



IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGARAO, JUDICIAL MEMBER AND
SHRIK.M. ROY, ACCOUNTANT, MEMBER

ITA no.267 and 563/Nag./2024
(Assessment Year : N.A.)

Gospel India Ministries
Gutkula, Christian Colony
Chandrapur 442 401
PAN – AACTG2390K

..... Appellant

v/s

Commissioner of Income Tax
Exemption, Pune

..... Respondent

Assessee by : Shri Sapan Usrethe
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 23/01/2025

Date of Order – 27/01/2025

ORDER

PER K.M. ROY, A.M.

The appeal by the assessee is emanating from the impugned order dated 13/03/2025, passed by the learned Commissioner of Income Tax (Exemption), Pune, [*learned CIT(E)*].

ITA no.267/Nag./2024
Assessee's Appeal

2. In its appeal, the assessee has raised following grounds:–

"1. On the facts and circumstances of the case the learned Commissioner of Income tax (Exemption) was not justified in rejecting the application in Form 10AB for grant of registration u/s 12AB of the Act without properly appreciating the facts of the case.

2. On the facts and circumstances of the case the learned Commissioner of Income tax (Exemption) was not justified in rejecting the application in Form 10AB for grant of registration u/s 12AB of the Act and also cancelling the provisional registration dated 31.12.2021 without appreciating that appellant was prevented with reasonable cause in not filing the reply on 10.03.2023 as the mother of the secretary who is dealing in the income tax matters was severely ill and had to undergo treatment due to which her health condition deteriorated over a period of time and the Secretary was not in a position to do the routine office work including correspondence with regulators and hence reply could not be filed, but on earlier occasions complete reply along with documents were duly filed and as rejection was done without giving proper opportunity of hearing is not justified.

3. On the facts and in the circumstances of the case, the order of the Id. CIT (Exemption) in rejecting the registration under sec. 12AB of the Income-tax Act, 1961 on the ground that the genuineness of activities could not be ascertained, whereas the detailed activity report which totally synchronizes with the activities reflected in the Audited Statements of accounts was duly submitted and still showing in attachments in e portal. Thus, the reason for rejection is without properly understanding the facts of the case and the documents submitted.

4. On the facts and in the circumstances of the case, the order of the Id. CIT(Exemption) was not justified in rejecting the registration under sec. 12AB of the Income-tax Act, 1961 by wrongly observing that he was not being able to draw satisfactory conclusion about the compliance of requirements of any other laws, whereas the copy of the annual FCRA returns filed, the undertaking about the compliance of all applicable laws that are material for achieving its objectives were submitted and the same is still seen on the IT portal. Thus the second reason for rejection is also without any basis and without appreciating the charitable activities of the applicant.

5. On the facts and in the circumstances of the case, the order of the Id. CIT(Exemption) rejecting the registration under sec. 12AB of the Income- tax Act, 1961 dated 13.03.2023 is unjustified and against the principles of natural justice as it was passed without giving proper opportunity.

6. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.”

3. During the course of hearing, at the very onset, the learned Authorised Representative appearing for the assessee fairly submitted that in view of common grievance against non-granting of registration under section 12AB of the Act in both the appeals, he does not want to persecute the appeal being ITA no.267/Nag./2024. Accordingly, the same is dismissed as infructuous.

4. In the result, appeal being ITA no.267/Nag./2024, is dismissed.

ITA no.563/Nag./2024
Assessee's Appeal

5. The grounds raised by the assessee are as under:–

"On the facts and circumstances of the case the learned Commissioner of Income tax (Exemption) was not justified in rejecting the application in Form 10AB for grant of registration u/s 12AB of the Act without properly appreciating the facts of the case.

2. On the facts and circumstances of the case the learned Commissioner of Income tax (Exemption) was not justified in rejecting the application in Form 10AB for grant of registration u/s 12AB of the Act by wrongly observing that activities were already commenced at the time of filing the present application and it has claimed deduction under section 11 for previous year before the date of the present application, and therefore assessee trust is found not eligible to file application u/s 12A(1)(ac) (vi) of the Income-tax Act, 1961.

3. On the facts and circumstances of the case the learned Commissioner of Income tax (Exemption) was not justified in rejecting the application in Form 10AB for grant of registration u/s 12AB of the Act without appreciating the facts that during the assessment year 2022 23 appellant is having valid registration and therefore exemption was claimed which is as per law.

4. On the facts and in the circumstances of the case, the order of the Id. CIT(Exemption) rejecting the registration under sec. 12AB of the Income- tax Act, 1961 dated 29.08.2024 is unjustified and against the principles of natural justice as it was passed without assigning any good reasons and when appellant have fled all the details and no error was found the rejection is bad in law and is against the sprit of section 12 of the income tax Act.

5. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal."

6. The learned Authorised Representative further invited the attention of the Bench to the impugned order dated 29/08/2024, passed by the learned CIT(E), Pune, denying registration under section 12AB of the Act. The operating portion of the impugned order from Para–3 to 6, are reproduced below:–

"3. On verification of the details submitted by the assessee in response to the said notice and the documents submitted along with the application, various

discrepancies were noticed. Another notice was then issued to the assessee on 18/07/2024 and the discrepancies were duly communicated to it as reproduced below:

"(i) It is seen from the financial statements that you have received donations from Abroad. Kindly submit the details along with specific instructions received from donor, if any.

(ii) Furnish copies of bill/invoices of expenses done on activities as shown in your financial statement.

(iii) Without prejudice to the above, it is seen that at point 2(ii) of notice dated 30/04/2024, you have been stated that the trust has not claimed exemption u/s 11 of the Act. However, as per financial statements and ITRs filed by you, it is seen that the trust has claimed deduction u/s 11. Therefore, said provisions of sec. 12A(1)(ac) (vi) (B) of the Act are not applicable to your case. As such, your present application is liable to be rejected. Please clarify with supporting documents."

3.1 The assessee was requested to show cause as to why the application should not be rejected and why the registration granted under section 12AB of the Income Tax Act, 1961 should not be cancelled. The assessee was also given opportunity of being heard vide the said notice. The assessee was specifically informed that in the event of failure to comply by the due date, the application shall be liable to be rejected and the registration shall also be liable to be cancelled. The compliance to the said notice was due on 25/07/2024. The notice was duly served on the assessee through e-portal and email. However, the assessee neither submitted explanation to the show cause notice till date nor availed the opportunity of being heard.

4. The assessee responded to the said notice and furnished the compliance on 24/07/2024. The assessee has furnished so many bills wherein most of the bills were related to administrative & establishment expenses i.e. petrol, stationery, repairs & maintenance etc. some of bills are for foods like chicken biryani, mutton kary, boiler chicken etc. These bills are not related to the charitable activities.

5. Further, regarding the point number (iii) of the show cause notice, the assessee has contended that it has claimed deduction u/s. 11 & 12 for A. Y. 2022-23. The part of the submission reproduced as under:

"Your Goodself may kindly note that the applicant trust has filed ITR- 5 for the A.Y. 2021-22 and A.Y. 2023-24 and has not claimed any benefit under section 11 of the

During the A.Y. 2022-23, the applicant trust was having Provisional Registration of 12A and thus has filed its return in ITR-7.

Your Goodse if my kindly note that the previous application was rejected by the CIT (Exemptions), Pune only due to the reason that the applicant could not furnish the documents/submissions in time."

5.1 The contention of the assessee is considered. However, the same is not found to be acceptable. The assessee has itself confirmed that the assessee has claimed deduction u/s. 11 & 12 for A. Y. 2022-23 and also accepted that the assessee has failed compliance to its earlier application too and its earlier application was rejected due to non-compliance.

6. The assessee has filed the present application u/s 12A(1)(ac)(vi)- ITEM 'B' of the Income-tax Act, 1961. The extract of the said provision is reproduced herewith for ready reference:

"12A(1)(ac)(vi) in any other case, where activities of the trust or institution have-

(A)

(B) commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or subclause (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,"

6.1 It can be thus seen that the provisions of said section applies to a case where activities of the trust or institution have 'commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or subclause (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. In the light of said provision, the submission of the assessee trust has been verified. It is seen that the assessee trust has uploaded copies ITR for the FYs 2021-22, 2022-23 and 2023-24. As noticed from the ITR for said period, the assessee has claimed deduction u/s 11 for A. Y. 2022-23 as under:

	<u>FY 2022-23</u>
(i) Amount applied to charitable purposes u/s 11 lakhs	₹ 20.05
(ii) Amount accumulated u/s 11(1)(a)/11(1)(b) lakhs to the extent 15%	₹ 3.19

As stated by the assessee, its activities were commenced in 03/11/2003. Thus, the assessee's income pertaining to previous year i.e. A. Y. 2022- 23, to the extent discussed above, has been excluded from the total income on account of applicability of section 11 which occurs after the commencement of such activities.

6. Considering the above, and since the assessee's activities were already commenced at the time of filing the present application and it has claimed deduction under section 11 for previous year before the date of the present application, the assessee trust is found not eligible to file application u/s 12A(1)(ac)(vi)-ITEM 'B' of the Income-tax Act, 1961. Therefore, the application filed by the rejected."

7. He vehemently submitted that the order is unsustainable and has relied on following documents and evidences in support of his contention.

<i>Sr. no.</i>	<i>Particulars</i>	<i>Page no.</i>
1.	<i>Copy of Form no.10AB filed on 20/02/2024</i>	<i>1 - 8</i>
2.	<i>Copy of notice issued on 30/04/2024</i>	<i>9 - 12</i>
3.	<i>Copy of e-acknowledgment along with copy of reply filed on 15/05/2024</i>	<i>13 - 18</i>
4.	<i>Copy of notice dated 18/07/2024</i>	<i>19 - 20</i>
5.	<i>Copy of e-acknowledgment and reply dated 24/07/2024</i>	<i>21 - 25</i>
6.	<i>Copy of ITR Ack for A.Y. 2021-22, 2022-23 and 2023-24</i>	<i>26 - 28</i>
7.	<i>Copy of provisional 12A Certificate</i>	<i>29 - 31</i>
7.		

8. He pointed out that provisional registration was granted on 31/12/2021, from assessment year 2022-23 to 2024-25 and there was no apparent error in claiming exemption under section 11 and 12 of the Act. Provisional registration was granted under section 12A(1)(ac)(vi) of the Act. He thus prayed that final registration may be granted.

9. On the other hand, the learned Departmental Representative strenuously pointed out that application was made erroneously under a non-applicable provision which is an incurable defect. Hence denial of registration is justified.

10. We have given a dispassionate hearing to the averments before us. It is crystal clear that nowhere the genuineness of objects, activities or non-compliance of any law, material to objects achievement of objects has been painted out by the learned CIT(E). The grounds for rejection are ring fenced

and the learned CIT(E) does not have any authority to over step the same. There is no error in claiming exemption under section 11 and 12 of the Act when the trust was armed with provisional registration. Moreover, taxability or otherwise of the income of the assessee would have to be separately considered as per provision of the Act. Quoting a wrong provision if at all so, cannot be held to be fatal to militate against the well-deserved beneficial provision to be extended. Thus, the assessee is entitled to final registration. Accordingly, we set aside the impugned order passed by the learned CIT(E) and direct the authorities below to grant registration keeping in mind the aforesaid findings. Accordingly, all the grounds raised by the assessee are allowed.

11. In the result, appeal by the assessee is allowed.

12. To sum up, assessee's appeal being ITA no.267/Nag./2024 is dismissed and assessee's appeal being ITA no.563/Nag./2023, is allowed.

Order pronounced in the open Court on 27/01/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 27/01/2025

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