

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.605 and 628/Nag./2024
(Assessment Year : N.A.)

Vandaniya Laxmibai Kelkar Smruti
Pratishthan, Madhuban Plaza Building Appellant
Chandrapur 442 401 PAN – AACAV4220C

v/s

Income Tax Officer
Ward-3, Exemption, Nagpur Respondent

Assessee by : Shri A.G. Pimparkhede
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/02/2025

Date of Order – 21/03/2025

ORDER

PER K.M. ROY, A.M.

Assessee's appeals emanate from the impugned orders of even date 05/08/2024, passed in Form no.10AD, by the learned Commissioner of Income Tax (Exemption), Pune, [*learned CIT(E)*] rejecting the application filed by the assessee in Form no.10AB under clause (iii) of section 12A(1)(ac) of the Income Tax Act, 1961 (*the Act*) and the provisional registration granted on 31/01/2024 was cancelled.

2. There is a delay of 60 days in filing the appeal in ITA no.628/Nag/2024. While going through the material available on record, we find that the assessee has not furnished a duly sworn affidavit. An application on plain paper in format of affidavit that too without mentioning any date on it has

been filed stating cause of the delay. The contents of the said application are as under:-

"AFFIDAVIT
Before the Hon'ble Income Tax Appellate Tribunal
Nagpur Bench, Nagpur

I, Mrs. Anjali Hirulkar aged about 58 years R/o. Chandrapur acting in the capacity of Secretary of M/s. Vandaniya Laxmibai Kelkar Smruti Pratishthan, Mrunal Associates, Madhuban Plaza Building, Chandrapur-442401 solemnly affirm and state as under:-

1) That, the trust has applied before the Hon'ble CIT, Exemption, Pune for obtaining certificate in form 10AB under clause (iii) of first proviso sub-section (5) of I.T. Act on 14.02.2024.

2) That, the Hon'ble CIT Exemption has rejected the application vide order dtd. 05/08/2024. The trust filed an appeal against the said order before the Hon'ble ITAT, Nagpur on 22/12/2024 and thus there is a delay of about 77 days in filing the said appeal.

3) That, the delay in filing the said appeal is due to the reason that there was a migration of ITAT site from one software to another one during the month of Oct 2024, with result that the appeal could not be filed for about 10 to 15 days in Oct'2024. A snap shot of the web-site is enclosed herewith.

4) That, later on my mother passed away on 05/12/2024 with the result that I was engaged in my family matters. This also caused the delay in filing the said appeal.

5) That, the delay was due to the reasons beyond the control of the assessee and hence it is most humbly submitted that the delay of about 77 days may kindly be condoned and the appeal may be admitted for hearing.

Chandrapur
Date:

Sd/-
Deponent

Verification

I, above named deponent states that the contents in para 1 to 5 above are true and correct to the best of my knowledge.

Chandrapur
Date:

Sd/-
Deponent"

3. We are satisfied that there is sufficient and reasonable cause and there is no mala fide intention. Accordingly, delay of 60 days in filing this appeal before the Tribunal is hereby condoned and we proceed for adjudication.

4. The statement of facts along with note of arguments as advanced by the learned Authorised Representative is culled out as under:–

"1) The Vandaniya Laxmibai Kelkar Smruti Pratishthan is charitable Trust with primary objects of running hostel and providing all facilities including residence, food, and all other things which are required for daily life of hostel for girls. The trust is registered under the societies registration act 1960 on 31/01/2005 vide Registration no. MH/46/2005 (Chandrapur), the registration certificate is given on page no. 7.

2) The copies of income tax returns along with the computation of income for last 2 years for AY 2022-23 & 2023-24 are given on page no. 8 to 11.

3) Since the trust is charitable trust it applied for the registration on 24/01/2024 under Item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A of Income tax. The copy of receipt along with the form for registration is given on page no. 12.

4) The registration was granted by the Income tax department on 31/01/2024. The copy of provisional registration enclosed on page no. 13 to 14.

5) As per the provisions of sec 12A(1)(ac)(iii), the trust immediately applied for final registration on 12/02/2024, the copy of receipt is given on page no. 15 to 16.

6) The Hon'ble CIT (Exemption) vide their letter dated 29/04/2024 had asked for several details/ documents and the same had been filed by the appellant on 03/05/2024. The copies of letter from Hon'ble CIT (Exemption) and reply from assessee enclosed herewith on 17 to 25.

7) The Hon'ble CIT (Exemption) issued another letter dated 12/07/2024 asking for additional details which had been replied by the assessee on 19/07/2024 & 20/07/2024. A copy of the letter and the reply of the appellant is enclosed herewith at page no. 26 to 33.

8) In the letter issued by the Hon'ble CIT (Exemption) issued on 12/07/2024, it had been stated in para 2(iii), that the assessee had obtained the provisional registration under 12A(1)(ac) (vi) (A). As per Hon'ble CIT the said clause to new trust hence the clarification has been sought for.

9) The assessee had replied in letter dated 20/07/2024 in para 1 on page no. 32 that the trust obtained the registration under new regime after 01/04/2021 the trust has applied under sub-clause A.

10) Registration was rejected by Hon'ble Commissioner of Income tax on 22/07/2024 only on the ground that the assessee applied for provisional registration under Item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A of Income tax which should be item no. (B) of sub of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A of Income tax to

the interpretation of Hon'ble CIT rejection order enclosed with from 36 appeal memo.

11) With the respect to provisions of income tax act, provisional registration under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A which are substituted by finance Act 2023, w.e.f. 01/10/2023, which are reproduced under,

A. not commenced at least one month prior to the commenced of the previous year relevant to the assessment year from which the approval is sought.

B. where the activities commenced and no income or part thereof of the said institution or fund has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or section 11 or section 12 for any previous year ending on or before the date of such application, at any time after the commencement of such activities.'

12) It is further submitted that, the Hon'ble CIT was correct in stating that the activities of the trust commenced prior to 01/04/2021. However the trust had obtained provisional registration under the new regime after 01/04/2021. The trust has obtained the registration under Item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A.

13) It is further submitted that the Hon'ble PCIT had granted the provisional registration without raising any objection on the sub-clause at time of granting the certificate under form 10AC and now at time when assessee applied for final registration, suddenly the Hon'ble CIT objected on the provisional registration certificate and cancelled the same. The action of the Hon'ble CIT (Exemption) is totally unjustified and against the natural justice.

14) The clause A or B is immaterial and only timing for application and technical in nature, this does not affect the merits of the case. The final registration under (iii) of clause (ac) of sub-section (1) of section 12A does not speak about the clauses and just says about the activities, which means whatever the provisional registration is, if the activities are genuine and all the requirements for registration were followed the registration to be granted.

15) The various tribunals has decided this issue in the following matters:-

i) Kimaya Ashram Charitable Trust, Pune Vs. CIT (E) (ITA No. 2033 & 2034/Pun/2024)

ii) Celebrate life, Mumbai Vs. CIT (E) Mumbai Bench.

iii) Teddy trust Vs CIT (Exemption) (ITA no. 1315/CHNY/2023)

iv) Sri Jeyamkonda Choleeswara Soundaranayaki Amman Kumbhabisheka Mala Kuzhu (2024), 159 502

In all above said orders it has been stated that the rejection of application just on the grounds of application is filed under wrong sub-section is just a technical error on the part of Hon'ble CIT and directed to reconsider the

matter. In all the cases the appeal is allowed and remanded the back to Hon'ble Commissioner where Tribunal specifically stated that the wrong mentioning of sub-section does not a reason for cancellation of registration.

16) Assessee trust had given full submission of required documents along explanations of activities of trust and also attached numerous documents in support of activities of trust as a proof of activities along with the Aadhar cards of girls and donation receipts. The Hon'ble CIT (Exemption) has verified all the documents and do not made any comments about the activities of the trust which are of charitable nature, it means that the Hon'ble CIT was fully satisfied about the charitable activities of the trust and simply rejected the application of the assessee on technical ground i.e. obtaining provisional registration in wrong section. The action of the Hon'ble CIT is totally incorrect and unjustified.

17) So considering the above facts it is clearly observed that the Hon'ble Commissioner do not have any other adverse objection on the activities of trust and the rejection is technical in nature and against natural justice.

18) We invite your kind attention to the Union Budget 2025 in which under the heading Simplification and Rationalization of the trust regarding the registration it is stated under this heading para II para 2,3 and 4 as under:

Sub-section (4) of the section 12AB inter alia provides that where registration or provisional registration of a trust or an institution has been granted and subsequently, the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year, the Principal Commissioner or Commissioner shall, pass an order in writing, cancelling the registration of such trust or institution if he is satisfied that one or more specified violations have taken place.

Explanation to sub-section (4) of the said section provides that "specified violation" inter alia means the cases where the application referred to in clause (ac) of sub-section (1) of section 12A is not complete or it contains false or incorrect information.

It is noted that even minor default, where the application referred to in clause (ac) of sub-section (1) of section 12A is not complete, may lead to cancellation of registration of trust or institution, and such trust or institution becomes liable to tax on accreted income as per provisions of Chapter XII-EB of the Act.

It is, therefore, proposed to amend the Explanation to sub-section (4) of section 12AB so as to provide that the situations where the application for registration of trust or institution is not complete, shall not be treated as specified violation for the purpose of the said sub-section.

These amendments will take effect from the 1st day of April, 2025.

According as per Finance Bill as per Clause 7 of section 12AB(4) (g) i.e. "The application referred to in clause (ac) of subsection 1 of section 12A is not complete or it contains falls or incorrect information" is proposed to be omitted w.e.f. 01/04/2025.

In view of the above spirit of the legislature it is most humbly submitted that the error being of a technical nature may kindly be ignored."

5. The learned A.R. for the assessee respectfully submitted that there is an inadvertent error in selecting the clause while uploading the Form. He expressed that the matter may be remanded back to the file of the learned CIT(E) to decide the issue afresh.
6. The learned Departmental Representative submitted that he has no objection to the prayer so made by the learned A.R. for the assessee.
7. Consequent upon hearing the rival parties, we set aside the impugned orders passed by the learned CIT(E) in both the appeals and restore the appeals to the file of the learned CIT(E) for de novo adjudication.
8. In the result, assessee's appeals are allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

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

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur