



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



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'B' BENCH, PUNE
BEFORE SHRI PARTHA SARATHI CHOUDHURY, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 1232/PUN/2023

Dwarika Memorial Charitable Trust

A-504, GO Square Aundh,
Hinjewadi Link Rd., Wakad, Pune

PAN: AADTD9742P

..... अपीलार्थी / Appellant

बनाम / V/s.

Commissioner of Income Tax,
Exemption, Pune

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Sharad Vaze ['Ld. AR']

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

सुनवाई की तारीख / Date of conclusive Hearing : 24/01/2024

घोषणा की तारीख / Date of Pronouncement : 19/02/2024

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

By the present appeal the assessee challenged DIN & order No. ITBA/EXM/F/EXM45/2023-24/1056373289(1) dt.21/09/2023 of the Commissioner of Income Tax-Exemption, Pune [for short 'CIT(E)'] passed u/s 80G(5) of the Income-tax Act, 1961 [for short 'the Act']

2. The long and short of the case is that; the appellant assessee vide registration No. F-56292 is registered as a Trust under the provisions of Bombay Public Trust Act, 1950 and vide registration No 776/2021 also registered as Society under the provisions of Society Registration Act, 1890 dt. 29/07/2021. The Respondent accepted the appellant's application for provisional registration u/s 12A & 80G of the Act, and vide his order dt. 23/02/2022 granted the appellant a provisional 12A registration and vide order dt.



21/02/2023 also granted provisional 80G registration. Both these provisional registrations granted were in force and valid upto assessment year 2024-25. In compliance of terms of condition of provisional registrations granted by the responded and applicable provisions of the Act, the appellant assessee on 28/09/2022 had applied for regular registration of 12A and 80G approval. In so far as the 12A registration is concerned the same was duly granted by the respondent vide order dt. 30/03/2023, this is however not in dispute. In so far as the application for regular 80G registration is concerned, the Ld. CIT(E) after pointing defect in the category of application filed by the assessee, has rejected the application by order dt. 12/03/2023, owing to filing of application inadvertently u/c (ii) of first proviso to section 80G(5) of the Act, this is also not in dispute. In the event of such rejection to grant regular 80G(5) approval, the assessee by subsequent application dt. 30/03/2023 made second attempt before Ld. CIT(E) by correcting its earlier mistake and by applying u/c (iii) of first proviso to section 80G(5) of the Act. This second application however rejected by the impugned order on the ground of limitation by the Ld. CIT(E). In view of the Ld. CIT(E), since the appellant was already commenced its activities before the issue of provisional registration hence was under obligation to file correct application seeking regular registration within a period of six months therefrom i.e. on or before 20/09/2022. It is further the case of the Revenue that, said application filed was even beyond extended time limit granted by CBDT Circular 08/2022 dt. 31/02/2022 i.e. on or before 30/09/2022, therefore barred by limitation.

3. Aggrieved assessee brought up the present appeal on as many as five grounds which are inconsonance with rule 8 of ITAT Rules, 1963.



4. Heard rival contentions of both the parties; and subject to the provisions of rule 18 of ITAT-Rules, 1963 perused material placed on record and case laws relied. We note that, all the grounds raised in the appeal solitarily revolve alleging around erroneous action of the respondent Revenue which without touching the merits of the case calls for adjudication on the ground of limitation and violation of principle of natural justice.

5. We observed that, *prima-facie* the first application of the appellant assessee seeking regular registration for 80G(5) was made on 28/09/2022 that is within the period of six month from the date of provisional registration and within the extended time limit granted by CBDT Circular 08/2022. Undisputedly this application was inadvertently filed by the appellant assessee u/c (ii) of first proviso to section 80G(5) of the Act in place of applicable & eligible clause (iii), owing to which the Ld. CIT(E) rejected the said application *in limine* holding the assessee applicant as ineligible for registration u/c (ii) (supra). This rejection however saw the day of light on 12/03/2023. In absence of any mechanism to amend the error in the said application or mechanism to correct the mistake in said application during its pendency before the Ld. CIT(E), it was impossible for the appellant to file a fresh application with applicable clause (iii) to first proviso to section 80G(5) of the Act. We further note that, immediately after the first application is rejected by the Ld. CIT(E) on 12/03/2023, the appellant within a reasonable period therefrom could file its revised application on 30/03/2023 with the applicable clause (iii) (supra). While adjudicating the impugned proceedings, the Ld. CIT(E) however did fail to consider former facts holistically but adjudicated the matter without going into the merits on the ground of limitation *in limine*



6. As brought to our notice by the parties hereto, the CBDT vide its circular 06/2023 dt. 24/05/2023 extended the time limit further upto 30/09/2023 and thus enabled all trusts/Funds an additional time to file Form 10A/10AB in all such cases where original due date within which applications to be filed is already expired. The impugned adjudication however lost sight of this circular as it proceeded on the basis of CBDT Circular 08/2022 (supra). Though delayed filing of revised application was beyond appellant's control, however it was well within the aforesaid extended time period granted by CBDT (supra). Therefore, rejection of appellant's revised application on the ground of limitation in our considered view is without appreciating the facts of the case in its entirety and devoid of subsisting circular (supra), which deserves to be set-aside, *ergo* ordered accordingly. Resultantly, without commenting on merits of the case, we deem it fit to remind the matter back to the file of Ld. CIT(E) with a direction to treat appellant's revised application dt. 30/03/2023 as filed within the time limit prescribed u/c (iii) to first proviso to s/s (5) of section 80G of the Act r.w.c. 06/2023 (supra) and adjudicate the same on merits in accordance with law after according two effective opportunities of hearings to the appellant assessee.

7. In result, the appeal is allowed for statistical purpose in above terms.

U/r 34 of ITAT Rules, the order pronounced in the open court on this Monday 19th day of February, 2024.

-S/d-

PARTHA SARATHI CHOUDHURY
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 19th day of February, 2024.

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

1. अपीलार्थी / The Appellant.
4. The CIT(E), Pune (MH-India)

2. प्रत्यर्थी / The Respondent.
5. DR, ITAT, Pune Bench 'B', Pune

3. The Pr. CIT Concerned.
6. गार्डफ़ाइल / Guard File.

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

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER