

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos. 361&362/Ahd/2023
(Assessment Year: N.A.)

Shree Variya Prajapati Samaj Yuva Mitra Mandal Mehsana, Panchvati Society, TB Road, Mehsana-384002	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
[PAN No.ABBTS8754K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri H.V. Doshi, A.R.
Respondent by:	Shri Sudhendu Das, CIT D.R.
Date of Hearing	08.01.2024
Date of Pronouncement	17.01.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

These appeals have been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Exemption), (in short “Ld. CIT(E)”), Ahmedabad in DIN & Notice No. ITBA/EXM/F/EXM45/2022-23/1050807086(1) & 1050815871(1) vide order dated 15.03.2023.

2. The assessee has raised the following grounds of appeal:-

ITA No. 361/Ahd/2023

“1. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 12AB of the Act.

2. On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has not

provided reasonable opportunity of being heard as provided under Second Proviso to Section 12AB (1)(b)(ii)(B) of the Act.

3. *On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has hurriedly rejected the claim of assessee by giving reason of applicability of section 13(1)(b) and not even given opportunity by giving show cause notice by pointing out probable reason of the rejection of 12AB application.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

ITA No. 362/Ahd/2023

“1. *On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 80G(5) of the Act.*

2. *On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has erred in rejecting application for registration u/s 80G(5) without considering the fact that the registration u/s. 12A of the Act has already been provisionally approved by the authority vide order dated 31.12.2021.*

3. *On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has not provided reasonable opportunity of being heard as provided under Second Proviso to Section 80G(ii)(b)(B) of the Act.*

4. *On the facts and in circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Exemption) has hurriedly rejected the claim of assessee by giving reason that trust is not registered u/s. 12A(1)(ac)(iii) of the act without considering the facts that order for rejecting of application u/s 12AB is appealable before ITAT.*

5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. These are appeals filed by the assessee against the order passed by CIT (Exemptions) on account of rejection of grant of application under Section 12AA/80G of the Act.

4. Before us, the counsel for the assessee submitted that firstly, in the instant case notably, the CIT(Exemptions) did not grant adequate opportunity of hearing to the assessee. The counsel for the assessee submitted that the CIT(Exemptions) issued only two notices of hearing dated 08.12.2022 and 29.12.2022, both within a period of one month only, and rejected the application filed by the assessee, without giving adequate opportunity of hearing to the assessee. Further, the counsel for the assessee drew our attention to page 6 of the order passed by CIT(Exemptions) and submitted that the reason for rejection of application by CIT(Exemptions) was that the assessee's activities were restricted for benefit to a particular community only, and accordingly, in view of the provisions of Section 13(1)(d) of the Act, the assessee was not eligible for grant of deduction under Section 12AA/ 80G of the Act. It was submitted that the CIT(Exemptions) has rejected the application of the assessee on an incorrect assumption of facts, and accordingly, it was prayed that the matter may be restored to the file of CIT(Exemptions) for fresh examination, after giving due opportunity of hearing to the assessee to present its case on merits.

5. On going to the facts of the assessee's case and the basis of order passed by CIT(Exemptions), we are of the considered view that in the interest of justice, the matter may be restored to the file of CIT(Exemptions) for de novo hearing after giving due opportunity of assessee to present its case on merits. In the event of failure on part of the assessee to cause appearance before CIT(Exemptions), promptly and

- 4 -

diligently, CIT(Exemptions) would be at liberty to pass order on the basis of material available on record, in accordance with law.

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

This Order pronounced in Open Court on	17/01/2024
---	-------------------

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 17/01/2024

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad