

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1284 & 1282/PUN/2024

Shubhsita Foundation, C/o. CA R.S. Poonia, D-82-B, Siwad Area, Krishna Marg, Bapu Nagar, Jaipur, Rajasthan - 302015 PAN : ABICS5418G	Vs.	DCIT, Exemption Circle, Pune
Appellant		Respondent

Assessee by : Shri R.S. Poonia &
Shri Rajat Chaudhary
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 24.09.2024
Date of pronouncement : 25.09.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These two appeals filed by the appellant Trust are directed against the orders of Id. Commissioner of Income Tax (Exemption), Pune both dated 20.11.2023 denying grant of registration u/s.12AB and denying grant of approval 80G(5) of the Income Tax Act, 1961 ('the Act').

2. At the outset, we find the appeals are time barred by limitation by 193 days before the Tribunal. The appellant trust filed petitions praying for condonation of delay on the ground that the delay had occurred on account of wrong advice given by the Tax Consultant. The affidavit of Tax Consultant is also placed on record. The Id. DR vehemently

opposed the arguments advanced by the Id. AR for condoning the delay, placing reliance on certain judicial precedents. He further submits that the appellant has neither submitted any affidavit nor any application for condonation of delay. The appellant must explain to the court what constituted a 'sufficient' cause for the delay. Therefore, the contention put forth by the appellant trust has no merit, prayed for rejecting the same.

3. We have gone through the averments made in the condonation petitions filed by the appellant trust and find that there is no material on record to disbelieve the explanation of the appellant trust and keeping in view the salutary principle governing the condonation of delay that the appellant does not gain anything in filing the appeal with delay, the delay deserves to be condoned. Therefore, we are of the considered opinion that these are fit cases to condone the delay. We therefore condone the delay of 193 days in filing the appeals and admit the appeals, proceed for adjudication of appeals.

ITA No.1284/PUN/2024 :

4. Briefly, the facts of the case are that the appellant is a trust, filed application in Form No.10AB under clause (iii) of section 12A(1)(ac) for grant of registration u/s.12AB of the Act on 20.06.2023. In order to verify the genuineness of activities of the appellant trust, the Id. CIT (Exemption) issued a notice dt. 21.08.2023 through ITBA portal calling upon the appellant trust to file certain information/clarification. The appellant trust complied with the said notice by furnishing the required information. The Id. CIT(Exemption) issued another notice dated 20.10.2023 pointing out certain discrepancies, requiring the appellant trust to comply with the said notice on or before 26.10.2023. In

response, the appellant trust had not furnished any explanation. In the circumstances, the Id. CIT(Exemption) rejected the application filed for grant of regular registration u/s.12AB by holding that he 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.

5. Being aggrieved, the appellant trust is in appeal before the Tribunal in the present appeal assailing the impugned order denying the grant of registration u/s.12AB.

6. Before us, the Id. AR submits that the notice given by the Id. CIT(Exemption) falls short of legal requirement of at least giving 15 days time to respond to the notice. Therefore, in the interest of justice, it is therefore prayed for remanding the matter to the file of CIT(Exemption).

7. On the other hand, the Id. Sr. DR relying on the order of Id. CIT(Exemption) submits that Id. CIT (Exemption) had rightly rejected the application filed by the appellant trust, therefore, no interference by this Tribunal is called for.

8. We heard the rival submissions and perused the relevant material on record. We find, in the present case, the assessee trust filed application in Form No.10AB dated 20.06.2023 seeking registration u/s.12A(1)(ac)(iii) of the Act. On mere perusal of the contents of para no.2.2 and 2.3 of the impugned order, it would reveal that show cause notice was issued to the appellant trust through ITBA portal on 20.10.2024 requesting the appellant trust to file explanation to the discrepancies pointed out in the said notice, on or before 26.10.2024. At the first instance, we find that there is no proof that the said show cause

notice stated to have been served through e-portal and e-mail was actually served on the appellant trust. The service of notice through e-portal 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. Further, undisputedly, the time given to the appellant trust for compliance is less than a week, which is against the Standard Operative Procedure ('SOP') issued by the CBDT dated 19.11.2020, wherein, minimum period of 15 days is required to be given to the assessee to comply with notices u/s 142(1) from the date of issue of the notice. Recently, the Hon'ble Delhi High Court in the case of Dauphin Travel Marketing Private Limited vs. ITO in W.P.(C) 8870/2023 & CM Nos.33516-17/2023 dated 05.07.2023 taking note of this SOP held that the grant of insufficient time to respond the notice violates the principles of natural justice and, therefore, set-aside the assessment. Thus, it is clear that the appellant trust was given unreasonably very short period of time to respond to the notice, which is against the principles of natural justice. In the light of the aforementioned facts, we find that the approach adopted by the Id. CIT (Exemption) is unreasonable and violates of the principles of natural justice. Therefore, we are of the considered opinion that it is a fit case to remand the matter to the file of Id. CIT (Exemption) for *de novo* consideration of application in accordance with law.

ITA No.1282/PUN/2024 :

9. We find that similar approach was adopted by the Id. CIT(Exemption) while dealing with the application filed by the appellant trust in Form No.10AB for grant of approval u/s.80G(5) of the Act.

Therefore, the appeal denying grant of approval is also remitted to the file of Id. CIT(Exemption) in the terms indicated above.

10. In the result, both the appeals filed by the appellant trust are partly allowed for statistical purposes.

Order pronounced on this 25th day of September, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th September, 2024

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The PCIT 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