

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1523/MUM/2024
(Assessment Year: 2024-25)**

**ITA No.1525/MUM/2024
(Assessment Year: 2024-25)**

Shree Saisewa Charitable Sanstha, Mumbai

5 Jayanti Gavakar Sarota Pada
Veera Deai Road, Andheri West,
Mumbai-400058, Maharashtra.
[PAN: MUMH06844F]

..... **Appellant**

**Commissioner of Income Tax
(Exemptions), Mumbai**

Room No.601, 6th Floor, Cumballa Hill MTNL
TE Building, Peddar Road, Dr. Gopalrao
Deshmukh Marg, Mumbai-400026,
Maharashtra.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Mamta Shukla
For the Respondent/Department : Shri Pushkraj Bhanghe Patil

Date

Conclusion of hearing : 18.10.2024
Pronouncement of order : 29.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member

1. These are two appeal preferred by the same Assessee. On perusal of Appeals we find that the Appellant had filed the appeal electronically and thereafter filed a physical copy of the said appeal. Inadvertently, both the appeals were numbered separately. Accordingly, ITA No.1525/Mum/2024 is dismissed as being duplicate appeal.

ITA No.1523/Mum/2024

2. We now proceed to adjudicate upon ITA No.1523/Mum/2024

preferred by the Assessee against the order, dated 05/12/2023, passed by the by the Commissioner of Income Tax (Exemptions), Mumbai, [hereinafter referred to as the '**CIT(E)**'] whereby the application filed by the Appellant in Form No.10AB filed under Section 12AB of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] was rejected and provisional registration granted under Section 12AB read with Section 12A(1)(ac)(vi) of the Act was also cancelled.

3. The Assessee has raised following grounds in ITA No.1523/Mum/2024 challenging the order impugned :

"1. *The CIT (EXMP), Mumbai erred in rejecting the application for regularisation 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 From 10AB filed by the assessorit was observed that the assessee has applied under section 124(1)(ac)[iv) Le. 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 sway 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 "From 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 (ii) 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 (ii) with CPC was not opening even after rigorous/ diligent try of the appellant and the assessee submitted in any one of the clauses, the e portal 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 ie. 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 sub-clause 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 document s 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 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 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. *I say that if the said appeal is not allowed, it will be great injustice to the public at large as the trust are in process of running several projects in the field of Sanitation and Cleanliness and also education activities being distribution of Books and other materials to the poor and needy students coming from slum areas. Also giving relief to poor, the larger number of people will suffer to a great extent."*
4. On perusal of the grounds raised, we find that the primary grievance of the Appellant is that the Learned CIT(E) did not provide opportunity of being heard to the Appellant before rejecting the application.
5. When the appeal was taken up for hearing the Learned Authorised Representative for the Appellant the Learned Authorised Representative for the Appellant submitted as under.
- (a) The Appellant is a public charitable society, established on 11.12/2002 with the main objects of carrying out work for

the relief to poor, education, medical relief, as well as advancement of objects of general public utility.

- (b) The Appellant was granted provisional registration under 12A(1)(ac)(vi) on 07/04/2022 for period from Assessment Year 2022-2023 to Assessment Year AY 2024-2025.
- (c) The Appellant had applied for regular registration of the Society under Section 12AB by way of application filed in Form 10AB, dated 23/09/2022, before the prescribed time (30/09/2022). Two notices were issued in respect of the aforesaid application on 25/01/2023 and on 08/03/2023. It is the case of the Appellant that the Appellant had no knowledge of the aforesaid notices. The physical copy of the aforesaid notices were not served upon the Appellant and the members of the society were not computer savvy and could not trace/track the notices on the e-portal. Since the Appellant failed to comply with the same. Vide order dated, 19/03/2023, passed by the CIT(E), the aforesaid Application was rejected holding as under:

“Registration under section 12AB is to be granted in terms of the provisions of Section 12AB(1)(b) of the Act after being satisfied about the objects of the trust or the genuineness of activities, and the compliance of any other law for the time being in institution, force as are material for the purposes of achieving its objects in the absence of necessary compliance by the Applicant. I am unable to arrive at a satisfaction on these parameters. As such, in view of the statutory limitation to decide on the application on or before 31 03.2023, I am left with no other option but to reject the application seeking registration under section 12AB of the Act”

- (d) The Appellant re-applied for obtaining regular registration on dated YY well before the last date (i.e. 30.09.2023). The aforesaid application was filed under Section 12A(1)(ac)(iv) of the Act. It is the case of the Appellant that there was

technical issue with the portal because of which the Appellant could not re-apply under Section 12A(1)(ac)(iii) and had to make application under Section 12A(1)(ac)(iv) as the portal permitted submission under that section only. The aforesaid application was also rejected on the ground that the application was not filed under the correct provision. The relevant extract of order dated 05/12/2023 reads as under:

"On perusal of the Form 10AB filed by the assessee it was observed that the assessee has applied under section 12A(1)(ac)(iv) ie. 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, this rejection will not adversely impact the provisional registration under section 12AB issued by the CPC. For statistical purposes, this application is non maintainable and stands rejected."

