IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE: SHRI G. S. PANNU, ACCOUNTANT MEMBER
AND
SHRI R.S. PADVEKAR, JUDICIAL MEMBER

ITA Nos. 2270 & 2271/PN/2012

Assessment Years :

Sitai Bahuuddeshiya Shaikshanik Sanstha, C/o Rajaram Salunke, H. No. 604, Bhadane Taluka Sakri, District Dhule (Appellant) PAN No.AAJTS8284R	**Vs.**	**Income Tax Officer, Ward-3(3), Dhule** (Respondent)

Appellant By: **Shri Sunil Ganoo**
Respondent By: **Ms. M.S. Verma**

Date of hearing : **02-01-2014**
Date of pronouncement : **28-01-2014**

ORDER

PER R.S. PADVEKAR, JM:-

These two appeals are filed by the assessee challenging the impugned orders of the Ld. CIT-I, Nashik rejecting the registration to the assessee u/s. 12AA of the Income-tax Act, 1961 vide order dated 20-09-2011 and also rejecting the exemption u/s. 80G of the I.T. Act vide order the same date.

2. In ITA No. 2270/PN/2012, the assessee has taken the following grounds:

1. *In the facts and circumstances of the case and in law, the learned C.I.T. has failed to appreciate the legal position that the application dt.20/03/2012 filed by the appellant trust for registration u/s 12A [1] [aa] of the I.T. Act 1961 was a fresh application and consequently the learned C.I.T. ought to have adjudicated the said application on merits. The learned C.I.T. may please be directed to grant the registration to the appellant as prayed for vide application dt. 20/03/2012*

2. *In the facts and circumstances of the case and in law, the learned C.I.T. has grossly erred in rejecting the application for registration*

made by the appellant trust u/s 12A [1] [aa] of the I.T. Act 1961, on the ground that the earlier application was rejected due to non attendance on the part of the appellant and hence the decision on fresh application would amount to review of the earlier order The impugned, order being arbitrary, perverse, devoid of merits and being legally unsustainable the same may please be vacated and the learned C.I.T. may please be directed to grant the registration to the appellant as prayed for vide application dt.20/03/2012

3. *The appellant stoutly objects to the observation of the learned C.I.T. in Para 5 on Page 2 of the impugned order that* ***But he could not explain the genuineness of the trust*** *as the same is factually incorrect, arbitrary and perverse and hence the same is requested to be vacated.*

4. *Without prejudice to above grounds of appeal, and by way of an alternate submission, the appellant submits that the impugned order passed by the learned C.I.T. may please be vacated and the learned C.I.T. may please be directed to decide the application filed by the appellant on 20/03/2012 on merits without being in any way influenced by his earlier ex parte order passed on 20/09/2011.*

3. In ITA No. 2271/PN/2012, the assessee has taken the following grounds:

1. *In the facts and circumstances of the case and in law, the learned C.I.T. has grossly erred in mechanically passing the impugned order on the ground that the earlier application was rejected due to non attendance on the part of the appellant arid hence the decision on fresh application would amount to review of the earlier order. The impugned order being arbitrary, perverse, devoid of merits and being legally unsustainable the same may please be vacated and the learned C.I.T. may please be directed to grant the registration to the appellant as prayed for vide application dt.20/03/2012*

2. *Without prejudice to above grounds of appeal, and by way of an alternate submission, the appellant submits that the impugned order passed by the learned C.I.T. may please be vacated and the learned C.I.T. may please be directed to decide the application filed*

by the appellant on 20/03/2012 on merits without being in any way influenced by his earlier ex parte order passed on 20/09/2011

4. The briefly stated facts are as under. The assessee is a trust which has come into existence w.e.f. 05-11-1994 as per trust deed and is registered under the Society Registration Act, 1860 and the Bombay Public Trust Act. The assessee had earlier applied for registration u/s. 12AA vide letter dated 07-03-2011 but the assessee's application was rejected by the CIT-I. As observed by the Commissioner in his order the orders as well as the communication were returned back by Postal Authority with remark that trust is not traceable on given address. It appears that the assessee trust again filed an application in Form No. 10A for registration u/s. 12AA of the I.T. Act on 20-03-2012. The Commissioner rejected the application of the assessee by following observations:

> *5. In response to letter A.R. of the trust Shri A.M. Gujrathi, C.A. attended and explains the case. But he could not explain properly the genuineness of the trust and previously the application of the trust was rejected due to non attendance and rejection order has been passed on that basis. In my opinion this order cannot be reviewed by me and that is no such provision in I.T. Act to review order passed previously. The assessee trust might prefer an appeal to I.T.A.T., Pune, if it was aggrieved by the earlier order.*

5. We have heard the parties. The Ld. Counsel submits that second application was the fresh application and the same should have been decided on merit by the Ld. Commissioner. We find force in the argument of the Ld. Counsel. On the perusal of the impugned order dated 18-09-2012 we find that the Commissioner himself as stated that the assessee has filed the application in Form No. 10A for registration of the charitable/religious trust u/s. 12AA of the I.T. Act on 20-03-2012. In our opinion the said application should not have been treated as a review application by the Commissioner as it was a fresh application and the Commissioner should have decided the application on merit. The

approach of the Commissioner, in our opinion is erroneous treating the second application filed by the assessee for review of the order passed dated 20-09-2011. We, accordingly, set aside the order of the Commissioner and restore the entire matter to his file with direction to decide the same afresh as per the provisions of law by passing the speaking order. Needless to say the assessee should be given an opportunity as per the principles of natural justice.

6. So far as ITA No. 2271/PN/2012 is concerned it is in respect of getting approval u/s. 80G which is consequential as the assessee's application for getting registration u/s. 12AA of the I.T. Act has been rejected by the Commissioner. We, therefore, set aside the order of the Commissioner passed u/s. 80G of the I.T. Act dated 20-09-2011 and restore the entire matter to his file for fresh decision in the light of our above observations and directions in ITA No. 2270/PN/2012.

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

Pronounced in the open Court on **28-01-2014**

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Sd/-
(R.S. PADVEKAR)
JUDICIAL MEMBER

RK/PS
Pune, Dated: 28th January, 2014

<u>Copy to</u>

1 Assessee
2 Department
3 The CIT-I, Nashik
4 The CIT, Nashik
5 The DR, ITAT, "A" Bench, Pune.
6 Guard file.

//True Copy//

By Order

Private Secretary
Income Tax Appellate Tribunal
Pune