

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

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

**ITA Nos.1059 & 1060/Mum/2023
(A.Y. 2022-23)**

Rotary Seva Trust Kalyan 604/B Vrindavan Paradise, Near Mumbai University Kalyan Sub Centre, Kalyan – West Maharashtra – 421301	Vs.	CIT Exemption Room No. 322, 3 rd Floor, Income Tax Office, PMT Building, Shankar Seth Road, Pune Maharashtra – 411037
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAETR4794G		
Appellant	..	Respondent

Appellant by :	Mahesh K. Madkholkar
Respondent by :	Neena Jeph

Date of Hearing	27.07.2023
Date of Pronouncement	31.07.2023

आदेश / O R D E R

Per Bench:

These 2 appeals filed by the assessee are directed against the order of ld. CIT (Exemption) Pune, u/s 12AB (1)(b)(ii)(B) and u/s 12AB r.w.s 80G(5)(iii) of the Act. Since, common issue on identical facts are involved in these 2 appeals, therefore, for the sake convenience these 2 appeals are adjudicated together by taking ITA No. 1059/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeal. The assessee raised the following grounds before us:

- “1. Order passed by the Learned Commissioner of Income-Tax, Exemption, Pune U/s 12AB rws80G(S)(ii)dated 28/09/2022 (ITBA/EXM/F/EXM45/2022-23/1046055267(1)) is Bad in law as:

(a) it seems that the Judicial Mind has not been applied

*(b) passed without giving reasonable opportunity of being heard.
(c) Rejected only for the want of Note on the Activities of the Trust or Rebutting the same for its compliance and therefore the provisional registration granted U/S80G(5) vide URN:AAETR4794GF20229 dated 08/02/2022, may please be restored.*

2. *The appellant craves to leave, add, alter, amend and/or delete any of the above referred grounds of appeal at the time of the hearing of the appeal."*

2. The assessee trust as 'Rotary Seva Trust Kalyan' is registered under Mumbai Public Trust Act 1950 vide registration no. E-12439/Thane dated 20.10.2021. There was a delay of 124 days in filing the appeal by the assessee trust. During the course of appellate proceedings before us, the assessee has filed application for condonation of delay dated 29.03.2023 on the ground that assessee was not well versed with statutory compliance and was not having competent staff to look after technical issue. In its petition the assessee has also placed reliance on the following judicial pronouncements:

1. *Collector Land Acquisition Vs MST Katiji & Others (1987) 167 ITR 471 (SC)*
2. *Shri Y P Trivedi Vs The JCIT ITA No. 5994/Mum/2010-Hon Members, G Bench, ITAT, Mumbai*
3. *The Honorable Jurisdictional high court, in the recent decision in case of Vijay Vishin Meghani Vs DCIT 308 ITR 250 (Bom)."*

3. Heard both the sides and after looking to the nature of activity of the trust and unprofessional organisational set up of the trust we consider that there appear to be a bonafide cause for delay in filing the appeal as this trust was recently created vide registration no. E-12439/Thane dated 20.10.2021. Therefore, we condone the delay in filing these appeal.

4. The assessee has filed application in Form 10AB u/s 12A(i)(ac) (iii) and under clause (iii) of first proviso to sub-section (5) of Sec. 80G of the Income Tax Act, 1961 on 30.03.2022 and 31.03.2022 respectively. The applications filed by the assessee were taken by the Id.

CIT(Exemption) Pune, for verification and issued notices to the assessee on 02.04.2022 and 16.09.2022 for uploading certain informations. The ld. CIT(A) stated that assessee has not made compliance with the notices, therefore, both the applications filed by the assessee were rejected.

5. During the course of appellate proceedings before us the ld. Counsel submitted that while filing Form 10AB basic document were submitted which included trust deed, copy of registration certificate under Mumbai Public Trust Act. Ld. Counsel further submitted that the annual account for the year ended 31.03.2022 could not be uploaded because accounts were in the process of finalisation. The ld. Counsel further submitted that these facts were clearly mentioned in the assessee's e-submission made on 08.08.2022. The ld. Counsel submitted that assessee was not given sufficient time to make compliance as vide notice dated 16.09.2022 the assessee was asked to make compliance by 22.09.2022.

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

6. Heard both the sides and perused the material on record. The assessee has filed applications in Form 10AB u/s 12A(i)(ac) (iii) and under clause (iii) of first proviso to sub-section (5) of Sec. 80G of the Income Tax Act, 1961 on 30.03.2022 and 31.03.2022 respectively. The ld. CIT(Exemption) has rejected both the application filed by the assessee for not making compliance to the notices asking the assessee to upload certain information. The ld. Counsel submitted that assessee could not make compliance with the notices issued on 16.09.2022 for want of sufficient time as the assessee trust was recently created and it was not having competent technical staff to handle the issue of making compliance on the ITBA Portal. On perusal of the submission of the ld.

Counsel we consider there is a bonafide reason for not making compliance to the notice because of non-availability of competent staff since the trust was newly registered on 20.10.2021, therefore, in the interest of justice we restore both the appeals to the file of the Id. CIT(Exemption) for deciding de novo on merit after affording adequate opportunity to the assessee.

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

Order pronounced in the open court on 31.07.2023

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 31.07.2023

Rohit: PS

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.