

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**I.T.A No. 7069/Del/2017
(ASSESSMENT YEAR: 2017-18)**

Sadhna Ashram Trust C/o. Matta Gard & Co. 15, Astley Hall, Dehradun, Uttarakhand AASTS1241B	Vs	CIT, Exemption TC-46, V, UP State Construction & Infrastructure Development Corporation, Vibhuti Khand, Gomti Nagar, Lucknow, Uttar Pradesh
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Shri H. K. Chaudhary, CIT (DR)

Date of Hearing	02.12.2021
Date of Pronouncement	07.12.2021

**Hearing conducted via Webex
ORDER**

PER DIVA SINGH, J.M.

The present appeal has been filed by the assessee, assailing the order dated 13/10/2017 passed u/s 12AA(1)(b)(ii) CIT, Exemption Lucknow, pertaining to 2017-18 assessment year. The grounds raised as under:-

- “1. The Ld. CIT(A), Lucknow ahs erred in rejecting the application for grant of registration u/s 12AA of the Income Tax Act, 1961.*
- 2. The order passed is arbitrary, against the provisions of law and against the facts of the case.”*

2. The assessee has also appended **Statement of Facts** along with the grounds. We shall come to address these in the subsequent paras.

3. At the time of hearing, no one was present on behalf of the assessee. However Written request dated 24th November, 2021 has been placed before us stating as under:-

“Most respectfully submitted that hearing in this case is fixed for 02.12.2021. A / paper books containing inter alia written submission dated 07,09.2021 was submitted by speed post. We are sure it must be available on records.

*It was stated in the paper book that institution cannot afford to engage a senior lawyer. It was requested to decide the case on merits on the basis of written submissions, evidences given in the paper book and **other material available on records. It is reiterated that institution does not have means to join online, therefore, appeal may please be decided on merits.***

Respectfully Submitted

*For Sadhna Ashram Trust
Chitteshwaranand Sd/-
President*

*Dehradun
Dated: 24th Nov, 2021*

(Emphasis supplied)

4. On a reading of the order it appears that the assessee was not heard. The Ld. CIT DR accordingly was required to make his submissions in support of the order. The Ld. CIT DR relied upon the order drawing specific attention to Para 4 of the order. For the sake of completeness, it is reproduced hereunder:-

“4. I have considered the material available on record. The applicant society has not been able to produce the books of accounts. Bank statement and vouchers in respect of expenses

claimed by the applicant for verification of objects and activities of the trust. On perusal of material available on record, it is seen that the applicant society is not carrying out any activities of charitable nature. In light of the above facts that the applicant society could not produce the books of accounts and vouchers, the genuineness of activities could not be verified. As per provision of section 12AA(l)(b) of the Act, two factors namely the object of charitable purpose and the genuineness of activities have to be proved before granting the registration. However, the applicant failed to prove the same. Hence, the applicant society has not made a case for granting the registration u/s 12AA(l)(b).”

(emphasis supplied)

5. We have gone through the impugned order and find that admittedly the assessee could not participate in the proceedings. We also note that the Ld. CIT(E) also did not care to mention any relevant fact. In as much as even the stated Aims and the Objects of the Trust and the supporting documents claimed to have been filed have remained unaddressed.

5.1. We find on a reading of the written submissions in the paper book on record that how that the assessee trust is claimed to be performing “Yajnas and running a Goshala”. How these activities justify the grant of Registration is to be demonstrated by the assessee. It is also found stated on behalf of the assessee that Registration Application u/s 12AA along with all the supporting documents was filed. In the **Statement of facts** filed, it is further stated as under:-

“1. The appellant is a religious/charitable trust applied for registration u/s 12A(a) online on 17/4/2017.

2. The competent authority slept over the application till Sept., 2017 and issued first letter seeking documents/information for making compliance on 12.10.2.017 for the first time at Lucknow.

3. ***The information/documents desired were sent by speed posts which have admitted to have been received in the office of learned Commissioner of Income Tax, Exemption, Lucknow on 09.10.2017. The council could not visit personally as he was busy in Tax audits the last date for which was 31.10.2017.***

4. *The learned Commissioner of Income Tax has deliberately and intentionally falsified the facts that Income & Expenditure Account and Balance Sheet were not submitted which actually were submitted for the year ending 21.02.2017 only as the Trust was created on 21.12.2016. Further, the compliance of the letter dated 12.00.2017 written by learned Commissioner of Income Tax was fully made."*

(emphasis supplied)

5.2. Be that as it made the facts remain that there are patent contradictions on the basic facts itself. Accordingly, we hold that the impugned order as it stands cannot be upheld. In the circumstances we deem it appropriate to set aside the order back to the file of the Ld. CIT (Exemption) with the direction to bring on record all available facts i.e. the Aims and the Objects of the trust etc so as to enable us to adjudicate whether the decision to allow/deny the Registration is based on settled legal position or not. In the absence of specific discussion on the relevant facts we are unable to conclusively come to any finding.

5.3 The assessee in his own interests is also directed to ensure and full proper participation and place all necessary documents before the adjudicating authority. It cannot be over emphasized that the assessee who seeks Registration cannot be allowed to wash his hands off claiming inability to engage a counsel, participate in the proceedings and avoid making available the relevant documents. Without ensuring that the documents are placed on record the onus placed upon the assessee cannot be said to be properly discharged in law. The assessee cannot be allowed to absolve himself of all responsibilities and alternately shift the burden on the tax authorities expecting

them to run helter skelter and gather evidences which the assessee seeks to rely upon. The onus placed upon the party seeking Registration cannot be allowed to be struck off on the specious plea that the assessee is unable to assist. In the absence of proper compliances etc before the Ld. CIT(Exemption) on the part of the assessee it is made clear that the Ld. CIT(A) (E) shall be at liberty to pass an order on the basis of material available on record. Hence, the opportunity so provided in good faith, it is hoped is not abused and utilized fairly by the assessee.

6. The order in view of the above reasons and in terms of the above direction is set aside as per the pronouncement made in the open Court via Webex at the time of hearing itself.

7. In result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the Open Court on this 07th Day of December, 2021 in presence of both the parties.

Sd/-

(N.K. BILLAIYA)

ACCOUNTANT MEMBER

** R. N. Sr.PS*

Sd/-

(DIVA SINGH)

JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT concerned Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches:
Delhi.

