

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**

**BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI RAVISH SOOD, JM**

**आयकरअपीलसं. / ITA No.79/PUN/2021**

**निर्धारणवर्ष/ Assessment Year : -**

Uttamenergy Philanthropic Foundation  
Mahindra Chambers, May Fair, A-4,  
DP Road,Camp, Pune – 411001

PAN :AAACU2928A

.....अपीलार्थी / Appellant

बनाम / V/s.

CIT (Exemption),  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar, A.R  
Revenue by : Shri Kalika Singh, D.R

सुनवाई की तारीख / Date of Hearing : 04/01/2022  
घोषणा की तारीख / Date of Pronouncement : 07/01/2022

**ORDER**

**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee trust/institution is directed against the order passed by the Commissioner of Income Tax (Exemption), Pune u/s 12AA(1)(b)(ii) of the Income Tax Act, 1961 ("Act", for short), dated 27/01/2021, declining the assessee's application for grant of registration u/s 12AA of the Act. The assessee has assailed the impugned order on the following solitary ground of appeal before us:

- "1. The learned CIT(Exemption) erred on facts and in law in rejecting approval u/s 12AA of the Act. He failed to appreciate the facts and contentions of the assessee in proper perspective."

2. Briefly stated, the assessee which is a company incorporated under the Companies Act, 1956 had as on 15.06.2020 e-filed an application in Form No.10A for grant of registration u/s 12AA of the Act. On 28/08/2020 the Id. CIT (Exemption) issued a notice through ITBA portal to the assessee trust directing it to furnish/upload certain information/clarification that was required to process its application. On a perusal of the aforesaid application, it was noticed by the Id. CIT (Exemption) that the assessee had applied for registration under clause (ab) of sub-section (1) to Sec. 12A of the Act, which provided for filing of a fresh application if a trust/institution had adopted or undertaken modifications of the objects which do not conform to the conditions of registration already granted. Observing, that an application for registration under clause (ab) of sub-section (1) to Sec. 12A was statutorily required to be filed within a period of 30 days from the date of adoption or modification of the objects, the Id. CIT(Exemption) was of the view that the application filed by the assessee trust on 29.08.2018 i.e being much beyond the stipulated time period was not maintainable. At the same time, the Id. CIT(Exemption) holding a doubt that the assessee trust might not have in context of Sec. 12AB of the Act which was earlier proposed to be effective from 01.06.2020 but was thereafter made effective from 01.04.2021, therein, wrongly referred to the provisions of Sec. 12A(1)(ab) of the Act, thus, vide a notice issued through e-portal on 06.11.2020 called upon it to clarify the correct factual position, and if the application was correctly filed, then, to furnish the copy of its Memorandum of Association/Trust deed prior to and after the date of modification of its objects. Also the assessee was directed by the Id. CIT(Exemption) that if it's intention was to file an application u/s 12AB of the Act, then, it may withdraw the application since the new provisions were made effective only from 01/04/2021. As the assessee failed to respond to the aforesaid notice, therefore, the Id. CIT(Exemption) issued another notice through e-portal on 06/12/2020, to which the assessee applicant through an e-mail expressed its inability to make submissions through the e-portal and though filed as an attachment its reply to the questionnaire dated 28.08.2020, but did not furnish any explanation to

the query as regards the filing of the application u/s 12A(1)(ab) of the Act. Also, the assessee did not furnish its Memorandum of Association/Trust deed after the modification of its objects. In the absence of any submission forthcoming, the Id. CIT(Exemption) provided another opportunity to the assessee vide a notice dated 21/12/2020 that was issued through e-portal. Although the assessee filed its reply to the aforesaid notice dated 21/12/2020, however, once again it neither did furnish any details as regards the modification of its objects nor a copy of the amended Memorandum of Association. Backed by the aforesaid facts, the CIT(Exemption) concluded, viz. (i). that as the application of the assessee u/s 12A(1)(ab) of the Act was filed beyond the stipulated time period of 30 days from the date of modification of its objects, thus, it was not maintainable; and (ii). that the assessee had even otherwise failed to furnish the copies of the documents evidencing adoption or modification of the objects which it was required to file as per the provisions of Rule 17A of the Income Tax Rules, 1962; therefore, having failed to fulfil the conditions of Sec. 12A(1)(ab) of the Act as well as the provisions of Rule 17A of the Income-tax Rules, 1962 the assessee was not eligible for grant of registration u/s 12AA(1)(b)(ii) of the Act.

3. Aggrieved, the assessee trust has assailed the order of the Ld. CIT (Exemption) in appeal before us.

4. We have heard the Id. Authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. At the very outset of the hearing of the appeal, it was submitted by the Id. Authorised representative ("A.R", for short) that the assessee trust while filing the online application for grant of registration u/s 12A of the Act, had on account of a bonafide mistake, inadvertently stated at Column 5a of its application in "Form No. 10A" that its case was that of registration under clause (ab) of sub-section (1) of Sec. 12A of the Act. Our attention was drawn by the Id. A.R to the application filed by the assessee trust in "Form No. 10A". It was stated by the Id. A.R that the assessee trust had earlier not been granted registration u/s 12AA of the Act, and had in fact filed the application seeking registration for the first

time. It was submitted by the Id. AR that it was on account of a bonafide mistake that the assessee had inadvertently marked the application as one being filed under clause (ab) of sub-section (1) to Sec. 12A of the Act. On the basis of his aforesaid contentions, it was submitted by the Id. A.R that in all fairness the matter be restored to the file of the Id. CIT (Exemption) with a direction to dispose off the application afresh.

5. The learned Departmental Representative ("D.R", for short) conceded that as the issue had not been examined properly, therefore, the same may be restored to the file of the Id. CIT(Exemption) for re-examination and disposing off the application filed by the assessee in "Form No. 10A" as per the extant law.

6. We have heard the Id. Authorised Representatives for both the parties, perused the orders of the lower authorities and the material available on record. After considering the facts involved in the case before us, we concur with the Id. A.R that the assessee trust which had filed an application seeking grant of registration u/s 12A of the Act, had inadvertently, on account of a bonafide mistake stated in its application in "Form No. 10A" that the same was filed under clause (ab) of sub-section (1) to Sec. 12A of the Act. Backed by the aforesaid facts, we are of the considered view, that in all fairness the matter requires to be restored to the file of the Id. CIT(Exemption) for *de novo* consideration of the assessee's application i.e, after allowing an opportunity to the assessee to rectify the mistakes in the same. We, thus, in terms of our aforesaid observations restore the matter to the file of the Id. CIT(Exemption).. The **Ground of appeal No.1** is allowed for statistical purposes.

7. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced on 07<sup>th</sup> January, 2022.

**Sd/-**

**(Inturi Rama Rao)**  
**ACCOUNTANT MEMBER**

**sd/-**

**(Ravish Sood)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 07/01/2022

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. The CIT (Exemption), Pune.
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, “B” बेंच,
4. पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकरअपीलीयअधिकरण, पुणे / ITAT, Pune.

Date of dictation	04-01-2022
Date on which the typed draft is placed before the dictating member	05-01-2022
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	10-01-2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	