

THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh(JM)

I.T.A. No. 221/Mum/2020 (Assessment Year 2017-18)

Marathwada Mitra Mandal CTS No. 633, Opp Chetana College, Bandra East Mumbai-400 051. PAN : AACTM2309N (Appellant)	Vs.	CIT(Exemption) Piramal Chambers 6 th Floor, Parel Mumbai-400 012. (Respondent)
---	-----	--

Assessee by	Shri Narendra Sharma
Department by	Shri Salil Mishra
Date of Hearing	13.10.2020
Date of Pronouncement	10.12.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 1.11.2017 rejecting the assessee's application for registration u/s. 12A of the Income Tax Act (in short 'Act').

2. The grounds of appeal read as under :-

- 1) The Learned Assessing Officer is not justified in not affording another opportunity to the Appellant Trust (and to the authorized CA only) to present the documentary evidences for non compliances of the requirements. Except Balance Sheet and Income & Expenditure Account, other documents as desired, were in possession of the Trust, which should have been submitted, had it been informed to the Trust also. The authorized CA failed to inform the Trust of the requirements by the office of CIT (Exemptions).
- 2) Non Co-operation of the Auditors who was Authorized representative of the Trust should not result in any sort of privilege in the interest to the Trust.

3. Brief facts of the case the assessee-Trust filed an application for registration U/S.12A of the I.T. Act 1961 in the prescribed Form No. 10A on

11.5.2017. The trust was constituted by a Trust Deed dated 28.09.1966. It was registered with the Office of the Assistant Charity Commissioner, Mumbai on 08.10.1988 vide registration No. F-12722(Mumbai). However due to non-supply of details sought, the learned CIT(A) rejected this application by concluding as under :-

Thus, for want of non submission of details with respect to property shown in the Balance sheet alongwith the supporting document, details with respect to loan from M/s. Samruddhi Arcade Pvt. Ltd. and the income & expenditure account and balance sheet for the A.Y. 2011-12, 2012-13, 2016-17 and 2017-18, the genuineness of the activity of the trust cannot be proved beyond doubt. As the applicant Trust has failed to fulfill the mandatory procedural requirements prescribed U/S.12AA read with Rule 17A, and therefore, its application for grant of registration is rejected.

4. Against the above assessee is in appeal before us. Learned Counsel of the assessee has summarized the reasons for the failure of the assessee in complying with the requirement of learned CIT(A) as under :-

“1. Absolute non Co-operation by Auditors M/s. L W. Kale, the Chartered Accountants - an authorised representative of our trust for 12 A registration matter in non submission of Revised Audited Statements for the FY 2013-14 and subsequent year Audit Report and Audited Income & Expenditure Account and Balance Sheet, resulting in getting audits late for the subsequent years.

2. Non Attendance by L. W. Kale, the Chartered Accountant on 13.10.2017, a date, fixed for submission of property documents and account details of Samruddhi Arcade Pvt. Ltd. as was desired from him by the office of CIT (Exemption), Mumbai.

3. Submission of property documents and account details of Samruddhi Arcade Pvt. Ltd. as was desired from him by the office of CIT (Exemption), Mumbai could have been submitted by L. W. Kale, the Chartered Accountant as these documents were available with the Trust. He did not bother to inform the Trust of the requirements of these documents.

4. Non informing by the authorized CA, the Trust about the requirements raised in connection with the application for the grant of Registration U/s. 12 A of the Income Tax Act, 1961 on 28.09.2017 and deliberately be absent on 13.10.2017.

5. Off too much late, on 16.02.2018, L. W. Kale, the Chartered Accountants, informed in writing their inability to complete the Audit for the FY 2013-14 and 2014-15.

6. The Trust was forced to appoint new firm of Chartered Accountants for the Re-Audit of Accounts for the FY 2013-14 and conduct the Audit of remaining subsequent years. The audits were completed on 28.10. 2019.
7. Submission of Audit Reports and Income and Expenditure Accounts and Balance Sheets and ITR's are pre-requisitions for an application for the grant of Registration U/s. 12 A of the Income Tax Act, 1961 was known to CA.
8. Having occupied the post of an Auditor, holding Power of Attorney and deliberate non co-operation from him backed by late submission of reluctance to continue as Auditors, forcing the Trust to appoint New firm of Chartered Accountants and getting the Audits done for the period from 2013-14 to 2018-19 are the major reasons of Trust for genuinely seeking for condonation of delay.
9. A complaint of misconduct against M/s. L. W. Kale, the Chartered Accountants has also been filed with Institute of Chartered Accountants, Mumbai.”
5. Upon hearing both the counsel and perusing the records, in our considered opinion the non-compliance by the assessee is fully attributable to the conduct of the consultant. In the substance interest of justice, we remit the issue to the file of learned CIT(A). Learned CIT(A) shall give the assessee one more opportunity for the compliance of his queries. Thereafter he shall decide as per law. The assessee is also directed to provide full cooperation.
6. In the result, appeal by the assessee stands allowed for statistical purpose.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 10.12.2020.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 10/12/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai