

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

श्री अनिकेश बनर्जी, न्यायिक सदस्य  
एवं  
श्री गिरीश अग्रवाल, लेखा सदस्य  
के समक्ष  
Before

**SRI ANIKESH BANERJEE, JUDICIAL MEMBER  
&  
SRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A. No.: 1431/KOL/2023  
Assessment Year: 2023-24**

***NITDAA Foundation.....Appellant  
[PAN: AADTN 2308 K]***

***Vs.***

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

**Appearances:**

***Assessee represented by: Sh. S. Banerjee, Adv.***

***Department represented by: Sh. Rakesh Kumar Das, CIT D/R.***

Date of concluding the hearing : February 26<sup>th</sup>, 2024

Date of pronouncing the order : February 29<sup>th</sup>, 2024

**ORDER**

**Per Bench:**

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income-tax (Exemption), Kolkata [in brevity ld. 'CIT(Exemption)'] passed in relation to registration applied u/s 12A(1)(ac)(iii) of the Income Tax Act, 1961 (in brevity the 'Act') for assessment year 2023-24 dated 09.11.2022.

2. The assessee has taken the following grounds of appeal:

*"1. That the Learned C.I.T (Exemption) Kolkata completely lost sight that most of the documents as demanded by the Questionnaire/ notice are already filed along with the application for registration u/s 80G(5)(vi) filed*

in Form No. 10G on 24.9.2019 which was granted u/s 80G(5)(vi) on 7.11.2019.

2. That the Learned C.I.T (Exemption) Kolkata completely lost sight that most of the documents as demanded by the Questionnaire/ notice are already filed along with the application for registration u/s 12AA filed in Form No. 10A on 24.9.2019 which was granted u/s 12AA on 7.11.2019

3. That the Learned C.I.T.(Exemption) Kolkata was not at all justified in arbitrarily rejecting the application for Registration u/s 12A(1)(ac)(iii) of the I.T. Act 1961 without making any proper enquiry about the existence of the Trust and the documents already in the custody of the department.

4. That the Learned CIT(Exemption) Kolkata was not at all justified in arbitrarily rejecting the application for Registration u/s 12A(1)(ac)(iii) of the LT. Act 1961 without considering that this is merely registration under the new regime with existing documents and it cannot be rejected on account of non appearance.

5. That the Learned CIT(Exemption) Kolkata was not at all justified in arbitrarily rejecting the application for Registration u/s 12 A(1)(ac)(iii) of the I.T. Act 1961 without issuing any physical hearing notice to the assessee.”

3. The Registry informed us that the appeal was filed with a delay of 326 days. Condonation petition was filed. The assessee has explained the delay. Ld. D/R had not made any strong objection about the condonation of delay. So, the delay of 326 days is condoned, and the matter is taken for adjudication.

4. Ld. A/R first pressed that the assessee has submitted all relevant documents during filing the registration in Form 10AB u/s 12A of the Act dated 24.09.2019. Ld. A/R claimed that all the relevant documents are duly submitted, and the ld. CIT (Exemption) has not taken care of all submitted documents related with registration. Without considering the same, the registration application was rejected vide order dated 09.11.2022.

5. Ld. D/R vehemently argued and has drawn our attention in para no. 3 to 5 of the impugned order which is reproduced as below:

*“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 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. We heard the rival submissions and considered the documents available in the record. From, the record, it is found that the relevant documents were duly filed during the filing the registration in Form 10AB by the assessee for registration u/s 12A of the Act. But ld. CIT (Exemption) without considering the same, issued the notice and due to non-compliance, the entire registration was rejected. Ld. A/R also prayed to restore the matter back to the file of ld. CIT (Exemption) for further adjudication *de-novo* and grant the registration by his order.

7. Ld. D/R had not made any strong objection against the submission of the assessee.

8. In our considered view, the assessee partially complied the documents with the application of registration in Form 10AB. But the issue was ignored, and reasonable opportunity was denied during the time of proceeding before the Revenue. Accordingly, we direct to remand matter back to the file of ld. CIT (Exemption) and adjudication *de-novo* by considering the assessee's submission. It is to be directed to issue the registration certificate as per the Act after considering the documents and evidence of the assessee. Needless to say, that the assessee should get a reasonable opportunity of hearing in set aside proceeding.

9. In the result, ITA No. 1431/KOL/2023 is allowed for statistical purposes.

**Order pronounced in the open Court on 29<sup>th</sup> February, 2024.**

*Sd/-*

**[Girish Agrawal]**

Accountant Member

Dated: 29.02.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **NITDAA Foundation, FE 261, Sector III, Salt Lake, Kolkata-700 106.**
2. **CIT (Exemption), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

*Sd/-*

**[Anikesh Banerjee]**

Judicial Member

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata