

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 5152/Mum/2024
(Assessment Year: 2024-25)**

Datta Krupa Education Trust H No. 270/2, New Sahyadri Nagar, Behind Birla College, Kalyan (W), Maharashtra-421301 PAN : AABTD7837R	Vs.	CIT (Exemption) Room No. 322, 3 rd Floor, Income Tax Office, PMT Building, Shankar Seth Road, Pune, Maharashtra-411037.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Subodh Ratnaparkhi, AR

Revenue / Respondent by : Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing : 27.11.2024

Date of Pronouncement : 05.12.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Exemptions), Pune [in short 'the CIT(E)'] dated 05.08.2024 for AY 2024-25. The assessee raised the following grounds of appeal:

“1. The Hon. CIT (Exemption) erred in rejecting and thereby refusing to grant to the appellant trust, registration u/s 12AB of the IT Act, 1961, not appreciating that its application u/s 12AB in form no. 10AB electronically filed on 17.02.2024 suffered from defect on account of the deficiency of the I.T. portal, which fact was brought to the attention of the Hon.

CIT(Exemption) but unfortunately ignored and for this reason the refusal of registration u/s 12AB was not justified.

2. The order passed by the Hon. CIT (Exemption) in form no. 10AD dated 05.08.2024 rejecting the application filed by the appellant for registration u/s 12AB, be set aside and the Hon. CIT (Exemption) be directed to consider the said application of the appellant trust for grant of registration u/s 12AB, on merits.”

2. The assessee is a public charitable trust registered under Bombay Public Trust Act, 1950 and is engaged in running educational institutions in Kalyan. The assessee being a Trust engaged in educational activities was eligible for exemption under section 10(23C) (iiiad) of the Act and also had the provisional registration under section 10(23C) of the Act. The exemption under section 10(23C) (iiiad) was withdrawn by the CIT(E) vide order dated 29.11.2023. The assessee being still eligible for exemption under section 11 & 12 attempted to make an application for provisional registration under section 12A of the Act in Form 10A. However, the IT Portal did not permit the submission of Form for provisional registration and in this regard the assessee has written a letter to CIT(E) on 15.02.2024 seeking permission to file physical application. The CIT(E) vide response dated 18.04.2024 informed the assessee that the physical application for provisional registration under section 12A will be considered as non-est and that the application has to be filed through e-filing portal only. In this regard, the assessee also raised grievance on the IT Portal on the issue of not being able to submit Form 10A seeking provisional registration. The assessee received the response from grievance cell to file Form 10AB being application for final registration under section 12A of the Act. The assessee accordingly filed the application on 17.02.2024 in Form 10AB seeking registration under section 12A. The CIT(E) dismissed the application for final registration vide order dated 05.08.2024 by holding that

“6. After verification of the submission made by the assessee in response to the said notice, it is seen that the assessee has not furnished the copy of provisional registration under section 12AB of the Income Tax Act, 1961. The assessee has filed application under clause (iii) of section 12A(1)(ac) of the Act. The provisions of said section are applicable to a trust or institution which is provisionally registered under section 12AB of the Act. As per the provisions of Rule 17A(2)(e) of the Income Tax Rules, 1962, the copy of existing order granting registration was required to be submitted along with the application itself. Therefore the copy of order of provisional registration under section 12AB of the Act in form No.10AC issued under the provisions of clause (vi) of section 12A(1)(ac) of the Act was required to be submitted by the assessee along with the application, itself. However, it is seen that the copy of such provisional registration is neither submitted along with the application nor submitted during the present proceedings till date.

7. In view of the above, the application filed by the assessee is hereby rejected.”

3. The Id. AR submitted that provisional registration granted under section 10(23C) was not cancelled in the system and therefore the assessee was not allowed to submit the application for provisional registration under section 12A of the Act. The Id. AR drew our attention to the relevant reply from grievance cell in response to the query raised by the assessee

“Dear Taxpayer,

Once Form 10AB is rejected, there is no need to file Form 10A again. You are requested to file 10AB again. If you have any other grievance, please raise a fresh ticket with detailed description along with necessary documents/screenshots/attachments etc.

Dear Taxpayer,

As per rectification functionality, only name and address shall be rectified as per data available in 'My Profile'. As per your problem statement you want to change Section Code. For change of Section Code, you are requested to surrender your existing Form 10AC after follow steps: Login with PAN in e-Portal-> Go to e-File-> Select Income Tax Form-> Click on View filed

Forms-> Select Form 10A-> Click on Additional Action Tab-> Click on Tab Surrender Form 10AC. After surrender existing Form 10AC, please file Form 10A again for correct section code. However, the due date for making such application for Form 10A for AY prior to AY 2023-24 has been expired. You will be able to re-file form 10A for AY 2024-25 only. If you have any other grievance, please raise a fresh ticket with detailed description along with necessary documents/screenshots/ attachments etc.”

4. The ld. AR submitted that in the second response the procedure suggested by the grievance cell could not be followed because the assessee was never granted Form 10AC and therefore the assessee did not have any option but to submit the Form 10AB for final registration under section 12A of the Act. The ld. AR submitted that the Hon'ble High Court of Chhattisgarh in the case of Vaisya Welfare Gaushala and Naturopathy Shiksha Society V. Union of India [2024] 167 taxmann.com 582 (Chhattisgarh) has considered a similar issue where the assessee was not able to submit Form 10AB due to technical glitches and directed the CIT(E) to accept the Form in physical mode. The ld. AR prayed that a similar direction may be given in assessee's case since the assessee due to technical issues could not submit the Form 10AB and that the assessee cannot be punished for something which is beyond its control.

5. We heard the parties and perused the material on record. From the facts as elaborated hereinabove we notice that the assessee made genuine attempts to submit the Form for provisional registration in Form 10A which was not allowed due to the fact that the provisional registration under section 10(23C) was reflecting in IT Portal as existing provisional registration in assessee's name. We further notice that the assessee made attempts to submit the Form 10A manually before the CIT(E) which was rejected. We also notice that the attempts made by the assessee to find a resolution through IT Grievance Cell also did not resolve the

issue except that the assessee was advised to submit the Form for final registration in Form 10AB of the Act. Considering the facts peculiar to this case, we are inclined to agree with the submission of the ld. AR that the reason for non-submission of Form for provisional registration is beyond the control of the assessee and that an opportunity to submit the Form manually should be given to the assessee. In this regard, it is relevant to consider the following observations of the Hon'ble High Court of Chhattisgarh in the case of Vaisya Welfare Gaushala and Naturopathy Shiksha Society (supra):

“9. By the notification dated 17.07.2022, the Commissioner of Income Tax is authorized to admit application for condonation of delay in filing Form No. 9A and Form No. 10 for assessment year of 2018-19 or for any subsequent assessment years, where there is delay of up to 365 days and decide on merits. The grievance of the petitioner is that before the last date of submission of application Form No. 10 AB, due to some technical glitches he could not succeed in submitting his application form through online mode and his grievance is only to the extent of submission of his application Form No. 10 AB. In view of the circular dated 17.07.2022, the purpose would be subserved if the Commissioner of Income Tax is directed to accept the application Form No. 10 AB of the petitioner in physical mode treating the same is filed prior to the last date of submission of the application i.e. 30.06.2024 and to decide it on its own merits, considering the period of delay and reasons for delay, as the same has been explained by the petitioner that due to technical glitches he could not succeed in filing the application form.

10. Therefore, although the Commissioner of Income Tax (Exemption) has not been made a party respondent in the case, yet in the interest of justice, the petitioner is directed to submit his application Form No. 10-AB in physical mode to the Competent Authority/Commissioner of Income Tax (Exemption) Bhopal along with an application as well as necessary documents under the circular dated 17.07.2022 within 03 weeks from today, then the Commissioner of Income Tax (Exemption) Bhopal is directed to consider the application of the petitioner treating it as filed before the last date of submission of application form i.e. 30.06.2024, and decide the application on its own merits in accordance with law, and Circular dated 17.07.2022.

11. With this observation, the petition is finally disposed of.”

6. Accordingly, we remit the issue back to the CIT(E) with a direction to accept the Form 10A for provisional registration under section 12A of the Act in physical mode and decide the issue on merits. The CIT(E) is further directed to consider the earlier attempt made by the assessee on 17.02.2024 to file Form 10A for the purpose of continuity while deciding the application on merits. The assessee is directed to file the necessary Form 10A for provisional registration manually before the CIT(E) and provide other necessary details as may be called for in this regard. It is ordered accordingly.

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

Order pronounced in the open court on 05-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai