

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1305/Mum./2021
(Assessment Year : 2022-23)

Saifee Burhani Upliftment Trust
Mufaddal Shopping Arcade,
Ramchandra Bhatt Marg,
Umarkhadi, Chinchbunder,
Mumbai 400 009
PAN – AAITS3160K

..... Appellant

v/s

Commissioner of Income Tax (Exemptions)
Circle-2, Piramal Chambers, Lalbaug,
Parel, Mumbai 400 012

..... Respondent

Assessee by : Shri Tanzil Padvekar
Revenue by : Shri B.K. Bagchi, Sr. AR

Date of Hearing – 15.03.2022

Date of Order – 27.04.2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee against the order for Provisional Registration dated 28.05.2021 passed by DIT (CPC) in Form 10AC.

2. In this appeal, the assessee has raised following grounds:

"1. That appellant is entitled to Regular Registration for 5 years as mandated under section 12 AB and DIT was wrong in granting only provisional registration to the appellant.

2. That conditions are imposed for registration u/s 12 AB are unwarranted, unjustified and without authority of law.

3. That the order passed for Registration is contrary to the provisions of the Act."

3. The only grievance of the assessee in present appeal is against grant of Provisional Registration instead of Regular Registration under section 12AB of the Income Tax Act, 1961 ("the Act").

4. The brief facts of the case are: The assessee is a Public Charitable Trust registered under Bombay Public Trust Act, bearing Registration No. E 25619 (Mumbai). The assessee trust has also been granted registration under section 12AA(1)(b)(i) of the Act vide order dated 30.10.2009 passed by the Director of Income Tax (Exemptions), Mumbai.

5. The assessee trust made an application on 24.05.2021 in Form No. 10A for registration as per section 12A(1)(ac)(i) of the Act. The DIT (CPC) vide impugned order dated 28.05.2021 granted Provisional Registration in Form 10AC to the assessee trust subject to certain conditions. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative ("*learned A.R.*") appearing for the assessee submitted that as the assessee trust was registered under section 12AA, application for registration was filed by the assessee as per provisions of section 12A(1)(ac)(i) of the Act. The learned A.R. further submitted that in cases where application is made under provisions of section 12A(1)(ac)(i) of the Act, the Principal

Commissioner or Commissioner is required to pass an order registering the trust for a period of 5 years under section 12AB(1)(a) of the Act. However, Provisional Registration was granted in Form 10 AC, which is granted to new charitable institutions who are yet to commence their activities.

7. On the other hand, learned Departmental Representative vehemently relied upon the impugned order granting Provisional Registration.

8. We have considered the rival submissions and perused the material available on record. In order to decide the issue, it is relevant to analyse the relevant provisions of the Act applicable to the present case. Section 12A deals with conditions for applicability of section 11 and 12. Section 12A(1)(ac) of the Act reads as under:

"12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(a) ..

(aa) ...

(ab) ...

(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—

(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional

registration or within six months of commencement of its activities, whichever is earlier;

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought,

and such trust or institution is registered under section 12AB;”

9. From the aforesaid provision, it is clear that for claiming the benefit under section 11 and section 12 of the Act, the trust or institution has to make an application for registration and such trust or institution should be registered under section 12AB of the Act. Section 12A(1)(ac)(i) of the Act specifically deals with the cases where trust or institution was registered under section 12A or under section 12AA.

10. Further, section 12AB of the Act deals with procedure for fresh registration. Section 12AB(1) of the Act reads as under:

“12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of the trust or institution; and

- (B) *the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;*
- (ii) *after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i),—*
- (A) *pass an order in writing registering the trust or institution for a period of five years; or*
- (B) *if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;*
- (c) *where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,*
- and send a copy of such order to the trust or institution.”*

11. In the present case, it has not been disputed that the assessee trust was duly registered under section 12AA of the Act. Thus, the only provision applicable to the assessee trust for the purpose of applying for registration is section 12A(1)(ac)(i) of the Act. Further, section 12AB(1)(a) of the Act provides that where an application is made under section 12A(1)(ac)(i) the Principal Commissioner or Commissioner shall pass an order in writing registering the trust or institution for a period of 5 years. However, in the present case, the assessee trust being registered under section 12AA and thus rightly made an application under section 12A(1)(ac)(i) of the Act, was granted Provisional Registration in Form 10 AC subject to certain conditions. It is pertinent to note that section 12AB(1)(c) deals with granting of Provisional Registration to the trust or institution for a period of 3 years from the assessment year from which registration is sought. However, the said section is applicable in cases where application is made under section 12A(1)(ac)(iv) of the Act. It is also not disputed that the

Provisional Registration would be granted for a period of 3 years to the charitable institutions which are yet to start their activities. However, in the present case, the assessee trust was already holding certificate dated 30.10.2009 issued under section 12AA of the Act. We noticed that section 12AB(1)(a) of the Act, which deals with grant of Regular Registration for a period of 5 years does not authorise the Principal Commissioner or Commissioner to impose any conditions for grant of such registration. We further noticed that though the impugned order granted Provisional Registration subject to certain conditions, however, same was granted for a period of 5 assessment years i.e. from assessment year 2022-23 to assessment year 2026-27. We also noticed that the impugned order for provisional registration in Form 10AC was issued under section 12A(1)(ac)(i) of the Act, which provision merely deals with making an application for registration.

12. Thus, in view of the above, we are of the considered opinion that application filed by the assessee trust under section 12A(1)(ac)(i) was not properly considered for grant of registration under section 12AB of the Act. Accordingly, we direct the designated authority under section 12AB to *de novo* consider the application of the assessee trust under section 12A(1)(ac)(i) of the Act and grant the registration as per law. As a result, grounds raised by the assessee are allowed for statistical purpose.

13. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.04.2022

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27.04.2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai