



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "ए" न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'A' BENCH, PUNE  
BEFORE HON'BLE SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No. 1112 & 1111/PUN/2023

Association of Otolaryngologists Ahmednagar

Plot No. 08, Gajanan Hospital,

Delhi-Gate Satbhai Mala, Ahmednagar-414001

PAN:AAHTA1373K

..... अपीलार्थी / Appellant

बनाम / V/s.

Commissioner of Income Tax

Exemption, Pune.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr. Prasad Bhandari ['Ld. AR']

Revenue by : Mr. Prakash Mane ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 22/11/2023

घोषणा की तारीख / Date of Pronouncement : 22/11/2023

आदेश / ORDER

**PER G. D. PADMAHSHALI, AM;**

The present twin appeals of the assessee are assailed against separate orders of Ld. Commissioner of Income Tax (Exemption), Pune ['CIT(E)'] dt. 31/03/2023 passed u/s 12AB(4) & 80G(5) of the Income-tax Act, 1961 ['the Act'].

2. After vouching sufficiency of reasons beyond 143 days delay in instituting these twin appeals, we deem it fit to condone the delay in the light of 'Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others' reported at 167 ITR 5 (SC) and proceeded for adjudicate the issues on merit.



3. Briefly stated facts borne out of these case records are; the appellant assessee was accorded a provisional registration u/s 12A & 80G of the Act, pursuant to which it has e-filed its application in Form No 10AB on 28/09/2022 seeking grant of regular registration u/s 12A(1)(ac)(iii) under the category of charitable trust / institution and further Form 10AB on 30/09/2022 for recognition u/s 80G(iii) of the Act. The Ld. CIT(E) in-order to verify objects, activities and to ascertain the fulfilment of conditions for granting registration u/s 12A and recognition u/s 80G of the Act, was put the appellant to two notices from time to time, which remained effectively un-replied, un-attended or non-complied by the appellant assessee.

4. In so far as the application for 12A is concerned, for the want of evidences in support of activities purported to be engaged by the assessee, without putting the assessee to show-case notice, the Ld. CIT(E) has rejected the said application and cancelled the provisional registration granted to it u/s 12AB r.w.s. 12A(1)(ac)(iii) of the Act. Consequent to the aforestated denial to grant regular registration u/s 12AB of the Act, as a corollary the application of the appellant seeking regular registration for 80G is also rejected by the Ld. CIT(E) by an impugned order of even date.

5. Aggrieved by the aforestated rejections and cancellation of provisional registration granted to its, the appellant assessee has set-up these twin appeals against respective impugned orders alleging the action of Ld. CIT(E) as violative of principle of *audi alteram partem*.



6. We have heard both rival parties; and subject to the provisions of rule 18 of ITAT Rules, perused material placed on record which suggests that, the preliminary submission of the appellant did failed to give plausible response to various queries raised by the registering authority and also failed to substantiate its activities with cogent evidences so as enable him to draw a reasonable conclusion about the genuineness of the activities of the appellant. As a consequence, the Ld. CIT(E) rejected these applications in violation of principle of natural justice as commanded by sub-clause (B) of section 12AB(1)(b)(ii) and by clause (ii)(b)(B) of 2<sup>nd</sup> proviso to 80G(5) of the Act r.w. proviso to rule 11AA(5) of the Income Tax Rules, 1962.

7. It is a trite law as laid down by Hon'ble Supreme Court in case '*Chandra Kishore Jha Vs Mahavir Prasad*' reported in 8 SCC 266 (SC), that '***if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner***'. Applying this ratio, in our considered view, the Ld. CIT(E)'s failure to confront his negative satisfaction or his dissatisfaction over the application to the appellant before he could reject its twin applications, were against the provisions of statute as the action of rejection suffered from sufficiency of reasonable opportunity to the appellant to refute negative observation or dissatisfaction.

8. It shall be worthy to underlined that the opportunity of being heard should be real, reasonable and effective and same should not be empty formalities, it should not be a paper opportunity, the doctrine of natural justice is a facet of



fair play in action and no person shall be saddled with a liability without being heard. In the light of decision of High court of Patna in ‘*St. Paul’s Anglo Indian Education Trust (2003) 262 ITR 377 (Pat)*’ we hold that, rejection of application is unjustified as the assessee deprived of reasonable opportunity and time to produce all relevant documents to substantiate its claim for registration u/s 12AB and recognition of 80G.

9. In the light of aforesaid discussion, without commenting on the merits of these cases, we deem it fit to remand these matters back to the file of Ld. CIT(E) to adjudicate the issue in accordance with law after according *two effective opportunities* to the assessee to refute negative satisfaction recorded against its twin application.

**10. Resultantly, both these appeals of the appellant assessee are ALLOWED FOR STATISTICAL PURPOSE.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday, 22<sup>nd</sup> day of November, 2023.

-S/d-

**S. S. VISWANETHRA RAVI**  
**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 22nd day of November, 2023.

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

1. अपीलार्थी / The Appellant.  
4. The Pr. CIT(E), Pune

2. प्रत्यर्थी / The Respondent.  
5. DR, ITAT, “A” Bench, Pune

3. The Pr. CIT, Pune  
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकरअपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.