

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 449/MUM/2024**

**(Assessment Year : 2024-25)**

**The New Path Educational Trust,**

Plot No.48, Sector-12,

Vashi - 400703,

Navi Mumbai

PAN: AAATT4794L

..... Appellant

v/s

**CIT(E),**

601, 6<sup>th</sup> Floor Cumballa,

Hill MTNL TE Building,

Pedder Road, Dr. G. D. Marg

Mumbai- 400026

..... Respondent

Assessee by : None

Revenue by : Shri R.A. Dhyani (CIT-DR)

Date of Hearing – 03/10/2024

Date of Order 16/10/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

1. The present appeal has been filed by the assessee challenging the impugned order dated 13/01/2024 passed in Form 10AD by the learned Commissioner of Income Tax (Exemptions), Mumbai, [*learned CIT(E)*]denying the approval under section 80G of the Income Tax Act, 1961 (*the Act*).

2. In this appeal, the assessee has raised the following grounds: –

"1. The CIT (EXMP), Mumbai erred in rejecting the Appl. In Form 10AB dated 15.03.2023 submitted along with all necessary documents on the income tax e-filing portal, which was well in due time as the last date was 30.09.2023. The said rejection Order was directly posted on e-portal without providing reasonable opportunity to the applicant of being heard. The Application has been rejected by mentioning reason of noncompliance and the para mentioned in the rejection order is re produced herewith:

"On verification of the facts and circumstances of the case and on perusal of submission furnished by the assessee, I find that the assessee has commenced no activity. Further it was observed that clause no. 4.1(24) of the objects as mentioned in the trust deed allows the trust to apply public charitable funds received beyond Indian shores. A show cause notice vide DIN & Notice No. ITBA/EXM/F/EXM43/2022-23/1049926419(1) was sent on 20.02.2023. The assessee has made no compliance to the terms of the said notice. As such, the assessee is not fulfilling the stipulated conditions prescribed for filing application for approval in Form 10AB. In view of the this application for grant of approval is not maintainable and the same is rejected."

2. However, the CIT (EXMPT), Mumbai does not mention about the reply submitted by the Trust in response to the notice DIN & Notice No:ITBA/EXM/F/EXM43/2022-23/1048928374(1) issued on 19.01.2023 in the same proceedings where the trust has submitted full details of the current activities run by the trust and also submitted separate note on present Activities on the trust letter head which stated that the Trust is running a school and the present students is about 1100 students. The brief note on the activities was too attached along with the reply in response to the said notice. To prove our contention, we hereby attached the copy of reply letter which say that Note on activity of the Trust is enclosed along with the Acknowledgement copy.

3. Here I would like to bring to your kind notice that even though the officer was having full details still issued one notice asking for the same details which the officer had it in its file. The fresh notice was issued and the application was rejected in such a hasty manner for the reasons best known to the officer. Had the CIT (EXMPT), Mumbai given the reasonable opportunity we would have once again submitted the same detail.

4. The CIT (EXMPT), Mumbai failed to appreciate that the rejection order 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 satisfying the CIT (EXMPT), Mumbai.

5. That due to the recent amendment brought in the Act for registering the Trust under 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.

6. That The CIT (EXMP), Mumbai erred in rejecting the Application in a hasty manner, asking for the details even though it had with it and that to without giving reasonable 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.

7. The CIT (EXMP), Mumbai failed to appreciate that because of the recent amendments, this being the first time in life of all the assessee of submission of such type of application for 12AB, that to through e-portal, it was but obvious that a soft corner to be given to the assessee by providing an opportunity of being heard before passing any such rejection order."

3. When the present appeal was called for hearing, neither anyone appeared for/on behalf of the assessee nor was any application seeking adjournment filed. Therefore, we proceeded to decide on the present appeal on the basis of the submissions of the learned Departmental Representative and perusal of the material available on record.

4. We find that the assessee is a public charitable trust, established on 04/09/2000. The main object of the trust was to carry out relief for the poor, education, medical relief, as well as the advancement of objects of general public utility. We further find that the assessee was granted provisional registration under clause (iv) of the first proviso to section 80G(5) of the Act on 18/03/2022 for the period from 18/03/2022 to the assessment year 2024-25.

5. From the perusal of the impugned order dated 13/01/2024, we find that the learned CIT(E) rejected the application filed by the assessee in Form 10AB on the basis that the assessee had applied under clause (ii) of the first proviso to sub-section (5) of section 80G, i.e. for the renewal of approval and not for regularisation of provisional approval. The learned CIT(E) further granted the liberty to the assessee to reply in Form 10AB along with all necessary documents/conclusions as prescribed in Rule 11AA(2) of the Income Tax Rules, 1962. Thus, it is undisputed that the application filed by the assessee in Form 10AB was within the applicable limitation period. However, it is not evident that the opportunity of hearing

was granted to the assessee by the learned CIT(E) before rejecting the assessee's application in Form 10AB.

6. In view of the facts and circumstances noted above, we deem it appropriate to direct the learned CIT(E) to grant an opportunity to the assessee to file the revised application under the correct provision of the law. Further, the learned CIT(E) is directed to consider the same on merits after affording the reasonable and adequate opportunity of hearing to the assessee. With the above directions, the impugned order dated 13/01/2024 is set aside and grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16/10/2024

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 16/10/2024**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai