA/10504 in Form No.10AB under clause (iii) of section 12A(1)(ac) of the Income Tax Act, 1961 on 29/03/2022

2. The application was carefully perused and considered along with its annexures. With a view to verify the genuineness of activities of the assessee, a notice was issued through ITBA portal on 26/07/2022 requesting him to upload certain other information/clarification by 10/08/2022. Another opportunity was given to the assessee vide notice dated 18/09/2022 requesting him to submit his compliance by 23/09/2022. The assessee was specifically informed that in the event of failure to comply by the due date, the matter will be decided based on material available on record. Both these notices were duly served on the assessee through e-portal/email.

3. The assessee was specifically requested vide the initial notice to furnish the details of activities carried out during the last 3 years or since inception whichever is later along with supporting credible evidence. In response, the assessee submitted its reply on 17.08.2022. On verification of the same, it



is observed that the assessee trust has not submitted the note on activity of the trust

3.1 The assessee was given opportunity of being heard vide notice dated 18.09.2022. In response, Shri Madhav M Khisti, CA attended on behalf of the assessee trust. In the absence of credible evidence, the undersigned is unable to draw any satisfactory conclusion about genuineness of activities of the assessee.

In view of the above, the application filed by the assessee is hereby rejected.”

6. Aggrieved, by the aforesaid action of the Ld. CIT(A), the assessee is before us.

7. At the outset, the Ld. AR of the assessee brought to our notice that the assessee received notice dated 27.06.2022 through ITBA Portal seeking certain information which was duly submitted on 17.08.2022. Thereafter, the Ld. CIT(E) issued another notice dated 18.09.2022 directing the Ld. AR of the assessee to be present before him on 23.09.2022, pursuant to which the assessee's Ld. AR Shri M.M Khisti and Co. (CA) appeared, which fact has been acknowledged by the Ld. CIT(E) at para 3.1 of the impugned order. However, according to Ld. AR, the assessee was surprised to receive the impugned order rejecting the application for registration u/s 12AB of the Act, as well as u/s 80G of the Act on the ground/reason that the



assessee did not file the details of activities carried out during the last three (3) years along with supporting evidence. According to the Ld. AR, the afore-said reason given by Ld CIT(E) for rejecting both the applications were erroneous, since assessee had filed the documents on 17.08.2022 as called for by the Ld. CIT(E) vide notice dated 26.07.2022 & 03.08.2022 in respect of application for registration u/s 12AB of the Act; and u/s 80G of the Act respectively. And further, as per the direction of the Ld. CIT(E), the Ld. AR of the assessee appeared and presented its case before the Ld. CIT(E). Thus, according to Ld. AR, from the aforesaid events it can be seen that the assessee has co-operated and duly filed documents called for during the proceedings before the CIT(E); and according to him, even if the Ld. CIT(E) found that there was any deficiencies or further requirements for assessee to comply with, then Ld. CIT(E) ought to have directed assessee accordingly; and in such an event, the assessee would have certainly complied with such directions. Therefore, according to the Ld. AR, when assessee had complied with the directions of the Ld. CIT(E), still rejecting the application citing non-filing of certain information which was not called for tantamount to violation of natural justice because it is akin to keep the assessee in the dark and later allege failure on part of assessee which according to him is against fair play. So he prayed that assessee may be given one more opportunity to present the case before the Ld. CIT(E), so that it can file the necessary relevant details. Per contra, the Ld. CIT-DR opposes the prayer of the assessee and contents that the assessee was



given several opportunities, but failed to properly comply. Therefore, the Ld. CIT(E) rightly rejected both the applications. And therefore, he doesn't want us to interfere with the impugned action of the Ld. CIT(E).

8. We have heard both the parties and perused the records. We note that the assessee is registered with the Societies Registration Act 1860 as well as under Mumbai Public Trust Act, 1950. The assessee trust object is to promote education and it applied for registration u/s 12A of the Act on 05.08.2021 and was given Approval Provisionally vide order dated 23.09.2021.

9. Thereafter, the assessee sought permanent registration u/s 12AB of the Act by uploading application in Form 10AB dated 29.03.2022 which was processed; and the Ld. CIT(E) further asked for certain compliance from the assessee vide notice dated 26.07.2022 which was duly complied by assessee on 17.08.2022. And thereafter, the Ld. CIT(E) directed the Ld. AR of the assessee to be present before him on 23.09.2022 and the assessee duly complied with that direction also. However, the Ld. CIT(E) was pleased to reject both the applications (for registration u/s 12AB & 80G of the Act) on the ground that assessee failed to file/upload the details of its activities for last three (3) years. According to the Ld. AR, the assessee had complied with the directions given by Ld. CIT(E) and since the details of its activities for last three years were not sought for by Ld. CIT(E), it was not furnished. But he conveyed/under-took before us that if an



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opportunity is given to the assessee, it will produce/file the details of activities carried out by it as well as evidences to support the same. From a perusal of the impugned order, it is not clear as to whether the assessee was directed to file the details of its activities for the last three (3) years other than the observation of the Ld. CIT(E) that though the assessee submitted reply on 17.08.2022, the trust has not submitted the note about its activities. Be that as it may, after hearing both the sides, and after perusal of the records, we are inclined to set aside the impugned order of the Ld. CIT(E) and restore the applications back to the file of the Ld. CIT(E) with a direction to de-novo consider the both applications for registration u/s 12AB of the Act as well as 80G of the Act, after giving opportunity to the assessee. The assessee is directed to furnish the details of its activities carried out during the last three (3) years or since inception whichever is later along with supporting evidence. And the Ld. CIT(E) to pass order in accordance to law de-novo on both applications u/s 12AB as well as u/s 80G of the Act.

10. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21/04/2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 21/04/2023.
Vijay Pal Singh, (Sr. PS)

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER



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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**