

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 737/KOL/2022  
Assessment Year: 2022-2023**

***Mitra Institution, Bhowanipur Branch,.....Appellant  
16A, Balaram Bose Ghat Road,  
Bhawanipur, Kolkata-700025  
[PAN: AACAM9671N]***

**-Vs.-**

***Commissioner of Income Tax (Exemption),.Respondent  
Kolkata,  
10B, Middleton Row, Kolkata-700071***

**Appearances by:**

*Shri Sanjay Kumar Sinha Chowdhury, CA, appeared on  
behalf of the assessee*

*Shri Subhrajyoti Bhattacharjee, CIT (DR), appeared on  
behalf of the Revenue*

**Date of concluding the hearing : January 30, 2023  
Date of pronouncing the order : 07 February, 2023**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Exemption), Kolkata dated 17.10.2022 passed for A.Y. 2022-23.

2. The solitary grievance of the assessee is that ld. CIT (Exemption) has failed to grant sufficient opportunity of hearing and thereby dismissing its application *ex-parte*. The impugned order passed by the ld. CIT (Exemption) reads as under:-

*“The assessee has filed an application in Form No.10AB for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961.*

*2. Notice dated 24.09.2022 was issued through ITBA fixing hearing on 14.10.2022, but there was no compliance to the notice.*

*Further notice was issued on 14.10.2022 fixing date of hearing on 17.10.2022, but no reply was received from the assessee.*

*Hence, in absence of any reply or response from the applicant assessee, the matter is being decided ex-parte.*

*3. In the absence of any reply to the questionnaire which was issued to the applicant assessee and non-production of various details and documents as called for doing the necessary verification, it is not possible to verify the genuineness of the claim of the applicant assessee as to whether it meets the necessary conditions for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961.*

*4. It is the duty of the applicant to produce the relevant documents for verification before the competent authority for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961.*

*The maxim ‘Vigilantibus Non-Dormentibus Jura Subveniunt’ refers to the obligation on the part of the applicant assessee that “the law assists those who are vigilant and not those who sleepover their rights” is squarely applicable in this case. It is evident that the applicant has merely filed the application for the sake of filing it and has not given reply to the questionnaire which was sent to it.*

5. *In the absence of verification of the financial transactions being true and correct, genuineness and nature of activities, it cannot be held that the trust is eligible for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961.*

6. *It is relevant to note that as all the communications with the applicant assessee were made through e-mail, the applicant cannot take plea that it had not received the notice of hearing, as the notice issued to the assessee is available in e-filing portal of Income-tax Department, the same portal in which the applicant filed the application.*

7. *Therefore, the Application for Registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961 is rejected, in limine”.*

3. The Id. Counsel for the assessee, at the very outset, submitted that vide letter dated 12.10.2022, the assessee sought an adjournment upto 21<sup>st</sup> October, 2022 on the ground that dealing employee is on leave on account of Puja Holidays.

4. A perusal of the impugned order, we find that the application for grant of registration was listed for hearing on 24<sup>th</sup> September, 2022 and a notice was issued fixing the date as 14.10.2022. According to the Id. Counsel for the assessee, a letter dated 12.10.2022 was moved requesting the re-fixation of the application after 21.10.2022 because Puja Vacations were going on during that period. The Id. CIT (Exemption) did not grant adjournment and dismissed the application by observing that sufficient details were not filed in support of the claim for registration under section 12A(1)(ac)(iii) of the Income Tax Act. After perusing the record carefully, we deem it appropriate that the impugned order deserves to be set aside because if 10-15

days was being given to the assessee for submission of complete details, nothing serious would have happened. It is not a situation where time-barring issue would be applicable for adjudication of this application. The first hearing commenced on 14.10.2022 and the assessee sought adjournment upto 21.10.2022. It is not such a request, which has frustrated the adjudicating authority. Therefore, we set aside the issue to the file of Id. CIT (Exemption) for re-adjudication of the application of the assessee on merit after submitting necessary material in support of the application.

**5. In view of the above, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 07<sup>th</sup> February, 2023.

Sd/-

**(Manish Borad)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 7<sup>th</sup> day of February, 2023***

*Copies to : (1) Mitra Institution, Bhowanipur Branch,  
16A, Balaram Bose Ghat Road,  
Bhawanipur, Kolkata-700025*

*(2) Commissioner of Income Tax  
(Exemption), Kolkata,  
10B, Middleton Row, Kolkata-700071*

*(3) Commissioner of Income Tax- ;*

*(4) The Departmental Representative*

(5) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***