

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE
BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

I.T.A.Nos.1735 & 1722/PUN./2024
Assessment Year 2022-2023

Otari World Confederation, Pl 13, Near New Nishant Apt. Vinay Nagar, CIDCO Colony, NASHIK – 422 009 Maharashtra. PAN AADCO6485B	vs.	The Income Tax Officer, Exemption Ward-1(1), Kendriya Rajaswa Bhawan, Gadkari Chowk, Old Agra Road, Nashik – 422 022 Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri K P Dewani (Through Virtual)
For Revenue :	Shri Amol Khairnar, CIT-DR

Date of Hearing :	02.12.2024
Date of Pronouncement :	04.12.2024

ORDER

PER BENCH :

The above two appeals filed by the assessee are directed against the separate orders dated 01.03.2024 of the learned CIT(E), Pune rejecting grant of registration u/sec.12A of the Income Tax Act, 1961 (in short "the Act") and also denying approval u/sec.80G of the Act; respectively.

2. There is delay of 109 days and 108 days respectively in filing of these appeals, for which, the assessee has filed condonation applications along with affidavits explaining the reasons for such delay which is due to ill-health of the trustee Mr. Arun Sawant who was looking after the day-to-day affairs

of the trust. Learned Counsel for the Assessee referring to the contents of the affidavits filed along with the condonation applications and relying on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) requested the Bench to condone the delay and admit the appeals for adjudication.

3. Learned DR on the other hand strongly opposed condonation applications filed by the assessee.

4. We have heard the rival arguments made by both the sides on the issue of condonation of delay in filing of the above appeals. We find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST Katiji (supra) has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It has further been held that refusing to condone delay can result in a meritorious matter being thrown-out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. In view of the above decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs., MST Katiji (supra) and considering the contents of the condonation application filed

along with the affidavits, the delay in filing of both the appeals is condoned and the above appeals are admitted for adjudication.

5. Facts of the case, in brief, in its "lead" appeal ITA.No.1735/PUN./204 are that the assessee is a charitable institution and a company formed u/sec.8 of the Companies Act, 2013. It filed an application for registration in Form No.10AB under clause (iii) of section 12A(1)(ac) of the Act on 30.09.2023. In order to verify the genuineness of activities of the assessee and compliance to 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, the CIT(E) issued a notice through ITBA portal on 01.12.2023 requesting the assessee to upload certain information. In response to the same, the assessee submitted certain documents/details.

5.1. On verification of the details submitted by the assessee, the learned CIT(E) noted various discrepancies, for which, he issued another notice to the assessee to answer certain questions. In response to the same, the assessee filed certain details through e-portal which the learned CIT(E) has summarized in para-3 of his order reads as under :

"3. The assessee has furnished its compliance through e-portal, the part of the same is reproduced below :

"Regarding your initial comment we would like to make it clear that we have registered our company for charity purposes and have made clear the objective of the company in our Form-10AB. Furthermore, we would like to inform you that, in accordance with object 18 of our trust deed, we are carrying out activities to help developing nation and achieve the Millennium Development Goals through continuous training and counseling free of cost to the MSME sector which are normally neglected and which does not have sufficient resources and funds to do it, and if it is done, they will contribute immensely for employment development in our country. Specifically objects of our trust deed is for the development of economically backward classes and sections of society, including orphans and street children free of cost so that they are made employable and these objectives are for imparting the practical skills to those downtrodden people who does not have access to such practical skills being imparted at higher cost. Our goal is to develop and impart training free of cost to such underdeveloped parts of our society for making them capable in their lives and there is no profit motive behind such development and imparting training.

We would further like to give clarification for second point that we do have not sufficient funds in Fiscal Year 2021-22 except the equity participation from the founders

and till date we have not taken any donations or corpus funds. We would further like to let you know that we will be approaching various organization and corporate companies for getting funding through CSR so that we can execute the objects and for getting this CSR funds we need to obtain the CSR Registration from the Registrar of Companies which can be granted only when the section 78 company (non-profit) is of 3 years old and we are in the process of now applying for getting CSR registration and once it is in place we will approach the corporate companies in India for seeking the funds under CSR to fulfill the objectives of the section 8 company."

5.2. However, the learned CIT(E) was not satisfied with the submissions of the assessee. He noted that the very first object of the assessee is to construct, renovate and general administration of religious places and structures which is purely of religious nature. Further, the assessee itself has confirmed that it has not carried-out any activities since its inception. Further, the assessee-trust has hardly utilized any amount towards the proposed cause and objects of the trust. Since, it has not commenced its activities, the genuineness of the activities cannot be verified at this stage. He, therefore, treated the application filed by the assessee-trust as premature. Since, he rejected the claim for grant of registration u/sec.12A; due to similar non-compliance, the Ld.

CIT(E) rejected the application for grant of approval u/sec.80G of the Act.

