

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1561/Chny/2023
निर्धारण वर्ष/Assessment Year: -

Kaakkum Karangal, Old No.11, New No.47, East Mada Street, Thiruvanmiyur, Chennai – 600 041.	v.	The Income Tax Officer, Exemption Ward-3, Chennai.
[PAN: AAATK 5406 E]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri P.M.Kathir, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri V.Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	08.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	31.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Trust against the order of the Learned Principal Commissioner of Income Tax (Exemptions), (hereinafter 'the Ld.PCIT(E)') dated 18.10.2022 granting provisional registration for three (3) years instead of five (5) years.

2. There is a delay of '374' days in filing of this appeal against the impugned order of the Ld.PCIT(E); and the assessee has filed condonation application, which contents states that the assessee Trust is providing



:: 2 ::

relief to the poor, running homes for old aged people and orphaned children; and had enjoyed registration u/s.12AA of the Income Tax Act, 1961 (hereinafter 'the Act') and had been claiming exemption u/s.11 of the Act, and that assessee could have enjoyed Sec.12AA registration in perpetuity, but for the amendment which was brought in the law by the Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 (hereinafter in short 'TOLA, 2020') w.e.f.01.04.2021. And by virtue of TOLA, 2020, [assessee had to apply for re-registration under the Act] amendments were brought in the provisions relating to the eligibility/procedure of registration u/s.12A/12AA of the Act, sec.10(23C), sec.80G of the Act. At present, we are concerned with the procedure to apply for re-registration brought in Sec.12A(1)(ac) and sec.12AB of the Act and the relevant provisions reads as under:-

12A. [(1)] The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:-

(a)

(aa)....

(ab)....

(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—

(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment



:: 3 ::

of Certain Provisions) Act, 2020 (38 of 2020)], within three months from the first day of April, 2021;

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought,

and such trust or institution is registered under section 12AB;]

12AB. (1)The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

(a)where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

(b)where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—

(i)call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—

(A)the genuineness of activities of the trust or institution;
and

(B)the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;

(ii)after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i),—



:: 4 ::

(A)pass an order in writing registering the trust or institution for a period of five years; or

(B)if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

(c)where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,

and send a copy of such order to the trust or institution.

(2)All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be applications made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3)The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4)Where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,—

(a)the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year; or

(b)the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c)such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year,

the Principal Commissioner or Commissioner shall—

(i)call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii)pass an order in writing, cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violations have taken place;



:: 5 ::

(iii) pass an order in writing, refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or clause (iii), as the case may be, to the Assessing Officer and such trust or institution.

Explanation.—For the purposes of this sub-section, the following shall mean "specified violation",—

(a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, has been applied, other than for the objects of the trust or institution; or

(b) the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has applied any part of its income from the property held under a trust for private religious purposes, which does not enure for the benefit of the public; or

(d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste; or

(e) any activity being carried out by the trust or institution—(i) is not genuine; or (ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

(5) The order under clause (ii) or clause (iii) of sub-section (4), as the case may be, shall be passed before the expiry of a period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of sub-section (4).]

3. The assessee being a Trust already enjoying registration u/s.12AA [after TOLA 2020] as per the amended provisions (supra), was eligible to apply for re-registration in Form 10A within three months from 1st day of April, 2021 i.e. within 30.06.2021 under sub-clause (i) of Sec.12A(1)(ac)



:: 6 ::

and then, in such an event, it would have obtained registration automatically from CPC u/s.12AB(a) of the Act for five (5) years from AY 2022-23 to AY 2026-27. However, due to Covid pandemic, digital glitches, etc., several Institutions/Trusts could not e-file the application for registration and considering the genuine hardship faced by Trust/Institution, the CBDT had issued several circulars extending the due date of filing from 30.06.2021 (*applicable for old Trust enjoying 12A/12AA registration before TOLA 2020*) to 25.11.2022 *applicable also for registration u/s.10(23C), and 80G(5) of the Act*].

4. However, the assessee while applying for registration on 18.10.2022 (well within the extended time) online in Form 10A inadvertently sought registration under sub-clause (vi) of Sec.12A(1)(ac) of the Act, [instead of sub-clause (i) of Sec.12A(1)(a) as discussed supra]. The Ld.PCIT(E)/CPC acting upon ibid the Form 10A u/s.12A(1)(ac)(vi), granted provisional registration from AY 2022-23 onwards for three years from AY 2023-24 to AY 2025-26 [instead of five years, if it had applied under sub-clause (i) of sec.12A(1)(ac)]. The assessee Trust after receiving the provisional registration bonafidely believed that it was enjoying registration u/s.12AB of the Act without any break/continuity ; But to its surprise, the assessee received notices of demand for AY 2022-23, then, it realized that the CPC/Ld.PCIT(E) has granted only provisional registration for three years from AY 2023-24



:: 7 ::

onwards, and then it realized that due to the inadvertent mistake of selecting sub-clause (vi) instead of sub-clause (i), the assessee's right to continue registration (without a break from AY 2021-22 onwards) got jeopardized and it lost registration for AY 2022-23; immediately on realizing this mistake of filing Form 10 as stated above, it approached the Tribunal by filing appeal before this Tribunal and thus, there was a delay of '374' days which was the cause of delay, which we find to be reasonable for condoning because, assessee was legally entitled for re-registration u/s.12AB(a) for five years had it applied online by clicking on sub clause (i) instead of sub-clause (vi) of sec.12A(1) of the Act; and we do condone the delay and proceed to decide the appeal.

5. The main grievance of the assessee is against the action of the Ld.CIT/CPC granting provisional registration for only three years (for AYS 2023-24 to 2025-26) rather than granting registration for five years from AY 2022-23 onwards.

6. Brief facts are that the assessee is a trust which provides relief to the poor and runs home for old age people and take care of orphaned children. According to the assessee, it obtained registration u/s.12AA of the Income Tax Act, 1961 (hereinafter "the Act") on 21.10.1994 from the Director of Income Tax (Exemptions), Madurai, and that it had been regularly filing its Income Tax Returns claiming exemption u/s.11 of the



:: 8 ::

Act. According to the assessee, as per new provisions u/s.12A(1)(ac) of the Act w.e.f.01.04.2021, the assessee trust in order to claim exemption u/s.11 of the Act had to obtain fresh registration u/s.12AB of the Act, and for that it had to apply for registration under sub-clause (i) of section 12A(1)(ac) of the Act, within three months from the first day of April, 2021 i.e.30.06.2021 which time line has been extended by CBDT taking note of covid/pandemic genuine hardship faced by assessee, to 25.11.2022; and assessee had filed for registration in Form No.10A on 09.10.2022, legitimately expecting registration u/s.12AB of the Act for five Assessment Years from AY 2022-23 onwards, since assessee was legally entitled for as per Sec.12A(1)(ac)(i) r.w.s.12AB(1)(a) of the Act. However, due to inadvertent mistake, while filling up Form 10A on 09.10.2022 instead of sub clause (i), assessee clicked sub-clause (vi) of sec.12A(1)(ac) of the Act; and the CPC/Ld.PCIT(E) processed the application and granted provisional registration for three years from AY 2023-24 onwards; whereas assessee being a Trust enjoying Sec.12AA of the Act from year 1994 was qualified/eligible to apply under sub-clause (i) of Clause (ac) of sec.12A(1) of the Act and in the event if it had applied correctly under sub-clause (i), then, it would have got registration u/s.12AB(1)(a) of the Act, for five years i.e. from AY 2022-23 onwards and the assessee would not have faced the problem of not having registration u/s.12AB for AY 2022-23. According to the Ld.AR, taking note



:: 9 ::

of the hardships and the transition period from the old regime to the new regime and the complexities of the digital world for adapting to the new system and considering the technical glitches, the inadvertent mistake should not come in the way of the assessee getting registration for five assessment years from AY 2022-23 onwards. But, by passing the impugned order dated 18.10.2022 (granting registration from AY 2023-24 to AY 2025-26), the assessee is left without any registration for AY 2022-23 which would jeopardize/create insurmountable problems for assessee's Charitable Trust; And since, assessee had applied for registration well within the extended period of time allowed by the CBDT and taking note of the fact that the assessee is enjoying Sec.12AA registration from year 1994 onwards and eligible as per law to claim registration for five assessment years u/s.12AB of the Act, the claim of assessee should not be denied.

7. Per contra, the Ld.DR opposed the plea of the assessee and submitted that since, the assessee had wrongly filled up online portal of the Income Tax Department, CPC/ Ld.PCIT(E) granted it provisional registration for three years and there is no mechanism to correct the system.

8. We have heard both the parties and perused the material available on record. The facts afore-stated being not disputed, it is not repeated for



:: 10 ::

sake of brevity. The assessee being an old Trust which enjoyed registration u/s.12AA of the Act, from year 1994 onwards, after the Parliament passed TOLA 2020 w.e.f.01.04.2021, had to apply for re-registration under sub-clause (i) of Clause (1) of Sec.12A of the Act, whereas, it inadvertently applied under sub-clause (vi) of this provision and because of which, it was granted provisional registration u/s.12AB(1)(c) for three (3) years from AY 2023-24 onwards; and because of this action, the assessee lost its registration u/s.12AB of the Act for AY 2022-23 and was denied exemption u/s.11 of the Act, for that year. We find that assessee Trust was legally entitled for registration u/s.12AB(1)(a) for five (5) years; and because of inadvertent mistake of filling up sub-clause (vi) instead of sub clause (i), the assessee's right for re-registration u/s.12AB of the Act for AY 2022-23 cannot be denied. We are of the considered opinion that the inadvertent mistake of the assessee clicking online for fresh registration under clause (vi) of sec.12(1)(ac) needs to be intervened and rectified; therefore, the assessee's application for registration under sub-clause (vi) to be treated as if assessee has applied under clause (i) of sec.12A(1)(ac) and granted registration u/s.12AB(a) of the Act for five assessment years from AY 2022-23 onwards. Considering the purpose for issuing Circular by CBDT was for mitigating the hardships faced by assessee, we set aside the impugned order of the Ld.PCIT(E) dated 18.10.2022 and restore the assessee's



ITA No.1561/Chny/2023
Kaakkum Karangal

:: 11 ::

application for registration back to the file of the Ld.PCIT(E)/CIT(E) and direct him to process the application filed by assessee on 9/18-10-2022 in Form 10 as u/s.12A(1)(ac)(i); and the competent authority is at liberty to call for any documents including asking assessee to file hard copy of Form 10 u/s.12A(1)(ac)(i); and thereafter, decide granting registration u/s.12AB(1)(a) of the Act for five (5) years from AY 2022-23 onwards. Needless to say, assessee be given opportunity of hearing if the authority desires to hear it and to pass orders in the light of discussion (supra) and in accordance to law.

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

Order pronounced on the 31st day of May, 2024, in Chennai.

Sd/-

(एस. आर. रघुनाथा)

(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st May, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)



ITA No.1561/Chny/2023
Kaakkum Karangal

:: 12 ::

4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF