

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE S/SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
MAKARAND V.MAHADEOKAR, ACCOUNTANT MEMBER
ITA No.93/Ahd/2025
Asstt.Year : -

MAA Sharda Kothari Foundation 7, Mahavir Bungalows Nr.Prernatirth Derasar Jodhpur Gam Ahmedabad 380 015. PAN : AAATM 7202 Q	Vs.	Commissioner of Income Tax (Exemption) Vejalpur Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri Bandish Soparkar, AR
Revenue by :	Shri Rignesh Das, CIT-DR

सुनवाई की तारीख / **Date of Hearing** : **07/07/2025**

घोषणा की तारीख / **Date of Pronouncement**: **15/07/2025**

आदेश / O R D E R

PER MAKARAND V.MAHADEOKAR, AM:

This appeal is filed by the assessee-trust against the order passed by the Commissioner of Income Tax (Exemption), Ahmedabad [hereinafter referred to as "CIT(Exemption)"] dated 05.12.2023, whereby the application filed by the appellant in Form 10AB for regular registration under section 12AB(1)(b) of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] was rejected, treating the application as premature and non-maintainable.

Condonation of Delay

2. At the outset, it is noted that there is a delay of 319 days in filing the present appeal before us. The registry has pointed out the delay in filing the appeal beyond the prescribed period of 60 days from the date of service of

2

the impugned order. In this regard, the assessee has filed a detailed application for condonation of delay accompanied by a duly notarised affidavit sworn by Shri Mitesh Kothari, trustee of the assessee-trust. In the said affidavit, it has been explained that the provisional registration under section 12AB was granted on 28.02.2023 and thereafter the application for final registration was filed on 01.06.2023. The same came to be rejected on 05.12.2023 on the ground that the trust had not commenced any activities and had not received any donations. The affidavit further states that the trust subsequently commenced its charitable activities in March 2024 and made attempts to file a fresh application in compliance with section 12A(1)(ac)(iii), but was unable to do so due to persistent technical issues on the e-filing portal, which did not permit uploading of the prescribed forms and generated repeated error messages. It has also been stated that the assessee filed its return of income for A.Y. 2024–25 along with Form 10BB audit report on 29.09.2024, thereby evidencing commencement of charitable activities. The appeal before the Tribunal was ultimately filed with a delay of 319 days, and the delay is sought to be condoned on bona fide and reasonable grounds. The assessee has submitted that the delay was not deliberate or wilful but was occasioned due to procedural and technical constraints.

3. During the course of hearing, the learned Departmental Representative (DR) fairly submitted that he has no objection if the delay is condoned.

4. Having regard to the submissions made, the reasons stated in the affidavit, and the fact that the delay is attributable to procedural hurdles and technical difficulties and also considering the fact that no mala fide or deliberate inaction is attributable to the assessee, we are satisfied that sufficient cause has been made out for condoning the delay. Accordingly, in the interest of substantial justice, the delay of 319 days in filing the appeal is hereby condoned, and the appeal is admitted for adjudication on merits.

Facts of the Case

5. The assessee is a registered public charitable trust established under a trust deed and duly registered on 31.05.2002. The trust bears Registration or Incorporation No. E/15324/AHMEDABAD and is stated to be engaged in charitable activities. Pursuant to the amended provisions of section 12A(1)(ac) of the Act the assessee filed an application in Form No. 10AB on 01.06.2023, seeking conversion of its provisional registration into regular registration under section 12AB(1)(b) of the Act. It is pertinent to mention that the assessee had earlier been granted provisional registration under section 12AB vide Form 10AC dated 28.02.2023, in terms of clause (vi) of section 12A(1)(ac), for the period from A.Y. 2023–24 to A.Y. 2025–26. The instant application in Form 10AB was filed under section code 12A(1)(ac)(iii), which governs the filing of application for regular registration in a case where provisional registration had already been granted under clause (vi).

6. Upon receipt of the said application, the CIT(Exemption) initiated verification proceedings and issued a notice dated 04.10.2023, calling upon the assessee to furnish details and documents in support of its claim. Specifically, the assessee was asked to furnish a note on the nature of activities carried out during the last three financial years, details of top five donations received (including names, addresses of donors, amount, and mode of receipt), corresponding expenditure incurred on the objects of the trust, and supporting documentary evidence for the above. In response to the said notice, the assessee furnished its replies on 16.10.2023 and 17.10.2023. On perusal of the same, it was observed by the CIT(Exemption) that the assessee-trust had not commenced any charitable activity since its inception. The CIT(Exemption) also undertook an examination of the audited financial statements submitted by the assessee for the financial years 2019–20, 2020–21, 2021–22, and 2022–23, and recorded that the assessee had neither received any donation nor incurred any expenditure during these years towards the fulfilment of its stated charitable objects. It

was thus inferred that the trust had remained inactive and dormant even during the period of provisional registration. The Commissioner further noted that as per section 12A(1)(ac)(iii), where a trust has been provisionally registered under section 12AB, it is required to apply for regular registration either within six months of commencement of its activities, or at least six months prior to the expiry of the period of provisional registration, whichever is earlier. Since the assessee had not commenced any activity at the time of filing of the application in Form 10AB on 01.06.2023, the authority came to the conclusion that the conditions of section 12A(1)(ac)(iii) were not fulfilled. Accordingly, the CIT(Exemption) held that the application filed by the trust for regular registration was premature and not maintainable in law, as the trust had neither undertaken any activity nor received any donations. The application was treated as filed for statistical purposes only, and was rejected by order dated 05.12.2023, citing non-compliance with the statutory requirement of having commenced charitable activity within the prescribed time frame.

7. Aggrieved by the said order, the appellant has preferred the present appeal before us raising following grounds of appeal:

1. *The Commisioner of Income Tax (Exemption), Ahmedabad has erred in law and on facts by rejection of the application made u/s. 12AB(1)(b) of I. T. Act, 1961.*
2. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

8. During the course of hearing, the learned Authorised Representative (AR) of the assessee reiterated the factual chronology. The AR submitted that the assessee-trust was incorporated on 31.05.2002 and was granted provisional registration under section 12AB vide Form 10AC dated 28.02.2023, valid from A.Y. 2023-24 to A.Y. 2025-26. Subsequently, the assessee filed Form 10AB on 01.06.2023, seeking regular registration under section 12AB(1)(b), anticipating commencement of activities in the financial year 2023-24. However, the said application was rejected by the CIT(Exemption), Ahmedabad, vide order dated 05.12.2023 passed under

section 12AB(1)(b), holding the application as premature on the ground that the trust had not commenced its activities nor received any donations. The AR submitted that the activities of the trust in fact commenced in March 2024, which is within the validity period of the provisional registration, and in due course, the assessee filed its return of income for A.Y. 2024–25 on 29.09.2024, along with Form 10BB, thereby evidencing compliance with the provisions of sections 11 and 12. The AR further submitted that despite repeated attempts, the assessee was unable to file a fresh Form 10AB due to technical errors on the income-tax portal, which consistently displayed error messages preventing submission of a fresh application. A record of these unsuccessful attempts was also placed on record. The AR placed reliance on some judicial precedents including the decision of Co-ordinate Bench in case **of Susamskar Foundation v. CIT(E)** – [2024] 160 taxmann.com 552 (Kolkata - Trib.).

9. Considering the facts the DR raised no objection in restoring the matter back to the file of CIT(E) for deciding the matter afresh.

10. We have considered the rival contentions, perused the material on record, and carefully examined the relevant provisions of the Act as well as the judicial precedent relied upon by the assessee. The issue for adjudication in the present appeal pertains to the rejection of the application for regular registration under section 12AB(1)(b), filed by the assessee on 01.06.2023 in Form No. 10AB. The CIT(Exemption) rejected the application vide order dated 05.12.2023, treating the same as “premature” on the ground that the assessee had not commenced its activities or received any donations as on the date of application, and therefore, the conditions of section 12A(1)(ac)(iii) were allegedly not fulfilled.

11. It is not in dispute that the assessee had been granted provisional registration under section 12AB vide Form 10AC dated 28.02.2023, for the period from A.Y. 2023–24 to A.Y. 2025–26. The application for final registration was filed within the currency of the said provisional

registration, i.e., on 01.06.2023, anticipating the commencement of activities. Although the trust had not yet commenced operations at that stage, it is an admitted fact now placed on record through an audited report in Form 10BB for F.Y. 2023–24, that the activities have indeed commenced in March 2024. The return of income for A.Y. 2024–25 was also filed on 29.09.2024, evidencing active operations. The assessee has also submitted that despite the commencement of activities, it was technically unable to file a fresh Form 10AB in November 2024 due to portal-related errors, as confirmed by internal screenshots and portal error logs. These facts remain uncontroverted and were brought to our notice during hearing. In support of its case, the assessee has rightly placed reliance on the decision of the Coordinate Bench of the ITAT, Kolkata in *Susamskar Foundation v. CIT(Exemption)* [ITA No. 1113/KOL/2023, order dated 06.03.2024]. In that case, the CIT(Exemption) had similarly rejected the assessee's application for regular registration on the ground that the application was premature as provisional registration was still valid. The Co-ordinate Bench set aside the rejection, holding that there is no bar in moving the application for final registration at the earliest possible. The relevant paras of the said decision are reproduced hereunder for the sake of clarity:

7. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is that ld. CIT (Exemption) erred in law and on fact for not granting the benefit of permanent registration u/s 12AB of the Act. We observe that the assessee is a charitable Trust registered u/s 12AA of the Act vide order u/s 12AA(1)(b)(i) of the Act effective from 01.05.2018 (AY 2018-19). Subsequent to the amendments brought in the Act by Finance Bill, 2020, there was a requirement of provisional registration as well as final registration for new as well as existing Institutions/Trusts. The assessee has been granted provisional registration up to AY 2026-27 and before the expiry of the period, the assessee has applied for final registration. However, ld. CIT (Exemption) has treated the said application as non-maintainable only on the ground for being premature and that the assessee has already been granted provisional registration valid till AY 2026-27.

8. We find that under the similar set of facts and circumstances, this Tribunal in the case of Ramkrishna Mandal Institute of Education vs. CIT (Exemption) in ITA No. 924/KOL/2023 order dated 20.02.2024 in which one of the co-signatory is the author of this order and the issue has been examined and decided in the following manner:

“3. We have heard the rival contentions and gone through the record. The assessee-institution has been granted registration u/s 12AB(1)(a) of the Act for five years vide order dated 28.05.2021 which is valid from A.Y 2022-23 to A.Y 2026-27. As per the provisions of section 12A(1)(ac)(iii) of the Act, the assessee-institution is supposed to apply for final registration after grant of provisional registration u/s 12AB of the

Act. The relevant part of the provisions of section 12A(1)(ac) of the Act is reproduced as under:

“12A(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely

[(ac) notwithstanding any contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,

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(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier; ...and such trust or institution is registered under section 12AB.”

4. A perusal of the aforesaid provisions of section 12A(1)(ac)(iii) of the Act would reveal that where the trust or the institution was provisionally registered u/s 12AB of the act, the application for final registration can be made at least six months prior to the expiry of the period of provisional registration or within six months of the commencement of its activity, whichever is earlier, which means that the application for final registration has to be made at the earliest possible event i.e. either within six months of the commencement of the activities or at least six months prior to the expiry of the provisional registration. The aforesaid provision does not mean that there is any bar on the applicant to move an application before the period of six months from the expiry of the provisional registration. What has been provided is that the application must be made before the expiry of six months from the date of expiry of final registration. There is no bar in moving the application at the earliest possible event, rather, i.e. it is expected from the assessee-trust to do so. In view of this, the impugned order of the Id. CIT(Exemptions) is set aside and the matter is restored to the Id. CIT(Exemptions) to consider the application of the assessee for final registration and grant the same if the same is otherwise so admissible to the assessee.”

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10. From perusal of the above finding and also considering the fact that facts and issues are verbatim similar. We therefore, hold that there is no bar in moving the application for final registration at the earliest possible. We accordingly, set aside the impugned order and restore the matter back to the file of Id. CIT (Exemption) to consider the application of the assessee for final registration and grant the same for if the same is admissible to the assessee as per the provisions of the Act. Accordingly, all the grounds of appeal raised by the assessee are allowed for statistical purposes.

12. In the present case, the rejection of the application as “non-maintainable” due to the absence of activity at the time of application is not in accordance with the legislative intent of section 12A(1)(ac)(iii) read with section 12AB(1)(b). The provision merely prescribes the outer time limit by which the application for regular registration must be made — either within six months of commencement of activities, or six months prior to expiry of provisional registration, whichever is earlier. There is no prohibition against

8

filing the application at an earlier point of time once provisional registration is in place. Moreover, once the assessee has commenced its activities and submitted audited financials evidencing such commencement, and there is no adverse finding recorded on the genuineness of the trust or its charitable objects, we are of the considered opinion that the rejection solely on procedural ground is not sustainable in law.

13. We also note that the CIT(Exemption) did not call for further clarification or issue a fresh notice after activities had commenced, nor did he invoke his powers under section 12AB(1)(b)(i) to conduct an inquiry as to the genuineness of the activities or compliance with conditions of registration. Instead, the application was disposed of as “premature” and “non-maintainable,” without any adjudication on merits. This approach, in our view, frustrates the very purpose of the statutory framework for charitable registration.

14. Having regard to the totality of facts, and following the binding coordinate bench decision in *Susamskar Foundation* (supra), we are inclined to set aside the impugned order of the CIT(Exemption) and restore the matter back to his file with a direction to adjudicate the application for regular registration under section 12AB(1)(b) afresh, in accordance with law and on merits, after considering the Form 10BB, ITR and all other relevant materials placed by the assessee evidencing commencement of charitable activities.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Court on 15th July, 2025 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, dated 15/07/2025

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

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