

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER

I.T.A No.2361/Mum/2024

(Assessment Year : 2023-24)

Raghuvanshi Charitable Foundation, 206, Balaji Arcade, S V Road, Near Jain Mandir, Kandivali West, Mumbai-400067. PAN No. AAKCR 8911 L	vs	Commissioner of Income-tax (Exemptions), Mumbai, 601, Cumballa Hill MTNL TE Building, Pedder Road, Dr Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai-400 026
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Assessee Represented by	Ms. Kinjal Bhuta, Adv.
Department represented by	Smt. Snyogita Nagpal (CIT DR)

Date of hearing	17/09/2024
Date of Pronouncement	19/09/2024

ORDER

PER O.P. KANT (AM):

This appeal has been preferred by the assessee against the order dated 05/03/2024 passed by the Learned Commissioner of Income-tax (Exemptions), Mumbai [in short, 'the Ld.CIT(E)], wherein the application of the assessee for regularization of the provisional registration , which was granted under section 12AB of the Act, has been rejected.

2. The grounds raised by the assessee in appeal are reproduced as under:-

"1. The Appellant submits that the Learned CIT (E) has not applied his mind while perusal of the application in Form 10AB and has erred in not considering the material placed on

record and the written submission made, wherein the appellant fulfills all conditions required for granting of Registration u/s 12AA.

2. The appellant submits that while denying registration u/s 12AA, the Learned CIT (E) has never held that the trust is not for religious/charitable purposes as required u/s 12A of the Income Tax Act 1961.

3. The Appellant submits that no reasonable opportunity has been granted to the appellant for being heard and the said order has been passed without issuing a show cause notice to the appellant before the rejection of the said application. Non issuance of show cause notice mentioning that the application is likely to be rejected for reasons mentioned therein, is a violation of section 12AB as well as principal of natural justice.

4. The Appellant submits that the provisional registration u/s 12AB was valid form From AY 2022-23 to AY 2024-2025. The appellant had filed the application in Form 10AB on 28.09.2023 which was within 6 months before the expiry of provisional registration. The Learned CIT (E) has erroneously mentioned that the application was not filed within 6 months of action months before the expiry of provisional registration

5. The Appellant submits that the Learned CIT (E) has erred in not considering the circular no 6 of 2023 dated 24.05.2023 wherein clause 5 of the said circular clearly stated that the due date had been extended till 30.09.2023 where the due date for filing of Form 10AB had expired prior to the date of the said circular.

6. The Appellant submits that while processing the appellant application us 12AB the Learned CIT(E) has not applied his mind and he ought to have asked the appellant the requisite details and information and relevant documents rather than hurriedly rejecting the application on the technical ground without considering the applicability of circular no 6 of 2023 dated 24.05.2023.

7. The Appellant submits that The Learned CIT (E) while processing the application for registration ought to have given an opportunity to the appellant to reply the queries if any.

8. The Appellant submits that The Learned CIT (E) has not appreciated and considered the entire facts of the case in establishing the genuineness of the activities of the trust and has not carried out proper enquiry. The Learned CIT (E) has rejected the application for registration u/s 12AB without giving opportunity of being heard in the said matter which is a violation of provisions of section 12AB as well as principal of natural justice.

9. The Appellant submits that The Learned CIT (E) has not followed the procedures laid down in section 12AB for granting of Registration which is a violation of provisions of section 12AB as well as principal of natural justice.

10. The Appellant challenges the action of The Learned CIT (E) in rejection of application for seeking registration u/s 12AA of the Income Tax Act 1961 is violation of principal of natural justice and is contrary to the provisions of the law and facts of the case. Hence,

the same be kindly directed to grant registration from the year when the application is made.

11. The Appellant craves leave to add, alter, omit, change, amend or modify any of the aforesaid grounds of appeal as the occasion may arise or demand."

3. In all the above grounds, the assessee is aggrieved with the rejection of the regularization of provisional registration of the assessee Trust.

4. We have heard rival submission of the parties and perused the relevant material on record. We find that a new section 12AB for the registration of the trusts or institutions has been introduced by the Hon'ble Parliament in the Finance Act, 2020. The new section 12AB is effective from 1st April 2021, making the erstwhile section 12AA of the Income Tax Act, ineffective. The registration granted under section 12AA was valid for life long, unless canceled due to any violation. But under new section 12AB, a trust or institution can get registered for a fixed tenure, after the expiry of which mandatory renewal is required to avail the tax exemption. The registration granted to the trusts or institutions u/s 12AB is for different tenure as per the different scenarios. In first scenario, where existing trusts already registered under section 12A/section 12AA of the Act, apply for the registration under section 12AB, it shall be granted registration for a period of 5 years. In second scenario, where, a new trust applies for fresh registration under section 12AB or a trust whose application is pending under section 12AA, it shall be granted a provisional registration for over a period of 3 years. If a trust wish to regularize its provisional registration , it has to apply six months before expiry of provision registration, as provided in section 12A(1)(ac)(iii) of the Act.

4.1 In the instant case the provisional registration to the assessee was granted vide order dated 31/12//2021, which was valid for a period from A.Ys. 2022-23 to A.Y.2024-25. Thereafter, the assessee applied for regularization of the registration under section 12A of the Act in prescribed form No.10AB on 02/04/2022, but in view of non compliance on the part of the assessee to the various notices issued , the Ld.CIT(E) rejected the application by way of order dated 28/10/2022. Thereafter, in view of the CBDT circular No.6 of 2023 dated 24th May, 2023, the assessee again applied for registration and filed prescribed form 10AB on 29/09/2023. The Ld.CIT(E) rejected the said application of the assessee by observing as under:-

Act on 29.09.2023

“2. On perusal of material on record it was observed that the assessee had already filed Application in Form 10AB for regularisation of provisional registration u/s 12A on 02.04.2022. The Application of the assessee was rejected vide order dated 28.10.2022 due to non- submission of required documents in the prescribed time.

3. The assessee filed fresh Application in Form 10AB when the window of re- filing the application was open for the trusts which have not filed application within 6 months of activities or 6 months before the expiry of provisional registration. The assessee does not fall under both the conditions. The filing of fresh application is not as per Circular No. 06 of 2023 dated 24.05.2023, Hence this application in Form 10AB is non- maintainable.”

4.2 We find that Ld.CIT(E) has rejected the application of the assessee as ‘non maintainable’ for the reason that assessee has not fulfilled eligibility of the said circular issued by the CBDT. The two conditions prescribed under the circular(supra) are that –either the application should be filed within six months from the activities or same should be filed six months before the expiry of the provisional registration. Before us, the Ld. Counsel for the assessee submitted

that the provisional registration was applicable upto to Assessment Year 2024-25 (i.e. FY 2023-24) and the period of six months before expiry of provisional registration would end on 30/09/2023, thus, invoking the condition of the CBDT circular (supra), the assessee was required to file the application before 30/09/2023, whereas the assessee has filed the said application on 29/09/2023 and, therefore, it is within the limitation. The contention of the assessee has been verified and found to be correct. Therefore, we set aside the order of the Ld.CIT(E) on the issue in dispute and direct him to admit the application of the assessee and decide the issue on merit after taking into consideration the submissions of the assessee. The sole issue in dispute in the appeal is accordingly allowed for statistical purpose.

5. In the result, the appeal is allowed for statistical purpose.

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

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 19/09/2024
Pavanan

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. गार्डफाइल/Guard file.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai