

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B' AT KOLKATA
[BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER]**

I.T.A. No. 614/Kol/2020
Assessment Year: 2020-21

Pawan Alka Rajgarhia Foundation.....Appellant
Hi-Tech Chamber, 5th Floor,
84/1b, Topsia Road (S),
Kolkata - 700 046.
[PAN: AADTP 2189 G]

Vs

CIT (Exemptions), KolkataRespondent

Appearances by:

Shri S.S. Gupta, AR appearing on behalf of the Assessee
Shri Sudipta Guha, CIT, DR appearing on behalf of the Revenue:

Date of concluding the hearing : May 02, 2022

Date of pronouncing the order : May 11, 2022

ORDER

PER SONJOY SARMA, JM:

This is an appeal filed by the assessee pertaining to the assessment year (in short 'A.Y.') 2020-21 is directed against the order of Ld. CIT(Exemption), Kolkata dated 22.09.2020 rejected the application of the appellant assessee u/s 12AA of the Income Tax Act, 1961.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The assessee is in appeal before the Tribunal raising the following grounds:

“i. For that the ld. CIT(E) has rejected the application for grant of registration u/s 12AA of the Act on 22.09.2020. On perusal of the impugned order, it can be noted that various queries were raised and details were sought by CIT(E) vide letter dated 19.08.2020 which the appellant was asked to comply by 11.09.2020. In the impugned order it is mentioned that the appellant failed to reply to the detailed questionnaire and therefore in the absence of details and the CIT(E),s view that the appellant was not interested in pursuing the matter, the application for registration has been dismissed ex-parte.

ii. In this regard, we will like you to observe that the said order has been issued after the appellant filed its application for registration u/s 12AA of the Act, on 31.03.2020, the office of the CIT(E) took notice of appellant’s application almost after 5 months by issue of letter dated 19.08.2020 calling for details from the appellant, ignoring the hardships faced by people in general in this pandemic situation and practicality of the situation to attend to notice when people are fighting for lives and arrange for documents by 11.09.2020. After no apparent action for almost 5 months from the date of the appellant’s application for registration u/s 12AA of the Act, dated 31.03.2020: in less than a month proceeded to call for details, examine them and reject the appellant application ex-parte vide order dated 22.09.2020. It appears to us that the apparent reason for this hurried disposal of the appellant application by CIT(E) with undue haste was because as per section 12AA(2) of the Act, order for grant or rejection of registration was to be passed before the expiry of 6 months from the end of the month in which the application for registration was received; i.e., in

the case on hand the CIT(A) was bound to pass the order on or before 30.09.2020.

iii. For that the said order has not taken into consideration the CBDT Notification 35/2020 dated 24th June, 2020 where due to spread of COVID-19 board has also considered to extend various due dates including completion of any proceedings or passing of any order or issuance of any notice intimation, notification, sanction or approval or such other action by any authority, commission or Tribunal till 31st March, 2021. Therefore, there was no need for such this hurried disposal of the appellant application by CIT(E).

iv. The proviso to section 12AA(1) of the Act clearly provides that no order under sub-clause (ii) of clause (b) of section 12AA(1) shall be passed unless the applicant has been given reasonable opportunity of being heard. Whereas in our case appellant was not afforded reasonable opportunity and neither difficulty being faced in COVID-19 situation worldwide was taken into consideration.

v. The Id. CIT has not taken into consideration the attachments submitted along with Form 10A at the time of application such as copy of trust deed, copy of annual accounts, activities conducted by trust, bank account details, contact & email address and called for such details again in the questionnaire issued for examination. Further, as far as objection raised with respect to trust deed points raised from Point 13 to 17 i.e.:

Pt. 13: Specify the category of charitable purpose provided in section 2(15).

Pt. 14: Trust deed not mentioning irrevocability clause.

Pt. 15: Trust deed not having a clause that beneficiaries are a section of public and not specific individuals.

Pt. 16: Trust deed not having clause that in event of dissolution assets of the trust will be transferred to similar trust/society etc. having similar objective.

Pt. 17: Trust deed not having clause that fund will be used only for objectives of trust.

However, all these queries raised are covered in trust deed attached along with Form 10A submitted on 31.03.2020.

Reply to above points raised:

Pt. 13: Deed mentions the category of trust under clause 5 aims & objective of the trust.

Pt. 14: Irrevocability clause is mentioned in clause 19 duration of trust.

Pt. 15: Clause 6 of the deed mentions that beneficiaries of the trust are poor & underprivileged people of the society.

Pt. 16: Clause 28(2) of deed mentions that in case of dissolution all net funds and assets will be transferred to another public charitable trust or society having similar objectives.

Pt. 17: Clause 7 application of trust funds & objectives clearly states the fact that funds of trust will be applied solely towards promoting aims & objective of the trust.

As these queries raised by the Id. CIT(E) directing to include these in deed and amend the deed accordingly was not required by the appellant as same was already mentioned in trust deed. Therefore, there is no need to amend original trust deed. Ld. CIT(E) has not considered the deed submitted along with the application.

vi. For that the said order is against the decision in case of M/s. Eastwood Charitable Society vs DCIT(E), Kolkata on 30.05.2018, ITA No. 1775 & 1776/Kol/2017 [ITAT, Kolkata 'B' Bench] where at the time of registration of the assessee u/s 12AA CIT(E) should be concerned to be looked into is whether the assessee is

a genuine one or whether it is a sham institution floated only to avail the benefits of exemption under the Act. The stage for consideration of the application of the funds vis-a-vis objectives of the trust arises at the time of assessment by the AO where benefits are claimed by the assessee in terms of section 11 & 12 of the Act and the AO can examine the question as to the nature of the contributions etc. at the time of assessment. Whereas the ld. CIT(E) had asked to submit the details of donation made and received at the time of registration itself (Pt. 8 & 9 of details questionnaire).

vii. For that the said order is against the order of bench in case of M/s. Sri Saharsa Lingeshwara Mahakali Devastahna vs CIT(E) Bangalore on 13.12.2018, wherein it was held that

(a) Refusing to dismiss the application u/s 12AA where adequate and reasonable opportunity to be heard has not been given, as required under the proviso to section 12AA(1)(b)(ii) of the Income Tax Act, 1961.

(b) When a substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

viii. For that the said order is against the decision in case of M/s. Sri Saharsa Lingeshwara Mahakali Devastahna vs CIT(E) Bangalore on 13.12.2018, ITA No. 1602/Bang/2017 [ITAT, Bangalore 'A' Bench}, where such haste decision to reject the application without being reasonable opportunity to be heard grounds for rejection of 12AA application was dismissed.

ix. For that the said order is also against the proposition that in the absence of any judgement of the Jurisdictional High Court, there being contrary judgements of the non-jurisdictional High

Courts, a decision which is favourable to the appellant is to be followed in view of the reasoning laid down by the Hon'ble Supreme Court in the case of CIT vs Vegetable Products Ltd., (1973) 88 ITR 192 (SC).

x. For that the impugned order passed u/s 12AA of the Income Tax Act by the Id. CIT(E), Kolkata is arbitrary, irrational, unjustified and bad in law."

4. The brief facts of the case are that the appellant assessee is a public charitable trust which was formed on 06.12.2016 and filed an application before the Id. CIT(E), Kolkata on 31.03.2020 for grant of registration u/s 12AA of the I.T. Act in Form No. 10A of the said Act. The Id. CIT(E) called for certain documents from the assessee on 19.08.2020, 26.08.2020 and on 05.09.2020 respectively. But the assessee did not file the required documents as asked for by the Id. CIT(E) due to pandemic situation, the assessee could not attend the office of the Id. CIT(E) and file the necessary documents before the Id. CIT(E). Ultimately, the Id. CIT(E) rejected the application for grant of registration u/s 12AA of the Act filed by the assessee and pass an ex-parte order vide order dated 22.09.2020. Aggrieved by the said order, the assessee is in appeal before us.

5. At the outset, the Id. counsel for the assessee submitted that since the order passed by CIT(A), Kolkata is an ex-parte order and the assessee did not get any opportunity to file any relevant documents and submissions before the Id. CIT(E)

and, therefore, one more opportunity should be given to the assessee so that the assessee can submit necessary documents before the Id. CIT(E). He further submitted that since the Id. CIT(E) issued notices during the period of Pandemic and at that point of time prevailing situation due to various restrictions and lockdown imposed by the Govt. Authority, the assessee could not file the necessary documents before the Id. CIT(E). The Id. DR was fair enough not to oppose the arguments of the Ld. AR.

6. Considering the facts and circumstances of the case, we are of the considered view that ends of justice would be met by the assessee is given one more opportunity so that assessee can file necessary document for grant of registration u/s 12AA before Id. CIT(E) and since the order of Id. CIT(E) is ex-parte and not decided on merits of the case, we set aside the impugned order and remit back to the file of Id. CIT(E) to decide the issue by way of speaking order afresh after considering the merits of the case. We also direct the assessee to remain vigilant in receiving the notices of the hearing of the Id. CIT(E) and should not request for any further adjournment unless otherwise required for reasonable cause and should file all necessary documents so as to facilitate the Id. CIT(E) for passing order u/s 12AA of the Income Tax Act. Needless to mention that the assessee should be given proper opportunity of being heard. The other grounds of appeal are

general and consequential in nature and need not to be adjudicated.

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

Order Pronounced in the Open Court on 11th May, 2022.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Dated: 11/05/2022
Biswajit, Sr. PS

Copy of order forwarded to:

1. Appellant: Pawan Alka Rajgarhia Foundation.
2. Respondent: CIT (Exemption), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT Kolkata Benches, Kolkata