

**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.78 &79/Asr/2023  
Assessment Years: N/A**

Sh. Har Har Mahadev Sewa Mandal, Shop No.299, Grain Market, Shiv Mandir, Jawaharke Road, Mansa. [PAN:-AACTS6366H] <b>(Appellant)</b>	Vs.	CIT (Exemptions) Chandigarh.  <b>(Respondent)</b>
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**I.T.A. Nos. 80&81/Asr/2023  
Assessment Years: N/A**

Sh. Gaushala Bhawan, Charitable Trust, Water Works Road, Mansa. [PAN:AAATS4896E] <b>(Appellant)</b>	Vs.	CIT (Exemptions) Chandigarh.  <b>(Respondent)</b>
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<b>Appellant by</b>	None
<b>Respondent by</b>	Sh. S. R. Kaushik, CIT. DR

<b>Date of Hearing</b>	26.07.2023
<b>Date of Pronouncement</b>	01.08.2023

**ORDER**

**Per:, Bench:**

A Batch of four appeals of two assessee 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. 78/Asr/2023 is taken as lead case.**

3. The assessee has taken the following grounds:

*1. That on the facts and in the circumstances of the case and in law, the learned CIT(Exemption) has erred in denying the renewal of registration u/s 12A of the Income tax Act, 1961.*

*2. That the assessee had got registration u/s 12A from assessment year 2002-03. So, the renewal of registration should have been allowed but the same was rejected on 16.01.2023.*

*3. That on the facts and in the circumstances of the case and in law, the learned CIT (Exemption) has erred in giving a finding that the trust is not responding to the notices issued as*

*no notice was received by the assessee on mail which is clear from the screen shot of portal.*

4. *That on the facts and in the circumstances of the case and in law, the learned CIT(Exemption) has erred in rejecting the application without checking its online record.*

5. *That on the facts and in the circumstances of the case and in law, the learned CIT(Exemption) has erred in relying on the various judgments while rejecting the registration u/s 12A of the Act which are not relevant to the facts of the case.*

6. *That on the facts and in the circumstances of the case and in law, the learned CIT(Exemption) was only required to see if there is any change in the objects which were charitable for the last 20 years or so and whether the trust is genuine and nothing more.*

7. *That no reasonable opportunity was given to the assessee to meet the case. So, it is against natural law and justice. So, the order of rejection is liable to be quashed.*

8. *That any other relief may kindly be granted to the assessee to whom it is foundentitled at the time of hearing of appeal.”*

4. Brief facts as culled out from the records are that the assessee is a charitable trust running more than 20 years 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. 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 *ex parte* order accordingly. Being aggrieved assessee filed an appeal before us.

5. When the appeal was called for hearing, none was present. On perusal of record we find that the Id. Counsel for the assessee filed an adjournment petition before the bench. The Id. AR mentioned that he is busy in filing the income tax return. The reason of adjournment is not acceptable before the bench. We rejected the letter of adjournment and proceed to dispose of the appeal in *exparte qua* for assessee after hearing the Id. DR.

6. The Id. DR vehemently argued and relied on the order of the revenue authorities. The Id. DR invited our attention in relevant paragraphs 3 to 4.1.1 of the order of Id. CIT(E) which are reproduced as below:

*“3. On the stipulated date neither any submission was made nor was any request for adjournment or other communication received from the applicant through any channel. Another letter granting*

*necessary opportunity was issued to the applicant on 13.12.2022 and the matter was fixed for reply by 21.12.2022. On this date likewise, neither any online/offline reply was submitted nor was any request for adjournment or other communication received from the applicant. In the interests of natural justice, final opportunity was then accorded to the applicant on 28.12.2022 and the matter was fixed for 04.01.2023. However once again, no reply has been furnished in the case nor any communication received from the applicant through any channel even till the date of passing of this order. Given the non-compliances on the aforesaid occasions afforded to the applicant, it becomes evident that the applicant is not interested in pursuing the matter. In the absence of submissions regarding the activities, it is difficult to verify both the nature of objects & genuineness of activities of the applicant. It can safely be concluded that the queries raised could not be answered satisfactorily by the applicant.*

*4.1 As observed by the Apex Court in many cases, the law assists those who are vigilant and not those who sleep over their rights as found in the Maxim “Vigilantibus Non Dormientibus Jura Subveniunt”. Merely because the assessee is not vigilant, it cannot follow that the assessee is bestowed with a right to the delay the proceedings. An assessee cannot sleep over its right ignoring the statute of provisions and without giving sufficient and reasonable explanation for the delay, except its application for registration u/s*

*12AA of the Act to be condoned. The above findings are fortified by placing reliance on following judicial pronouncements: -*

*4.1.1 The Hon'ble ITAT Delhi (ITR No.2006/Del/2011 dt. 19.12.2001) in the case of Whirlpool of India Ltd. Vs. DCIT had dismissed appeal for non-attendance at hearings, inferring that assessee was not interested in prosecuting of appeal. Thereafter in another decision in the case of Chadha Finlease Ltd. Vs. ACIT (ITA No.3013/Del/2011 date of order 20.12.2011) the Hon'ble ITAT had dismissed the appeal for non-attendance at hearings.”*

7. We heard the submission of the ld. DR, relied on the documents available in the record and considered the order of the revenue authority. The assessee claimed that no notice was served for fixation of hearing. The ld. DR was unable to bring any evidence that the notice was duly served to the assessee for hearing. The assessee agitated that no sufficient opportunity was allowed for hearing.

7.1. The service of a valid notice is a condition precedent to the assumption of jurisdiction by the ld. CIT(E). The existence of a valid notice is, therefore, a jurisdictional fact. The question, therefore, is not to be looked at from the perspective that the decision to issue notice was by an authority competent in that behalf under the Act and, therefore, submitting to his jurisdiction without objection, the inference of waiver arises. The question being one of jurisdiction, to

be more specific the condition precedent to the assumption of jurisdiction what has to be seen is that the person that purported to exercise the jurisdiction vested in him had in fact exercised that jurisdiction with issue of notice and service of notice. The said test has not been fully completed. We should not turn a blind eye about the service of notice. Both the Id. CIT(E) and Id. DR are remained quite in this issue. But in exercise of jurisdiction service is one of the components for department which is not transparent here.

7.2. Considering the fact, the principle of natural justice is violated during hearing proceeding. Since the matter is restored to the file of Id. CIT(E) for meritorious adjudication by passing a speaking order. We are not expressing any views on the merits of the case so as to limit the set aside proceeding before the Id. CIT(E). The observations herein made by us in remanding the matter back to the file of Id. CIT(E) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defence/explanation of the assessee. Accordingly, we set aside the impugned order of the Id. CIT(E) and restore the matter back to the file of the Id. CIT(E) to decide afresh after affording reasonable opportunity of being heard to the assessee and the assessee is directed to be diligent in the set aside proceedings. Accordingly, the appeal of the assessee in **ITA No. 78/Asr/2023** is allowed for statistical purposes.

8. In the result, the appeal of assessee in **ITA No.78/Asr/2023** is allowed for statistical purposes. The bench has noticed that the issue raised by the assessee in the above appeal is 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. 78/Asr/2023** shall apply *mutatis mutandis* in **ITA Nos.79/Asr/2023 to 81/Asr/2023** and follows accordingly.

9. In the result, the appeals of the assessee bearing **ITA Nos. 78/Asr/2023 to 81/Asr/2023** are allowed for statistical purposes.

**Order pronounced in the open court on 01.08.2023**

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