- (e) No opportunity was granted to the Appellant to correct/rectify the application or to explain as to why application has been filed under incorrect section. The CIT(E) had rejecting the application without considering the relevant facts/documents sought were submitted along with the application and the same were on records. The Appellant was neither given notice nor any opportunity for clearing/rectifying the mistake or providing explaining the problems that was faced by the appellant.
- (f) The CIT(E) had acted 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 filing portal, well within the due time.
- (g) Even the rejection order was not communicated to the Appellant on the registered e-mail address of the Appellant,

or the mobile or at the physical address and was only posted on e-proceeding section of the e-portal. Therefore, the Appellant got knowledge of the same subsequently. Soon thereafter, the Appellant took necessary steps to get the appeal filed before the Tribunal. However, in the aforesaid facts and circumstances, appeal could be filed only after a delay of 63 days in filing the appeal.

- 5.1. In view of the above, it was prayed that the delay in filing the appeal be condoned; the grounds raised be considered on merits; and the impugned order be set aside.
6. Per contra, the Learned Departmental Representative relied upon the order passed by the CIT(E) and supported the order passed by the CIT(E) by submitting that since the Appellant had failed to comply with the notices issued the CIT(E) was justified in rejecting the first application. The second application was admittedly filed under an incorrect section and therefore, the same was also rightly rejected.
7. We have given thoughtful consideration to the rival submissions and perused the material on record.
 - 7.1. While the Learned Departmental Representative relied upon order passed by the CIT(E), he could not controvert the factual averments made by the Learned Authorised Representative for the Appellant.
 - 7.2. We note that the first application filed by the Appellant for seeking approval under Section 12/12AB of the Act was dismissed vide order dated 19/03/2023 passed by the CIT(E). Before us, the Learned Authorised Representative for the Appellant has explained that the notices issued by the CIT(E) were not complied with by the Appellant on account of want of

knowledge. The persons at the helm of the affairs of the charitable organization were not comfortable using computer and could not locate the notice issued since the same was posted on e-portal and was not served physically. As regards, the second application it was explained by the Appellant that the same was filed under Section 12A(1)(ac)(iv) of the Act since the income tax portal did not permit the Appellant to file application under Section 12A(1)(ac)((iii). The application was actually meant to be filed under Section 12A(1)(ac)((iii) of the Act. However, due to technical issue having been faced by the Appellant, the same was filed electronically Section 12A(1)(ac)(iv) of the Act. From the aforesaid facts and circumstances of the present case, it becomes clear that while the Appellant was diligent in filing and refiling the application seeking approval within specified time. However, the Appellant failed to keep track of the proceedings as the same were conducted electronically and the key persons at the helm of the affairs of the Appellant-Society were not comfortable/conversant with online working of the income tax portal and could not locate the notice of hearing which resulted in non-compliance. Since no response was filed, the Appellant was proceeded ex-parte and the application was dismissed. The Appellant made another application. However, the second application was also dismissed vide order dated 05/12/2023 passed by the CIT(E). The Appellant got knowledge of the rejection order subsequently as the same was also not posted on the e-portal only. On getting knowledge the Appellant preferred the present appeal. There is no allegation that the Appellant has acted in a malafide manner. Given the facts and circumstances of the present case, the delay of 63 days in filing the present appeal is condoned.

7.3. We also find merit in the contention advanced on behalf of the

Appellant that no opportunity was granted to the Appellant to correct/rectify the second application. Further, we note that the order, dated 05/12/2023 passed by the CIT(E) rejecting the application also clearly provided that the provisional registration granted to the Appellant shall not be adversely impacted by the rejection of the application and that the Appellant would be at liberty to reapply. Therefore, keeping in view the facts and circumstances of the present case, we deemed it appropriate to set aside the order, dated 05/12/2023, passed by the CIT(E) with the directions to the CIT(E) to either permit the Appellant to file rectified application or to consider the application filed by the Applicant as application filed under Section 12A(1)(ac)(iii) of the Act. The Appellant is directed to place all relevant details/documents before CIT(E) in support of its application for seeking registration. In terms of the aforesaid, Ground No.1 to 14 raised by the Appellant are allowed for statistical purposes.

8. In result ITA No.1523/Mum/2024 preferred by the Assessee is allowed while ITA No.1525/Mum/2024 preferred by the Assessee is dismissed in view of paragraph 1 above.

Order pronounced on 29.10.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.10.2024
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /((Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai