

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA No. 2335/Mum/2024
Assessment Year : 2023-24

Minhaj Interfaith & Welfare Foundation, Shop 68, Ground Floor, New Wadala Market, R.A. Kidwai Ropad, Wadala, Mumbai PAN : AALCM0743L	vs.	Dy. Commissioner of Income Tax, 601, 6 th Floor, MTNL TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai
(Appellant)		(Respondent)

For Assessee :	Shri Haridas Bhat, CA
For Revenue :	Ms. Sanyogita Nagpal, CIT-DR

Date of Hearing :	10-09-2024
Date of Pronouncement :	13-09-2024

ORDER

PER OM PRAKASH KANT, A.M :

This appeal filed by the assessee is directed against the order dated 10-03-2023 passed by the Ld. Commissioner of Income Tax (Exemptions)-Mumbai [in short Ld.CIT(E)], rejecting the application of the assessee-Trust, seeking registration u/s. 12AB of the Income Tax Act, 1961 ('the Act'), which was applied in prescribed form No. 10AB of Income-tax Rules, 1962 (in short 'the Rules') .

2. At the outset, learned counsel for the assessee submitted that this appeal has been filed with a delay of 365 days. The learned counsel

submitted that against rejection of registration application, the assessee exercised alternative remedy and had filed fresh application in Form-10AB on 30-09-2023 before the Id CIT(E), but same was rejected by the Ld.CIT(E) holding that window of re-filing of the application was open for the Trust, which had not filed application within six months of activities or six months before the expiry of provisional application and it was held that assessee did not fall under those conditions, therefore, the said application of the assessee was rejected by way of order dated 05-03-2024 and thereafter the assessee had filed this appeal. The relevant part of the affidavit filed on behalf of the assessee is reproduced as under:

“2. We had filed application u/s 1248 in form 10AB which was rejected by the CIT(Exemptions), Mumbai on 10.03.2023, We had filed another application u/s 1248 in Form 10AB on 30.09.2023 vide Circular No. 6 of 2023 which was later rejected on 05.03.2024.

3. We had not filed an appeal as per the order passed by CIT(Exemptions), Mumbai dt 10.03.2023 under the genuine belief that we were covered the Circular no. 6 of 2023 and instead re-filed application u/s 12AB of the Act

4. We learnt that we were not covered under the said circular upon receipt of rejection order against the newly filed application by CIT(Exemptions), Mumbai vide order dt 05.03.2024. By that time, the time limit for filing appeal against the order dated 10.03.2023 lapsed.”

3. We have heard rival submissions of the parties on the issue of condonation for delay in filing the appeal. Before us, the learned counsel for the assessee has explained sufficient reasons for not filing the appeal within the limitation period prescribed. In our opinion, there is a bonafide delay in filing the appeal and the assessee is not benefitting by delaying the appeal. The Hon'ble Supreme Court in the case **of Collector, Land Acquisition Vs. Mst.Katiji & Ors [167 ITR 471] (SC)** has held that – *where substantial justice and technicalities are pitted against each other, then substantial justice should prevail over the technicalities. The filing of the appeal is a statutory right and which should not be denied to the assessee and effort should be made for*

deciding the matter on merit rather than rejecting the appeal at threshold. Accordingly, we condone the delay of 365 days in filing the appeal before the ITAT.

4. Briefly stated facts of the case are that the assessee-Trust was engaged in activities specified in its objects including relief to poor. The assessee was granted provisional registration certificate and thereafter the assessee filed application in Form-10AB for regular registration of the trust u/s. 12AB of the Act. The assessee though complied the preliminary information sought by the Ld.CIT(E), however, the relevant information called for by the Ld.CIT(E) was not complied by the assessee despite reminder dated 21-02-2023 and, therefore, the Ld.CIT(E) rejected the application of the assessee for registration of the assessee-Trust, observing as under:

“3. On verification of the application in Form 10AB filed by the assessee, it was found that the application was not complete, and all the documents required to be accompanying the application were not furnished. Hence, a notice was issued to the applicant vide DIN & Notice No. ITBA/EXM/F/EXM43/2022-23/1049102605(1) dated 25.01.2023 requesting the assessee to furnish the complete set of documents mentioned in rule 17A(2). A reminder notice was also issued vide DIN & Notice No. ITBA/EXM/F/EXM43/2022-23/1049957634(1) dated 21.02.2023.

4. The Applicant has made no compliance to the terms of the above notices. Registration under section 12AB is to be granted in terms of the provisions of section 12AB(1)(b) of the Act after being satisfied about the objects of the trust or institution the genuineness of activities, and the compliance of any other law for the time being in force as are material for the purposes of achieving its objects. In the absence of necessary compliance by the Applicant, I am unable to arrive at a satisfaction on these parameters. As such, in view of the statutory limitation to decide on the application on or before 31.03.2023, I am left with no other option but to reject the application seeking registration under section 12AB of the Act.

5. In conclusion, this application for grant of registration stands rejected.”

5. Before us, the learned counsel for the assessee submitted that the assessee is willing to produce all the required information before the

Ld.CIT(E) and, therefore, the matter may be restored back to the file of the Ld.CIT(E) for considering the registration of the assessee u/s. 12AB of the Act.

6. The Ld.DR, on the other hand, relied on the orders of the Ld.CIT(E).

7. We have heard rival submissions of the parties and perused the relevant material on record. We find that the Ld.CIT(E) has rejected the application for registration of the assessee-Trust for the reason that the assessee could not comply notices issued by him, seeking information for determining the issue of registration. Since before us the learned counsel for the assessee has given undertaking that assessee is willing to file all the information sought for by the Ld.CIT(E), therefore, in the interest of substantial justice, we feel it appropriate to restore the matter back to the file of the Ld.CIT(E) for considering the eligibility of the assessee-Trust for registration u/s. 12AB of the Act. The grounds raised by the assessee are accordingly treated as allowed for statistical purposes.

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

Order pronounced in the open court on 13th September, 2024

Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai,

Date : 13-09-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai