

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1579 & 1580/Mum/2023
(A.Y. 2022-23)**

Shree Modasa Ekda Visha Khadayata Kovadia Mandal, B-02, Ground Floor, Govind Govardhan CHS, Popat Niwas Compound, Mathuradas Road, Kandivali West, Mumbai - 400067	Vs.	CIT (Exemption) Room No. 601, 6 th Floor, MTNL Telephone Exchange, Cumballa Hill, Peddar Road, Tardeo Mumbai - 400026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAITS3618L		
Appellant	..	Respondent

Appellant by :	Anushree Gupta
Respondent by :	Riddhi Mishra

Date of Hearing	17.07.2023
Date of Pronouncement	24.07.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The appeal vide ITA No.1579/Mum/2023 is directed against the order passed by the CIT(Exemption) u/s 12AB(1(b) of the Act 1961. The Appeal vide ITA No. 1580/Mum/2023 is directed against the order of Id. CIT(Exemption) passed under clause (ii) of second proviso to Sec. 80G(5) of the Act. Since both these appeals are based on identical facts and similar issue, therefore, for the sake convenience both these appeals are adjudicated together by taking ITA No.1579/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeal of the assessee.

ITA No. 1579/Mum/2023

- “1. On the facts and circumstances of the case and in the law, the order passed by the Learned Commissioner of Income-Tax, Exemptions, [Ld CIT(Exemptions)]. Mumbai under section 12AB(1)(b) in Form No. 10AD dated 10.03.2023 [DIN. ITBA/EXM/F/EXM45/2022-23/1050599163(1)] is bad in law and violative of principles of natural justice.
2. On the facts and circumstances of the case and in the law, the order passed by the Ld. CIT(Exemptions), Mumbai under section 12AB(1)(b) in Form No. 10AD dated 10 03 2023 [DIN ITBA/EXM/F/EXM45/2022-23/1050599163(1)] be restored to the Ld. CIT(Exemptions), Mumbai on account of the following:
 - (i) The notices issued by the Ld. CIT(Exemptions), Mumbai were not sent on the registered email addresses as mentioned on the e-filing portal i.e. niteshhshahandoo@gmail.com and kovadia mumbai@gmail.com. rather were sent on the email addresses of one of the trustee (Mr Bhalavat Mukesh, bhalavat mukesh@yahoo.in) and the erstwhile consultant (Mr. Shardul Shah, shardulshah@secmark.in). The trustee is a senior citizen, has health challenges and is not a technocrat The erstwhile consultant has already closed his practice since last few years and the email address has become dormant. Further, the notices were also not received on the postal address of the appellant. Hence, the notices remained non-compliant.
 - (ii) The e-filing portal of the income-tax department does not provide any functionality to re-apply for registration under section 12A of the Act against the rejected application, hence, the appellant is before Your Honours.
 - (iii) The present consultant of the appellant could not attend to the notices issued by the Ld. CIT(Exemptions), Mumbai due to the wedding of his daughter during that period, and therefore the appellant humbly requests Your Honours to grant us an opportunity of being heard.
3. On the facts and circumstances of the case and in the law, the appellant humbly requests Your Honours to stay the order passed by the Ld CIT(Exemptions), Mumbai till the time the appeal is decided by Your Honours and consider the assessee as deemed registered under section 12A of the Act.
4. The Appellant craves leave to add, to amend, to alter, to withdraw, to modify and/or to substitute any or all the foregoing grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”

2. Fact in brief is that assessee has filed an application in form 10AB for registration u/s 12AB of the Act. The ld. CIT(Exemption) on verification of the application filed in Form 10AB found that application was not complete and all the document required to be accompanied with

the application were not furnished. Therefore, the ld. CIT(Exemption) has issued notices to the assessee on 27.01.2023 and 22.02.2023 to furnish the complete set of documents as mentioned in Rule 17A(2) of the I.T Rule. However, the assessee has not made any compliance to the notices issued by the ld. CIT(exemption) therefore, the ld. CIT(Exemption) has rejected the application of the assessee seeking registration u/s 12AB of the Act.

3. During the course of appellate proceedings before us the ld. Counsel submitted that notices issued by the ld. CIT(Exemption) were not sent on the registered email address as mentioned on the e-filing portal by the assessee trust. However, the notices were sent to the e-mail of the erstwhile consultant as a result the due compliance could not be made before the ld. CIT(Exemption).

On the other hand, the ld. D.R. supported the order lower authorities.

4. Heard both the sides and perused the material on record. The assessee has filed an application in Form 10AB seeking registration u/s 12AB of the Act, however, the ld. CIT(Exemption) has rejected the application seeking registration on the ground that assessee has not made any compliance to the notices issued by the ld. CIT(Exemption) requesting the assessee to furnish complete set of documents mentioned in Rule 17A(2). On the perusal of the material on record, we find that assessee has registered e-mail address on the e-filing portal as niteshhshahandco@gmail.com and kovadia mumbai@gmail.com. However, the notices requiring the assessee to furnish the details were sent on the e-mail address of (Mr. Bhalavat Mukesh, bhalavat_mukesh@yahoo.in) and on the email of erstwhile consultant (Mr. Shardul Shah, shardulshah@secmark.in). As a result, the necessary compliance could not be made before the ld. CIT(Exemption) from the

side of the assessee. After perusal of the material on record, we find that there is a reasonable cause for not making compliance before the Id. CIT(exemption) as discussed supra in this order, therefore, in the interest of justice we restore this case to the file of the Id. CIT(Exemption) for deciding afresh on merit after affording opportunity to the assessee.

ITA No. 1580/Mum/2023

5. The assessee filed an application in Form 10AB seeking approval under section 80G of the Act. The Id. CIT(Exemption) issued notices to the assessee requiring to furnish the complete set of documents mentioned in Rule 11AA(2). On the similar reason as discussed in ITA No. 1579/Mum/2023 supra the Id. CIT(Exemption) has rejected the application seeking approval u/s 80G of the Act for not making any compliance to the notices issued. The assessee could not make compliance for the same reason as discussed above while adjudicating the appeal of the assessee vide ITA No.1580/Mum/2023. Therefore, applying the findings of the ITA No.1580/Mum/2023 this appeal of the assessee is also allowed for statistical purposes.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 24.07.2023

Sd/-

(Amit Shukla)
Judicial Member

Place: Mumbai
Date 24.07.2023
Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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 DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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