



॥ आयकर अपीलीय न्यायाधिकरण, पुणे 'बी' न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'B' BENCH, PUNE  
BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1439/PUN/2023

Sundar Sankar Va Swadhya Mandal,  
22, Lokmanya Nagar, Gangapur Road,  
Nashik- 422002.  
PAN: AAETS1478G

..... अपीलार्थी / Appellant

बनाम / V/s

The Commissioner of Income Tax  
(Exemption), Pune

..... प्रत्यर्थी / Respondent

**द्वारा/ Appearances**

Assessee by : Mrs. Deepa Khare ['Ld. AR']

Revenue by : Mr Ajay Kumar Kesari ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 17/01/2024

घोषणा की तारीख / Date of Pronouncement : 17/01/2024

**आदेश/ ORDER**

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

The present appeal of the assessee impugned DIN & Order No. ITBA/EXM/F/EXM45/2023-24/1058612905(1) dt. 09/12/2023 passed by Ld. CIT(E) u/s 12A(1)(ac)(vi) of the Income Tax Act ['the Act' hereinafter].

2. We have heard the rival contentions of both the parties; subject to provisions of rule 18 of Income Tax Appellate Rules, 1963 ['ITAT Rules' hereinafter] perused material placed on records.



3. We note that; for regular registration, the assessee filed an application to the respondent vide application No. CIT EXEMPTION, PUNE/2023-24/12AA/12040 dt. 11/07/2023 in Form No.10AB under clause (iii) of section 12(1)(ac) of the Act. By the impugned order, said application of the assessee was rejected by the Ld. CIT(E) on the ground that copies of financial statements/building fund details filed were not legible, inasmuch as, images were cut and amounts/figures could not be read. Further case of the Revenue is that the appellant did fail to rectify the discrepancies notified to it by show cause notice [‘SCN’ hereinafter] in terms of clause (B)(ii)(b) of sub-section (1) of section 12AB of the Act r.w.r. 17K(8) of the Income Tax Rules, 1962.

4. Aggrieved by the impugned order, on the ground of violation of principle of natural justice the assessee brought up this case challenging the cancellation of its provisional registration and denial to grant it a regular registration as an institution / fund u/s 12A(1)(ac)(iii) of the Act.

5. The matter of fact as rightly solidified by the Ld. DR from para 4 of the impugned order placed at page 1 thereof that, while rejecting the application, the appellant was duly notified with discrepancies & negative observations and called upon to rectify & refute respectively. The appellant’ inaction solitarily in these matters triggered the denial of registration which cannot be faulted with. Countenanced therewith, we prima-facie see no reasons to interfere with Ld. CIT(E)’s action to cancel the provisional registration and to reject the application on the foundation of his categorical findings.



6. However, we note that, by SCN dt. 23/11/2023 the appellant was called upon to rectify the discrepancies and negate the findings which allowed the appellant only seven days for its compliance. Further from page 1-2 of paper book filed by the appellant, we note that the appellant had forwarded a request for adjournment on very SCN expiring day seeking thereby an additional time to comply, which however lost sight of the respondent. This period of seven days allowed to appellant to comply in our considered opinion is not a reasonable period, because the opportunity of being heard should be real, reasonable and effective, the same should not be for namesake, it should not be a mere paper opportunity. This was so held in '*CIT v. Panna Devi Saraogi*' [1970] 78 ITR 728 (Cal.). In '*Smt. Ritu Devi v. CIT*' [2004] 141 Taxman 559 (Mad.), time of just a day was given to the assessee to furnish reply. This was held as denial of opportunity. As also held in '*E. Vittal v. Appropriate Authority*' [1996] 221 ITR 760 (AP), where a decision is based upon a document in a proceeding, copy of the same should be provided to the affected party according reasonable period to negate, otherwise, it would violate the principles of natural justice as the opportunity of being heard should be an effective opportunity and not an empty formality, as the denial of reasonable opportunity renders the action/order void.

7. Although the Act prescribes no reasonable period, what however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. This aspect of reasonable time was recently discussed by this Court in *Madras Aluminium Co Ltd v. Tamil*



Nadu State Electricity Board [8 SCC 240], having referred a three-Judge Bench decision in SEBI v. Bhavesh Pabari [5 SCC 90] stating that the concept is to be applied and judged in each case per its own peculiar facts so has to enable the aggrieved party to comply with the requirement.

8. In the instant case, we hold that, in the absence of reasonable period to the appellant and for sufficient reasons the appellant was prevented from complying the requirement of SCN more precisely in rectifying the notified defects and negating the findings of the respondent. For the reasons without commenting on merits of the case, we deem it fit to remand this matter back to the file of Ld. CIT(E) for granting not more than **ONE** effective opportunity with a period not less than fifteen days from the date of service of notice to the appellant to represent and refute the reasons of rejection and cancellation of its provisional registration.

**2. In result, the appeal is ALLOWED FOR STATISTCIAL PURPOSE.**

U/r 34 of ITAT Rules, the order pronounced in the open court on this Wednesday 17<sup>th</sup> day of January, 2024.

-S/d-

**S. S. GODARA**

**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**

**ACCOUNTANT MEMBER**

पुणे/ PUNE ; दिनांक / Dated : 17<sup>th</sup> day of January, 2024.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

- |                              |                                 |                             |
|------------------------------|---------------------------------|-----------------------------|
| 1.अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. | 3. The PCIT (E),Pune.       |
| 4. The CIT, concerned, Pune. | 5. DR, ITAT, Bench 'B', Pune.   | 6. गार्डफ़ाइल / Guard File. |

*Sujeet*

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