

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1954/PUN/2024

Late Tilokchand Kuche Shikshan Prasarak Mandal Aurangabad, Plot No.17, Laxmidevi Balaji Mandir, Juni Mukundwadi, Aurangabad - 431 001 Maharashtra PAN : AABTL3131C	Vs.	CIT(Exemption), Pune
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Ajay Kumar Keshari
Date of hearing	:	07.11.2024
Date of pronouncement	:	13.11.2024

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal at the instance of Assessee is directed against the order dated 09th September, 2024 framed by learned CIT (Exemption), Pune.

2. In the instant appeal, assessee has raised following grounds of appeal :

"1. The Learned Commissioner of Income Tax Exemption, Pune, erroneously rejected the appellant's application based on the incorrect section code selected in Form No. 10AB. The appellant inadvertently selected the section code pertaining to renewal of regular registration (clause (ii) of section 12A(1)(ac)) instead of the code for provisional registration (clause (iii) of section 12A(1)(ac)). This mistake was clerical and inadvertent, and should not have been a basis for rejection. Therefore the appellant be granted an opportunity. to rectify the clerical error in Form No. 10AB and that the application be processed under the correct clause (iii) of section 12A(1)(ac).

2. The Commissioner of Income Tax Exemption stated in their order that they had sent a notice to the appellant's email ID. However, the appellant did not receive any notice in their email. As a result, the appellant could not present their case and documents before the Commissioner of Income Tax Exemption Pune. The appellant's registration application under Section 12AB of the Income Tax Act was rejected by the Commissioner of Income Tax Exemption without providing an opportunity to present their case or submit the necessary documents. This constitutes a violation of the fundamental principle of law that all parties must be given a fair opportunity in any legal proceeding. Therefore, the appellant should be allowed to present their case and submit the documents by the kind interference of the Hon'ble Appellate authority.

3. According to CBDT Circular No.7/2024 dated 25/04/2024, applications pending in Form No.10AB should be treated as valid if no order was passed before the issuance of the circular. The appellant's application was valid as it was filed before the extension deadline, and should have been considered accordingly.

4. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise."

5. The other grounds will be argued at the time of the final hearing."

3. Brief facts of the case are that the assessee is a Charitable Society registered under the Bombay Public Trust Act, 1950. It is formed with the object of providing education to Tribal, inaccessible and backward boys and girls residing in both rural and urban areas. The assessee society filed application on Form No.10AB u/s.12A(1)(ac)(ii) of the Act on 31.03.2024 seeking registration u/s.12AA of the Act. In order to verify the genuineness of activities of the assessee and compliance to the requirements of any other law for the time being in force by the Trust/Institution, the ld. CIT(E) issued notice through ITBA portal 03.06.2024 calling upon it to file/upload certain information. In compliance, the assessee furnished the requisite information. On verification of the details submitted by assessee, the ld. CIT(E) issued another notice dated

12.07.2024 communicating certain discrepancies in the details so filed, fixing the compliance date on or before 19.07.2024. The assessee did not comply with the said notice. In the said circumstances, the ld. CIT(E) chose to reject the application filed by the assessee as non-maintainable, without going into merits of the case.

4. Aggrieved assessee trust preferred appeal before the Tribunal.

5. When the matter was called for, none appeared on behalf of the assessee despite due service of notice of hearing. We therefore proceed to dispose of this appeal *ex parte qua* the assessee after hearing the ld. Departmental Representative.

6. We have heard the ld. Departmental Representative and perused the record placed before us. The main grievance of the issue agitated in this appeal is selection of wrong section code by the assessee pertaining to renewal of regular registration as filed under section 12A(1)(ac)(ii) instead of section 12A(1)(ac)(iii). It was also assailed vide Ground No.2 that it did not receive any notice on the e-mail provided by it. The appellant also relied on CBDT Circular No.07/2024 dated 25.04.2024 in support of its case. We note that similar issue came up for adjudication before Coordinate Bench, Surat in the case of *Shree Swaminarayan Gadi Trust Vadtal (SVG) Vs. CIT (Exemptions), Ahmedabad in ITA Nos. 369 & 370/Srt/2024, dated 13.05.2024* and the finding of the Tribunal reads as under :

“5. We have considered the submissions of both the parties and perused the record carefully. There is no dispute that the assessee applied for registration under Section 12A/12AB of the Act under Form 10AB on 28.09.2023. The ld. CIT(E) while considering the application of assessee noted that the application filed by assessee is not maintainable and accordingly, a show cause notice dated 02/11/2023 was issued for seeking clarification. The assessee responded to the show cause notice of ld CIT(E) vide their reply dated 15.12.2023. The contents of show cause notice and the reply thereof is not recorded by ld CIT(E) in his order. We find that the assessee vide their reply dated 15/12/2023 prayed to consider the application in appropriate sub-clause of section 12A(1). The ld CIT(E) held that he has no power to change/ amend or rectify Form-10AB. We find that it was an inadvertent mistake and the assessee has already explained the facts and prayed for correction before the ld. CIT(E). In our view the mistake in filing entry was not fatal and could be considered in appropriate sub-clause or clause of section 12A(1). Otherwise, the assessee has provided all the details and information in Form-10AB, while applying for registration under section 12A/12AB. Being first appellate authority, the plea of assessee for correction in Form-10AB is accepted and the order of ld CIT(E) is set-aside. The registry official of ld CIT(E) maintaining record of ITBA portal about the registration of trust under section 12A/12AB is directed either to correct such mistake or allow the assessee to rectify or amend the relevant clause/ sub-clause of section 12A(1). Considering the fact that the application of assessee was not considered on merit, therefore, we deem it appropriate to direct the ld. CIT(E) to treat the application of assessee under Section 12A(1)(ac)(iii) in place of Section 12A(1)(ac)(iv) of the Act and to consider the case on merit and pass the order in accordance with law. Needless to direct that before passing the order, the ld CIT(E) shall grant opportunity of hearing to the assessee. The assessee is also directed to furnish complete details to prove its object and activity and make all compliances as desired by the ld. CIT(E). In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes only.”

7. In light of the above decision and having given our thoughtful consideration to the given facts and circumstances prevailing in the instant case, we are of the opinion that the ld. CIT(E) ought to have given an opportunity to the assessee to rectify the defect. Further we are of the view that wrong selection of section code/ clause

would not disentitle the assessee to its rightful claim. Selection of wrong clause by the assessee cannot be treated as fatal to the proceedings initiated after the filing of the application. We therefore in the interest of natural justice being fair to both the parties deem it appropriate to grant one more opportunity to the assessee society, setting aside the impugned order to the file of Id. CIT(E). The Id.CIT(E) shall give an opportunity to the assessee to file the correct application and then decide the case on merits *denovo* after granting reasonable and proper opportunity to the assessee. Assessee Society is also directed to remain vigilant and make satisfactory compliance to the notice(s) of hearing issued by Id.CIT(E). It should refrain from taking adjournments unless otherwise required for reasonable cause. Effective grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 13th day of November, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th November, 2024.
Satish

ITA No.1954/PUN/2024
Late Tilokchand Kuche
Shikshan Prasarak Mandal Aurangabad

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.