

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1829/M/2024
Assessment Year: 2024-2025**

M/s. Zoe Foundation, Flat No.A/103, Laxmi Residency, Vithal Mandir Road, Waliv, Vasai East, Palghar – 401 208 PAN: AAATZ2758G (Appellant)	Vs.	CIT Exemption, Room No.322, 3 rd Floor, Income Tax Office, PMT Building, Shankar Seth Road, Pune – 411 037 (Respondent)
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Present for:

Assessee by : Shri Darpan Jawale, C.A.
Revenue by : Dr. Kishor Dhule, D.R.

Date of Hearing : 03 . 07 . 2024
Date of Pronouncement : 30 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Appellant/Assessee against the order dated 02.03.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Exemption) (in short Ld. Commissioner) under section 12AB/(I)(b)(ii) of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2024-25.

2. In the instant case, the Appellant by filing an application dated 18.09.2023 before the Ld. Commissioner, sought exemption under section 12A of the Act, which was taken for consideration by the Ld. Commissioner and in order to ascertain the overall nature of the activities of the Appellant, certain information/details were called for from the Appellant. In response, the Appellant filed various details and documents, which were considered by the Ld. Commissioner, however,

on finding some discrepancy, another show cause notice was issued by which the Appellant was directed to comply with the notice on 23.02.2024. However, the Appellant neither submitted any explanation till the passing of the impugned order dated 02.03.2024 nor availed the opportunity of being heard and therefore the Ld. Commissioner by presuming that the Appellant has nothing to say in the matter, ultimately rejected the application filed by the Appellant and also cancelled the provisional registration granted on 07.04.2022 under section 12AB r.w.s. 12A(1)(ac)(vi) of the Act.

3. The Appellant being aggrieved is in appeal before us.

4. The Appellant by drawing our attention to the page No.6 of the paper book filed before us submitted that in compliance to the notice dated 16.02.2024 by which the Appellant was asked to comply with the notice on 23.02.2024, the Appellant on dated 22.02.2024 had sought adjournment as it clearly reflects from the screenshot downloaded from the ITBA portal. However the Ld. Commissioner, without considering the adjournment request of the Appellant, proceeded with the case of the Appellant and by wrongly holding that the Appellant neither submitted any explanation to the show cause notice till date nor availed the opportunity of being heard, rejected the application, vide impugned order which is in violation of the principle of natural justice and amounts to denial of a reasonable opportunity of being heard, hence the impugned order is liable to be set aside as the same is not only perverse but also suffers from impropriety and/or illegality.

5. The Ld. D.R., though supported the impugned order, however, did not refute the factual aspect submitted by the Appellant.

6. Heard the parties and perused the material available on record. The Appellant in response to the notice by which the Appellant was

asked to comply on 23.02.2024, has sought an adjournment by filing an adjournment application on ITBA portal on 22.02.2024 but the Ld. Commissioner without considering adjournment application proceeded with the case and ultimately rejected the application filed by the Appellant for registration under section 12A of the Act. May be the Ld. Commissioner by oversight or inadvertently overlooked the adjournment application filed by the Appellant on 22.02.2024, but it clearly appears that the Ld. Commissioner in the absence of relevant documents/reply failed to decide the application filed by the Appellant in its right perspective and in proper manner. Hence, considering the peculiar facts and circumstances in totality and for the just decision of the case and for the ends of substantial justice, the instant case is remanded to the file of the Ld. Commissioner for decision afresh on merits; suffice to say by affording reasonable opportunity to the assessee to substantiate its claim.

7. We also deem it appropriate to direct the Assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents, which would be essentially required by the Ld. Commissioner for proper adjudication of the case. In case of further default, the Assessee shall not be entitled for any leniency.

8. Thus the case is remanded accordingly.

9. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.07.2024.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.