



IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH LUCKNOW



**BEFORE HON'BLE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND**

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.33/LKW/2021

Ram Swaroop Memorial Charitable Trust
C/o Giridhari Lal Pappu, Pilibhit Bypass Rd.,
Suresh Varma Nagar, Bareilly.
PAN: AABTR0744D

..... **अपीलार्थी / Appellant**

बनाम / V/s.

Commissioner of Income Tax-Exemption,
Lucknow.

..... **प्रत्यर्थी / Respondent**

द्वारा / Appearances

Assessee by : Mr P K Kapoor ['Ld. AR]

Revenue by : Mr Sunil Kumar Rajwanshi ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 20/06/2024

घोषणा की तारीख / Date of Pronouncement : 20/06/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

By the present appeal the assessee challenged the cancellation of 12A registration by the Ld. Commissioner of Income Tax-Exemption, Lucknow ['CIT(E)'] vide DIN & Order ITBA/COM/F/17/2020-21/1029978938(1) dt. 21/01/2021 passed u/s 12AA(3) of the Income Tax Act ['the Act'].

2. Briefly stated facts anent to the case are that;

2.1 The assessee is a registered Trust which was granted registration u/s 12AA & approval u/s 80G of the Act. An inquiry into the activities of the



assessee were initiated in the year 2019 and pursuant to such inquiry a report dt. 19/11/2019 coupled with the remanded assessment proceedings, the Ld. CIT(E) assumed his jurisdiction and initiated the cancellation proceedings vide show cause notice ['SCN'] dt. 12/10/2020.

2.2 When the aforestated SCN remained unattended, by service of further notice dt. 19/11/2020 the assessee was called upon to explain nature & source of ₹1.6 Crores cash deposited in its SB account maintained with Bank of Baroda and to explain other connecting issues arising out therefrom.

2.3 In the event of effective failure on the part of assessee to attend the former two notices, the 12A registration granted to the assessee on 14/09/2006 by the impugned order was cancelled by the Ld. CIT(E).

2.4 Aggrieved by the cancellation of registration, the assessee trust came in present appeal.

3. At the outset of the hearing, the Ld. AR Mr Kapoor adverting page 8 of paper book filed on records submitted that, the assessee was unaware of initiation of cancellation proceeding till the receipt of follow-up notice issued to it. In response to follow-up SCN dt. 25/11/2020 the assessee requested the copy of SCN dt. 12/10/2020 along-with reasons for initiating the cancellation proceedings in its case. The Ld. CIT(E) however did fail to take cognizance of assessee's reply and culminated the proceedings ex-parte without providing reasonable opportunity to refute the negative findings/observations. In view of this factual position, the impugned proceedings & cancellation has suffered from principle of natural justice, hence the impugned order of cancellation deserves to be



set-aside. *Au contraire*, the Ld. DR Mr Chaurasia solidifying the facts narrated by the appellant has drawn our attention to remanded assessment proceedings and averred that, the assessee trust's activities are in deep dark and are not genuine to hold & continue registration under the Act. The Ld. DR further submitted that, as it can be seen from SCN that the assessee had deposited huge cash in its bank account in the AY 2007-08 and the nature & source of such cash has not been explained & substantiated till date, further such cash never passed through accounts. In upshot, the activities of the assessee are not genuine, hence the action of Ld. CIT(E) in coming to rightful conclusion of cancellation has strong basis hence flawless.

4. We have heard the rival parties' contentions & argument; and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on records, considered the facts of the case in the light of settled legal position.

5. We find that, the present appeal is filed with as many as nine argumentative grounds which are not in consonance with rule 8 of the ITAT Rules, 1963, for that reason reproduction thereof is dispensed with. While doing so we vouch the sole & substantive grievance of the appellant is directed against the cancellation of registration.

6. Without going into merits of the case, we observed that, the first SCN dt. 12/10/2020 was served on the registered email calling upon the assessee to explain nature & source of cash deposits, discrepancies in audited final accounts and documents in support of claim of



expenditure etc. The said notice was not available to the appellant as such the registered email was no more accessible owing to technicalities. In the absence of SCN and knowledge of information/details sought thereby, the assessee in reply to subsequent follow-up SCN dt. 25/11/2020 requested the respondent to provide copy & reasons for initiating the cancellation. Undisputedly, the said reply remained out of consideration while culminating the impugned proceedings *ex-parte*.

7. In our considered view, in the matter of registration & cancellation, a reasonable and effective opportunity to the appellant is necessary to protect against arbitrary rejection/cancellation by the registering authority. This also ensures that negative observations (if any) are negated by credible evidences by the appellant. Any proceedings culminated without effective notice and reasonable opportunity would be violative of principle of natural justice, which *de-facto* turns the proceedings bad in law and therefore deserves to be set-aside in view of the ratio laid down by Hon'ble Rajasthan High Court in '*Sanatan Dharm Mahaveer Dal Vs CIT*' reported in 252 ITR 46.

8. In present case the action of the Ld. CIT(E) has suffered from sufficiency of reasonable opportunity to the appellant to adduce necessary evidential material in support of its claim and to represent effectively vis-à-vis to comply with the requirements sought through SCN. It shall be worthy to underline that the opportunity of being heard should be real, reasonable and effective and same should not be empty formalities, it should not be a paper opportunity, the doctrine of natural



justice is a facet of fair play in action and no person shall be saddled with a liability without being heard.

9. Relying on Hon'ble High court of Patna judgement in '*St. Paul's Anglo Indian Education Society (2003) 262 ITR 377 (Pat)*', in our view the impugned cancellation of registration is unjustified as the assessee was deprived of reasonable opportunity and time to produce all relevant documents to substantiate its claims, hence set-aside for remand to Ld. CIT(E) with a direction to deal therewith de-novo in accordance with law. Needless to state that, the appellant shall be give reasonable opportunity of hearings.

10. The appeal in result is ALLOWED FOR STATISTICAL PURPOSES.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday 20th day of June, 2024

-S/d-

SUDHANSHU SRIVASTAVA
JUDICIAL MEMBER

Lucknow ; दिनांक / Dated : 20th day of June, 2024

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

1. अपीलार्थी / The Appellant.
4. The Concerned CIT

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

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)
6. गार्डफाइल / Guard File.
आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, / ITAT, Lucknow