

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.851 & 852/PUN/2024

Shree Gopal Krushna Mandir Trust, Brahman Ali, Taluka Bhiwandi, Dist. Thane – 421302 Maharashtra PaN : AAFTS0368A	Vs.	CIT Exemption, Pune
Appellant		Respondent

Assessee by : None
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 23.07.2024
Date of pronouncement : 24.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the two appeals filed by the assessee directed against the order of the CIT Exemption, Pune dt. 22.02.2024 denying registration u/s.12A of the Income-tax Act, 1961 (hereinafter also called 'the Act').

2. Today, when the matter was called on, it was brought to the notice of the Bench that appellant e-filed appeal twice impugning the same order, both of them got registered and numbered as ITA No.851/PUN/2024 & 852/PUN/2024. Therefore, the latter appeal being ITA No.852/PUN/2023 is treated as 'Infructuous' and dismissed as such.

3. None appeared on behalf of the appellant trust despite due service of notice of hearing. We therefore proceed to dispose of the appeal ex parte *qua* the appellant trust after hearing the Id. DR.

4. Brief facts of the appeal ITA No.851/PUN/2024 are that the appellant is a Trust, filed application in Form No.10AB dated 22.09.2023 seeking registration u/s.12A(1)(ac)(iii) of the Act. On receipt of the said application, the Id. CIT (Exemptions), in order to verify the genuineness of activities of the appellant trust, issued notice through ITBA portal calling upon the appellant trust to file certain information/clarification. However, for the reasons best known to the appellant trust could not comply with the said notice. In the circumstances, the Id. CIT(Exemptions) rejected the application filed by the appellant trust for grant of registration u/s.12AB by observing as under :

“4. Considering the above facts discussed in the show cause notice and discrepancies noticed and also that the assessee has not complied with the provisions of section 12AB(1)(b)(i) of the Income Tax Act, 1961 as well as the provisions of Rule 17A(2) of Income Tax Rules, 1962 in spite giving sufficient opportunities, the undersigned is unable to draw any satisfactory conclusion about the genuineness of activities of the assessee and compliance of requirements of any other law for the time being in force by the assessee as are material for the purpose of achieving its objects.”

5. Being aggrieved, the assessee trust is in appeal before the Tribunal in the present appeal.

6. The Id. DR submitted that the appellant trust did not comply with the notices issued through ITBA portal and e-mail and has not furnished any explanation with regard to the discrepancies pointed out by the CIT Exemptions, despite giving sufficient opportunity. Therefore, the authorities were justified in rejecting the application by the appellant trust seeking registration u/s.12A of the Act.

7. We heard the Id. DR and perused the relevant material on record. In the instant case, the appellant trust filed application in Form No.10AB dated 22.09.2023 seeking registration u/s.12A(1)(ac)(iii) of the Act. The CIT(Exemptions) rejected the application filed by the appellant trust owing

to non-compliance of the appellant trust to the notices issued through ITBA portal and e-mail. On mere perusal of the contents of para no.2.3 of the impugned order, it would reveal that the notices were served through e-portal and e-mail. In our considered opinion, it is not a valid method and manner of service of notice as specified under the provisions of section 282(1) of the Income-tax Act, 1961 Act and Rule 127(1) of the Income-tax Rules, 1962. Therefore, it is crystal clear that the notices were not served upon the appellant trust. To fortify our view, we would like to make a reference to a decision rendered by the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of 282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

.....

8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be

entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.”

In view of the above legal position, we are of the considered opinion that the notice(s) of hearing were not served properly to the appellant trust. In the circumstances, we find it is a fit case to remand the matter to the file of CIT(Exemptions) for *denovo* disposal of application of the appellant trust after affording due opportunity in accordance with law. The appeal filed by the appellant trust stands partly allowed for statistical purposes.

8. In the result, ITA No.851/PUN/2024 filed by the appellant trust is partly allowed for statistical purposes whereas the ITA No.852/PUN/2024 filed by the appellant trust is dismissed.

Order pronounced on this 24th day of July, 2024.

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 24th July, 2024.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.