

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE DR. B.R.R KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3287/Del/2023
Asstt. Year: NA

Vishwanathan Medical Foundation, Block L, Hauz Khas Enclave, New Delhi-110016. PAN AABAV2555R	Vs.	Commissioner of Income Tax (Exemption), Civic Centre, Minto Road, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Prince Chugh, CA
Department by:	Ms. Sapna Bhatia, CIT(DR)
Date of Hearing:	15.02.2024
Date of pronouncement:	28.02.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 25.09.2023 of the Ld. Commissioner of Income Tax (Exemption), Delhi [**"CIT(E)"**] passed u/s 12AB(1)(b)(ii)(B) of the Income Tax Act, 1961 (**the "Act"**).

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

"1. On the facts and circumstances of the case and in law, the Ld. CIT(Exemption) has erred in rejecting the application for registration under section 12AB of the Income Tax Act 1961.

2. The Ld. CIT(E) has passed the Order of rejection on 25/09/23 stating that the assessee failed to respond to notice dt. 15/09/23. However, the assessee filed reply to the said notice on 23/09/23 vide acknowledgement no. 292794531230923. The Ld. CIT(E) has failed to take into account the said reply and passed order on 25/09/23.

3. That the appellant craves to reserves the right to alter, amend or add any of the grounds of appeal before the appeal is heard and disposed off. ”

3. Briefly stated, the assessee filed an application on 18.03.2023 in Form 10AB for registration u/s 12A(1)(ac)(iii) of the Act. The Ld. CIT(E) issued questionnaire dated 15.05.2023 to the assessee to furnish certain details to support its claim. Compliance was sought on or before 30.05.2023. The assessee responded and filed part details. Vide letter dated 31.08.2023, the Ld. CIT(E) required the assessee to file all remaining details and also financials for the period 01.04.2022 to 31.03.2023; rent agreement in support for rental income for FY 2020-21, 2021-22, 2022-23; and details of salary/ honorarium paid to staff/ nurse/ doctors along with ID proofs. Compliance was sought on or before 05.09.2023. In response, the assessee filed details.

4. The Ld. CIT(E) perused the details and required the assessee to furnish further details namely, bills and vouchers for the last three years to substantiate the claim of expenses under the heads clinic maintenance and repair and maintenance; to justify receipt of income as fees u/s 2(15) of the Act; ID proofs of all the staff/ doctors working with the Foundation as per section 12A(1)(ac)(iii) of the Act and to justify application filed in Form 10AB in the light of section 12A(1)(ac)(iii) of the Act. The compliance was sought on or before 19.09.2023 with an option to file reply through E-filing portal.

5. As per the Ld. CIT(E), the assessee did not file any reply till 25.09.2023. He therefore, passed the impugned order rejecting the application of the assessee filed on 18.03.2023 in Form 10AB for grant of registration u/s 12A(1)(ac)(iii) of the Act.

6. Aggrieved, the assessee is in appeal before the Tribunal.

7. We have heard the Ld. Representative of the parties and perused the records. It is evident from ground No. 2 of the assessee and the submission of the Ld. AR that the assessee filed reply to the notice dated 15.09.2023 of the Ld. CIT(E) on 23.09.2023 vide Acknowledgment Number 292794531230923 which has not been considered by the Ld. CIT(E). The Ld. CIT(DR) had no objection to send back the matter to the Ld. CIT(E) for fresh hearing.

8. In our opinion, it is not a case of non-compliance on the part of the assessee. It is a case of communication gap. On the facts and in the circumstances of the case, the viable remedy to meet the ends of justice is to restore the matter to the file of the Ld. CIT(E) with the direction to him to decide the matter afresh after considering the assessee's reply sent to him on 23.09.2023 and the material already on his record. The Ld. CIT(E) shall give reasonable adequate opportunity of hearing to the assessee. We order accordingly.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 28th February, 2024.

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 28/02/2024
Pooja

Copy forwarded to -
1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	26.02.2024
Date on which the typed draft is placed before the dictating Member	26.02.2024
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	