

**THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. Nos. 28 & 29/KOL/2024
Assessment Year: 2023-2024**

***Praayas Welfare Society,.....Appellant
Kayasthpara Maliara,
Bajora Bankura-722142, West Bengal
[PAN: AAKAP3127G]***

-Vs.-

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

Appearances by:

*Shri Anketa Lohia, A.R., appeared on behalf of the
assessee*

*Shri Anindya Kumar Bandopadhyay, Addl. CIT,
appeared on behalf of the Revenue*

Date of concluding the hearing : February 19, 2024

Date of pronouncing the order : February 20, 2024

O R D E R

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

The present two appeals are directed at the instance of assessee against the orders of Id. Commissioner of Income Tax (Exemption), Kolkata dated 03.11.2023 vide which Registrations

under sections 12AA and 80G(5) have been denied to the assessee.

2. The assessee has filed two Miscellaneous Applications for grant of out of turn hearing. With the assistance of Id. Representatives, we have gone through both the applications. A perusal of the record would suggest that the Registrations under sections 12AA and 80G were not granted to the assessee because the assessee failed to submit the necessary details.

3. Considering this issue, we deem it appropriate to dispose of the appeals itself alongwith these applications because at the end, these issues are to be relegated to the file of Id. CIT(Exemption) for fresh adjudication. Therefore, we allow these applications and take up these appeals for hearing on merit.

4. With the assistance of Id. Representatives, we have gone through the record carefully. The Annexure attached with the Proforma No. 10AD exhibiting the reasons for such denial in both the appeals read as under:-

“Application under section 12AA

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 06.10.2023 was issued through ITBA fixing hearing on 12.10.2023, but there was no compliance to the notice.

Further notice was issued on 19.10.2023 fixing date of hearing on 25.10.2023, but again 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-Dormientibus 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 sleep over 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.*

Application under section 80G(5)

The assessee has filed an application in Form No. 10AB for registration under clause (iii) of second proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961.

2. Notice dated 09.10.2023 was issued through ITBA fixing hearing on 16.10.2023, but there was no compliance to the notice.

Further opportunity was given to the applicant assessee vide notice dated 19.10.2023 refixing hearing on 25.10.2023, but again no compliance was made nor any reply was received from the applicant 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 clause (iii) of second proviso to sub-section (5) of Section 80G 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 clause (iii) of second proviso to subsection (5) of Section 80G of the Income Tax Act, 1961.

The maxim *Vigilantibus Non-Dormientibus 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 sleep over 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 clause (iii) of second proviso to sub-section (5) of Section 80G 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 clause (iii) of second proviso to subsection (5) of Section 80G of the Income Tax Act, 1961 is rejected, in limine.

5. A perusal of both the impugned orders would reveal that an opportunity was given to the assessee vide which notice dated 19th October, 2023 was issued, the assessee was required to put a reply before 25th October, 2023. The ld. Commissioner thereafter has observed in paragraph no. 3 that no reply or details were submitted by the assessee. It has also been observed in paragraph no. 6 that notices were given on e-mail also.

6. On due consideration of the above details, we are of the view that no doubt, two notices appear to have been issued but in both the notices, only one week time was given. Sometime it may be possible that the concerned person might have not checked his e-mail and failed to respond those notices. At the time of hearing, the case of the ld. Counsel for the assessee before us is that no specific notice was sent through e-mail though notices are available on the portal and the portal was not checked by the assessee during that time. Though this fact is not verifiable whether mail was sent or not but assuming the assessee might have failed to look into the mail and in the interest of justice, we deem it appropriate to grant one more opportunity to the assessee to prosecute its case before the ld. CIT(Exemption). Therefore, we set aside both the orders and relegate this issue to the file of ld. CIT(Exemption) for fresh adjudication. We direct the assessee to submit complete details well in time as required by the ld. CIT(Exemption).

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 20/02/2024.

Sd/-

**(Girish Agrawal)
Accountant Member**

Sd/-

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

Kolkata, the 20th day of February, 2024

*Copies to :(1) Praayas Welfare Society,
Kayasthapara Maliara,
Bajora Bankura-722142, West Bengal*

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

(3) CIT- , Kolkata

(4) The Departmental Representative;

(5) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.