

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 1017/MUM/2025
Assessment Year: N.A.**

Avinash Amita Jain Foundation
Trust
B wing, 1018, Samarth aishwaria,
Above Marks & Spencer, New Link
road, Andheri West,
Mumbai- 400053
PAN NO. AAATO 3990 K
Appellant

Vs.

Commissioner of Income Tax
(Exemptions),
Room No. 601, 6th floor,
Cumballa Hill, MTNL Building,
Mumbai-400026.
Respondent

Assessee by : Mr. Sanjay Parikh
Revenue by : Dr. K. R. Subhash, CIT-DR

Date of Hearing : 08/05/2025
Date of pronouncement : 21/05/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 17.12.2024 passed by the Ld. Commissioner of Income-tax (Exemptions), Mumbai [in short 'the Ld. CIT(E)'] rejecting the registration of the assessee trust sought u/s 12AB of the Income-tax Act, 1961 (in short 'the Act').



2. Briefly stated fact of the case are that the assessee applied for the registration of the trust u/s 12AB of the Act in form No. 10AB. In clause 2 of the said form, the assessee mentioned the relevant clause under which registration was sought as sub-clause (iii) of clause(ac) of sub-section (1) of sec. 12A of the Act. This sub-clause is applicable for regularization of the provisional registration granted u/s 12AB of the Act. Accordingly, Ld. CIT(E) asked the assessee to file a copy of the provisional registration granted to the assessee in prescribed form No. 10AC of the Income Tax Rules, 1962 (in short 'the Rule'). The assessee did not file copy of the provisional registration certificate, thus, of the Ld. CIT(E) rejected the application of the assessee observing as under:

“2. Representations have been received in the Board with a request to condone the delay in filing Form No. 10A/10AB, as the same could not be filed in such cases within the last extended date, te 30.09.2023.

3. On consideration of the matter, with a view to avoid and mitigate genuine hardship in such cases, the Board, in exercise of the powers conferred under section 119 of the Act, hereby extends the due date of making an application/intimation electronically in-

(i) Form No. 10A, in case of an application under clause (i) of the first proviso to clause (230) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of an intimation under fifth proviso of sub-section (1) of section 35 of the Act, till 30.06.2024;

(ii) Form No. 10AB, in case of an application under clause (iii) of the first proviso to clause (2)C) of section 10 or under sub-clause (ii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first promise to sub-section (5) of section 80G of the Act, till 30.06.2024.

4. It may be also noted that extension of due date as mentioned in paragraph 3(ii) shall also apply in case of all pending applications under clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause



(iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, as the case may be. Hence, in cases where any trust, institution or fund has already made an application in Form No.10AB under the said provisions on or before the issuance of this Circular, and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application.

4.1 Further, in cases where any trust, institution or fund has already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 3(ii) i.e. 30.06.2024.

5. It is also clarified that if any existing trust, institution or fund who had failed to file Form No. 10A for AY 2022-23 within the due date as extended by the CBDT circular no. 6/2023 dated 24.05.2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form No. 10AC and appl for registration for AY 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time provided in paragraph 3(i) i.e. 30.06.2024.”

3. Before us, the Ld. counsel for the assessee filed a paper book containing pages of 1-162 containing the letters and documents filed before the Ld. CIT(E). Ld. counsel referred to paperbook page no. 123 and submitted that the assessee was supposed to file the application in form No. 10A instead of form No. 10AB. It was submitted on behalf of the assessee before the ld CIT(E) that filing of wrong form was a bonafide mistake. The assessee referred to the coordinate bench decision in the case of LTCL Palaniappa Charities Trust v/s Commissioner of Income Tax (Exemptions)Chennai in ITA No.575 & 576/CHNY/2023 and submitted that filing of a wrong form was a technical breach that could be cured. The assessee also



relied on decision of the Coordinate bench of Hyderabad in the case of Mandava Foundation v/s Commissioner of Income Tax (Exemptions)Chennai in ITA 47/HYD/2024 wherein also the filing of form No. 10 AB instead of form No.10A was held to be a technical breach rather than subsequent failure, allowing for correction and condonation. Ld. counsel referred to above submission before the ld CIT(E) and accordingly submitted that order of the Ld. CIT(E) may be setaside and the assessee might be provided one more opportunity to file the registration under 12AB in the appropriate form.

4. The Ld. DR on the other hand, submitted that w.e.f. 01.10.2023 wherever activity of the trust has not been commenced, the trust is required to apply for registration form No. 10A for provisional registration in first stage and for regularization of registration in second stage. Whereas, the trust who had already commenced the activity is required to apply for regular registration directly in form No. 10AB and registration shall be granted for a period of 5 years or 10 years as per application provision of the Act. Since the assessee has not provided the proper information whether it had commenced the activity or not and therefore the onus was on the assessee to file correct information before the Ld. CIT(E). In view of the failure on the part of assessee, the Ld. CIT(E) is justified in rejecting the registration.



5. We have heard the rival submissions of the parties and perused the material available on record. It is not in dispute that the assessee had applied for registration under Section 12AB of the Act in Form No. 10AB, invoking the provisions of Section 12A(1)(ac)(iii) of the Act. This provision contemplates the conversion of a provisional registration into regular registration for a period of five years. In pursuance thereof, the Ld. CIT(E) called upon the assessee to furnish a copy of the provisional registration granted to it in the prescribed Form No. 10AC. It is noted that the assessee was granted provisional registration on 27.05.2021, which was valid up to the Assessment Year 2023–24. A copy of the said provisional registration has been placed on record at pages 46–47 of the paper book. In terms of the mandate of Section 12A(1)(ac)(iii) of the Act, an application for regularization of provisional registration is required to be made either within six months prior to the expiry of the provisional registration or within six months from the commencement of its activities, whichever is earlier. In the present case, the assessee had commenced its activities prior to 01.04.2021—the date on which the amended provision came into effect—rendering the second condition inapplicable. Consequently, the assessee was required to apply for regular registration on or before 30.09.2022. However, the application for regular registration was filed only on 12.06.2024, well beyond the stipulated timeline. It is thus evident that the assessee’s application was filed belatedly. Moreover, the assessee appears to have erroneously contended



before the Ld. CIT(E) that it was required to file the application in Form No. 10A and that the delay occurred due to a bona fide mistake in filing the application in Form No. 10AB instead. The relevant part of submission before the Ld. CIT(E) as mentioned on paper book page No. 122 is reproduced as under:

“Sub: Reply to Notice received u/s 124(1)(ac)(il) of the Income Tax Act, 1961

In addition to our previous submission dated 18.10.2024, we submit as under:-

We draw your Honour's kind attention to the captioned notice received by the assessee date 26.10.2024 in response to the application made under Form 10AB of the Income Tax Act 1961 (hereinafter referred to as 'the Act'). We submit details requested try your Honour as under:-

Sr. No.	Particulars	Remarks
1.	<i>Kindly provide proof of activities undertaken by the trust for each year (alongwith documentary and digital evidences like details of recipients, Payment receipts, bills, photographs, media reporting. etc).</i>	<i>Annexure 1</i>
2.	<i>Kindly provide proof of expenses undertaken by the trust on the objects of trust for each year (alongwith documentary and digital evidences like details of recipients, Payment receipts, bills, photographs, media reporting, etc).</i>	<i>Annexure 2</i>



3.	<i>Kindly provide bank statement after the receipt of provisional registration.</i>	Annexure 3
4.	<i>Kindly provide Form 10AC for 12A registration.</i>	<i>Annexure 4 contains the previous registration received by the CIT(E) u/s 12AA dated 30.09.2020</i>
5.	<i>A copy of your provisional Balance sheet and Income & Expenditure Statement of FY 2023-24 up to August 2024.</i>	Annexure 5

In addition to the above, it was brought to our notice that the application for registration has been made in Form 10AB Instead of Form 10A. We humbly submit that the above is a bonafide mistake and request your Honour to kindly treat the present application for registration of trust. We submit the following case laws wherein in similar circumstances the Hon'ble ITAT have held recognizing that that filing the incorrect form (Form 10AB instead of Form 10A) could be treated as technical breaches rather than substantive failures, allowing for corrections and condonation.”

6. In view of the foregoing submissions and upon careful consideration of the material on record, it is evident that an incorrect representation was made before the Ld. CIT(E), to the effect that the assessee was required to apply in Form No. 10A under Section 12A(1)(ac)(i) of the Act—i.e., for provisional registration. However, the record clearly reflects that provisional



registration had already been granted to the assessee on 27.05.2021. We further take note of the Instruction issued by the Central Board of Direct Taxes (CBDT) dated 25th April 2024, whereby the due date for filing applications under Section 12A(1)(ac)(iii) of the Act was extended up to 30.06.2024. In this context, the application submitted by the assessee on 12.06.2024 falls well within the extended period of limitation. The only lapse on the part of the assessee was its failure to furnish a copy of the provisional registration certificate to the Ld. CIT(E), despite such document being admittedly in its possession. Having regard to the totality of the facts and circumstances of the case, and in the interest of substantial justice, we deem it appropriate to set aside the impugned order passed by the Ld. CIT(E). The matter is accordingly remanded to the file of the Ld. CIT(E) for de novo consideration, keeping in view the provisional registration dated 27.05.2021 already forming part of the record. The ground of the appeal of the assessee is accordingly allowed for statistical purpose.

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

Order pronounced by way of display of result on notice board under Rule 34(4) of the ITAT Rules, 1963 on 21/05/2025.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER



Mumbai;
Dated: 21/05/2025
Disha Raut, Stenographer,

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai