

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 162/CHNY/2024

**M/s.MaDeIT Innovation
Foundation,**
3rd Floor, New Academic Block,
IIITDM,
Kancheepuram – 600 127.

The CIT(Exemption),
Vs. Chennai.

PAN: AAKCM 5065A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Girish Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri M. Murali, CIT

सुनवाई की तारीख/Date of Hearing : 06.06.2024
घोषणा की तारीख/Date of Pronouncement : 12.06.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Exemption), Chennai rejecting Form No.10AB u/s. 12A(1)(ac)(iii) dated 29.03.2023 filed for seeking registration under section 12AB of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.09.2023.

2. At the outset, the Id.counsel for the assessee drew our attention that this appeal is time barred by 55 days. The facts of the assessee are that the order of CIT(E) is dated 29.09.2023 and as per Form No.36, the same was received or communicated to the assessee on 29.09.2023. The appeal should have been filed on or before 28.11.2023. The assessee actually filed this appeal on 22.01.2024 and thereby there is a delay of 55 days. Now the assessee has filed condonation petition stating the reason that the assessee tried to or attempted to file fresh application for seeking registration u/s.12A of the Act but the grievance raised by assessee in the portal was not resolved till 27th December, 2023 and that day, the assessee approached the counsel on record with the help of its Chartered Accountant and accordingly, appeal was prepared and filed before the Tribunal on 22.01.2024. The reasons stated in condonation petition reads as under:-

“The Appellant filed a Form u/s 10AB which was rejected by the CIT(E) on the ground of non-compliance and insufficient time by passing the Form 10AD. Subsequently, the Appellant had attempted to file fresh application for seeking registration u/s 12A.

However, the portal did not permit the Appellant to file Form 10AB after the prescribed date for which the appellant raised a Grievance in the portal which was resolved on December 27 following which the appellant approached the Counsel on Record with the help of the Chartered Accountant who had advised the Appellant to file an appeal against the rejection order dated 29.09.2023.”

When these reasons were confronted to Id.CIT-DR, he could not controvert the above fact situation.

2.1 After hearing rival contentions and going through the facts on delay, we are of the view that the assessee was trying to file fresh application for seeking registration u/s.12A of the Act but grievance of the assessee was not resolved till 27th December, 2023 and thereafter, the assessee took steps to file appeal before the Tribunal. We find the cause as reasonable and sufficient and hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of assessee is as regards to the order of CIT(E) dismissing the application filed by assessee in Form No.10AB dated 29.03.2023, seeking registration of assessee trust u/s.12A(1)(ac)(iii) of the Act for the reason that the assessee could not submit the details called for vide para 8.3 of the impugned order. Another facet of argument by Id.counsel for the assessee is that no effective or proper opportunity of being heard before passing the impugned order in violation of principles of natural justice.

4. Brief facts are that the assessee MaDeIT Innovation Foundation filed an online application on 29.03.2023 in Form No.10AB

u/s.12A(1)(ac)(iii) of the Act, seeking registration u/s.12AB of the Act. The CIT(E) noted that the assessee has not replied the show-cause notice dated 14.09.2023 and he also called from the assessee various details which are narrated in paras 8.1 to 8.3 as under:-

“8.1 As explained in the said Show Cause Notice issued to the applicant, in Rule 17A of the Income Tax Rules, 1962 the list of documents which are mandatorily required to be submitted by the applicant has been prescribed. As per clause ‘e’ of Rule 17A, filing of certified copies of the annual account of the Trust for 3 years is mandatory. From the annual accounts of the applicant that is from its financial only, one can find out what type of expenses incurred by it, whether it is towards the object of the trust or not. Moreover from the income and expenditure only, how much amount of donation the trust received and. how much amount of income, the trust applied towards the object of the trust. It is relevant to mention here that as per the provisions of section 11(1a) of the I.T.Act, 85% of income should be applied in the year of receipt and if the trust is not able to apply 85%, then it has to file prescribed Form 9A/10 and has to follow certain conditions as prescribed in the Act. Since, the applicant failed to furnish the mandatory details required by Rule 17A of the Income Tax Rules, 1962, the application filed by the applicant deserves to be rejected.

8.2 Apart from the above, as explained in para 8, the applicant has not submitted any of the documents as called for in the questionnaire in respect of 20 questions asked in sl.no. 9-28 of the questionnaire issued to the applicant, which contains some important undertaking as explained in the following para.

8.3 The undertakings called for from the applicant are

- i) Whether any business undertaking is held under the provisions of section 11(4) or 11(4A)*
- ii) An undertaking that there will be no infringement to the 1st proviso to section 2(15) of the Income Tax Act, 1961*

ii) Declaration to the effect that no part of the income of the Trust / Society on Profit Company enures, directly or indirectly, for the benefit of any person specified under section 13(3) of the Income Tax Act, 1961

iv) An undertaking to the effect that it has complied with all the requirements of any other Law,

As these undertaking are called for not only to know about the genuineness of the trust and also to find out whether the trust has complied with the requirements of any other law as required u/s.12AB(1)(b) of the I.T.Act, 1961. Unless these details are submitted by the applicant, the undersigned could not come to a conclusion whether the applicant has complied with the requirement of the provisions of the I.T.Act or any other law for the time being in force. Since, the applicant failed to furnish the required details as mandated by Rule 17A of the Income Tax Rules, 1962, the application filed by the applicant deserves to be rejected.”

Hence in view of the above, the CIT(E) rejected the application filed by assessee in Form No.10AB dated 29.03.2023.

5. Now before us, the Id.counsel for the assessee stated that a fresh opportunity be given to the assessee to file complete details and allowing proper opportunity of being heard to the assessee. When it was pointed out to the Id.counsel for the assessee that there is extension of due date for filing of Form No.10A / 10AB under the Act, vide Notification F.No.173/25/2024-ITA-I, Circular No.7/2024 dated 25th April, 2024, wherein the CBDT has extended the date for filing of application till 30.06.2024. Even otherwise the assessee should have been allowed opportunity to file the details. Hence, in

the interest of justice, we set aside the order of CIT(E) and remit the issue back to the file of the CIT(E), who will examine all the details and assessee will comply with all the requirements. In term of the above, the order of CIT(E) is set aside and matter restored back to his file for fresh adjudication. The appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th June, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12th June, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.