

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

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

आयकर अपील सं. / ITA Nos.837 & 838/PUN/2024

Nilkanteshwar Mahadev Mandir Trust, 3 Hafsan Ali, Teen Batti, Bhiwandi - 421308 PAN : AAATN2002R	Vs.	CIT (Exemption), Pune
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Smt. Deepa Khare
Department by :	Shri Amol Khairnar
Date of hearing :	02-12-2024
Date of Pronouncement :	05-12-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

Two appeals filed by the assessee are directed against the order dated 22.02.2024 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) of the Income Tax Act, 1961 (**the "Act"**) filed on 28.09.2023.

2. At the outset, the Ld. AR brought to our notice that the appeal in ITA No. 838/PUN/2024 has been filed by the assessee twice inadvertently against the impugned order of the Ld. CIT(E). Since, the assessee inadvertently filed ITA No. 838/PUN/2024, the same becomes infructuous and dismissed as such.

3. We now proceed to decide the appeal in ITA No. 837/PUN/2024.

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

- “1) The learned CIT (Exemption) Pune erred in law and on facts in not granting registration u/s 12A of ITA, 1961, and rejecting the Application for the same.
- 2) The Ld. CIT Exemption Pune is not considering the submission made on 28/09/2023, which has been explained and submitted with form No. 10AB of the Income Tax Act 1961.
- 3) The Ld. CIT Exemption Pune had given very short notice for hearings. The application was filed on 28/09/23, The Notice for hearing was given on

09/02/2024 for compliance of on or before 15/02/2024. The Appellant has applied for an extension for a hearing dated 14/02/2024, which was not considered, and rejected the application for registration. Hence the learned CIT (Exemption) Pune erred in law and on facts in not granting sufficient opportunity to the appellant to submit the details/ information thereby violating the principles of natural justice.

- 4) The appellant contends that learned CIT(E) ought to have decided the matters on merits i.e., on the tests of bona fide objects, genuine activity, etc. instead of the hyper-technical aspect of section/sub-section opted during the filing of application vide form 10AB for registration u/s 12A of ITA, 1961.*
- 5) The appellant craves leave before Hon'ble ITAT to add, alter, clarify, explain, modify, or delete any of the grounds of appeal, set aside, and to seek any just and fair relief."*

5. Briefly stated, the facts of the case are that 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 21.11.2023 through ITBA portal 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/president/secretary, list of donors, note on activities carried out in the last three years/inception etc. under the provisions of section 12AB(1)(b)(i) of the Act. The compliance was sought by 06.12.2023. The notice was duly served on the assessee through e-portal and email. However, the assessee did not respond to the said notice. Hence, another notice was issued on 19.12.2023. The assessee was requested to submit the compliance by 26.12.2023. The notice was duly served on the assessee through e-portal. The assessee responded to the said notice on 22.12.2023. On verification of the details submitted by the assessee in response to the said notice and the documents submitted alongwith the application, various discrepancies were noticed by the Ld. CIT(E) (listed in para 2.2 of his order) resulting in issuance of another show cause notice on 09.02.2024 communicating the said discrepancies thereof. The assessee was requested to show cause as to why the application should not be rejected and why the registration granted under section 12AB of the Act should not be cancelled. The assessee was specifically informed that in the event of failure to comply by the due date of 15.02.2024, the application shall be liable to be rejected and registration shall also be liable to be cancelled. The show cause notice was duly served through e-mail portal/e-mail but the assessee failed to file its reply. The Ld. CIT(E) therefore proceeded to passed the impugned order

rejecting the application filed by the assessee and also cancelling the provisional registration granted on 22.02.2024 to the assessee, by observing as under :

“3. Since the assessee has not furnished any explanation to the discrepancies communicated to it, it is presumed that the assessee has nothing to say in the matter.

4. Considering the above facts discussed in the show 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.”

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

7. The Ld. AR submitted that there was no intentional non-compliance before the Ld. CIT(E). Since the notice(s) were served on email/e-portal, they were glossed over by the assessee. The Ld. CIT(E) had given very short notice of hearings. The application was filed on 28.09.2023. The show cause notice outlining the discrepancies was given on 09.02.2024 seeking compliance by 15.02.2024. The assessee sought extension which was not considered by the Ld. CIT(E) and he proceeded to pass the impugned order rejecting the application of the assessee for the reason that the assessee failed to submit the requisite supporting documents/evidences in support of its charitable activities and also failed to respond to the discrepancies noted by him. The Ld. AR 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 including the details on discrepancies cited by him. He, therefore, prayed that the matter may be set aside to the file of the Ld. CIT(E) to adjudicate the same afresh 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 satisfactory conclusion about the genuineness of the activities of the assessee trust. The Ld. CIT(E) was, therefore, 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 one more 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, 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.

11. To sum up, the appeal of the assessee in ITA Nos. 837/PUN/2024 is allowed for statistical purposes and appeal of the assessee in ITA No. 838/PUN/2024 is dismissed as infructuous.

Order pronounced in the open court on 05th December, 2024.

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

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th December, 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, "ए" बेंच, पुणे / DR, ITAT, "A" 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