6. Aggrieved with such order of the Ld. CIT(A), the assessee-trust is in appeal before the Tribunal by raising the following grounds in ITA.No.1735/PUN./2024 :

1. *“The learned CIT (Exemption) Pune erred in not granting registration u/s 12A as applied with reference to application dated 30.09.2023 even though it was holding provisional registration u/s 12A(1)(ac)(vi) of I.T. Act 1961.*
2. *The learned CIT (Exemption) erred in not granting registration by observing discrepancies at para 2.2 as to Trust Deed having objects of commercial nature and no activities having been carried out since inception.*
3. *The order passed by CIT (Exemption) non-granting registration u/s 12AB is unjustified, unwarranted and bad in law.*
4. *The learned CIT (Exemption) ought to have grant registration u/s 12AB of I.T. Act 1961 considering the facts and evidence on record.*
5. *The learned CIT (Exemption) erred in cancelling the provisional registration without specifying any specified violation in the case of assessee.*

6. *The learned CIT (Exemption) erred in concluding that para 3.9 and 3.18 are not eligible objects even though it is specified in the Trust Deed as to above said matters as necessary for furtherance of objects specified in clause 3 which are not faulted.*

7. *Any other ground that shall be prayed at the time of hearing.”*

7. Grounds in ITA.No.1722/PUN./2024 :

1. *The learned CIT (Exemption) Pune erred in not granting Approval under clause (iii) of first proviso to sub-section (5) of section 80G of I.T. Act 1961 as applied with reference to application dated 30.09.2023 even though it was holding provisional Approval under clause (iv) of first proviso to sub-section (5) of section 80G of I.T. Act 1961.*

2. *The learned CIT (Exemption) erred in not granting approval by observing discrepancies at para 2.2 as to Trust Deed having objects of commercial nature and no activities having been carried out since inception.*

3. *The order passed by CIT (Exemption) non-granting approval under clause (iii) of first proviso to sub-section (5) of section 80G of I.T. Act 1961 is unjustified, unwarranted and bad in law.*

4. *The learned CIT (Exemption) ought to have grant approval under clause (iii) of first proviso to sub-section (5) of section*

80G of I.T. Act 1961 considering the facts and evidence on record.

5. The learned CIT (Exemption) erred in cancelling the provisional Approval without specifying any specified violation in the case of assessee.

6. The learned CIT (Exemption) erred in concluding that para 3.9 and 3.18 are not eligible objects even though it is specified in the Trust Deed as to above said matters as necessary for furtherance of objects specified in clause 3 which are not faulted.

7. Any other ground that shall be prayed at the time of hearing.”

8. Learned Counsel for the Assessee submitted that assessee-trust was holding provisional registration u/sec.12A of the Act. He submitted that without going through the various evidences on record, the learned CIT(E) rejected the application for grant of registration u/sec.12A. Further, adequate opportunity was not granted by the learned CIT(E). He accordingly submitted that in the interest of justice one more opportunity may be granted to the assessee-trust to substantiate it's case before the learned CIT(E) by producing all necessary details to his satisfaction.

9. The Learned DR on the other hand, heavily relied on the order of the learned CIT(E) and submitted that he has given valid reasons for rejecting the application filed for grant of registration u/sec.12A and approval u/sec.80G. Therefore, the same should be upheld and the grounds raised by assessee in both the appeals should be dismissed.

10. We have heard the rival arguments made by both the sides and perused the material available on record. We find the Ld. CIT(E) rejected the application of the assessee seeking grant of registration u/sec.12A of the Act on the ground that the objects of the assessee-trust are purely of religious nature and the assessee has not carried-out any activities since it's inception and that the assessee-trust has hardly utilized any amounts towards the proposed cause and objects of the trust and, therefore, the genuineness of the activities cannot be verified at this stage and the application is premature at this stage. It is the submission of the Learned Counsel for the Assessee that the assessee was granted provisional registration u/sec.12A. Further adequate opportunity was not granted by the Ld. CIT(E) to substantiate it's case and, therefore, matter may be restored to the file of Ld. CIT(E) with a direction to grant one more opportunity to the assessee to substantiate it's case. We find some force in the arguments advanced by the Learned Counsel for the Assessee that sufficient opportunity was not granted by the

learned CIT(E) for filing the necessary details. Considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the matter back to the file of Ld. CIT(E) with a direction to grant one final opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to make its submissions, if any, before the Ld. CIT(E) on the appointed date without seeking any adjournment under any pretext, failing which, the Ld. CIT(E) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. Since we have restored the appeal in ITA.No.1735/PUN./2024 filed by the assessee seeking registration u/sec. 12A of the Act, therefore, we restore the appeal ITA.No.1722/PUN./2024 filed by the assessee seeking approval of its trust u/sec.80G of the Act back to the file of Ld. CIT(E) with similar directions. The grounds raised by the assessee in ITA.No.1722/PUN./2024 are accordingly allowed for statistical purposes.

12. In the result, both the appeals filed by the assessee are allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 04.12.2024.

Sd/-
[MS. ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[RAMA KANTA PANDA]
VICE PRESIDENT

Pune, Dated 04th December, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.