

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. Nos.: 1379 & 1380/KOL/2023
Assessment Year: N.A.**

***People For Animals.....Appellant
[PAN: AAETP 3659 A]***

Vs.

CIT (Exemption), Kolkata.....Respondent

Appearances:

Assessee represented by: Sh. Ramesh Patodia, Adv.

Department represented by: Sh. Abhijit Kundu, CIT(D/R).

Date of concluding the hearing : February 27th, 2024

Date of pronouncing the order : February 29th, 2024

ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed by the assessee are directed against the separate orders passed u/s 12AB and 80G(5) of the Income Tax Act, 1961 (in short the 'Act') by the Commissioner of

Income Tax (Exemption), Kolkata [hereinafter referred to as 'CIT (Exemption)'] even dated 22.11.2023.

First, we take up **ITA No. 1379/KOL/2023**.

2. Though the assessee has raised as many as 12 grounds, but the sole grievance is that ld. CIT (Exemption) erred in rejecting the application filed by the assessee on Form 10AB merely for selecting the wrong Section code.

3. At the outset, ld. Counsel for the assessee submitted that the assessee filed an application for final registration on Form 10AB on 23.05.2023 selecting the Section 12A(1)(ac)(iv) of the Act. Subsequently, the assessee came to know that there was a mistake in selecting the Section and the correct Section is 12A(1)(ac)(iii) of the Act. The assessee accordingly filed a revised Form 10AB on 18.10.2023. However, ld. CIT (Exemption) has not considered the revised Form 10AB filed on 18.10.2023 and has rejected the assessee's application as non-maintainable on account of mentioning a wrong Section without giving any opportunity to the assessee. Prayer was made to restore the matter to the file of ld. CIT (Exemption) for considering the assessee's revised Form 10AB.

4. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities.

5. We have heard rival contentions and perused the records placed before us. We notice that the assessee is a charitable organization working for the welfare of the animals and is governed by the deed of Trust dated 29.04.2019. The assessee has been

granted provisional registration u/s 12A of the Act and thereafter, it filed application on Form 10AB for the final registration. It was submitted on 26.05.2023. While preparing the application, at Sl. No. 2 while bunching the Section code, the assessee has mentioned Section 12A(1)(ac)(iv) of the Act which is applicable for the registration of the Trust or Institution which have become inoperative due to first proviso to sub-Section 7 to Section 11 of the Act. This Section code is not applicable to the assessee and it has been claimed before us that it was inadvertently filled in. The correct Section code applicable to the assessee is 12A(1)(ac)(iii) of the Act which is applicable for the Trust or Institution which has been provisionally registered u/s 12AB of the Act and they have to file an application for final registration at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities which have been raised earlier. On realising the mistake about mentioning wrong code, on 18.10.2023, the assessee uploaded a fresh Form 10AB selecting the correct Section code i.e. 12A(1)(ac)(iii) of the Act and also enclosed all the relevant documents and details required for the final registration. A note was also given in the remarks column about the mistake of having mentioned wrong code in earlier application. However, subsequent thereto on 22.11.2023 Id. CIT (Exemption) has rejected the application filed by the assessee on 23.05.2023 without considering the revised application.

6. We find that the assessee had intimated Id. CIT (Exemption) about the inadvertent mistake committed at its end and also about the revised Form 10AB filed for the final registration. However, it

seemed that ld. CIT (Exemption) failed to take note of the same and failed to provide opportunity to the assessee. We therefore, under the given facts and circumstances of the case, in the interest of justice and being fair to both the parties, restore this issue of final registration to the file of ld. CIT (Exemption) with a direction that the date of application for final registration should be considered as 26.05.2023. However, the final registration should be granted as per the revised application filed by the assessee incorporating the correct Section code. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed to remain vigilant and file necessary documents, if considered necessary, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the assessee, then ld. CIT (Exemption) can pass a speaking order in accordance with law. Accordingly, all the grounds of appeal raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee in ITA No. 1379/KOL/2023 is allowed for statistical purposes.

Now, we take up **ITA No. 1380/KOL/2023.**

8. In this appeal, the grievance of the assessee is that ld. CIT (Exemption) has dismissed the assessee's application filed u/s 80G(5)(iii) of the Act solely on the ground that it is belated and is not maintainable. At the outset, ld. Counsel for the assessee submitted that as per the CBDT Circular No. 6 of 2023 dated

24.05.2023 the last date for filing the application on Form 10AB u/s 80G(5)(iii) of the Act is 30.09.2023 and since the assessee has filed the application on 27.05.2023, there is no delay and therefore, ld. CIT (Exemption) erred in rejecting the application as non-maintainable. Copy of CBDT Circular No. 6 of 2023 referred (*supra*) is place on record.

9. On the other hand, ld. D/R submitted that in the said circular at para 7, there is no specific mention about Section 80G(5)(iii) of the Act. Therefore, ld. CIT (Exemption) has rightly dismissed the assessee's application on Form 10AB as non-maintainable.

10. We have heard rival contentions and perused the records placed before us. We notice that the assessee which is a charitable organization working for the relief of animals and protecting them from cruelty has filed an application for approval of the Trust u/s 80G(5)(iii) of the Act on Form 10AB under Rule 17A of the Rules dated 27.05.2023. As per ld. CIT (Exemption) the last date to file such application relevant to the assessee is 30.09.2022. We however, notice that Section 80G(5)(iii) of the Act refers to the Institution or Trust which are carrying out charitable activities and maintains regular accounts of receipts and expenditure. Certainly, Section 80G(5)(iii) of the Act has a direct connection with Section 12A of the Act which refers to the registration of charitable organizations. We notice that para 7 of the CBDT circular (*supra*) states as under:

"7. It may be also noted that the extension of due date as mentioned in paragraph 5(/ 7) shall also apply in case of all pending

applications under clause (7/7) of the first proviso to clause (23C) of section 10 or sub-clause (777) of clause (ac) of sub-section (I) of section 12A of the Act, as the case may be. Hence, in cases where the trust has already made an application in Form No. 10AB under the said provisions but such application has been furnished after 30-9-2022 and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application. Further, in cases where the trust had already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date, the trust may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 5(77) i.e. 30-9-2023.”

11. From perusal of the above circular which is binding upon the Revenue authorities, we notice that the extended time provided for filing the fresh application on Form 10AB is 30.09.2023.

12. Under these given facts and circumstances of the case, where the assessee had filed an application on Form 10AB on 27.05.2023 which is prior to the last date for filing such application i.e. 30.09.2023 which means that application of the assessee is not time barred. We therefore, find that ld. CIT (Exemption) grossly erred in rejecting the application as non-maintainable and also erred in cancelling provisional certificate issued to the assessee. We therefore, direct ld. CIT (Exemption) to restore the provisional certificate issued to the assessee and also to admit the application on Form 10AB u/s 80G(5)(iii) of the Act and decide it on merits in accordance with law. Accordingly, all the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

14. In the result, both the appeals filed by the assessee in ITA Nos. 1379 & 1380/KOL/2023 are allowed for statistical purposes.

Kolkata, the 29th February, 2024.

Sd/-

[Sonjoy Sarma]

Judicial Member

Sd/-

[Manish Borad]

Accountant Member

Dated: 29.02.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. People For Animals, Ashoka House, 5th Floor, Room No. 501, 3A, Hare Street, Kolkata-700 001.**
- 2. CIT (Exemption), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata