

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

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 752 & 753/Ahd/2023

(निर्धारण वर्ष / Assessment Year : NA)

Radha Govind Charitable Trust Plot No.3, Sankalp House, Nr. Rajpath Club, Bodakdev, Ahmedabad, Gujarat - 380054	बनाम/ Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAETR2408R		
(Appellant)	..	(Respondent)

Assessee by :	Shri Parimalsinh B Parmar, A.R.
Revenue by :	Shri Darsi Suman Ratnam, CIT. DR

सुनवाई की तारीख / Date of Hearing	25/01/2024
घोषणा की तारीख /Date of Pronouncement	25/01/2024 (Signed by the JM on 20/03/2024)

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant two appeals have been filed at the instance of the assessee are directed against the orders dated 08.08.2023 & 01.08.2023 passed by Commissioner of Income Tax (Exemption) (CIT(E)), Ahmedabad, whereby and whereunder the applications for approval under Section 80G(5)(ii) of the Income Tax Act, 1961, (hereinafter referred to as ‘the Act’) and the application for registration under Section 12A(1)(ac)(ii) of the Act respectively were rejected.

2. Since both the matters are related to the same assessee, these are heard analogously and are being disposed of by a common order for the sake of convenience.

Facts of ITA No.752/Ahd/2023

3. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

4. The brief facts leading to this case is this that the appellant filed an application for approval under clause (ii) of first proviso to sub-section (5) of Section 80G of the Act in Form No. 10AB electronically and the same was filed in ITBA on 31/03/2023, which was found to be not maintainable and clarification was sought for from the assessee by issuing letter dated 04.07.2023 whereupon the assessee sought for adjournment as contended by the Ld. AR. However, such application for adjournment was not considered. The appellant has already been granted provisional approval on 24.09.2021 under Clause (iv) of First Proviso of Section 80G of the Act for 3 years; accordingly the appellant was required to file the application under Section 80G(5)(iii) in lieu of Section 80G(5)(ii) of the Act as of the view of the Revenue. Finally, the application filed by the assessee dated 31.03.2023 was found to be not maintainable and rejected by the CIT(E) ex parte. Hence, the instant appeal before us.

5. The Ld. DR, however, relied upon the order passed by the Ld. CIT(E). Under these facts and circumstances of the matter, the Ld. AR prays for another opportunity to represent his case before the Ld. CIT(E) for grant of registration under Section 80G(5)(ii) of the Act.

Facts of ITA No.753/Ahd/2023

6. This matter relates to grant of registration under Section 12A(1)(ac)(ii) of the Act, The application whereof was electronically filed in Form No.10AB on 31.03.2023 which was found to be prima facie not maintainable and clarification was sought for by the Revenue from the appellant. The Ld. AR contended before us that an adjournment was sought for. However, the same was not entertained. The application was rejected ex parte with the view that the assessee is required to file such application under Section 12A(1)(ac)(iii) of the Act in lieu of 12A(1)(ac)(ii) as provisional registration under Sub-clause (vi) of Clause (ac) of Sub-section 1 of Section 12A of the Act was granted. The Ld. DR, on the other hand, relied upon the orders passed by the authorities below.

7. Having heard the Ld. Counsel appearing for the appellant and having regard to the facts and circumstances of both cases, we are of the opinion that the assessee is required to be given a further opportunity of being heard by the Ld. CIT(E) in order to prevent the miscarriage of justice as the orders impugned are admittedly ex parte order without considering the adjournment

applications which fact was not controverted by the Ld. DR. We, thus, set aside the issue in both the matters before us to the Ld. CIT(E) to consider the same afresh upon granting opportunity of being heard to the assessee and upon considering the evidences on record or any other evidence which the assessee may choose to file at the time of hearing of the matters. The Ld. CIT(E) is directed to pass orders strictly in accordance with law.

8. In the result, both appeals preferred by the assessee are allowed for statistical purposes.

9. In the combined result, both the appeals preferred by the assessee are allowed for statistical purposes.

10. Both the orders were pronounced in the Open Court on 25.01.2024 at Ahmedabad on the conclusion of the hearing in the presence of both the parties and reduced to writing and signed on 12.03.2024 by Id. Accountant Member at Allahabad(U.P.) and on 20.03.2024 by Id. Judicial Member at Ahemdabad(Gujarat)

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Ahmedabad; Dated 20/03/2024

S. K. SINHA

True Copy

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)-

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

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