

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA Nos. 472 & 473/Ahd/2023

निर्धारणवर्ष/Assessment Year: NA

Hasaniya Healthcare Sarvajanic Trust, Opp. Padheda Masjid MotiVahorwad, Himatnagar, Sabarkantha - 383001 PAN : AACTH 3306 C	Vs.	The CIT (Exemptions), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Jignesh Shah, AR	
Revenue by :	Dr. Darsi Suman Ratnam, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 19.10.2023

घोषणा की तारीख /Date of Pronouncement: 30.10.2023

आदेश/O R D E R

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

These are appeals filed by the assessee against the orders dated 29.11.2022, passed by the Id. CIT (Exemptions), rejecting the applications filed by the assessee for grant of registration under Section 12AB of the Act and application seeking approval under Section 80G(5) of the Act.

2. The brief facts of the case are that the assessee is a charitable trust incorporated on 06.11.2020. The trust was incorporated with the object of providing medical relief without any discrimination on the basis of caste, creed or religion. The trust is running a medical hospital at Himatnagar in the name of "Fatema Hospital". The assessee trust was granted provisional registration under Section 12AB of the Act with effect from 27.05.2021 for AYs 2021-22 to 2023-24 by Id. CIT (Exemptions), Ahmedabad. The assessee-

trust thereafter filed Form No.10AB on 07.05.2022 for seeking final registration under Section 12A(1)(ac)(iii) of the Act. The assessee-trust also filed an application seeking approval of the trust under Section 80G(5) of the Act on 09.05.2022.

3. With respect to grant of registration under Section 12A(1)(ac)(iii) of the Act, the assessee-trust was issued a questionnaire by Id. CIT(Exemptions) on 17.10.2022 which was responded to by the assessee-trust on 07.11.2022. The Id. CIT(Exemptions), Ahmedabad observed certain inconsistencies in the details filed in Form No.10AB and the response filed by the assessee-trust on 07.11.2022. According to the assessee, Id. CIT(Exemptions), without giving the assessee-trust an opportunity to give any clarifications with respect to the said discrepancies, passed an order dated 29.11.2022 in Form No.10AB of the Act, rejecting the application filed in Form No.10AB for grant of registration under Section 12AB of the Act. Further, the application of the assessee seeking approval of the trust under Section 80G(5) of the Act dated 09.05.2022 was also rejected by the Id. CIT(Exemptions) vide order dated 29.11.2022.

4. The assessee is in appeal before us against the aforesaid orders passed by the Id. CIT(Exemptions), Ahmedabad, rejecting the assessee's application for grant of registration under Section 12A(1)(ac)(iii) of the Act and also assessee's application seeking approval under Section 80G(5) of the Act.

5. Before us, Id. Counsel for the assessee submitted that there is a delay of 129 days in filing of the present appeal, primarily on account of mistake committed by the concerned Chartered Accountant of the assessee-trust, who was assisting the assessee-trust in obtaining grant of registration under

Section 12AB of the Act and Section 80G(5) of the Act before the Id. CIT(Exemptions), Ahmedabad. It was submitted that the trust initially filed application for provisional registration and thereafter filed application for regular registration; however, the application was rejected by Id. CIT(Exemptions) on account of certain discrepancies observed by him, vide order dated 29.11.2022. The Id. Counsel for the assessee filed affidavit of the concerned Chartered Accountant who stated that he was under the *bona fide* belief that upon rejection of application for grant of regular registration, a fresh application is required to be filed for seeking regular registration. Accordingly, the assessee-trust, upon the advice of the concerned Chartered Accountant, again tried to apply for regular registration; however, the online functionality did not allow the assessee-trust to again file Form No.10AB, seeking fresh registration. However, later upon realizing the mistake, the concerned Chartered Accountant advised the assessee-trust to file appeal against the orders passed by Id. CIT(Exemptions) rejecting the application for grant of registration under Section 12AB of the Act and grant of deduction under Section 80G(5) of the Act. Accordingly, it was submitted that the delay of 129 days in filing of the present appeal was due to the *bona fide* mistake of the Chartered Accountant of the assessee-trust and the application for condonation of delay has been filed, duly supported by affidavit of the Chartered Accountant, who has admitted that the aforesaid delay in filing of the present appeals was due to a *bona fide* mistake on his part.

6. On merits, the Id. Counsel for the assessee submitted that the assessee is running a charitable hospital. However, due to the mistake of the office of the Chartered Accountant, there were certain apparent discrepancies in the information filed in Form No.10AB, wherein the concerned Chartered

Accountant inadvertently stated that the assessee is carrying on activities in the nature of trade, commerce or business. However, in a subsequent reply to a questionnaire issued by Id. CIT(Exemptions), the assessee-trust submitted that it does not have any business undertaking under the provisions of Section 11(4) or 11(4A) of the Act. Further, while giving undertaking in respect of compliance under Section 2(15) of the Act, the assessee-trust gave an undertaking that the objects and activities of the trust does not involve carrying on any activities in the nature of trade, commerce, business etc.. Accordingly, it was submitted that Id. CIT(Exemptions), in view of the aforesaid discrepancies in the Form No.10AB filed by the assessee-trust and the subsequent replies filed by the assessee-trust in response to questionnaires issued by Id. CIT(Exemptions), rejected the application for grant of registration under Section 12AB of the Act, without confronting the assessee and without giving any opportunity of hearing to the assessee to give any explanation in respect of the above contradictions. Accordingly, it was submitted that the order was passed by Id. CIT(Exemptions) against the principle of natural justice, without giving the assessee-trust of fair opportunity to present its case on merits and to give explanation with respect to discrepancies/contradictions between Form No.10AB filed by the assessee-trust and the subsequent clarifications/replies filed by the assessee. It was submitted that the Id. CIT(Exemptions) simply rejected the application filed by the assessee for grant of regular registration under Section 12AB of the Act and deduction under Section 80G(5) of the Act, upon noticing the aforesaid discrepancies, which were submitted inadvertently by the staff of Chartered Accountant, assisting the assessee-trust and no opportunity was granted to the assessee to give any clarification/reply/justification in support of the aforesaid contradictions. Accordingly, in light of the above facts, it was submitted that, in the interests

of justice, the matter may be sent back to the file of Id. CIT(Exemptions), Ahmedabad for fresh examination/adjudication in accordance with law.

7. In response, Id. DR relied on the observations made by Id. CIT(Exemptions) while rejecting grant of approval under Section 12AB of the Act and under Section 80G(5) of the Act.

8. On going through the facts of the instant case, we observe that the delay in filing of the present appeals was on account of *bona fide* mistake on the part of the concerned Chartered Accountant, which led to the delay in filing of the present appeals before us. Accordingly, looking into the facts of the instant case, in our considered view, it is a fit case for condoning the delay in filing of the instant appeals. Accordingly, looking into the facts of the present case, the delay in filing of the present appeals are hereby condoned.

9. On merits, we observe that there were certain apparent contradictions in Form No.10AB filed by the assessee-trust for grant of registration under Section 12AB of the Act and the subsequent replies filed by the assessee-trust in response to questionnaire issued by Id. CIT(Exemptions). On perusal of the facts of the case, it is observed that the same were on account of inadvertent mistake by the staff of the concerned Chartered Accountant, who, at the time of filing of Form No.10AB, incorrectly interpreted the medical store at the hospital run by the assessee-trust as "business" and accordingly submitted that the assessee is engaged in carrying out business activities. However, subsequently, in reply to questionnaire issued by the Id. CIT(Exemptions), the assessee-trust submitted that it is not involved in carrying out any activities in the nature of trade, commerce or business. The

Id. CIT(Exemptions), Ahmedabad rejected the application filed by the assessee for grant of registration on the basis of the aforesaid contradictions in the application and replies filed by the assessee-trust. However, we observe that while rejecting the application for grant of registration, no opportunity was afforded to the assessee to give any explanation in support of the aforesaid discrepancies/contradictions and the Id. CIT(Exemptions) proceeded to summarily dismiss the applications of the assessee, without giving a fair hearing to the assessee to present its case on merits and to explain the contradictions/discrepancies. Accordingly, in the interests of justice, the matter is being restored to the file of the Id. CIT(Exemptions) to hear the matter afresh on merits with respect to application for grant of registration under Section 12AB of the Act and Section 80G(5) of the Act and pass appropriate order in accordance with law, after giving due opportunity of hearing to the assessee to present its case on merits.

10 In the result, both the appeals filed by the assessee are restored to the file of the Id. CIT(Exemptions), Ahmedabad with the aforesaid directions.

11. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 30/10/2023 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad;Dated 30/10/2023

**/s/*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt.Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad