

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2800/MUM/2024
Assessment Year: 2023-24**

Shreevasaird Swetamber
Murtipujak Tapagachh Jain Sang,
Plot No. 15A, Ambadi Road, Vasai
Road, West Palghar-401202
PAN NO. AAHTS 4589 H
Appellant

Vs. CIT Exemption, Pune,
322, Income Tax Office PMT
Building Shankar Seth Road,
Pune-411037.
Respondent

Assessee by : Ms. Jytoi Samant
Revenue by : Mr. R.A. Dhyani, CIT-DR

Date of Hearing : 18/07/2024
Date of pronouncement : 25/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee has been preferred against order dated 05.03.2024 passed by the Ld. Commissioner of Income-tax (Exemption), Pune [in short 'the Ld. CIT(E)'] for assessment year 2023-24, raising following grounds:



1. The Ld. Hon'ble CIT Exemption, Pune, erred in law and in facts by passing an order dated 05.03.2024 for cancellation of the provisional registration granted on 24/09/2021 under section 12AB read with section 12(1)(ac)(vi) of the Income Tax Act, 1961 without appreciating the fact that:

a) The assessee could not reply to the final show cause notice dated 23.02.2024 as the same was automatically transferred to Junk Folder instead of normal Inbox..

b) The assessee had in the previous reply furnished a point by point detailed and comprehensive reply along with documentary evidences and this time they could not merely due to the fact that the assessee was not in receipt of the notice.

2) The Ld. CIT erred in passing order of cancellation of registration without appreciating the fact that the Trust was granted registration for all the previous assessment years.

3) The Ld. CIT had erred in passing order of cancellation of registration by holding that the objects of the trust were found to be for the benefit of a specific religious community without appreciating the fact that the objects of The Trust caters to all the sections of the society regardless of any caste, creed or religion.

2. Briefly stated, facts of the case are that the assessee applied before the CIT(E), Pune for registration of the trust in prescribed form No. 10AB under clause (iii) of section 12A(1)(a) of the Income-tax Act, 1961 (in short 'the Act'). The Ld. CIT(E) called for detail of activities of the trust which were responded by the assessee. Subsequently, after verification of the details filed by the assessee, another notice was issued on 23.02.2024 and called for further information, which were not complied by the assessee. Thereafter, the Ld. CIT(E) issued a final show cause notice proposing as why the provisional registration granted u/s 12AB of the Act might not be cancelled. The said show cause notice was issued through e-portal as well as through e-mail. However, same



was not complied and therefore, the Ld. CIT(E) rejected the application of the assessee seeking permanent registration and cancelled the provisional registration granted u/s 12AB of the Act. The relevant finding of the Ld. CIT(E) is reproduced as under:

"2.2 On verification of the details submitted by the assessee in response to the said notice and the documents submitted along with the application, various discrepancies were noticed. Another notice was then issued to the assessee on 23/02/2024 and the discrepancies were duly communicated to it as reproduced below :

"i) Trust deed copy furnished is not authentic. Furnish the authenticated copy of trust deed bearing the seal of Charity Commissioner.

ii) The objects of the trust deed / MoA are found to be for the benefit of a particular religious community viz. Jain Community and not for public at large.

(iii) In respect of activity note, kindly furnish details viz. date and place of each activities carried out by your trust, details of beneficiaries, how they were identified, etc..

** (iv) You were specifically requested vide the initial notice itself to furnish the supporting credible evidence in respect of activities undertaken. However, you have not furnished the same. Thus, you have failed to comply with the provisions of section 12AB(1)(b)i) of the Income Tax Act, 1961. In absence of any such tangible material in respect of proof of activities being carried out it is not possible to arrive at any conclusion about the genuineness of activities and also to ascertain as to whether the activities are in line with the objects of the trust / institution.*

(v) Furnish the financial statements for FY. 2020-21, 2021-22 and 2022-23. Also furnish the copies of bills/invoices of expenses done on activities by your trust. From financial statement of earlier years, it is seen that all expense are done on administration/establishment rather than activities/object of the trust, please explain."

2.3 The assessee was requested to show cause as to why the application should not be rejected and why the registration granted under section 12AB of the Income Tax Act, 1961 should not be cancelled. The assessee was also given opportunity of being heard vide the said notice. The assessee was specifically informed that in the event of failure to comply by the due date, the application shall be liable to be rejected and the registration shall also be liable to be cancelled. The compliance to the said



notice was due on 01/03/2024. The notice was duly served on the assessee through e-portal and email. However, the assessee neither submitted explanation to the show cause notice till date nor availed the opportunity of being heard.

3. Since, the assessee has not furnished any explanation to the discrepancies communicated to it, it is presumed that the assessee has nothing to say in the matter.

4. Considering the above facts discussed in the show notice and discrepancies noticed and also that the assessee has not complied with the provisions of section 12AB(1)(b)i) of the Income Tax Act, 1961 as well as the provisions of Rule 17(2) of Income Tax Rules, 1962 in spite giving sufficient opportunities, the undersigned is unable to draw any satisfactory conclusion about the genuineness, of activities of the assessee and compliance of requirements of any other law for the time being in force by the assessee as are material for the purpose of achieving its objects.

5. In view of the above, the application filed by the assessee is hereby rejected and the provisional registration granted on 24/09/2021 under section 12AB read with section 12A(1)(ac)(vi) of the Income Tax Act, 1961 is hereby cancelled.”

3. Before us, the Ld. Counsel for the assessee submitted that the final show cause notice dated 23.02.2024 could not be responded for the reason that same was transferred to the ‘junk folder’ of the e-mail box, rather than normal ‘inbox’, therefore, the assessee could not comply and file a comprehensive reply along with documentary evidence. The Ld. counsel for the assessee given an undertaking before us that if matter is restored back to the Ld. CIT(E), all the notices shall be duly complied by the assessee.

4. The Ld. Departmental Representative (DR) on the other hand objected for giving a further opportunity to the assessee.

5. We have heard rival submission of the parties and perused the relevant material on record. The permanent registration sought by



the assessee u/s 12A(1)(a) of the Act has been rejected by the Ld. CIT(E) due to non-compliance of the show cause notice issued by the Ld. CIT(E). Before us, the Ld. counsel for the assessee has explained the reasons for non-compliance as transfer of notice to junk folder of e-mail inbox. In our opinion, there is a sufficient cause on the part of the assessee for not responding the notice dated 23.02.2024 issued by the Ld. CIT(E) and subsequent show cause notice. Before us, the Ld. counsel for the assessee has given an undertaking on behalf of the assessee that if matter is restored back due compliance of the notices issued by the Ld. CIT(E) shall be made. In view of the undertaking and in the interest of substantial justice, we feel it appropriate to restore the matter back to the file of the Ld. CIT(E) for deciding the matter afresh after taking into consideration submission of the assessee. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 25/07/2024.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 25/07/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai