

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

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष

Before

**SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 495/KOL/2024**

**Assessment Year: N.A.**

***Sister Nivedita Old Age Home.....Appellant***  
***[PAN: AAABS 1725 Q]***

***Vs.***

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

**Appearances:**

***Assessee represented by: P.K. Ray, AR and R.C. Halder, AR.***

***Department represented by: Abhijit Kundu, CIT DR.***

Date of concluding the hearing : May 30<sup>th</sup>, 2024

Date of pronouncing the order : July 9<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

In this case the appellant is aggrieved with the action of the Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as ld. 'CIT(Exemption)'] in passing an order u/s 12AB(1)(b)(iii) of the Income Tax Act, 1961 (in short the 'Act'), by rejecting the application of the appellant filed u/s 12A(1)(ac)(iii) of the Act on the ground that the application filed by the assessee was allegedly premature.

1.1. The brief facts of the case are that the appellant society was established on the basis of Memorandum of Association executed on 07.09.2000. Thereafter on the basis of an application u/s 12A(a) of the Act in Form-10A the ld. CIT (Exemption) registered the society with effect from 01.04.2014. As mentioned earlier the appellant's application for registration u/s 12A(1)(ac)(iii) of the Act was rejected on the ground of being allegedly premature.

1.2. The appellant has filed the present appeal and seeks relief as per the following grounds of appeal:

*"1) That the impugned Order of the Ld. Commissioner of Income Tax (Exemptions), Kolkata is arbitrary, illegal, contrary to the material on records and in excess of his jurisdiction while issuing the Order.*

*2) That the Rejection of Registration u/s 12AB:*

*The Ld. Commissioner of Income Tax (Exemptions), Kolkata erred in law and fact having not to grant the benefit of permanent Registration u/s 12AB of the Income Tax Act, 1961 of the Institution without any prejudice, merely quoting in the order that "the assessee is treated as nonmaintainable" under the Income Tax Act.*

*Although, the Appellant complied necessary Rule 17A of Income Tax Rules, 1962 for application along with requisition documents for application and also complied the section 12AB(1)(b)(i) time to time for registration under section 12A(1)(ac)(iii) of the Income Tax Act, 1961."*

2. Before us the ld. A/R placed on record a number of appellate orders in which, on identical facts, relief had been granted to the respective appellants.

2.1. The ld. D/R relied on the order of ld. CIT (Exemption).

3. We have considered the rival contentions of ld. A/R and ld. D/R and carefully gone through the documents and appellate orders placed before us. It is seen that in the case of *Mallarpur Naisuva vs. CIT (Exemptions)* in ITA Nos. 164 & 165/KOL/2024 dated 23.04.2024 on identical issues the following has been recorded as a finding:

*"3. We have heard the rival contentions and gone through the record. The assessee-trust has been granted registration u/s 12AB(1)(a) of the Act for five years vide order dated 31.05.2021 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(l)(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, -*

*(Hi) 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(l)(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, it is expected from the assessee-trust to do so. In view of this, the impugned order of the Id. CIT(Exemptions) is set aside and the matter is restored to the Id. 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.”*

3.1. Since the finding given in the Hon'ble ITAT's order (*supra*) is on identical facts to the present case, there can be no hesitation in holding that the impugned order of Id. CIT (Exemption) deserves to be set aside, with a direction to the Id. CIT (Exemption) to consider the application for final registration and grant the same if it is otherwise admissible to the assessee.

4. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open Court on 9<sup>th</sup> July, 2024.**

Sd/-

**[Sanjay Garg]**

Judicial Member

Dated: 09.07.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Sister Nivedita Old Age Home, Miya, Pathardih, Ajodhya, Ajodhya Hill B.O. Purulia, Purulia, West Bengal, 723152.**
2. **CIT (Exemption), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

Sd/-

**[Sanjay Awasthi]**

Accountant Member

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata