

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 239 & 240/Asr/2022
Assessment Years: 2022-23**

Y S. Makhdoomi Memorial Educational Trust, Madina Colony Buchpora Ellahibagh Srinagar. [PAN:-AAATZ2011N] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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**I.T.A. Nos. 241 & 242/Asr/2022
Assessment Years: 2022-23**

Sh. Ansar UINissa, Sangrampora Sopore Baramullah J & K, Srinagar. [PAN:AAETA7299M] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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**I.T.A. Nos. 243 & 244/Asr/2022
Assessment Years: 2022-23**

Sh. Mahdul Musliamat Educational Trust, Neharpora Sopore Baramullah J & K, Srinagar. [PAN:AADTM2633C] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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I.T.A. Nos. 245 & 246/Asr/2022
Assessment Years: 2022-23

Madad Charitable Trust, Lal Bazar Srinagar. [PAN:AAGTM2753C] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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I.T.A. Nos. 247 & 248/Asr/2022
Assessment Years: 2022-23

Mohammadia Yateem Trust, J & K Srinagar. [PAN:AAETM5039K] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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I.T.A. Nos. 249 & 250/Asr/2022
Assessment Years: 2022-23

J & K State Welfare Institute Kadal, Srinagar. [PAN:AAATJ5312J] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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I.T.A. Nos. 251 & 252/Asr/2022
Assessment Years: 2022-23

Kashmir Concern Foundation J & K, Srinagar. [PAN:AACTK8790P] (Appellant)	Vs.	CIT (Exemptions) Chandigarh. (Respondent)
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Appellant by	Sh. Bashir Ahmad Lone, CA
Respondent by	Balvinder Kaur., CIT. DR

Date of Hearing	26.06.2023
Date of Pronouncement	07.07.2023

ORDER

Per:, Bench:

A batch of 14 appeals of the different assessees were filed against the order of the Id. Commissioner of Income Tax (Exemption) Chandigarh, [in brevity the 'CIT (E)'] order passed u/s 12AB (1) (b) and section 80G(5) of the Income Tax Act 1961 [in brevity 'the Act'].

2. At the outset, all the appeals are similar in nature and have common factual ground. So, we are taken together, heard together and disposed of together. **ITA No. 239/Asr/2022** is taken as lead case.

3. The assessee has taken the following grounds:

“1. The Ld. CIT (E) erred in rejecting the registration under Section 12 AA of the Income Tax Act in an arbitrary manner.

2. The Ld. CIT (E) erred in not giving a reasonable opportunity of being heard while rejecting the application made under Section 12AA (1)(b)(ii) of the Act.

3. Assessee craves right to add, alter or modify any grounds of appeal before or at the time of hearing of the appeal.”

4. Brief fact of the case is that the assessee is a charitable trust established on 26.03.2018 and engaged in charitable activities as per definition u/s 2(15) of the Act. The assessee applied for provisional registration u/s 12AA and section 80G (5) of the Act. But the assessee was granted provisional registration u/s 12AA of the Act on dated 27.05.2021. The assessee made application for grant of final registration after receiving the provisional registration. But the final registration was duly rejected by the Id. CIT(E) and passed the order accordingly. Being aggrieved assessee filed an appeal before us.

ITA No. 239/Asr/2022

5. The Id. AR vehemently argued and filed written submission which is kept in the record. The ground of appeal of the assessee is that the assessee has not got a reasonable opportunity for submitting the documents before the revenue. In the paper book the assessee filed the trust deed and the reply submitted before the Id. CIT(E) which are enclosed in APB pages 1 to 39. The Id. AR also invited our attention in Income and Expenditure account of the assessee for the period 01/04/2019 to 31/03/2020, annexed in APB pages 41 to 45. The Id. AR placed that the Id. CIT(E) issued the notice on dated 19.09.2022, and hearing was fixed on 21/09/22. Due to lack of time the assessee was unable to submit required documents. Finally the order was passed on 27/09/2022. The Id. AR has grievance

that the Id. CIT(E) rejected the registration and disposed off the application as being deficient in factual evidence and in absence of requisite submission.

5.1. The Id AR respectfully relied on catena of judgment which are reproduce as below: -

Hon'ble High Court of Punjab And Haryanain the case of **Commissioner of Income-tax-I, Ludhianav.SpringDaleEducationalSociety, [2011] 16 taxmann.com 285 (Pun. & Har.)**. The relevant paragraph is extracted as follows:

“Therefore, the object of Section 12AA of the Act, is to examine the genuineness of the objects of the Trust, but not the income of the Trust for charitable or religious purposes. The stage for application of income is yet to arrive i.e. when such Trust or Institution files its return. Therefore, we find that the judgments referred to by the learned counsel for the appellant are not applicable to the facts of the present case arising out of the question of registration of the Trust and not of assessment.”

Hon'ble Bombay High Court in the case of **Premlata Ramakant Fatehpuria v. Pr. CIT [2022] 140 taxmann.com 97/288 Taxman 54** held that.

“it is clear that in response to the show cause notice dated 22/04/2021, the petitioner had on 23/04/2021 sought an opportunity for grant of personal hearing. Despite receipt of this request by the respondent no. 3, the impugned order has been passed after a period of almost two months but without granting any such opportunity. The

impugned order does not indicate the reason for not granting such opportunity despite request for the same having been made within time and received by the respondent no. 3. We find from the facts of the present case that failure to grant such opportunity to the petitioner has definitely caused prejudice to the petitioner. On the ground that the principles of natural justice have been violated, the impugned order of assessment is liable to be set aside.”

6. The ld. DR vehemently argued and relied on the order of the revenue authorities. The paragraph 5 of the order of the ld. CIT (E) is extracted as below:-

“5. In view of the above discussions, the present application of the assessee filed in Form 10AB u/s 12A(1)(ac)(iii) of the Act is disposed of as being deficient in factual evidences in the absence of the requisite submissions and appearances of the assessee at the scheduled hearings. It is pertinent to mention here that it is mandated by the provisions of Section 12A(1)(ac)(iii) of the Act that where the trust or institution has been provisionally registered u/s 12AB it has to make an application for registration u/s 12AB within six months of commencement of activities. In the absence of required submission from the applicant it is not possible to ascertain the objects and activities carried out by the applicant. Accordingly, the application filed by the applicant for registration u/s 12AB of the Act is hereby rejected, which rejection and consequent lack of registration will apply from this F.Y. 2022-23 onwards and also supersede any registration granted u/s 12AB or 12AA of the Act by any authority at any earlier time.”

7. We heard the rival submission and relied on the documents available in the record. The assessee submitted the documents related to trust deed and other financial documents and also replied the 1st notice before the Id. CIT(E). Finally, the date was fixed on 21.09.2022 related notice dated 19.09.2022. The time was allowed for 2 days for compliance. Whereas the order was passed on 27/09/2022. The assessee claimed that no sufficient opportunity was allowed for hearing. So, the principle of natural justice is violated. We respectfully relied on the order of **Premlata Ramakant Fatehpuria**(supra). The application of assessee was rejected mere lack of documents. Further the Id. AR claimed that the documents required U/s 12AB of the Act was duly submitted before the Id. CIT(E) on dated 09/09/2022 but the Id. CIT(E) had not taken any cognizance of this document. The Id. CIT(E) is only restricted to the main object and activity of the assessee-trust, **Spring Dale Educational Society**(supra). The revenue was totally speechless about the main object and activity related to main object in the order. In our considered view we remit back the matter to the Id. CIT(E) for further adjudication *de novo*. Needless to say, the assessee should get a reasonable opportunity of hearing in setting aside proceeding.

Accordingly, the appeal of the assessee in **ITA No. 239/Asr/2022**, Ground Nos 1 & 2 are allowed for statistical purposes & Ground No-3 is general in nature.

8. In the result, the appeals of assessee in ITA No.239/Asr/2022 is allowed for statistical purposes. The bench has noticed that the issue raised by the assessee in the above appeals are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. 239/Asr/2022 shall apply *mutatis mutandis* in ITA Nos.240/Asr/2022 to 252/Asr/2022 and follows accordingly.

9. In the result, the appeals of the assessee bearing ITA Nos. 239/Asr/2022 to 252/Asr/2022 are allowed for statistical purposes.

Order pronounced in the open court on 07.07.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order