

IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA. No.1538/MUM/2024
(A.Y.2024-25)

Evershine Phase V Charitable Trust, Evershine Halley Co- opHousingSocietyLtd, Thakur Village, Kandivali(East), Mumbai-400101	Vs.	CIT (Exemptions), Room no.601, 6 th Floor, Cumballa Hill, MTNL TE Building, PedderRoad, DrGopalraoDeshmukhMarg, Mumbai-400026.
PAN/GIR No. AAATE6520B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	None
Respondent by	Shri.BiswanathDas.CITDR

सुनवाई की तारीख/Date of Hearing	20.06.2024
घोषणा की तारीख/Date of Pronouncement	26.06.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Exemptions)(CIT(E)), Mumbai passed u/sec12AB(I)(b)(ii) of the Act. The assessee has raised the following grounds of appeal:

- 1. That the CIT (EXMP), Mumbai erred in rejecting the application for regularisation of the earlier provisional approval granted, submitting therewith along with the said application all the details necessary for the approval for granting regular approval, on the income tax e-filing portal, which was well in due time as the last date was 30.09.2023. However, all the required details were already submitted along with the application and also again forward all the details at the time of filling fresh application. The copies of documents as submitted along with the application which was sought by the officer is enclosed herewith for your ready reference.*
- 2. It is very important to note that no notice and or any opportunity was given to the appellant for changing/rectifying the mistake from clause (iv) to clause (iii) or explaining the problems that was faced by the appellant. Also, it is important to note that this being the first time, since this act was introduced and not much awareness was given to the public at large as the said amendment had come during Covid Pandemic, there was quite chances of mistake to take place.*
- 3. That the CIT (EXMP), Mumbai erred rejecting the said order in Form 10AD directly posted on e-portal without providing reasonable opportunity to the applicant of being heard and without considering the facts that the documents as sought by the officer were already submitted along with the application and the same were on records.*
- 4. That the CIT (EXMP), Mumbai erred in not considering the difficulties that the appellant faced at the time of filling "From 10AB", for regular registration. It was the fact that the application should have been submitted under section sub clause (iii), however at the time of filling of the said application in the last month in which it was due, the only portal open under sub clause (iv), for regularisation of provisional registration as the other portals and mainly sub section (iii) with CPC was not opening even after rigorous / diligent try of the appellant.*
- 5. That the CIT (EXMP), Mumbai did not consider the anxiety of applicant, submitting the application for regularisation of provisional registration in time limit as the it was, the portal and mainly sub section (iii) with CPC was not opening even after rigorous / diligent try of the appellant this act was introduced and not much awareness was given to the public at*

large as the said amendment had come during Covid Pandemic, there was quite chances of mistake to take place.

6. That no notice and or any opportunity was given to the appellant for clearing/rectifying the mistake or explaining the problems that was faced by the appellant.

7. It is submitted that it is not just and proper, for some technical reasons the application to be rejected because it was not submitted under correct section i.e. u/s clause (iii) of first proviso to sub-section ac (iii) and not under sub-clause (iv). Here I would again like to bring to your kind notice that while submitting the application the window under clause (iii) was not opening and was showing error and only it was accepting under clause (iv). That is why the applicant had submitted in the said clause, however if the Officer would have given the opportunity, the applicant should have rectified its mistake and had changed it.

8. That the CIT (EXMPT), Mumbai failed to appreciate that even the rejection order too was also not communicated to the applicant on the registered e-mail address of the assessee, or mobile or physical address and only posted on e-proceeding section of the e-portal. So, the appellant has never got the valid opportunity of being heard and providing the information sought and or clarifying its step if any which might have gone wrong while filling the application.

9. That the CIT (EXMP), Mumbai failed to appreciate that this being the first time in life of all the assessee of submission of such type of application for 12AB, that to through e-portal, it was but obvious that a soft corner to be given to the assessee by providing an opportunity of being heard and to rectify any such mistakes that may have taken place in the application form before passing any such rejection order.

10. That the CIT (EXMP), Mumbai erred in rejecting the application in a hasty manner without giving any opportunity even though we have submitted all the relevant documents as required under law on the income tax e-filing portal, which was well in due time.

11. That the CIT (EXMP), Mumbai did not considered that the applicant had no intention to put up the application in wrong sub-clause but for the reason mentioned herein above and allowing the registration to the Trust will not jeopardize the interest of the revenue but will affect the Trust to a great extent and that the charity would suffer a lot.

2. The brief facts of the case are that the assessee is a trust established on 16.06.2008. The main objects of the trust to carry out education, religious, medical relief, relief for the poor and advancement of objects of general public utility. The assessee was granted provisional registration under section 12AB of the Act in Form.no.10AC on 23.09.2021 for period From AY 2022- 23 to AY 2024-2025. Subsequently, as per the amended, provisions of section 12AB of the Act, The assessee for the purpose of permanent registration has uploaded e-application in Form. No.10AB and the same was rejected by the CIT(E). Aggrieved by the CIT(E) order, the assessee has filed the appeal before the Honble Tribunal.

3. At the time of hearing, none appeared on behalf of the assessee and the Ld.DR relied on the order of the CIT(E).

4. We have heard the Ld.DR submissions and perused the material available on record. The assessee has filed the application before the CIT(E) for permanent registration under section 12A of the Act, whereas the CIT(E) in course of hearing proceedings has issued e-notice on the assessee through ITBA portal for certain clarifications and additional information to verify the genuineness of the activities of the trust. Since there was no proper response to the notice in spite of providing sufficient opportunities to the assessee, the CIT(E) has rejected the application. Therefore considering, the facts, submissions and the principles of natural justice shall provide with one more

opportunity of hearing to the assessee to substantiate the case along with evidences and information. Accordingly, set aside the impugned order and direct the CIT(E) to denovo consider the assessee trust application as per the law and we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 26.06.2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated:26/06/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai