

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Shri Manish Borad, Accountant Member
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.1120/Kol/2024
Assessment Year: 2024-25**

Kharagpur Durga Welfare Association,
Traffic Golekholi, Kharagpur Sub-Division,
Paschim Medinipur,
[PAN: AABAK9722F]**Appellant**

vs.

CIT (Exemption), Kolkata,
10b, Middleton Row,
Kolkata – 700071 **Respondent**

Appearances by:

Assessee represented by : Soumitra Choudhury, Advocate
Department represented by : P.P. Barman, Addl. CIT, Sr. DR

Date of concluding the hearing : October 03, 2024

Date of pronouncing the order : October 15, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal is filed by the assessee challenging the order passed by the Ld. Commissioner of Income Tax (Exemption), [in short 'the Ld. CIT(E)], Kolkata, dated 09.02.2024 whereby the assessee's application for registration u/s 12A(1)(ac)(iii) of the Income Tax Act, 1961 (in short 'the Act') was rejected.

2. The Assessee has raised the following grounds of appeal:

"1. For that on the facts of the case, the order of the Ld. CIT (Exemptions), Kolkata u/s. 12A(1)(ac) (iii) of the Income Tax Act, 1961 dated 09.02.2024 refusing

provisional approval to register the charitable purpose in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities facts and circumstances of the case.

2. For that on the facts of the case, the order passed by the Ld. C.I.T.(E), Kolkata was not provided reasonable opportunity of being heard without examining and verifying the records, thus his action is completely arbitrary, unjustified and illegal.

3. For that Ld. Commissioner of Income Tax (Exemptions) was not justified in rejecting the fresh application dated 29.09.2023 of the Appellant filed for registration for final approval u/s. 12A(1)(ac) (iii) as per Notification of CBDT to consider the objectives of the society and whether activities of the Society are genuine, and the Provisional registration has already been approved by the authority vide order dated 07.04.2022, therefore, the Ld. CIT (Exemptions) went out of way and beyond the Circular of CBDT.

4. For that on the facts of the case, the Ld. CIT (Exemptions) is not justified in refusing to register the Society of the act, on the ground that

a) in absence of any reply or response from the applicant assessee, the matter is decided ex-parte.

b in the absence of verification of the financial transactions being true and correct, genuineness and nature of activities, it cannot be held that the society is eligible for registration u/s. 12A(1)(ac) (iii) of the LT. Act.

although they are self-evident and manifest and having regard to the genuineness of the objects and the activities of the Society the State Government itself in its wisdom enacted the provisions, the accounts are all audited and therefore, the finding of the Ld. CIT (Exemptions) is perverse and contrary to record in as much as the appellant has filed the balance sheet and relevant details before him at the time of application filed, to satisfy about the genuineness of the objects and the Ld. CIT (Exemptions) has overlooked the self-evident and facts that the appellant is relief of the poor people and religious as recognized by the act carrying on certain charitable activities and consequently, is entitled to registration of the act, notwithstanding there is no formal deed.

5. For that Ld. CIT (Exemption) rejected application of the appellant in a summary manner without considering the fact in a judicious manner. That in framing the proceeding the Provisional approval u/s. 12A(1)(ac) (vi) on Form 10AC issued on 07.04.2022 for the assessment years 2022-23 to 2024-25, as such the order of the Ld. CIT (Exemptions), Kolkata is completely arbitrary, unjustified and illegal.

6. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. At the outset, the Ld. AR submitted that there is a delay of 37 days in filing the appeal. The assessee has filed an application along with an affidavit explaining the reasons for the delay, duly sworn before an authorised officer. In the said affidavit, the assessee has set out the circumstances that caused the delay, primarily stating the reason that the Secretary of the Trust was suffering from illness which lead to inability to file the appeal within stipulated time. We after examining the facts stated in the application and affidavit, we are of the view that the assessee has provided a reasonable explanation for delay in filing the appeal. The reasons mentioned by assessee appear to be genuine and demonstrate that the delay was not due to any negligence or malafide intent but due of unavoidable circumstances. Keeping in mind, the principle of natural justice and in the interest of substantial justice, we are inclined to condone the delay of 37 days in filing the appeal. Accordingly, appeal is condoned and proceeded to decide the appeal on merits.

4. Brief facts of the case are that the assessee filed an application in Form No. 10AB or registration u/s 12A(1)(ac)(iii) of the Act seeking, recognition of the trust for charitable activities. The Ld. CIT(E) issued notice dated 27.12.2023 through the Income Tax Portal (ITBA) fixing the hearing on 03.01.2024. However, there was non-compliance from the assessee to the said notices. Second notice was issued on 11.01.2024, fixing date of hearing on 16.01.2024. Again, the assessee failed to respond or submit any relevant documents. Due to the assessee repeated failure to comply with the notices, the CIT(E) proceeded ex parte. In the ex-parte order, the Ld. CIT(E) rejected the application for registration u/s 12A(1)(ac)(iii) of the Act, stating that it is the duty of applicant to produce relevant documents for verification. In the absence of verification to the financial transactions, genuineness and natural activities could not be

established. Therefore, the trust was not eligible for registration and application of the assessee was rejected. At the time of hearing, the Ld. Counsel for the assessee submitted that the impugned order passed by the Ld. CIT(E) is arbitrary and against the principle of natural justice. It was argued that the Ld. CIT(E) failed to examine and verify the records and passed the order without considering the merits of the case. The Ld. Counsel further pointed out that the assessee did not receive the notice on time and was thus unable to comply. The assessee requested that the matter is remanded back to the Ld. CIT(E) after granting a reasonable opportunity of being heard to the assessee.

5. On the other hand, the Ld. DR opposed the assessee's prayer stating that the multiple opportunities were provided to the assessee to present its case to the assessee failed to do so. The Ld. DR argued that the Ld. CIT(E) had another choice but to pass the order based on the available records. It is evident that the Ld. CIT(E) issued consecutive notices to the assessee for submit to details necessary to verify the claim for registration u/s 12A(1)(ac)(iii) of the Act and despite this opportunities, assessee failed to appear or submit the requisite documents.

6. We note that the Ld. CIT(E) passed the impugned order passed exparte due to non-compliance by the assessee. It is also clear that the order does not discuss the merits of the case. There is no examination of the trust activities for financial details which are critical to determining allowability for registration u/s 12A(1)(ac)(iii) of the Act. In the interest of justice and to uphold the principle of natural justice, we believe that the assessee should be granted one final opportunities to present its case before the Ld. CIT(E). Accordingly, we deem it appropriate to remand the matter to the file of Ld. CIT(E) for fresh examination of the issue after providing reasonable opportunity of being heard to the assessee.

7. In the light of the above, we set aside the order passed by the Ld. CIT(E) and remand the matter for fresh adjudication. The assessee is directed to appear before the Ld. CIT(E) on the date fixed for hearing and all the relevant documents. The assessee fails to comply with the notices the Ld. CIT(E) shall be at liberty to decide the case on its merits. In terms of the above, appeal of the assessee is allowed for statistical purposes.

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

Kolkata, the 15th October, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 15.10.2024.
AK, PS

Copy of the order forwarded to:

- 1Kharagpur Durga Welfare Association
2. CIT (Exemption), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches