

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1109/Kol/2023

&

I.T.A. No. 1110/Kol/2023

Devottar Jai Chandi Thakurani Trust Chandi Mandir Chanditala Main Road Kolkata - 700053 [PAN: AADTD9609H]	Vs	CIT, Exemption, Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Agrawal, Advocate
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 19/12/2023  
घोषणा की तारीख /Date of Pronouncement: 19/12/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The above captioned appeals are directed at the instance of the assessee against the separate orders of the Commissioner of Income Tax, Exemption, Kolkata (hereinafter the "ld. CIT(E)") rejecting the applications for registration u/s 12A(1)(ac)(iii) and 80G(5)(iii) of the Act.

2. At the outset, the ld. Counsel for the assessee submitted that the ld. CIT(E) has passed *ex-parte* orders without affording the assessee reasonable opportunity of being heard, thereby violating the principles of natural justice.

The ld. D/R, though not leaving his grounds could not controvert this factual position.

3. We have heard rival contentions and perused the material available on record. We find that the ld. CIT(E) has passed *ex-parte*

orders while rejecting the applications for registration u/s 12A(1)(ac)(iii) and 80G(5)(iii) of the Act, due to non-appearance of the assessee on various dates of hearing, without dealing with the merits of the case. The Id. Counsel for the assessee, has placed before us the reasons for non-appearance before the Id. CIT(E) on the dates of hearing, in form of an affidavit dt. 13/12/2023, which is extracted for ready reference:-

*"I, Gopal Rai Agarwal, son of Late Shankar Lai Agarwal, aged 62 years, by religion Hindu, working for the gain at Chandi Mandir, Chanditala Main Road, Kolkata-700053, do hereby solemnly affirm and state as follows -*

1. *That, I am the trustee of Trust, Devottar Jai Chandi Thakurani Trust (hereinafter referred to as assessee). As such, I am competent to swear this affidavit on behalf of the said concern.*
2. *That an application for registration u/s 12A(1)(ac)(iii) as well as also for approval u/s 80G before the Commissioner Of Income Tax (Exemption) was filed*
3. *That the said applications were rejected by the CIT(E) vide order dated 25.08.2023 due to non-compliances of the notices issued by him.*
4. *That I am a patient of diabetic neuropathy with facial paralysis and was suffering from ischemic heart disease during the month of July 2023 and was advised to take rest for 6 months, (copy of the prescription is attached herewith and marked as **Annexure: 'A'**).*
5. *That due to such physical conditions I remained absent from the office and the mail containing the notices could not be accessed nor any compliances could be made. That on or around 1<sup>st</sup> week of October, 2023, after joining the office when I checked the mails, thereupon it was noticed that the said order was passed by the CIT(Exemption), Kolkata.*
6. *That then on or around 10<sup>th</sup> October, 2023 I contacted CA, Sri KK Chhaparia for filing an appeal and then an appeal was accordingly prepared by him and the same was deposited in the office of ITAT on 16.10.2023.*
7. *That because of the above genuine reasons, proper compliances could not be made before the Ld. CIT(Exemption), Kolkata.*
8. *That I give an undertaking that proper compliance shall be made in case the abovementioned case is restored back to the lower authorities by the Hon'ble Tribunal.*

9. *That the facts stated in para 1 to 8 are true to the best of my knowledge and belief and paragraph 9 is an undertaking by me."*

4. On perusing the reasons given in the affidavit, we are convinced that the assessee was prevented by sufficient cause from appearing before the Id. CIT(E). Under these facts and circumstances and in view of the submissions made by both the parties, we deem it fit to restore these appeals to the file of the Id. CIT(E) for fresh adjudication in accordance with law. The Id. CIT(E) shall provide adequate opportunity of hearing to the assessee before passing a speaking order. The assessee shall furnish any relevant documents/evidence, if any, before the Id. CIT(E) in support of its claim.

5. **In the result, appeals of the assessee are allowed for statistical purposes.**

**Order pronounced in the Court on 19<sup>th</sup> December, 2023 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 19/12/2023

*SC S.P.*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**