

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2788/Mum/2024 (A.Y.2023-24)

Alvita Foundation,

A/302, A the AHCL Homes,
Opp. Shimpoli, Telephone
Exchange, Borivali (West),
Mumbai-400 092
PAN No. AAVCA 0444N

..... Appellant

Vs.

CIT (Exem.)

R. No. 601, 6th floor
Cumballa Hill, MTNL Bldg.
Peddar Road, Dr. Gopalrao
Deshmukh Marg,
Mumbai – 400 026

..... Respondent

Appellant by	:	Shri Suresh Joshi, Ld. AR
Respondent by	:	Shri Ajay Chandra, Ld. DR
Date of hearing	:	22/07/2024
Date of pronouncement	:	19/09/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. CIT (Exemptions), Mumbai dated 17.04.2024 passed u/s. 12A of the Income Tax Act,

1961 (in short 'the Act') for A.Y. 2023-24. The assessee has raised the following grounds of appeal:-

1. *Alvita Foundation is Section 8 Company registered as Non-Profit organization (NPO) and it has main object promoting education, protection of environment, etc.*
2. *Company was incorporated on 05.04.2021, registered with Registrar of Companies Mumbai, Maharashtra with Registration No. CIT NO.: U93098MH2021NPL358273.*
3. *M/s. Alvita Foundation (Appellant) filed application in Form 10AB under section 12A of the Income Tax Act, 1961.*
4. *The Appellant Section 8 Company has not been granted Registration Approval u/s. 12A of the Act in Form 10AC by CPC, Bengaluru, under the relevant Act, Sub-Clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act. However the Appellant was granted provisional registration dated 08.02.2022 upto financial year 2023-2024, Assessment year 2024-2025 and the Appellant has commenced activities in Financial Year 2023-2024. In this event the Appellant Company was required to file Form 10AB for regular registration six months before the expiry of provisional registration in September, 2023 while the Appellant Company has filed on 26.10.2023 i.e. 26 days delay.*
5. *All trusts and Institutions with provisional registration for a period for three year will have to apply with Form 10AB within six months after the commencement of activities in this case commencement of activities is on 19.07.2023, as per F.No. 370133/06/2023 TPL circular 6/2023 dated 24.05.2023.*

Provisionally registered trust will again need to apply for regular registration.

- a) *At least 6 month prior to the expiry of period of provisional registration or.*
- b) *Within 6 months of commencement of activities, which event is earlier*

Events

- | | |
|--|-------------------|
| <i>(1) Grant of provisional registration for upto financial year 2023-2024, Assessment year 2024-2025.</i> | <i>08.02.2022</i> |
| <i>(2) Commencement of activities for F.Y. 2023-2024</i> | <i>19.07.2023</i> |
| <i>(3) (i) Should have applied on or before</i> | <i>30.09.2023</i> |
| <i>(ii) Date of application</i> | <i>26.10.2023</i> |

Thus there was delay of 26 days hence it is prayed to condone this delay.

6. the Learned CIT's order may be declared as NULL AND VOID, since it is passed without giving opportunity of being heard as it violates provision of natural justice.

ATTACHED TO AN FORMING PART OF FORM 36
RELIEF CLAIMED IN APPEAL

1. Alvita Foundation (herein after called the Appellant) filed application in Form 10AB under section 12A of the Act. The Appellant has been granted provisional Approval under section 12A in Form 10AC.

2. Under the relevant sub-clause (iii) of Clause (ac) of sub-section (1) of section 12A the appellate has to make an application before 30.09.2023, however as stated application has been made on 26.10.2023 this causing delay of 26 days.

Hence, outright rejection of approval under section 12A is not maintainable and this resulting in to rejection be set aside and final registration / approved be granted and restored, and condone delay of 26 days in filing Form 10AB.

3. The Appellant reserves his right to raise additional grounds amend or alter revised above ground.

2. The brief facts of the case are that the assessee is a section 8 company registered as non-profit organisation (NPO) and it has main objects like promoting education, protection of environment, etc. M/s Alvita Foundation [hereafter 'the applicant' or [the assessee) filed application in Form 10AB under section 12A of the Act. The application has been granted Provisional Approval under section 12A of the Act in Form 10AC by CPC Bengaluru.

3. On verification of the facts and circumstances of the case, it is found that the assessee has granted provisional registration vide dated 08.02.2022 for upto F.Y. 2023-24 (A.Y. 2024-25). Further, the assessee has commenced activity in F.Y.

2023- 24. In view of this, the assessee has to file Form 10AB for regular registration, six month before the expiry of provisional registration, i.e. September 2023, while the assessee has filed Form 10AB u/s. 12A of the Act on 26.10.2023. As such, the assessee is not fulfilling the stipulated conditions prescribed for filing application for approval in Form 10AB. In view of the same, as per the Ld. CIT (Exemption), Mumbai the application for grant of approval is not maintainable and the same is rejected.

4. Under the relevant sub clause (iii) of clause (ac) of sub-section (1) of Section 12A of the Act, an applicant has to make an application in the prescribed format and manner in the following scenario:

"Where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier."

As per law even the provisional registration has to be granted subject to fulfilment of requirement of Law and then authorities may impose certain conditions within the boundaries of law to be followed by the assessee in its future conduct and endeavour. Here in this case after going through the MOA and AOA of the assessee initial provisional registration was granted further subject to fulfilment of conditions as prescribed vide clause 10 (a) To 10 (r). Issuance of final registration certificate is just a process in continuation to the earlier proceedings done at the time of issuance of provisional registration certificate.

5. As per the scheme of law exemption certificate can never be denied to the assessee. The only power authorities have is with reference to pin point the relevant clauses which are in contradiction to the scheme of law and provide an

opportunity to the assessee to remove the same. Even during assessment proceedings of a charitable institution exemption can be withdrawn for that very year in which assessee defaulted with the conditions and not forever. In view of the above, we found there is no case of revenue which stops assessee from enjoying exemption. With reference to the issue under consideration, the only issue involved before us is that the application filed by the assessee was delayed by 26 days. This issue has categorically been dealt by the Central Board of Direct Taxes vide its Circular No. 7 /2024 dated 25.04.2024 as under:-

CIRCULAR NO. 7/2024 [F.NO. 173/25/2024-ITA-I]

**SECTION 119 OF THE INCOME-TAX ACT, 1961 - CENTRAL BOARD OF DIRECT TAXES -
INSTRUCTIONS TO SUBORDINATE AUTHORITIES - EXTENSION OF DUE DATE FOR FILING OF
FORM NO. 10A / 10AB**

On consideration of difficulties reported by the taxpayers and other stakeholders in the electronic filing of Form No. 10A/10AB, the Central Board of Direct Taxes (the Board) in exercise of its powers under section 119 of the Income-tax Act, 1961 (the Act) extended the due date for filing Form No. 10A to 31-8-2021 by Circular No. 12/2021, dated 25-6-2021, to 31-3-2022 by Circular No. 16/2021, dated 29-8-2021, to 25-11-2022 by Circular No. 22/2022, dated 1-11-2022 and further to 30-9-2023 by Circular No. 6/2023, dated 24-5-2023, and extended the due date for filing Form No. 10AB to 30-9-2022 by Circular No. 8/2022, dated 31-3-2022 and further to 30-9-2023 by Circular No. 6/2023, dated 24-5-2023.

2. Representations have been received in the Board with a request to condone the delay in filing Form No. 10A/10AB, as the same could not be filed in such cases within the last extended date, i.e., 30-9-2023.

3. On consideration of the matter, with a view to avoid and mitigate genuine hardship in such cases, the Board, in exercise of the powers conferred under section 119 of the Act, hereby extends the due date of making an application/intimation electronically in -

(i) Form No. 10A, in case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of

an intimation under fifth proviso of sub-section (1) of section 35 of the Act, till 30-6-2024;

- (ii) **Form No. 10AB, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30-6-2024.**

4. It may be also noted that extension of due date as mentioned in paragraph 3(ii) shall also apply in case of all pending applications under clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, as the case may be. Hence, in cases where any trust, institution or fund has already made an application in Form No. 10AB under the said provisions on or before the issuance of this Circular, and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application.

4.1 Further, in cases where any trust, institution or fund has already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 3(ii) i.e. 30-6-2024.

5. It is also clarified that if any existing trust institution or fund who had failed to file Form No. 10A for A.Y. 2022-23 within the due date as extended by the CBDT Circular No. 6/2023, dated 24-5-2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form No. 10AC and apply for registration for A.Y. 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time provided in paragraph 3(i) i.e. 30-6-2024.

Vikas Singh
Director (ITA-I)

6. In view of the above circular specifically referring Clause (2), Clause (3(i) and 3(ii) and Clause (4) as mentioned (supra), it is observed that while deciding the matter, the Ld. CIT (E), totally ignored the circular issued by the Central Board of Direct Taxes. When this order of rejection was passed by the Ld. CIT (E), the

circular mentioned (supra) was very much present and applicable. This circular extended the due date up to 30.06.2024, whereas the assessee filed the application on 26.10.2023.

7. In view of the above, matter is restored to the file of Ld. CIT (E) with a direction to allow the application of the assessee for continuation of approval as prescribed in section 12A of the Act. Based on above, grounds raised by the assessee are allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19th day of September 2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER
Mumbai, दिनांक/Dated: 19/09/2024
Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai