

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos. 96&97/Ahd/2024
(Assessment Year: 2023-24)

Divine Charitable Trust For Health & Education, 7/B.K. House, Nr. Amrapali Cinema, Raiya Road, Azad Chowk Rajkot-360001	Vs.	Commissioner of Income Tax, (Exemptions), Ahmedabad
[PAN No. AAETD2960N]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Darshak Thakkar, A.R.
Respondent by:	Shri Kamlesh Makwana, CIT D.R.

Date of Hearing	16.04.2024
Date of Pronouncement	24.04.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

Both the appeals have been filed by the Assessee against the orders passed by the Ld. Commissioner of Income Tax (Exemption), (in short “Ld. CIT(E)”), Ahmedabad vide separate orders dated 25.11.2023 & 28.11.2023 passed for A.Y. 2023-24. Since common facts and issues are involved for both the years under consideration, both appeals are being taken up together.

2. These are appeals filed by the assessee order of CIT (Exemptions) rejecting the application for grant of registration under Section 12AB and 80G of the Act.

We shall first take up the assessee’s appeal against order of CIT (Exemptions) rejecting the application for grant of registration under Section 12AB of the Act.

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

ITA No. 96/Ahd/2024 (A.Y. 2023-24)

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. That the learned Commissioner of Income Tax (Exemptions), Ahmedabad has erred in law and on facts in refusing to grant registration U/S 12AB of the Income Tax Act, 1961.

3. Your Honour’s appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”

ITA No. 97/Ahd/2024 (A.Y. 2023-24)

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. That the learned Commissioner of Income Tax (Exemptions), Ahmedabad has erred in law and on facts in refusing to grant approval u/s 80G(5) of the Income Tax Act, 1961.

3. Your Honour’s appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”

4. The brief facts of the case are that the assessee filed application for grant of registration in Form No. 10AB on 06.05.2023. In response to the application filed by the assessee/applicant trust, CIT(Exemptions) issued notice dated 30.09.2023, 11.10.2023 and 03.11.2023. However, CIT observed that there were certain details which were not filed by the assessee trust, in response to notices issued by CIT. Accordingly, CIT(E) dismissed the application for grant of final registration under Section 12AB of the Act, vide order dated 23.11.2023, with the following observations:

“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.***

*11. In view of the above, 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.**”*

5. The assessee/applicant trust is in appeal before us against the aforesaid order passed by CIT (Exemptions) rejecting the application for grant of final registration. Before us, the Counsel for the assessee admitted that in the present case the assessee/applicant trust has not been able to file complete details (more specifically the applicant trust has not been able to reply to five questions which were posed by CIT(E) to the assessee/applicant trust). The reason given by the learned Counsel for the assessee for this non-compliance was that while the trust had made application for grant of final registration in the month of May 2023, the first notice was issued by CIT (Exemptions) only in the month of September 2023 on 30.09.2023. Accordingly, there was a gap of almost 5 months from the date of application for grant of final registration and the first notice being issued by CIT (Exemptions). Accordingly, since there was substantial time gap, the assessee/applicant trust did not get adequate time and the application for grant of final registration was dismissed by the CIT(E) vide order dated 25.11.2023. The Counsel for the assessee submitted that if given an opportunity, the assessee/applicant trust shall promptly respond to all the balance queries raised by CIT (Exemptions).

6. In response, DR submitted that even from the date of final notice dated 03.11.2023 issued by CIT (Exemptions), the assessee still had time of 22 days in filing response to questions issued by the CIT. Accordingly, the DR submitted that there was deliberate non-compliance on part of the assessee/applicant trust and therefore, since the complete details were not submitted before CIT, he dismissed the application filed

by the assessee/applicant trust on the basis of materials available on record.

7. We have heard the rival contentions and perused the material on record. In our considered view, looking into the instant facts, in the interest of justice, the matter is being restored to the file of CIT (Exemptions) to consider the application for grant of registration afresh, after giving due opportunity of hearing to the assessee/applicant trust. It has been submitted before us that the assessee/applicant trust has already filed return of income for Assessment Year 2023-24 on the basis of provisional registration which had been granted earlier, and later recalled/rejected by CIT (Exemptions). Accordingly, looking into the instant facts, the CIT (Exemptions) is directed to complete the process within a period of 3 months from the date of receipt of this order.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Assessee/applicant trust's appeal against order passed by CIT (Exemptions) denying grant of registration under Section 80 G of the Act:

9. With regards to the order passed by CIT (Exemptions) for grant of registration under Section 80G, we observe that application for grant of registration under Section 80G of the Act was rejected by CIT(E) on the ground that since assessee/applicant trust did not have valid registration under Section 12A of the Act, which is a pre-requisite for grant of approval under Section 80G of the Act, approval under Section 80G of the Act could not be granted to the assessee.

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10. Accordingly, the matter with respect to grant of registration under Section 80G of the Act is also restored to the file of CIT (Exemptions) for de novo consideration and to pass appropriate orders, in accordance with law.

11. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on	24/04/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 24/04/2024

TANMAY, Sr. PS

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)-
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