

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

I.T.A. No. 918/Kol/2023

L Dey Road Sarada Society Purulia At. Dulmi Nadiha Dulminadiha, S.O. Dulmi (P) Purulia - 723102 [PAN : AAAAL7474L]	Vs	Commissioner of Income Tax (Exemptions), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri P.K. Ray, A/R and Daud Ahmed Buksh
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 09/04/2024
घोषणा की तारीख /Date of Pronouncement: 21/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This appeal is directed at the instance of the assessee against the order dt. 05/07/2023, of the learned Commissioner of Income Tax (Exemptions), (hereinafter the "ld. CIT(E)").

2. The sole grievance of the assessee is against the action of the ld. CIT(E) in rejecting the application of the assessee for permanent registration u/s 12AB of the Act by merely mentioning that "the assessee is treated as non-maintainable", solely on the ground that it is pre-mature as the provisional registration u/s 10AC is still valid.

3. At the outset, the ld. Counsel for the assessee submitted that it has been consistently held by this Tribunal that for the assesseees who have already commenced the charitable activities prior to the amendment brought in the Act for applying provisional/final registration, the assessee should not be denied to file the application for final registration merely on the ground that he has been given provisional registration.

Reliance placed on the decision of this Tribunal in the case of *Ramkrishna Mandal Institute of Education vs. CIT (Exemptions), Kolkata in I.T.A. No.924/Kol/2023 order dt. 20/02/2024*. He, therefore, prayed that the matter may be restored to the file of the ld. CIT(E) for admitting the application for registration u/s 12A(1)(ac)(iii) of the Act and grant the final registration.

On the other hand, the ld. D/R, though supported the order of the lower authorities but failed to controvert the fact that the case of the assessee is squarely covered by the decision of this Tribunal.

4. We have heard rival contentions and perused the material placed before us. We notice that the assessee society was established on 26/12/2011 and registered u/s 12AA of the Act from Assessment Year 2016-17 onwards with an object of providing relief to poor, medical relief etc. The assessee has filed a copy of the financial audited statement for FY 2018-19 to 2020-21. It has also filed financial report for FY 2019-20 depicting various charitable activities carried out during last many years.

4.1. The assessee applied for provisional registration on Form 10AC and was granted provisions registration on 28/05/2021 for the period 28/05/2021 to Assessment Year 2024-25. Subsequently, the assessee filed Form 10AB for final registration on 24/09/2022 enclosing all the relevant details including copy of registration certification and audit reports of three years. But, ld. CIT(E) summarily dismissed the application treating it as non-maintainable.

4.2. We, however, notice that this action of the ld. CIT(E) is not justified and for the same, we refer to rely on the decision of this Tribunal in the case of *Ramkrishna Mandal Institute of Education vs. CIT*

(Exemptions) (*supra*) wherein the Tribunal has dealt with the very same issue observing as under:-

“3. We have heard the rival contentions and gone through the record. The assessee-institution has been granted registration u/s 12AB(1)(a) of the Act for five years vide order dated 28.05.2021 which is valid from A.Y 2022-23 to A.Y 2026-27. As per the provisions of section 12A(1)(ac)(iii) of the Act, the assessee-institution is supposed to apply for final registration after grant of provisional registration u/s 12AB of the Act. The relevant part of the provisions of section 12A(1)(ac) of the Act is reproduced 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:-

[(ac) notwithstanding any 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, -

(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;

...and such trust or institution is registered under section 12AB.”

4. A perusal of the aforesaid provisions of section 12A(1)(ac)(iii) of the Act would reveal that where the trust or the institution was provisionally registered u/s 12AB of the act, the application for final registration can be made at least six months prior to the expiry of the period of provisional registration or within six months of the commencement of its activity, whichever is earlier, which means that the application for final registration has to be made at the earliest possible event i.e. either within six months of the commencement of the activities or at least six months prior to the expiry of the provisional registration. The aforesaid provision does not mean that there is any bar on the applicant to move an application before the period of six months from the expiry of the provisional registration. What has been provided is that the application must be made before the expiry of six months from the date of expiry of final registration. There is no bar in moving the application at the earliest possible event, rather, i.e. it is expected from the assessee-trust to do so. In view of this, the impugned order of the ld. CIT(Exemptions) is set aside and the matter is restored to the ld. CIT(Exemptions) to consider the application of the assessee for final registration and grant the same if the same is otherwise so admissible to the assessee.”

5. Respectfully following the above decision, we are inclined to hold that merely having a provisional registration does not put an embargo on the assessee to apply for the final registration and to wait till the effective date of provisional registration. The Act provides that the

application must be made before six months from date of expiry and, therefore, there is no bar in applying for final registration. We, therefore, set aside the impugned finding and restore the matter back to the Id. CIT(E) to admit the application on Form 10AB of final registration and grant the registration u/s 12AB of the Act, if it is otherwise admissible to the assessee.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 21st June, 2024 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 21/06/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata