

आयकर अपीलिय अधिकरण, “बी” बेंच, अहमदाबाद न्यायपीठ, अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“ B ” BENCH, AHMEDABAD

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

1. ITA No.816/Ahd/2023
2. ITA No.817/Ahd/2023
3. Assessment Year: NA

Rajyash Foundation 305, Mauryansh Elanza Shyamal Cross Road Azad Society SO Ahmedabad City Ahmedabad - 380 015 Gujarat	v.	The CIT (Exemption) Ahmedabad
PAN: AAETR 5602 H		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Shri Hasmukh V. Doshi & Shri Mehal H. Doshi, CAs
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 18/01/2024  
घोषणा की तारीख /Date of Pronouncement: 18/01/2024

**आदेश/ORDER**

**Per Coram:**

Both the appeals filed by the assessee are directed against the separate orders dated 21/08/2023 & 23/08/2023 respectively w.r.t Appeal in ITA Nos. 816 & 817/Ahd/2023 passed by Ld. Commissioner of Income-tax (Exemption), Ahmedabad[“CIT(E)” in short] for u/s.12AB and 80G respectively of the Income-tax Act,1961(hereinafter called “the Act”) ( Order in DIN & Notice No. ITBA/EXM/F/ EXM45/2023-24/1055269639(1) dated 21.08.2023 rejecting application filed by the assessee for registration of the

trust u/s 12AB of the 1961 Act & order in DIN & Notice No. ITBA/EXM/F/EXM45/2023-24/ 1055341014(1) dated 23.08.2023 rejecting application filed by the assessee for approval under clause (iii) of first proviso to sub-section (5) of Section 80G of the Income-tax Act, 1961)

2. First, we take up the appeal of the assessee in **ITA No.816/Ahd/2023**, which is filed by the assessee against rejection of application filed by the assessee in Form No. 10AB u/s 12A(1)(ac)(iii) of the 1961 Act. .

2.1. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad Benches, Ahmedabad (hereinafter called "the Tribunal):

*"1. Learned CIT(Exemption) erred in law and facts by making the order u/s 12AB(b)(ii)(B) by rejecting the application filed in form 10AB for registration u/s 12(1)(ac)(iii) of the Act without affording a reasonable opportunity of being heard.*

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

3. The brief facts of the case are that the assessee filed its application for registration of the Trust u/s.12AB of the 1961 Act, on 13/02/2023. The Ld.CIT(E) issued notices to the assessee dated 11/07/2023 to furnish certain details and documents , but the assessee did not file any response thereto. Thereafter, another notice was issued on 04/08/2023 , which was also not complied with the assessee. The Ld.CIT(E) rejected the application of the assessee , by observing as under:-

*"10. As discussed above, the applicant/assessee has failed to file documentary evidences to enable me to satisfy about:*

*i. Genuineness of the activities of the trust or institution.*

*ii. That the activities of trust or institution are in consonance with the objects of the trust or institution.*

*iii. That other laws material for the purpose of achieving objects are complied with.*

*Therefore, the present application filed in Form No.10AB u/s 12A(1)(ac)(iii) of the Act is rejected and your provisional registration is also cancelled.*

*Further, the applicant should take a note of his liability to tax in accordance with provisions of section 115TD to 115TF of IT Act 1961. In case applicant is filing appeal against this order u/s. 253 of IT Act 1961, proof of filing of appeal should be provided to AO to get benefit of time limit provided u/s. 115TD(5) of IT Act 1961."*

3.1. The assessee has now filed its first appeal before the ITAT, Ahmedabad Bench, Ahmedabad. The ld.counsel for the assessee submitted, at the outset, that notices were not viewed by the assessee in ITBA Portal of the Department. The ld. Counsel submitted that no notices were received by the assessee vide e-mails from the department or by any other mode. It was submitted that all the primary records were furnished before Ld.CIT(E). It was submitted that the assessee could not appear before Ld.CIT(E) due to non-receipt of the notices and only two opportunities were given by the Ld.CIT(E). Thus, it was submitted that no reasonable and proper opportunities were given by Ld.CIT(E). It was submitted that ld. CIT(E) rejected the application on 21.08.2023 while first notice was issued on 11.07.2023 i.e. within short period of time, and it was prayed that one more opportunity be granted to the assessee , and assessee will duly comply with the notices and file all the details as may be required by Ld.CIT(E) for

deciding the application afresh filed by the assessee for registration u/s 12AB of the 1961 Act . Thus, it was prayed that the matter may be restored back to the file of Id.CIT(E) for fresh adjudication.

4. The CIT-DR submitted that two notices were issued by Id. CIT(E) on 11.07.2023 and 04.08.2023, but the assessee did not file details before Id. CIT(E). The Id. CIT(E) , however, fairly submitted that department has no objection if the matter is restored back to the file of Id.CIT(E) for fresh adjudication.

5. After considering the entire material available on record as well as submissions made by both the parties, we are of the considered view that, in the instant case, the Ld.CIT(A) has not granted proper and adequate opportunity of being heard to the assessee and principles of natural justice are breached , as the assessee application in Form No. 10AB for grant of registration u/s 12A(1)(ac)(iii) of the 1961 Act was rejected in very short time . Only two notices were issued by Id. CIT(E), firstly on 11.07.2023 and secondly on 04.08.2023, and the application of the assessee stood dismissed within short period of one month or so , on 21.08.2023 ex-parte. The assessee has denied to have received any notice by email or by any other mode, while the notices were there in ITBA portal , the Id. Counsel for the assessee submitted that the assessee did not see the notices , and within the short period of around one month or so from the date of the issuance of first notice , the assessee application in Form No. 10AB for registration u/s 12A(1)(ac)(iii) of the 1961 Act stood dismissed by Id. CIT(E). It is claimed that serious and grave prejudice is caused to the assessee , by rejection of its application for registration u/s 12A(1)(ac)(iii) of the 1961 Act. The assessee

has prayed for giving one more opportunity so that the assessee can make effective representation before Id. CIT(E). The department has also no objection, if the matter is restored back to the file of Id. CIT(E) for considering application of the assessee afresh on merits. Thus, in the interest of justice and fair play and in order to comply with principles of natural justice, we are inclined to restore the matter back to the file of Ld.CIT(A) for fresh deciding afresh application of the assessee in Form No.. 10AB for grant of registration u/s 12A(1)(ac)(iii) of the 1961 Act, on merits in accordance with law, after providing reasonable and proper opportunity of being heard. We have observed that only two notices were issued on 11/07/2023 and 04/08/2023, and the application of the assessee for grant of registration u/s 12A(1)(ac)(iii) stood dismissed on 21.08.2023 around one month or so from the date of issuance of first notice i.e. within short period of time. . The assessee has claimed that the said notices were not received by the assessee and the assessee did not see the ITBA portal where these notices were posted. . Thus, in our considered view, proper and adequate opportunities were not granted to the assessee, and in fairness and in order to comply with principle of natural justice, we are inclined to restore the matter back to the file of Ld.CIT(E) for deciding afresh application in Form No. 10AB for grant of registration u/s 12A(1)(ac)(iii) of the 1961 Act afresh on merits in accordance with law. The assessee is also directed to co-operate with Ld.CIT(E), and comply with the directions of the Ld.CIT(A) by providing necessary details, so that the matter can be adjudicated on merits in accordance with law. Thus, in nutshell, the appeal of the assessee is restored back to the file of Id.CIT(E) for fresh adjudication on merits in accordance with law. We clarify that we have not commented on the merits

of the issue's , and all contentions are kept open. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

6. As a result, the appeal of the assessee in ITA No.816/Ahd/2023 is treated as allowed for statistical purposes.

7. Now, we take up the appeal of the assessee in **ITA No.817/Ahd/2023**, wherein the assessee has raised the following grounds of appeal in memo of appeal filed with the Tribunal:

*"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 not provided reasonable opportunity of being heard as provided under Second Provisionally to Section 80G (ii)(b)(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 erred in rejecting the application u/s. 80G(5) by presuming date of registration as date of commencement of activities.*

*5. Learned CIT(Exemption) erred in law and facts by making the order u/s 80G(5) by rejecting the application filed in form 10AB for approval u/s 80G(5) of the Act by giving reason that no valid order of registration u/s 12A of the IT Act without considering the facts that order of refusal of registration is appealable.*

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

8. The assessee has filed an application for grant of approval under clause (iii) of the first proviso to sub-section (5) of Section 80G of the 1961

Act, before Ld.CIT(E). Since the application of the assessee in Form No. 10AB for grant of registration u/s 12AB was rejected by Id. CIT(E) ( Refer:ITA No.816/Ahd/2023 (supra)) as well the present application was held to be belatedly filed, the Ld.CIT(E) rejected this application for grant of approval u/s 80G(5) ,by holding as under:-

**“Decision**

9. *In the absence of any details filed by the applicant in this case date of commencement is assumed to be date of incorporation/creation/registration i.e 06/01/2022. In view of discussion in Para 3 and Para 4 above, the applicant was required to file application in Form 10AB in this case on or before 30/9/2022 which it has failed to submit. Therefore, the present application in Form No.10AB u/s 80G(5) of the Act has not been filed within the time limit prescribed therein and therefore, the same is liable to be rejected as such as non maintainable.*

10. *No Valid order of Registration u / s 12A(1)(ac)(iii) of the Act.*

*Even otherwise the records reveal that the application of the applicant/assessee filed on 13/02/2023 in Form No. 10AB for the registration u / s 12A(1)(ac)(iii) of the I.T. Act, 1961, was rejected vide order bearing No. ITBA/EXM/ F/EXM 45/2023 - 24/1055269639 (1) dated 21/8/2023 Therefore, the applicant does not have any valid order for registration u/s. 12A(1)(ac)(iii) of the Act in form No.10AD. Under similar circumstances, where the assessee did not have valid registration u/s 12A of the Act, the Hon'ble Gujarat High Court in the case of CIT (Exemptions) vs. Shree Tapeshwar Hanumanji Bajrang Charity Trust, reported in 122 taxmann.com 98 has held that the registration u/s 12A of the Act is a pre-requisite for grant of approval u/s 80G of the Act. In absence of valid registration certificate u/s 12A of the Act, approval u/s 80G could not be granted.*

**Findings**

11. *In view of the above, the present application in Form No.10AB u/s 80G(5) of the Act is rejected and also provisional approval granted in Form*

*No. 10AC, under clause (iv) of first proviso to sub-section (5) of section 80G vide URN: AAETR5602HF20221 is hereby cancelled."*

8.1. In this case also , the first notice was issued by ld. CIT(E) on 12.07.2023 and the application of the assessee stood dismissed on 23.08.2023 i.e. within a short period of time of one month or so. The assessee has claimed that no notice by email was received, and the notices were posted in ITBA portal , but the assessee did not view the notices in ITBA portal. The application stood dismissed by ld. CIT(E) within short period of one month or so. In our view proper and adequate opportunity of being heard was not provided to the assessee, and further in view of our decision in ITA No.816/Ahd/2023 (supra), wherein we have restored the matter back to the file of Ld.CIT(E) for adjudication afresh wrt application of the assessee for grant of registration u/s 12A(1)(ac)(iii) of the 1961 Act, this appeal in ITA No.817/Ahd/2023 is also restored back to the file of Ld.CIT(E) for fresh adjudication on merits in accordance with law, after affording an proper an reasonable opportunity of being heard. Thus, in all fairness and in order to comply with principle of natural justice , we are inclined to restore the matter back to the file of Ld.CIT(E) for adjudication afresh on merits in accordance with law. The assessee is also directed to co-operate with Ld.CIT(E), and comply with the directions of the Ld.CIT(A) by providing necessary details, so that the matter can be adjudicated on merits in accordance with law. Thus, in nutshell, the appeal of the assessee is restored back to the file of ld.CIT(E) for fresh adjudication on merits in accordance with law. We clarify that we have not commented on the merits of the issue's , and all contentions are kept open. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

9. Thus, this appeal is also treated as allowed for statistical purposes.

10. In the combined result, both the appeals of the assessee in ITA Nos. 816 & 817/Ahd/2023 are treated as allowed for statistical purposes.

**Order pronounced in the Court on 18<sup>th</sup> January, 2024 at Ahmedabad in the presence of both the parties, and reduced to writing and signed on 22 January, 2024.**

**Sd/-  
( SUCHITRA KAMBLE )  
JUDICIAL MEMBER**

**Sd/-  
( RAMIT KOCHAR )  
ACCOUNTANT MEMBER**

Ahmedabad, Dated 22/01/2024

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/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 ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad