

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1572 & 1573/PUN/2024

Sangamner Vipassana Samiti, G 452/40, Sangamner, Ahmednagar – 422605	Vs.	CIT (Exemption), Pune
PAN : ABCTS1648D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Sanket M. Joshi
Department by :	Shri Ajay Kumar Keshari
Date of hearing :	23-10-2024
Date of Pronouncement :	26-11-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

Two appeals filed by the assessee are directed against the two separate order(s) both dated 29.08.2023 of the Ld. Commissioner of Income Tax (Exemption), Pune [**"CIT(E)"**] whereby he rejected the application of the assessee filed before him in Form No. 10AB u/s 12A(1)(ac)(iii) and section 80G(5)(iii) of the Income Tax Act, 1961 (**the "Act"**) filed on 30.03.2023. These were heard together and are being disposed of by this order.

2. The assessee has filed both the appeals with a delay of 275 days. The assessee has filed an application along with a sworn affidavit of the Trustee and the Tax Consultant seeking condonation of delay in filing of the appeal(s) stating therein the reasons for delay as under :

"I hereby state that the CIT(E), Pune rejected the application for final registration u/s 12A(1)(ac)(iii) and u/s 80G(5) dated 16.09.2023, vide orders dated 15.03.2024 only on technical ground that the said applications were not maintainable in law. However, these orders dated 15.03.2024 were never served on the official email id sangamnervipassana@gmail.com of our trust registered on income tax portal. The fact that the applications dated 16.09.2023 were rejected vide said orders dated 15.03.2024 came to our notice only around the second week of July, 2024 when the tax consultant logged into the income tax portal to verify the status of the applications. Upon becoming aware of this fact, I along with our tax consultant approached Counsel CA Sanket Milind Joshi for taking further appropriate action. Upon verifying all the facts and legal provisions, the Counsel informed us that even if the first application dated 30.03.2023 for final registration under clause (iii) of section 12A(1)(ac) was rejected on ex-parte basis without proper service of notices, the CIT(E) was not empowered to grant final registration

under 12A on the basis of the fresh application dated 16.09.2023 filed under clause (iii) to section 12A(1)(ac) of the Act. The Counsel informed us that the correct legal remedy would be to file appeal against the original order dated 29.08.2023 passed by CIT(E), Pune on ex-parte basis. Similar advice was tendered by the Counsel to file appeal against the order rejecting registration u/s 80G dated 29.08.2023. On the basis of the said advice, the appeals were drafted within a short period and the same were filed electronically on 30.07.2024. In view of the above facts, there was a delay of 275 days in filing the above appeals before Hon'ble Income Tax Appellate Tribunal, Pune."

2.1 The Ld. AR relied on the following cases in support of its contention wherein the Courts have condoned the substantial delay in filing the appeal in similar facts :

- i. Abdul Rahiman Vs. ITO (2024) 3 NYPCTR 1359 (Kar)(HC) dated 03.09.2024;
- ii. Vijay Vishin Meghani Vs. DCIT (2017) 398 ITR 250 (Bom)(HC);
- iii. CIT Vs. Indian Gospel Fellowship Trust (2011) 331 ITR 283 (Mad)(HC);
- iv. Subhash Malik Vs. CIT (2010) 325 ITR 243 (All)(HC);
- v. Faisal Hameed Vs. ITAT, 83 DTR 10 (J&K);
- vi. Sameer Ashok Joshi Vs. ACIT in ITA No. 572/PUN/2018, dated 18.01.2022;
- vii. OAOAM Muthiah Chettiar Vs. CIT, 19 ITR 402 (Mad);
- viii. Laxmi Traders Vs. CIT, 168 ITR 253 (Orissa);
- ix. Collector Land Acquisition Vs. Mst. Katiji & Ors., 167 ITR 471 (SC);
- x. Labricare Pvt. Ltd. VS. DCIT & Ors. in ITA No. 01/PUN/2023 dated 23.01.2023.

2.2 The Ld. DR, however, opposed the application for condonation of delay contending that there was no sufficient cause that has been demonstrated by the assessee for the said delay. He relied on the decision(s) in the case of :- (i) Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer in Civil Appeal No. 6974 of 2013 (SC); (ii) Siva Industries & Holdings Ltd. Vs. Assistant Commissioner of Income Tax (2023) 153 taxmann.com 354 (Madras); and (iii) Sahakar Maharshi Kasti Vividh Karyakari Sewa Sahakari Society Ltd. Vs. Principal Commissioner of Income Tax, ITA No. 367/PUN/2024 (Pune-Trib.).

3. After hearing both the sides and considering their factual and legal submissions, we are of the view that the delay is not intentional or deliberate but attributable to the sufficient cause. We, therefore, condone the delay in filing of the appeals and proceed to decide both the appeals.

ITA No. 1572/PUN/2024

4. The assessee has raised the following grounds of appeal :-

- “1] *The learned CIT(Ex.) erred in rejecting application filed by the appellant in Form 10AB for approval under sub clause (iii) of 12A(1)(ac) without appreciating that the said action was not justified on facts and in law.*
- 2] *The learned CIT(Ex.) failed to appreciate that there was a reasonable cause due to which proper compliance was not made to the notices of hearing, in as much as, the notices were issued on email id rathicarathi@gmail.com belonging to the erstwhile tax consultant who did not intimate the assessee regarding the receipt of said notices and not on the official email id sangamnervipassana @ gmail.com and hence, it is prayed that the matter may please be set aside to the file of the ld. CIT(Ex.) to adjudicate the same on merits after affording one more opportunity of being heard to the appellant.*
- 3] *The appellant craves leave to add/ alter/ amend any of the grounds of appeal.”*

5. Briefly stated, the facts of the case are that the assessee is a charitable trust engaged in the charitable object of establishing and operating centres for educational teaching and training in Vipassana Meditation as taught by Late Shri S.N. Goenkaji in the Tradition of Sayagji U Ba Khin and allied activities. The assessee trust had received provisional registration u/s 12A of the Act vide certificate dated 06.11.2021. Thereafter, the assessee trust applied for final registration under clause (iii) of section 12A(1)(ac) vide application dated 30.03.2023. On receipt of the assessee’s application filed in Form No. 10AB u/s 12A(1)(ac)(iii) of the Act along with annexures thereto, with a view to verify the genuineness of the activities of the assessee etc., the Ld. CIT(E) issued notice on 29.06.2023 through ITBA portal/e-mail requiring the assessee to upload certain information/clarification such as date of commencement of activity, date of expiry of provisional registration, details of any other law applicable for achievement of objectives and the proof of compliance of said law, proof of identity of main trustees / managing trustees / directors / trustees / secretary, list of donors, note on activities carried out in the last three years/inception etc. under the provisions of section 12AB of the Act. The compliance was sought by 14.07.2023. Since, the assessee failed to respond, a show cause notice was issued on 24.07.2023 to which the compliance was due by 31.07.2023. The assessee was specifically informed that in the event of failure to comply by due date the application shall be liable to be rejected and the registration/approval shall also be liable to be cancelled. The notice(s) were duly served on the assessee through e-portal/e-mail. The assessee also failed to comply with the said

show cause notice. The Ld. CIT(E) therefore observed that in the absence of compliance to the information/clarification sought for, it is not possible to arrive at any conclusion about the genuineness of the activities of the assessee as also compliance to the requirements of any other law as are material for the purpose of achieving its objects. The Ld. CIT(E), hence proceeded to pass the impugned order rejecting the application of the assessee and canceling the provisional registration granted to the assessee by observing in para 5.3 of his order as under :

“5.3 It is clear from the above that the assessee was given sufficient opportunity to comply, but it has not complied to the same. It seems that the assessee is not having any supporting documents / evidence to submit. The assessee has failed to comply with the provisions of section 12AB(1)(b)(i) of the Income Tax Act, 1961. Hence, the undersigned is unable to draw any satisfactory conclusion about genuineness of activities of the assessee and the compliance to the requirements of any other law for the time being in force by the trust / institution as are material for the purpose of achieving its objects. Therefore, the undersigned has left no alternative but to reject the application.”

6. Dissatisfied, the assessee is in appeal before the Tribunal.

7. The Ld. AR submitted that there was no intentional non-appearance before the Ld. CIT(E). The non-compliance before the Ld. CIT(E) was occurred due to non-receipt of notice(s) by the assessee. The notice(s) were issued on email id rathicarathi@gmail.com belonging to the erstwhile tax consultant who did not intimate the assessee regarding the receipt of said notices and not on the official email id sangamnervipassana @ gmail.com which was registered on the Income Tax Portal. In support thereof, screenshot reflecting the official email id registered for communication on income tax portal as sangamnervipassana @ gmail.com (placed at page 33 of the paper book) was referred to by the Ld. AR. The Ld. AR submitted that the Ld. CIT(E)'s order was not issued physically by post but was issued only electronically via e-mail to the erstwhile tax consultant of the assessee. He further brought to our attention that the assessee filed fresh application for final registration u/s 12A again on 16.09.2023 upon advice of the Tax Consultant after passing of the ex-parte order by the Ld. CIT(E) on 29.08.2023 rejecting the assessee's application for registration. Further to filing of this application, on 01.01.2024, 23.01.2024 and 22.02.2024, the assessee filed detailed submissions including all details called for by the Ld. CIT(E) in response to notice(s) issued by the Ld. CIT(E), however, the Ld. CIT(E) vide its order dated 15.03.2024 rejected the fresh application of the assessee on technical ground but the said order of the Ld. CIT(E) was neither served on the official email id of the Trustee nor by post. He

submitted that given an opportunity the assessee is in a position to submit all the requisite details/ documentary evidence before the Ld. CIT(E) in support of its application. He, therefore, prayed that the matter may be set aside to the file of the Ld. CIT(E) to adjudicate the same on merits after affording one more opportunity of being heard to the assessee.

8. The Ld. DR, on the other hand, supported the order of Ld. CIT(E) and submitted that the assessee was given adequate opportunity by the Ld. CIT(E) to present its case before him still the assessee failed to comply with the provisions of section 12AB of the Act by not submitting any supporting documents/evidence called for, in order for the Ld. CIT(E) to arrive at a specific conclusion about the genuineness of the activities of the assessee trust. The Ld. CIT(E) therefore was fully justified in rejecting the assessee's application for final registration and cancelling the provisional registration.

9. We have considered the rival submissions and perused the records. On the facts and in the circumstances of the assessee's case, we are of the view that it would be judicially expedient and in the interest of justice and fair play if the matter is restored back to the file of Ld. CIT(E) to consider afresh the assessee's application for registration u/s 12A(1)(ac)(iii) of the Act and decide the matter on merits, in accordance with facts and law after allowing adequate opportunity of being heard to the assessee and present its case. The assessee shall provide the requisite support in terms of submitting the relevant details/documentary evidence as may be required/ called upon on the appointed date without seeking adjournment under any pretext, failing which the Ld. CIT(E) shall be at liberty to pass appropriate order as per law. We order accordingly.

10. In the result, the appeal of assessee is treated as allowed for statistical purposes.

ITA No. 1573/PUN/2024

11. The assessee trust was granted provisional registration u/s 80G vide certificate dated 20.02.2022. Thereafter, the assessee applied for final registration u/s 80G(5)(iii) of the Act vide its application dated 30.03.2023. After considering the assessee's application along with annexure thereto the Ld. CIT(E) proceeded to pass the impugned order ex-parte without going into the merits of the case on the ground of it being time bared and non-compliance of notice(s) issued to the assessee and submission of the

details/documentary evidence called for by observing in paras 5.9 and 6 of his order as under :

“5.9 In view of the above, the present application filed in Form No. 10AB under clause (iii) of the first proviso to section 80G(5) of the Act is liable to be rejected without going into the merits since the assessee has not filed the present application within the time limit allowed under clause (iii) of the first proviso to section 80G(5) of the Income Tax Act, 1961.

6. The conditions for approval under section 80G(5)(vi) of the Act are provided under clause (i) to (v) of section 80G(5) of the Income Tax Act, 1961. As per the condition vide clause (i) of section 80G(5) of the Income Tax Act, 1961, the approval is available only if the income of the institution or fund is not be liable to inclusion in its total income under the provisions of section 11 and 12 or clause (23AA) / clause (23C) of section 10 of the Income Tax Act, 1961. Further, exclusions for the said condition are detailed in clause (a), (b) and (c) of proviso to clause (1) of section 80G(5) of the Act. Therefore, the institution/fund is required to be regularly registered / approved either under section 12AB or 10(230) of the Income Tax Act, 1961 or the institution / fund shall be a Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants.

6.1 In the instant case it is noticed that the assessee is neither registered u/s 12AB read with section 12A(1)(ac)(i) / 12A(1)(ac) (iii) nor approved u/s 10(23C) read with clause (i) / (iii) of first proviso to the said section and the case is not covered under the exclusions provided vide proviso to clause (i) of section 80G(5) of the Act. The assessee is also not a Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants. In fact, the application of the assessee in form No.10AB for registration u/s 12AB filed under the provisions of section 12A(1)(ac) (iii) of the Act has been rejected vide order dated 29/08/2023. Therefore, the condition prescribed under clause (i) of section 80G(5) of the Income Tax Act, 1961 is not fulfilled in this case.

6. In view of the above, the application filed by the assessee is hereby rejected and the provisional approval granted on 20/02/2022 under clause (iv) for first proviso to section 80G(5) of the Income Tax Act, 1961 is hereby cancelled.”

12. Aggrieved, the assessee is in appeal before the Tribunal by raising the following grounds of appeal :

- “1] The learned CIT(E) erred in rejecting application filed by the appellant in Form 10AB for approval under clause (s) of first proviso to section 80G(5) on an ex-parte basis without appreciating that the said action was not justified on facts and in law.*
- 2] The learned CIT(E) failed to appreciate that there was a reasonable cause due to which proper compliance was not made to the notices of hearing. in much as, the notices Were issued on email id rathicarathi@gmail.com belonging to the erstwhile tax consultant who did not intimate the assessee regarding the receipt of said notices and not on the official email id sangamnervipassana .gmail.com which was registered on income tax portal and hence, it is prayed that the matter may please be set aside to the file of the Id. CIT(E) to adjudicate the same on merits after affording proper opportunity of being heard to the appellant.*
- 3] The learned CIT(E) further erred in rejecting the application filed by the appellant in Form 10AB for approval under clause (iii) of first proviso to section 80G(5) on the ground that the said application was*

filed beyond the time limit prescribed under clause (in) of first proviso to section 80G(5) without appreciating that the denial of registration on this ground was not justified on facts of the case and in law.

4) *The appellant craves leave to add alter/ amend any of the grounds of appeal”*

13. We find that the facts in ITA No. 1573/PUN/2024 are identical to ITA No. 1572/PUN/2024 except the assessee seeking registration u/s. 80G of the Act. Since, the facts in ITA No. 1573/PUN/2024 are similar to ITA No. 1572/PUN/2024, the findings given by us while deciding the appeal of assessee in ITA No. 1572/PUN/2024 would *mutatis mutandis* apply to ITA No. 1573/PUN/2024, as well. Accordingly, the appeal of assessee is allowed for statistical purposes.

14. To sum up, both the appeals of the assessee in ITA Nos. 1572 & 1573/PUN/2024 are allowed for statistical purposes.

Order pronounced in the open court on 26th November, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th November, 2024.
रवि

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, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune