

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "G" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM)  
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 2413/Mum/2024 (A.Y. 2023-24)

Sabria Shahab E Millat Darul Uloom Orphanage and Medical aid Centre Qumar House, Near Green Field, Opp. Stone Building, Mare Road Kharodi, Malad West Mumbai-400 095.  PAN : AAPTS4855E (Appellant)	Vs.	The CIT(E) 601,6 <sup>TH</sup> Floor Cumballa Hill MTNL TE Building Pedder Road DDr. Gopalrao Deshmukh Marg Cumballa Hill Mumbai-400 026.  (Respondent)
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Assessee by	Ms. Kinjal Bhuta
Department by	Dr. Kishor Dhule
Date of Hearing	25.07.2024
Date of Pronouncement	18.10.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above captioned appeal, the learned AR of the appellant had main grievance of not giving proper opportunity of hearing while rejecting registration sought by them under section 12AB of the Income Tax Act (the Act for short). The learned Commissioner of Income Tax (Exemptions), Mumbai [Ld. CIT(E) for short] passed a very small order mentioning that original application for regularization of provisional registration under section 12A was rejected vide order dated 28.10,2022 due to non submission of required documents within prescribed time. Then, the appellant 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 six months of activities or six months before the expiry of provisional registration. As the appellant does not fall under both the conditions, application in Form No.

10AB filed by the appellant was held to be not maintainable and application for grant of registration was rejected by the Ld. CIT(E), Mumbai.

2. Aggrieved by the order of the Ld. CIT(E), appellant-trust filed several grounds of appeal which are reproduced below :-

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 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 activities or 6 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 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 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 CVT (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. From the above grounds of appeal raised by the appellant, it can be seen that the appellant had a grievance mainly on two grounds mentioned below :

- i) The Ld. CIT(E) has not given any opportunity of hearing for establishing the genuineness of the activities of the trust.
- ii) The Ld. CIT(E) has not given an opportunity of being heard while rejecting the application for registration u/s. 12AB which is a violation of provisions of section 12AB as well as principles of natural justice.
- iii) The Ld. CIT(E) ought to have asked the appellant the requisite details and information and relevant documents before rejecting the application on technical grounds without considering the applicability of the Circular No. 6 of 2023 dated 24.5.2023.
- iv) The appellant argues that the Ld. CIT(E) has not properly considered Circular No. 6 of 2023 dated 24.5.2023 wherein Clause 5 of the same clearly states the due date has been extended till 30.9.2023 where the due date for filing Form 10AB expires prior to the date of Circular.

4. Thus, main argument of Ld. AR of the appellant is that there is violation of principles of natural justice and rejection of registration is contrary of the provisions of law and facts of the case.

5. Ld. DR has argued that provisions of law were properly applied and the Ld. CIT(E) has rejected the application for registration after perusing the said circular and the same was mentioned in the order of the Ld. CIT(E). Hence, there is no merit in the argument of Ld. AR of the appellant.

6. Heard both sides. After perusing the order of the Ld. CIT(E), it is observed that the application in Form 10AB was held to be non-maintainable because the same is not as per the Circular No. 6 of 2023. But the Ld. CIT(E) has not mentioned anything as to why the said application in Form 10AB is not as per the above Circular and moreover it appears that proper opportunity was not given to the appellant before rejecting the registration sought for under section 12AB of the Act. As the order was cryptic and not giving full details as to why the registration was rejected, it is decided that the issue is remitted back to the Ld. CIT(E) to pass a speaking order as to why appellant is not entitled for registration under section 12AB of the Act. The Ld. CIT(E) is directed to give reasonable opportunity for submitting his case alongwith necessary documents and information. The appellant is directed to file all relevant information/documents which were relied on as mentioned in the grounds of appeal. After taking into consideration all material and the said circular, the Ld. CIT(E) is directed to pass a speaking order afresh.

7. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 18<sup>th</sup> October, 2024.

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 18.10.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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