

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAIBEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
I.T.A No.2363/Mum/2024
(Assessment Year : 2023-24)

Darul-Uloom Mohammadi Va Sunni Aqsa Trust, Juhu Galli, Gilbert Hill, Wireless Road, Indira Nagar, Andheri (West), Mumbai-400 058 PAN : AABTD9372M	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 under the procedure laid down in 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 due to a technical human error in mentioning the objects of the trust as charitable instead of religious in Form 10A and religious in Form 10AB, the Learned CIT (E) has rejected the application in form 10AB without application of mind and considering the facts and objects of the trust are religious as per the trust deed of the appellant and the rejection is improper, unjustified and contrary to the facts prevailing in the case.

5. The Appellant submits that while processing the appellant application u/s 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.

6. 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 regarding the aims/objects of the appellant.

7. 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 objects of the trust are religious as per the trust deed of the appellant and without considering the same has rejected the application in Form 10AB. Merely on the grounds of technical human error in stating the activities as charitable in Form 10A instead of religious, The Learned CIT (E) has rejected the application for registration u/s 12AB without giving opportunity of being heard in the said matter.

8.The Appellant submits that The Learned CIT (E) has not followed the procedures laid down in section 1248 for granting of Registration which violation of provisions of section 1248 as well as principal of natural justice

9. 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 in 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.

10. 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. We heard rival submissions 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 was introduced by the Hon'ble Parliament in the Finance Act, 2020. The new section 12AB was 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.

3.1 In the instant case the provisional registration to the assessee under was granted vide order dated 23/09/2021, 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 in prescribed form No.10AB on 01/04/2022 which was rejected by the Ld.CIT(A) vide order dated 29/10/2022 on the ground that in the prescribed form, the assessee wrongly mentioned 'charitable' instead of 'religious cum charitable'. However, the assessee was given opportunity to file another application. Accordingly, the assessee filed another application in form 10AB on 28/02/2023 which was also rejected by the Ld.CIT(E) on the ground that assessee applied for registration wrongly under sub clause (ii) of section 12A(1)(ac) instead of regularization of the provisional registration under sub clause (iii) of section 12A(1)(ac) of the Act. In this order also, the Ld.CIT(E) granted liberty to the assessee to file another application. Accordingly, the assessee filed third application in Form 10AB on 28/09/2023, which has been rejected by the Ld.CIT(E) on the ground that CBDT circular No.6 of 2023 dated 24/05/2023 was not applicable to the facts of the case of the assessee. The relevant finding of the Ld.CIT(E) is reproduced as under:-

"M/s Darul Uloom Muhammad Va Sunni Aqsa Trust (hereinafter the assessee or The applicant) filed an application in Form 10AB seeking registration under section 12AB of the Act on 21.06.2023.

2 On perusal of materials record it was observed that the assessee had already filed Application in Form10AB for regulation of provisional registration u/s 12A on 01.04.2022. The Application of the assessee was rejected vide order dated 29.10.2022 as the trust was religious but in nature of activities the assessee had mentioned charitable.

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 24.05.2003. Hence this application in Form 10AB is non- maintainable.

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

4. Thus, according to the Ld.CIT(E), the assessee has not fulfilled either of the conditions that application is filed within six months of the activities or filed six months before the expiry of the provisional registration. In the case, the provisional registration was granted vide order dated 29/09/2021, which was valid upto A.Y. 2024-25, (i.e. FY 2023-24) therefore, the period of six months before the expiry of provisional registration was to expire on 30/09/2023, But the assessee has filed the application in prescribed proforma on 28/09/2023, which is within the limitation prescribed under the CBDT circular i.e. 30/09/2023. Therefore, we set aside the finding of the finding of the Ld.CIT(E) on the issue in dispute and direct him to admit the application of the assessee and decide the same on merit after affording opportunity of hearing to the assessee. The grounds of appeal of the assessee are allowed for statistical purpose.

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

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

Sd/-

Sd/-

(KAVITHA RAJAGOPAL)	(OM PRAKASH KANT)
JUDICIAL MEMBER	ACCOUNTANT 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. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai