

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 47/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2024-25)

Mandava Foundation,
Hyderabad
[PAN : AABTM7396L]

Income Tax Officer (Exemptions),
Vs. Ward-1(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A.V. Raghuram, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 27/02/2024
घोषणा की तारीख/Pronouncement on: 15/03/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 28/11/2023 passed by the learned Commissioner of Income Tax (Exemption)-Hyderabad ("Ld. CIT(E)"), in the case of Mandava Foundation ("the assessee"), assessee preferred this appeal.

2. Brief facts of the case are that the assessee trust obtained registration under section 12A(a) of the Income Tax Act, 1961 ('the Act') by order dated 26/12/2005 under section 12AA(1)(b)(i) of the Act. Subsequently on 27/05/2021, the assessee sought for and granted provisional registration under 12A(1)(ac)(vi) of the Act in form No. 10AC. Again on 15/05/2023, the assessee applied in Form 10AB under section 12A(1)(ac)(iii) of the Act.

3. Learned CIT(E) observed that on an earlier occasion, the assessee applied under 12A(1)(ac)(vi) of the Act instead of 12A(1)(ac)(i) of the Act, since the assessee holds registration under section 12A of the Act, issued on 26/12/2005. Assessee submitted that by mistake, on earlier occasion, wrong code under section 12A(1)(ac)(iv) of the Act was selected instead of 12A(1)(ac)(i) of the Act and, therefore, the mistake may be excused and registration may be done.

4. Learned CIT(E) rejected the application filed in Form 10AB for regular registration under section 12AB of the Act, holding it to be infructuous and barred by limitation. Hence, the assessee filed this appeal.

5. Learned AR submitted that there was sheer mistake in selecting a wrong code, namely, "02-Sub-clause (vi) of clause (ac) of sub-section (1) of Section 12A" instead of section code 12A(1)(ac)(i) of the Act, and the assessee does not stand to gain by such mistake and, therefore, the mistake may be condoned and learned CIT(E) may be directed to grant regular registration.

6. Basing on the orders of the learned CIT(E), learned DR argued that due date for filing Form 10A for existing registered entities under section 12A of the Act was over by 31/03/2022, but the same was extended subsequently by the CBDT up to 30/09/2023 on two occasions and the learned CIT(E) has no jurisdiction to condone the delay and, therefore, the assessee cannot ask the learned CIT(E) to do what he cannot do. Learned DR submitted that even coming to the aspect of bonafide mistake, if it is really a bonafide mistake, the assessee would not have waited for two years to bring it to the notice of the Revenue authorities and get the mistake rectified. He submitted that there are no bonafides, hence the appeal may be dismissed.

7. We have gone through the record in the light of the submissions made on either side. Vide order dated 26/12/2005, the assessee applied for registration of the trust in Form 10A and got registration under section 12A of the Act. Thereafter, assessee made an application under section 12A(1)(ac) of the Act and obtained provisional registration by selecting the section code 02-Sub clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act. The registration under Form 10AC was granted on 27/05/2021. Subsequently on 15/05/2023, the assessee made an application in Form 10AB for regular registration by selecting the section code 02-Sub clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act.

8. Under section 12A(1)(ac) of the Act, having registered under section 12A of the Act, the assessee was expected to make an application under Form 10A under section 12A(1)(ac)(i) of the Act by selecting relevant

section code as 02-Sub clause (i) of clause (ac) of sub-section (1) of section 12A of the Act. Assessee, however, claims to have wrongly selected the section code as 02-Sub clause (vi) of clause (ac) of sub-section (1) of section 12A of the Act. while applying for registration on 27/05/2021. Explanation offered by the assessee is that in the drop down box, there was a wrong selection.

9. When the assessee applied on 15/05/2023 in Form 10AB for regular registration by selecting the section code as 02-Sub clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act, the learned CIT(E) noticed that on an earlier occasion, namely, on 27/05/2021, the assessee applied under 12A(1)(ac)(vi) of the Act instead of 12A(1)(ac)(i) of the Act, since the assessee holds registration under section 12A of the Act, issued on 26/12/2005. Assessee explained that by mistake, on earlier occasion, wrong code under section 12A(1)(ac)(iv) of the Act was selected instead of 12A(1)(ac)(i) of the Act and, therefore, the mistake may be excused and registration may be done.

10. Learned CIT(E) observed that the due date for filing Form 10A for existing registered entities under section 12A of the Act was originally till 31/03/2022, subsequently CBDT allowed another opportunity from 01/11/2022 to 25/11/2022 for those who failed to file application or filed the application opting wrong section code in Form 10A before the due date, and finally vide Circular No. 6/2023 dated 24/05/2023, CBDT extended the date up to 30/09/2023.

11. It is an undisputed fact that, having possessed the registration under section 12A of the Act, the assessee was supposed to make an application under section 12A(1)(ac)(i) of the Act in which event, the assessee had to submit the application in Form 10A vide Rule 17A of the Income Tax Rules, 1962 ("the Rules"). If the assessee applying on 27/05/2021 by selecting the wrong section code as 02-Sub clause (vi) of clause (ac) of sub-section (1) of section 12A of the Act was a mistake, still it is a mistake on 15/05/2023 also by applying for registration in Form 10AB. If really the assessee wanted to apply under 02-Sub clause (i) of clause (ac) of sub-section (1) of section 12A of the Act on any occasion, the proper form was not Form 10AB, but it should be Form 10A only. Form 10AB is applicable for the section code of 02-Sub clause (ii) or (iii) or (iv) or (v) of clause (ac) of sub-section (1) of section 12A of the Act, whereas for section code 02-Sub clause (i) or (vi) of clause (ac) of sub-section (1) of section 12A of the Act, the application shall be in Form 10A only.

12. Be that as it may, the fact remains that the assessee did not avail the opportunity of extension of time for filing application in Form 10A, if really its intention is to apply for 02-Sub clause (i) of clause (ac) of sub-section (1) of section 12A of the Act, by bringing the mistake to the notice of the authorities, since the assessee holds the registration under section 12A of the Act. When the CBDT took cognizance of the matter and by way of circulars extended the due date for filing Form 10A, it cannot be said that the learned CIT(E) can exercise jurisdiction to condone the delay in applying the Form 10A on the ground of mistake, because the time extended for such purpose by the CBDT expired by 30/09/2023. In these

circumstances, we do not find anything illegality or irregularity in the rejection of application by the learned CIT(E).

13. Now coming to the practical aspect of hardship that has befallen on the assessee, the fact remains that finally vide Circular No.6/2023 dated 24/05/2023, CBDT extended the date up to 30/09/2023, whereas the assessee filed Form 10AB by 15/05/2023. Though the assessee did not plead before the Revenue authorities by that day about the mistake of selection of wrong section code while applying in Form 10AB and seek rectification, the request of the assessee for regular registration is pending by that date. Though in a wrong Form, the request of the assessee was pending before the due date. In this peculiarity of the circumstances, we deem it just and proper to condone the mistake committed by the assessee while applying registration in Form 10AB instead of Form 10A and also by making a selection of wrong section code, namely, 02-Sub clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act instead of 02-Sub clause (i) of clause (ac) of sub-section (1) of section 12A of the Act. We accordingly condone such a mistake. Learned CIT(E) will proceed to hear and dispose the request of the assessee by allowing it to apply now under Form 10A. Grounds are allowed.

14. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 15th day of March, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Hyderabad, Dated: 15/03/2024

TNMM

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Mandava Foundation, NSL ICON, 4th Floor, Road No. 12, Banjara Hills, Hyderabad.
2. The ITO (Exemptions), Ward-1(2), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD