

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

BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.2664/Mum/2024  
(Assessment Year : 2022-23)

<b>Shalem Assemblies of God Mission, New Parsi Chal Kala Killa, Dharavi, Mumbai PAN : AAMTS2752F</b>	<b>vs</b>	<b>CIT(EXEMPTIONS) Room No.601, 6<sup>th</sup> Floor, Cumballa Hill, MTNL, TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hills, Mumbai-400 026</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Vimal Punmiya - CA  
Respondent by : Shri Dr. Kishor Dhule - CITDR  
Date of hearing : 31/07/2024  
Date of pronouncement : 02/ 08/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Ld.Commissioner of Income-tax (Exemption), Mumbai [for brevity, 'Ld.CIT(E)'] passed under section 80G(5)of the Income-tax Act, 1961 (in short, 'the Act'), date of order 28.10.2022.

2. The assessee has taken the following grounds of appeal: -

- “1. On the facts and circumstances of case and law the Ld CIT(Exemption) erred in rejecting our application made in the Form 10AB for granting of certificate u/s 80G
2. On the facts and circumstances of case and law the Ld CIT(Exemption) erred in not allowing us the opportunity to submit the documents.
3. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

3. The brief facts of the case are that the assessee is a charitable trust and running a school in the Dharavi Slum Area. The assessee was registered under the Charity Commissioner of Mumbai on dated 10/10/2012. The assessee was registered under section 12A and 80G provisionally. Finally, the assessee filed Form 10A before the Id. CIT(E) for final registration under section 80G of the Act. But due to noncompliance before the CIT(E), the Ld.CIT(E) rejected the assessee’s application. Aggrieved, the assessee filed an appeal before us.

4. The appeal was filed with a delay of 17 months i.e. 500 days for filing the appeal before the ITAT. The assessee filed an affidavit and placed that the concerned trustee was busy in medical treatment at his village and as per the doctor’s advice, he was in complete rest. The Ld.DR had not made any objection about the condonation of delay. Accordingly, the delay of 17 months i.e. 500 days were condoned.

4. We heard the rival submission, considered the documents available in the record. The assessee is a trust and working in Dharavi, Mumbai in Slum area for education of the children. The Ld.AR for the assessee submitted a paper book which is kept in the record. The assessee is already registered under the Charity Commissioner of Bombay since long. The assessee applied for the approval under

section 80G before the Ld.CIT(E) with form No.10AB. The Ld.AR placed that during the provisional registration, the assessee submitted all the documents before the authority. But due to non compliance before the Ld.CIT(E), the application was rejected and the assessee was seeking approval from 80G(5) which was duly not considered by the Ld.CIT(E). The Ld.AR relied on the order of the co-ordinate bench of **Mumbai Bench “D”** in the case of **B.K. Ajmera Foundation Trust vs PCIT ITA No.1279 & 1281/Mum/2022**. The relevant paragraph is reproduced as below:-

*“6. We have considered the rival submissions and perused the material available on record. In order to decide the issue, it is relevant to analyse the relevant provisions of the Act applicable to the present case. Section 12A deals with conditions for applicability of section 11 and 12. Section 12A(1)(ac) of the Act reads as under: “12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—*

*(a) ..*

*(aa) ...*

*(ab) ...*

*(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—*

*(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its*

*amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;*

- (ii) (ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;*
- (iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;*
- (iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;*
- (v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;*
- (vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, and such trust or institution is registered under section 12AB;”*

*6.1. From the aforesaid provision, it is clear that for claiming the benefit under section 11 and section 12 of the Act, the trust or institution has to make an application for registration and such trust or institution should be registered under section 12AB of the Act. Section 12A(1)(ac)(i) of the Act specifically deals with the cases where trust or institution was registered under section 12A or under section 12AA*

6.2. Further, section 12AB of the Act deals with procedure for fresh registration.

Section 12AB(1) of the Act reads as under:

*“12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—*

*(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;*

*(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—*

*(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about— (A) the genuineness of activities of the trust or institution; and (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;*

*(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i),—*

*(A) pass an order in writing registering the trust or institution for a period of five years; or*

*(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;*

*(C) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.”*

6.3. In the present case, it has not been disputed that the assessee trust was duly registered under section 12A of the Act. Thus, the only provision applicable to the assessee trust for the purpose of applying for registration is section 12A(1)(ac)(i) of the Act. Further, section 12AB(1)(a) of the Act provides that where an application is made under section 12A(1)(ac)(i) the Principal Commissioner or Commissioner shall pass an order in writing registering the trust or institution for a period of 5 years. However, in the present case, the assessee trust being registered under section 12A and thus rightly made an application under section 12A(1)(ac)(i) of the Act, was granted Provisional Registration in Form 10AC subject to certain conditions. It is pertinent to note that section 12AB(1)(c) deals with granting of Provisional Registration to the trust or institution for a period of 3 years from the assessment year from which registration is sought.

6.4. However, the said section is applicable in cases where application is made under section 12A(1)(ac)(iv) of the Act. It is also not disputed that the Provisional Registration would be granted for a period of 3 years to the charitable institutions which are yet to start their activities. However, in the present case, the assessee trust was already holding certificate dated 11/08/1989 issued under section 12A of the Act. We find that section 12AB(1)(a) of the Act, which deals with grant of Regular Registration for a period of 5 years does not authorize the Principal Commissioner or Commissioner to impose any conditions for grant of such registration. We further find that though the impugned order granted Provisional Registration subject to certain conditions, however, same was granted for a period of 5 assessment years i.e. from assessment year 2022–23 to assessment year 2026–27. We also find that the impugned order for provisional registration in Form 10AC was issued under section 12A(1)(ac)(i) of the Act, which provision merely deals with making an application for registration.

6.5. Thus, in view of the above, we are of the considered opinion that application filed by the assessee trust under section 12A(1)(ac)(i) was not properly considered

*for grant of registration under section 12AB of the Act. Accordingly, we direct the designated authority under section 12AB to de novo consider the application of the assessee trust under section 12A(1)(ac)(i) of the Act and grant the registration as per law. As a result, grounds raised by the assessee are allowed for statistical purpose.”*

5. We find that the assessee submitted the Trust deed before the Ld.CIT(E) and before the Bench, APB 11-35. Respectfully considering the order of **B.K. Ajmera Foundation Trust** (supra), we remand back the matter to the file of the Ld.CIT(E) for reconsidering the issue afresh. We are not expressing our view about the merit of the case which will impair the proceedings before the Id. CIT(E). Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings. On the other hand, the assessee should be diligent and submit the documents as may be required by the Ld.AO for quick disposal of the assessment proceedings.

6. In the result, the appeal of the assessee bearing **ITA 2664/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 02<sup>nd</sup> day of August, 2024.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 02/08/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**