

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "DIVISION BENCH-C"
AHMEDABAD

**Before: Shri Ramit Kochar, Accountant Member &
Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1045/Ahd/2023
Assessment Year: NA**

Shri Aahir Samaj Vikas Trust Baral Nr. Top 3, Cinema Adhweda, Bhavnagar-364002 Gujarat PAN:AANTS6444H (Appellant)	v.	The Commissioner of Income Tax (Exemption) Room No. 609, Floor-6, Aayakar Bhawan(Vejalpur), Near Sachin Tower, 100 Ft Road, Anandnagar- Prahladnagar Road, Ahmedabad-380015, Gujarat (Respondent)
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Assessee by:Mr. Mohit Balani,Advocate

Revenue by: Shri Kamlesh Makwana, CIT-DR

Date of hearing : 30-08-2024

Date of pronouncement : 05-09-2024

आदेश/ORDER

This appeal in ITA No. 1045/Ahd/2023 for assessment year:NA, filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Division Bench, Ahmedabad has arisen

from order dated 17.08.2023 passed by Ld. Commissioner of Income-tax(Exemption), Ahmedabad, in DIN & Notice No. ITBA/EXM/F/EXM45/2023-24/1055208686(1) dismissing application filed by the assessee in Form No. 10AB u/s 12A(1) (ac)(iii) of the 1961 Act for grant of registration u/s 12AB of the 1961 Act wherein provisional registration earlier granted also stood cancelled by ld. CIT(E).

2. The grounds of appeal raised by the assessee in Memo of Appeal filed with the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad in ITA no. 1045/Ahd/2023 for assessment year:NA, reads as under:-

“1. The Ld. CIT(E) has erred in law and on facts of the case in passing the impugned order ex-parte.

2.Learned CIT(E) has erred in law and on facts of the case in rejection the provisional registration of the Appellant u/s 12AB of the Act.

3. Your appellant reserves the right to add, delete , modify or revise any ground of appeal.”

3.At the outset it is noted that this appeal is filed belatedly by the assessee beyond the time prescribed u/s 253(3) of the 1961 Act. The appeal in ITA No. 1045/Ahd/2023 is filed belatedly by 58 days beyond the time stipulated u/s 253(3) of the 1961 Act. The assessee has filed an application supported with affidavit dated 08.08.2024 praying for condonation of

delay. The reasons given by the assessee is that the order was sent to consultant whose email id was given in the application filed by the assessee, but the said consultant did not informed the assessee. It is averred that the assessee did not open the ITBA portal , and it is only when the Accountant of the assessee opened the ITBA portal in December, 2023 , it came to notice that the assessee's application for registration u/s 12AB was dismissed by Id. CIT(E) , and then immediate steps were taken to file appeal with ITAT. The assessee has averred that there is a delay in filing this appeal with ITAT belatedly beyond the time prescribed u/s 253(3) , but there was no ill-motive in filing this appeal belatedly with ITAT. The Id. CIT-DR fairly submitted that the department has no serious objection to the condonation of delay in filing these two appeals belatedly by the assessee. Under these facts and circumstances and in the interest of justice, we are of the considered view that the assessee has shown reasonable and sufficient cause in filing this appeals belatedly with ITAT beyond the time stipulated u/s 253(3), and delay needs to be condoned and the appeals be heard on merits. When technicalities are pitted against the substantial justice, the Courts will lean towards advancement of substantial justice rather than technicalities, unless the malafide on the part of the assessee is at writ large. Under the facts and circumstances, we do not find any malafide on the part of the

assessee in filing this appeal belatedly, and in the interest of justice, we condone the delay w.r.t. this appeal and proceed to adjudicate this appeal on merits in accordance with law. Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**.

4. The brief facts of the case are that the assessee filed an application for registration of the trust u/s 12AB of the 1961 Act, vide application No. CIT(Exemption), Ahmedabad/2023-24/12AA/10762 on 23.02.2023 , in Form No. 10AB u/s 12A(1)(ac)(iii). The provisional registration was granted by Revenue on 27.05.2021 as per Form No. 10AC u/s 12A(1)(ac)(vi) from assessment year 2021-22 to 2023-24. The ld. CIT(E) issued notice of hearing dated 11.07.2023 and 04.08.2023 , but the assessee did not file any submissions nor sought any adjournment. The ld. CIT(E) gave final opportunity to the assessee vide SCN dated 04.08.2023, but again there was no compliance on the part of the assessee, while led to the rejection of the application by ld. CIT(E) vide order dated 17.08.2023 and provisional registration earlier granted also stood cancelled, on the grounds that the assessee has **failed** to file documentary evidences to enable ld. CIT(E) 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 and (iii) that other laws material for the purpose of achieving objects are complied with. The ld. Counsel for the assessee submitted that an exparte order has been passed by ld. CIT(E), and that too in a short period of time. The notice has been issued on 11.07.2023 and the proceedings were completed by ld. CIT(E) vide order dated 17.08.2023. It was submitted that principles of natural justice were not complied with by ld. CIT(E) as within a short period of time , the ld. CIT(E) dismissed the application filed by the assessee for grant of registration u/s 12AB. Thus, in nutshell, the assessee is praying for setting aside of the order dated 17.08.2023 passed by ld. CIT(E) ,and for restoring the matter back to the file of ld. CIT(E) to redecide the application filed by the assessee after granting of proper opportunity of being heard to the assessee before disposing of the application for registration u/s 12AB on merits in accordance with law. It could be seen that the ld. CIT(E) issued two notices , the first notice of hearing was issued by ld. CIT(E) on 11.07.2023 and the order was passed by ld. CIT(E) on 17.08.2023 i.e. within a short span of one month and six days from the date of issue of first notice, rejecting application filed by the assessee for grant of registration u/s 12AB and also the provisional registration earlier granted also stood cancelled by ld. CIT(E) vide aforesaid order. The ld. CIT-DR has no serious objection if the matter is remanded back to

the file of ld. CIT(E) for denovo deciding the application of the assessee for grant of registration u/s 12AB filed by the assessee. The assessee has stated in the affidavit filed with ITAT, that the consultant of the assessee whose email id was given in the application form , did not inform assessee about the notices issued by ld. CIT(E). In our considered view , the assessee ought to have been vigilant , once it had filed an application for registration u/s 12AB of the 1961 Act, and at the same time , we have also observed that ld. CIT(E) decided application of the assessee for registration u/s 12AB within short span of one month and six days Thus, in the interest of justice and fairness to both the parties, we are setting aside the order dated 17.08.2023 passed by ld. CIT(E) and restore the matter back to the file of ld. CIT(E) for fresh determination of application filed by the assessee for registration u/s 12AB on merits, after giving proper and reasonable opportunity of being heard to the assessee. The ld. CIT(E) will decide the application on merits in accordance with law. We clarify that we have not commented on the merits of the issue in this appeal, and all the contentions are kept open. The assessee is directed to comply with the notices issued by ld. CIT(E) in the set aside proceedings , otherwise ld. CIT(E) shall be free to decide the application of the assessee on merits in accordance with law. Thus, in the result, the appeal of the assessee is allowed for statistical purposes. We order accordingly.

4. In the result, appeal of the assessee in ITA no. 1045/Ahd/2023 for assessment year : NA is allowed for statistical purposes.

Order pronounced on 5th September, 2024 at Ahmedabad in Open Court

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated : 05/09/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद