

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No. 332/Ahd/2023

Shree Kalyan Kelvani Uttejak Mandal At Kalyanpura, Tal Kadi, Mehsana-382715, Gujarat PAN: AAHTS3486M (Appellant)	Vs	The CIT (Exemption), Ahmedabad (Respondent)
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**Assessee Represented: Shri Prakash D. Shah, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR**

Date of hearing : 24-01-2024
Date of pronouncement : 31-01-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 30.12.2022 passed by the Commissioner of Income Tax (Exemption), Ahmedabad rejecting Registration under section 12AB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Registry has noted that there is a delay of 65 days in filing the above appeal. It is explained by the trustee by way of a notarized Affidavit that the delay of 65 days is mainly on account of

communication on non-active e-mail id of the trustee and improper advice of the previous Chartered Accountant.

3. The Ld. CIT-DR has no serious objection in condoning the delay. Thus we are satisfied with the reasons given by the assessee Trust and we hereby condone the delay of 65 days in filing the above appeal.

4. The brief facts of the case is that the assessee is a Trust for the object of running educational, medical facilities, etc. The assessee Trust filed an application u/s. 12AB of the Act in Form 10AB on 08.06.2022. The Ld. CIT(E) issued a notice dated 07.11.2022 requesting the assessee to furnish detailed note on the activities actually carried out by the Trust with relevant details and documents. There was no response to this notice, therefore final opportunity was given to the assessee by issuing another notice on 28.11.2022. In response, the assessee furnished various details. From the above details, the Ld. CIT(E) found the Assessee Trust has not produced complete books details before the Auditor and hence he had to qualify his Audit Report and no explanations offered by the assessee Trust on the above discrepancies. Therefore Ld. CIT(E) held that it is not possible to arrive at proper satisfaction regarding genuineness of the activities and verify the activities are in consonance with the objects of the Trust, thereby Ld. CIT(E) rejected the application filed in Form 10AB for registration u/s. 12AB of the Act.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. That the Ld. CIT(E) has erred in law and fact by rejecting the application for registration under section 12AB of the Act on the ground that genuineness of the activities of the Trust does not get established therefore the ld. CIT(E) is to be directed to grant registration under section 12AB of the Act.

2. That your appellant craves a leave to add, alter or mend any grounds at the time of hearing.

6. Ld. Counsel Shri Prakash D. Shah appearing for the Assessee submitted before us, the final notice dated 28.11.2022 issued by Ld. CIT(E) was without asking the specific details, when the same was filed by the assessee no further query or opportunity given to the assessee to explain its case. Only on getting the rejection order, the assessee comes to know that the discrepancies mentioned by the Ld. CIT(E) for rejecting registration. Thus Ld. Counsel pleaded that one more opportunity be given to the assessee, so that the assessee undertake to file all the requisite details, documents and evidences in support of the case for grant of registration u/s. 12AB of the Act.

7. Per contra, the Ld. CIT-DR Shri Kamlesh Makwana appearing for the Revenue submitted that Ld. CIT(E) as per section 12AB of the Act, has to conduct an enquiry about the activities of the Trust and to verify the objects as per the Trust Deed and genuineness of the activities of the Trust and after satisfying the activities carried out by the assessee, the Ld. CIT(E) can grant Registration u/s. 12AB of the Act. Though the Ld. CIT(E) provided opportunities to the assessee as per the statutory provision, the assessee failed to submit the complete details namely annual accounts without audited. Therefore the rejection of Registration by Ld. CIT(E) is

justifiable. Therefore the order passed by Ld. CIT(E) does not require any interference and the appeal filed by the assessee is liable to be dismissed.

8. We have given our thoughtful consideration and perused the materials available on record. It is seen that the assessee failed to reply to the first notice but in the second notice, the assessee furnished the required details. However Ld. CIT(E) having noticed the discrepancies and mismatches, the same are not confronted to the assessee before rejecting registration u/s. 12AB of the Act, which is against the Principle of Natural Justice. At the same time, when an assessee claim for exemption, it should be double sure about furnishing required documents and evidences and should not furnish piecemeal documents.

9. Therefore considering the facts and circumstances of the case, in order to prevent miscarriage of justice, we find it fit and proper to provide one more opportunity of being heard to the assessee in support of its case for registration of the Trust u/s. 12AB of the Act. Therefore we dispose of this appeal by restoring this issue to the file of the Ld. CIT(E) with a direction upon him to provide further opportunity of being heard to the assessee and consider the documents, evidences which the assessee would file as per the notice issued by the Ld. CIT(E). Upon considering the entire set of documents and upon affording an opportunity of being heard to the assessee, the Ld. CIT(E) to dispose of the application for grant of registration of the Trust under Section 12AB of the Act with a speaking order. Needless to say if the assessee fails to co-operate

with the Ld. CIT(E) as directed hereinabove, the Ld. CIT(E) would be at liberty to pass orders strictly in accordance with law.

10. In the result, the appeal filed by the Assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 31-01-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 31/01/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद