

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. AMARJIT SINGH, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 1527/MUM/2024 (A.Y: 2024-2025)**

Bombay Buddhist Association Dharam Jyoti Vihar, Panchseel Park, Appapada, Kurar Village, K. V. Malad, East PAN: AACTB1385M	Vs. CIT (Exemptions), Ward No. (1), Mumbai Room No. 601, 6 th Floor, Cumballa Hill, MTNL TE Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Mumbai – 400026.
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(Appellant)

(Respondent)

Assessee Represented by	:	None
Department Represented by	:	Shri. Kiran Unavekar, Sr. AR.
Date of conclusion of Hearing	:	27.09.2024
Date of Pronouncement	:	08.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the assessee against the order dated 19.03.2023 of ITBA/EXM/F/EXM45/2022-23/1050955779(1), CIT (Exemptions), Mumbai [hereinafter referred to as the “*CIT(Exemptions)*”], passed under



section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2024-25, wherein application in form 10AB seeking registration u/s. 12AB of the Act was dismissed due to non-compliance of the term of the notice issued to the assessee.

2. The appellant is a society established on 14.12.1979 with the main object to carry out Education, Medical Relief, Relief for the poor as well as advancement of objects of general public utility; the assessee registered Religious and charitable Trust and it carries out pooja and other religious ceremonies of Buddha Temple situated at Versova, Andheri, Mumbai. The appellant was granted provisional registration under 02-sub clause (vi) of clause (ac) of sub section (1) of Section 12A on 30.03.2022 for period from A.Y. 2022-23 to 2024-25. The trust applied for regularization of the earlier provisional approval. The said application was rejected on the ground that the applicant was unable to do necessary compliance of notice issued on 18.01.2023 and 09.03.2023 by the Ld. CIT (Exemption). It is stated that the appellant has never received those notice and the time given on e-portal for second notice was not sufficient and; that the member of the society was not computer savvy and could not trace and follow e-portal procedure.



3. Aggrieved by the impugned order of rejection, the assessee is in appeal before us and has raised following grounds of appeal.

1. *“The CIT (EXMP), Mumbai erred in rejecting the application for regularization of the earlier provisional approval granted, submitting therewith along with the said application all the details necessary for the approval for granting regular approval, on the income tax e-filing portal, which was well in due time as the last date was 30.09.2023.*
2. *The CIT (EXMP), Mumbai erred in rejecting the application without considering the submissions made by the appellant stating that:*

“On perusal of the Form 10AB filed by the assessee, it was observed that the assessee has applied under section 12A(1)(ac)(iv) i.e. where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11 and not for regularisation of provisional registration. Hence this Application is hereby rejected.”

However, all the required details were already submitted along with the application and also again forward all the details at the time of filling fresh application. The copies of documents as submitted along with the application which was sought by the officer is enclosed herewith for your ready reference.

3. *The CIT (EXMP), Mumbai erred rejecting the said order in Form 10AD dully issued on 05.12.2023 by directly posted on e-portal without providing reasonable opportunity to the applicant of being heard and without considering the facts that the documents as sought by the officer were already submitted along with the application and the same were on records.*
4. *The CIT (EXMP), Mumbai erred in considering the difficulties that the appellant faced at the time of filling “Form 10AB”, for regular registration. It was the fact that the application should have been submitted under section sub clause (iii), however at the time of filling of the said application in the last month in which it was due, the only portal open under sub clause (iv), for regularisation of provisional registration as the other portals and mainly sub section (iii) with*



CPC was not opening even after rigorous / diligent try of the appellant.

5. *The CIT (EXMP), Mumbai did not consider the anxiety of applicant, submitting the application for regularisation of provisional registration in time limit as the it was, the portal and mainly sub section (iii) with CPC was not opening even after rigorous / diligent try of the appellant and the assessee submitted in any one of the clauses, the eportal was accepting.*
6. *That no notice and or any opportunity was given to the appellant for clearing/rectifying the mistake or explaining the problems that was faced by the appellant.*
7. *It is submitted that it is not just and proper, for some technical reasons the application to be rejected because it was not submitted under correct section i.e. u/s clause (iii) of first proviso to sub-section ac (iii) and not under sub-clause (iv). Here I would again like to bring to your kind notice that while submitting the application the window under clause (iii) was not opening and was showing error and only it was accepting under clause (iv). That is why the applicant had submitted in the said clause, however if the Officer would have given the opportunity, the applicant should have rectified its mistake and had changed it.*
8. *The CIT (EXMPT), Mumbai failed to appreciate that even the rejection order too was also not communicated to the applicant on the registered e-mail address of the assessee, or mobile or physical address and only posted on e-proceeding section of the e-portal. So, the appellant has never got the valid opportunity of being heard and providing the information sought and or clarifying its step if any which might have gone wrong while filling the application.*
9. *I would like to further bring to your kind notice that while submitting the above referred application, the window under sub-clause (iii) was not opening and was always showing error for may days and only it was accepting under sub-clause (iv). It was for these reasons the applicant had submitted the application in the said subclause so as we do not miss the deadline laid by the department. Here if the Officer would have given the opportunity, we have corrected our application to the extent.*



10. *That due to the recent amendment brought in the Act for registering the Trust under new regime of 12AB, this was very new to all and the e-portal at times did not support the assessee which the officers too confirmed at time.*
 11. *That the CIT (EXMP), Mumbai erred in rejecting the application in a hasty manner without giving any opportunity even though we have submitted all the relevant documents as required under law on the income tax e-filing portal, which was well in due time.*
 12. *The CIT (EXMP), Mumbai failed to appreciate that this being the first time in life of all the assessee of submission of such type of application for 12AB, that through e-portal, it was but obvious that a soft corner to be given to the assessee by providing an opportunity of being heard and to rectify any such mistakes that may have taken place in the application form before passing any such rejection order.*
 13. *That the applicant had no intention to put up the application in wrong sub-clause but for the reason mentioned herein above and allowing the registration to the Trust will not jeopardize the interest of the revenue but will affect the Trust to a great extent and that the charity would suffer a lot.*
 14. *That if the said appeal is not allowed, it will be great injustice to the public at large as the trusts are in process of carrying out several education activities especially in the slum areas.*
 15. *In view of the above, it is our prayer that the grounds of appeal be considered and the above referred rejections may be called off.”*
4. At the time of hearing, the assessee was represented by none. We have heard the Ld. DR on behalf of the department. The only question to be determined at this stage by us is whether the principle of natural justice has been followed by the Ld. CIT (Exemption) or the Ld. CIT (Exemption)



has passed the reasoned order which he otherwise was duty bound to do?

The impugned order reads as under: -

1. *“M/s. Bombay Buddhist Association [hereafter ‘the applicant’ or ‘the assessee’] filed application in Form 10AB seeking registration under section 12AB of the Income Tax Act [hereafter ‘the Act’]. The applicant has been granted Provisional Registration under Section 12AB of the Act in Form 10AC by CPC Bengaluru on 30.03.2022.*
 2. *Under the relevant section 12A(1)(ac)(iii) of the Act, an applicant has to make an application in the prescribed format and manner in the following scenario:*
“Where the trust or institution has been provisionally registered under Section 12AB, at least six months prior to the expiry of period of provisional registration or within six months of commencement of activities, whichever is earlier.”
 3. *On verification of the facts and circumstances of the case, | find that the assessee has applied as a “charitable” trust as per Application in Form 10AB. On perusal of trust deed and activities commenced by the trust it is observed that there are also activities of religious nature. A showcause notice vide DIN & Notice No. ITBAJEXM/F/EXM43/2022- 23/1050538824(1) was sent on 09.03.2023. The assessee has made no compliance to the terms of the said notice.*
 4. *For statistical purposes, this application is non maintainable and stands rejected.”*
5. It is thus evident from the impugned order extracted above, the Ld. CIT (Exemption) has dismissed the application of the applicant on that ground that apart from charitable purposes the applicant was also carrying out activity of religious nature and a show cause notice dated 09.03.2023 was issued and



the assessee has not made compliance to the term of the said notice. Therefore, the application was not maintainable and stands rejected.

6. It is the case of the assessee that they never received the notice. Even the impugned order does not speak regarding the service of the notice upon the assessee/applicant. In these facts and circumstances, we are of the considered opinion that the Ld. CIT (Exemption) has dismissed the application without following the principal of natural justice as in the given facts and circumstances, the assessee/applicant was required to be heard and given fair opportunity of replying to the show cause notice issued by the Ld. CIT (Exemption).
7. In the given facts and circumstances, we are of the considered opinion that the assessee needs to be given one more opportunity for presenting its case before the Ld. CIT (Exemption). The impugned order is accordingly set aside with the direction to the Ld. CIT (Exemption) to give more opportunity to the applicant for presenting its case effectively and to decide the case afresh.
8. The matter is accordingly restored to the file of the Ld. CIT (Exemption).



9. In the result, appeal filed by the assessee is allowed for statistical purposes in the above terms.

Order pronounced in the open court on 08.10.2024

Sd/-
(AMARJIT SINGH)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 08.10.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai