

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE**

**BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT**  
**AND**  
**MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.166/PUN/2024**

Shree Munisuvrat Swami Gangadham Tower Jain Sangh, Plot Manmojha Bunglaow Gangadham Nr. Market Yard, Bibwewadi Kondhwa Road Pune – 411037  PAN : ABGTS4826D	<b>Vs.</b>	CIT Exemption, Pune
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

Assessee by :	Smt. Deepa Khare
Department by :	Shri Pankaj Kumar
Date of hearing :	18-06-2024
Date of Pronouncement :	15-07-2024

**आदेश / ORDER**

**PER ASTHA CHANDRA, JM :**

The appeal filed by the assessee is directed against the order dated 21.12.2023 of the Ld. Commissioner of Income Tax (Exemption), Pune ["CIT(E)"] whereby the Ld. CIT(E) rejected the application of the assessee filed before him on 02.08.2023 in Form No. 10AB u/s 12A(1)(ac)(iii) of the Income Tax Act, 1961 (**the "Act"**) treating it as not maintainable.

2. The assessee has raised the following grounds:-

- “1. The ld CIT Exemption erred in law and on facts in rejection of application for registration u/s 12AB without considering the facts and circumstances of the case.
2. The ld CIT Exemption erred in law and on facts in treating the application for registration u/s 12AB as non-maintainable on the ground that the appellant has not commenced its activities.
3. The appellant prays for opportunity so as to explain its case.
4. The appellant craves leave to add, alter, modify or substitute any ground of appeal at the time of hearing.”

3. Briefly stated the facts are that on receipt of assessee's application filed in Form No. 10AB u/s 12A(1)(ac)(iii) of the Act along with annexures thereto with a view to verify the genuineness of the activities of the assessee etc., the Ld. CIT(E) issued notice on 23.10.2023 through ITBA portal requiring the assessee to upload certain information/clarification under the provisions of section 12AB(1)(b)(i) of the Act. Compliance was sought by 07.11.2023. The assessee submitted requisite details. On verification thereof and the documents filed along with the application, the Ld. CIT(E) noticed various discrepancies which were communicated to the assessee through notice issued on 22.11.2023. The assessee was required to furnish the authentic copy of trust deed/MoA bearing the seal of the Charity Commissioner. Further, the Ld. CIT(E) found from the note on activity that it being first year, the trust is developing infrastructure and building team. Moreover, financial statements indicated that there is no expenditure on objects of the trust. It therefore appeared that no activities have been carried out till date by the trust. On the basis of above communication, the Ld. CIT(E) required the assessee to show cause why its application be not rejected and why the provisional registration/approval granted u/s 12AB of the Act be not cancelled. The compliance was due by 29.11.2023. The assessee submitted its reply dated 24.11.2023 reproduced by the Ld. CIT(E) in para 5 of his impugned order. The Ld. CIT(E) found that the assessee had provisional registration u/s 12A(1)(ac)(vi) of the Act and was required to file application for regular registration u/s 12A(1)(ac)(iii) of the Act within six months of commencement of activities. Since the activities had not yet commenced, the Ld. CIT(E) held that the assessee's application is not maintainable. However, the assessee may file fresh application for regular registration after commencement of its activities. He did not go into the merits of the case. Accordingly, he treated the impugned application as non-maintainable against which the decision of the Ld. CIT(E) the assessee is in appeal before the Tribunal.

4. The Ld. AR submitted that in its reply dated 24.11.2023, the assessee had brought to the notice of the Ld. CIT(E) that it is the initial application and registration u/s 12AB and that after registration the trust will commence the activities as per the objects of the trust. This has not been considered/appreciated by the Ld. CIT(E) who held that application for registration is non-maintainable as the trust has not commenced its activities. Relying on the decision of the Hon'ble Supreme Court in the case of Ananda Social & Educational Trust Vs. CIT (2020) 426 ITR 340

(SC), the Ld. AR argued that the matter may be sent to the Ld. CIT(E) so that the assessee may explain its case to him.

5. The Ld. DR supported the order of Ld. CIT(E) relying on the decision of the Hon'ble Kerala High Court in the case of Self Employers Service Society Vs. CIT (2000) 113 Taxman 703 (Kerala) and the decision of Cochin Bench of Tribunal in the case of Progressive Educational & Charitable Trust Vs. CIT (2015) 58 taxmann.com 205 (Cochin-Trib.).

6. We have given careful thought to the submissions of the parties and perused the records. The effective ground raised by the assessee is ground No. 2 where the assessee has challenged the rejection of the application for registration by the Ld. CIT(E) as non-maintainable on the ground that the assessee has not commenced its activities. It is not in dispute that the assessee made an application u/s 12(1)(ac)(iii) of the Act and that the said provision applies to a trust which has been provisionally registered u/s 12AB of the Act. The order of the Ld. CIT(E) also reveals that he has rejected the assessee's application for regular registration treating it to be non-maintainable as the conditions laid down in clause (iii) of sub-section (1)(ac) of section 12A are not satisfied in assessee's case i.e. the assessee trust has not yet commenced any activity. According to the Ld. CIT(E) the assessee has submitted a copy of provisional registration u/s 12A(1)(ac)(vi) of the Act (para 6 first sentence of the order refers). However, there is no detail of provisional registration e.g. the date of assessee's application therefor, the date when provisional registration was granted to the assessee. The Ld. CIT(E) has observed that the assessee has not submitted any satisfactory material before him inspite of the opportunity granted to it. The Ld. CIT(E) further noted that the assessee in reply dated 24.11.2023 filed before him stated that FY 23-24 is the first year of operation and the trust has not started any activity, therefore, there are no expenses incurred and income received by the trust. This is the initial application and registration u/s. 12AB and that after registration the trust will commence the activities as per the objects of the trust.

7. The Hon'ble Supreme Court in the case of Ananda Social & Educational Trust (supra) observed that registration can be applied for by a trust which has been in existence for sometime and also by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making

the application for registration. Section 12AA requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. This is in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits u/s 11 and 12 of the Act. A finding that the assessee had not spent any part of its income for charitable purposes is not a case of carrying out activities contrary to its objects.

8. In para 5 of his order the Ld. CIT(E) himself mentioned that the assessee in its reply dated 24.11.2023 has stated that the trust is not yet started any activity and that after registration the trust will commence the activities as per the object of the trust. Reliance on the decision of the Hon'ble Kerala High Court in the case of Self Employers Service Society (supra) as advocated by the Ld. DR will render no assistance to it as in that case the Commissioner of Income Tax had observed that the trust had undertaken activities which were contrary to the objects of the trust. There is no such finding in the case of assessee at hand.

9. On the facts and in the circumstances of the assessee's case, we are of the view that it would be judicially expedient and in the interest of justice and fair play if the matter is restored back to the file of the Ld. CIT(E) to consider afresh the assessee's application in the light of the decision of the Hon'ble Supreme Court in the case of Ananda Social & Educational Trust (supra) and decide the matter on merits in accordance with law after allowing adequate opportunity of being heard to the assessee and present its case. We order accordingly.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the open court on 15<sup>th</sup> July, 2024.**

Sd/-  
(Rama Kanta Panda)  
**VICE PRESIDENT**

Sd/-  
(Astha Chandra)  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 15<sup>th</sup> July, 2024.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune