

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH: CHENNAI श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, ँखा सदस्य के समक्ष BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER		
आयकर अपील सं./ITA No.1665/Chny/2024		
ARREDS Trust 5, Kattalai Post, Krisnarayapuram, Karur-639 108. [PAN: AABTA-3865-G]	vs.	CIT(Exemption), Chennai. (प्रत्यर्थी/Respondent)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.G.Baskar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr. N.Balakrishnan, CIT
सुनवाईकीतारीख/Date of Hearing	:	06.11.2024
घोषणाकीतारीख /Date of Pronouncement	:	08.01.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee-Trust against the order of the Learned Commissioner of Income Tax (Exemption) (hereinafter in short "the Ld.CIT(E)"), Chennai, dated 17.05.2024 rejecting application filed online by the assessee on 08.11.2023 in Form 10AB u/s.12A(1)(ac)(iii) of the Income Tax Act, 1961 (hereinafter in short "Act") seeking registration u/s.12AB of the Act.

2. The assessee trust *inter-alia*, is established to promote education, and to aid and assist in establishment improvement, maintenance and running expansion of all educational institutions as well as to promote all manner of reconstruction activities through which victims of all types of natural calamities are rehabilitated etc. as well as to carry out



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charitable objects given in the trust deed. The assessee is stated to be carrying out services to the financial institution such as nationalized banks, NABARD etc. which the Ld. CIT(E) noted at para 4.1 (page 5 to 9 of the impugned order).

3. The assessee trust was formed on 05.01.2005 which trust deed was amended on 28.07.2005 and the CIT-1 had granted registration u/s.12AA of the Act on 31.08.2005 from AY 2005-06 onwards (*refer page 24 of paper book*). The Ld.AR brought to our notice that assessee thereafter amended its trust deed on 06.06.2019 (*refer page 39 to 41 of the paper book*) and pursuant thereto, applied for registration on 04.07.2019 u/s.12A(1)(ab) in Form 10A, which was rejected by the Ld.CIT(E) vide order dated 09.01.2020 (*refer page 55 & 56 of the paper book*), which decision was assailed before this Tribunal; and the Tribunal vide order dated 22.06.2022 was pleased to set aside the same back to the file of the Ld.CIT(E) (*refer page 75 to 78 of the paper book*); and thereafter, the assessee had filed 3rd trust deed amended deed on 25.10.2023 before him and thereafter, the Ld.CIT(E) by an order dated 08.11.2023 was pleased to grant registration u/s.12AA of the Act from the date of application filed by the assessee (*refer page 111 to 116 of the paper book*) dated 04.07.2019.[i.e. from AY 2020-21]



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4. Thereafter, the assessee immediately filed an application online on 08.11.2023 in Form 10AB u/s.12(1)(ac)(iii) of the Act seeking registration u/s.12AB of the Act which was rejected by Ld CIT(E) by passing the impugned order dated 17.05.2024 which has been assailed before us.

5. According to the Ld.AR, it can be noticed that the assessee-Trust was enjoying registration u/s.12AA of the Act from AY 2005-06 onwards and pursuant to amendment made in trust deed on 06.06.2019, it again applied for registration u/s.12A(1)(ab) of the Act which was granted on 08.11.2023 [*after the Tribunal order on 22.06.2022, wherein the Tribunal had set aside the first round rejection order passed by the Ld.CIT(E) on 09.01.2020 back to his file for deciding again the registration*]. According to the Ld.AR, the Ld.CIT(E) granted registration u/s.12AA of the Act from the date of application filed by the assessee on 04.07.2019 i.e., from AY 2020-21 onwards, which means the assessee was enjoying the registration u/s.12AA of the Act during the old regime, viz before the new regime came into force after Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 (hereinafter in short 'TOLA, 2020') w.e.f.01.04.2021. According to Ld AR, by virtue of TOLA, 2020, the assessee had to apply for re-registration under the Act since amendments were brought in the provisions relating to the eligibility/procedure of registration u/s.12A/12AA of the Act, sec.10(23C),



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sec.80G of the Act. And since in the present case, the assessee is concerned with the procedure to apply for re-registration brought in Sec.12A(1)(ac) and sec.12AB of the Act, the Ld AR drew our attention to the relevant provisions, which 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 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;



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(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),—

(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,



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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;

(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



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(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).]]

6. Thus, according to the Ld AR, the assessee being a Trust which was already enjoying registration u/s.12AA of the Act, [after TOLA 2020] as per the amended provisions (supra), it 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) 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



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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 30.06.2024 *applicable also for registration u/s.10(23C), and 80G(5) of the Act*].

7. However, the Ld AR pointed out that assessee-Trust while applying for registration on 08.11.2023 (well within the extended time) online in Form 10A inadvertently sought registration under sub-clause (iii) of Sec.12A(1)(ac) of the Act, [instead of sub-clause (i) of Sec.12A(1)(a) as discussed supra]. The Ld.CIT(E) acting upon ibid Form 10A u/s.12A(1)(ac)(iii), rejected the application filed by assessee for registration [instead of granting automatic registration five years, if it had applied under sub-clause (i) of sec.12A(1)(ac)]. In this regard, the Ld AR pointed out that the Ld.CIT(E) who passed the impugned order rejecting the registration, had interestingly granted registration u/s 12AA to the assessee by order dated 08.11.2023 from AY 2020-21 onwards. Therefore, according to Ld AR, the Ld CIT(E) has not applied his mind while passing the impugned order on 17.05.2024, when he has granted the same albeit u/s 12AA [old regime] by order dated 08.11.2023 with retrospective effect from date of application in year 2019. Therefore, on this score itself the impugned action is bad in law.



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8. And the Ld AR explained about the inadvertent mistake which happened while filling up online Form 10A on 08.11.2023, instead of clicking under sub clause (i), it inadvertently clicked sub-clause (iii) of sec.12A(1)(ac) of the Act; (i.e., renewal) and the Ld.CIT(E) rejected the application; whereas assessee being a Trust enjoying Sec.12AA of the Act from year 2005 and then again from AY 2020-21 onwards was qualified/eligible to apply under sub-clause (i) of Clause (ac) of sec.12A(1) of the Act and in such an 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 rejection of registration u/s.12AB of the Act by the impugned order. According to the Ld.AR, taking note 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 have 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 17.05.2024 (rejection of registration), the assessee is left without any registration u/s.12AB which would jeopardize/create insurmountable problems for assessee Charitable Trust in between the period [08.11.2023 to 17.05.2024]; And since, assessee had applied for registration well within the extended period of time



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allowed by the CBDT and taking note of the fact that the assessee is enjoying Sec.12AA registration from year 2005 and again from AY 2020-21 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.

9. 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, Ld.CIT(E) rejected the same assuming it to be applied by the Trust for renewal and there is no need to interfere with the same.

10. We have heard both the parties and perused the material available on record. The facts afore-stated being not disputed, is not repeated for sake of brevity. The assessee being an old Trust which enjoyed registration u/s.12AA of the Act, from year 2005 and thereafter from AY 2020-21 onwards [*granted by the Ld.CIT(E) dated 08.11.2023 with retrospective effect from date of application i.e. on 04.07.2019 i.e. AY 2020-21 onwards*]. Nevertheless, after the Parliament had passed TOLA 2020 w.e.f.01.04.2021, the assessee-Trust had to again apply for re-registration under sub-clause (i) of Clause (1) of Sec.12A of the Act, whereas, it inadvertently applied under sub-clause (iii) of this provision (*renewal, which is the second stage in the scheme of new regime*); and



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because of which, it was rejected as non-maintainable; and because of this impugned action, the assessee has lost its registration u/s.12AB of the Act from 17.05.2024 onwards and consequently, it will be denied exemption thereafter u/s.11 of the Act. In this case, the assessee by virtue of order of Ld.CIT(E) *albeit* dated 08.11.2023 was enjoying registration u/s.12AA of the Act after enquiry (*refer page 111 to 116 of the paper book*) **from AY 2020-21** onwards until it was rejected by Ld.CIT(E) vide the impugned order dated 17.05.2024, which action of Ld CIT(E) cannot be countenanced, being not in consonance with the new scheme of registration after TOLA-2020. The assessee-Trust being an old trust (before TOLA came into force) was legally entitled for registration u/s.12AB(1)(a) for five (5) years; and because of inadvertent mistake of filling up for renewal under sub-clause (iii) instead of sub clause (i), the assessee's right for re-registration u/s.12AB of the Act for AY 2022-23 onwards cannot be denied, which action would offend Article 14 of the Constitution of India, which guarantees *inter-alia* that equals to be treated equally and therefore, a different treatment cannot be given to assessee-Trust, which will tantamount to discrimination. Therefore, we are of the considered opinion that the inadvertent mistake of the assessee clicking online for fresh registration under clause (iii) of sec.12(1)(ac) needs to be intervened and rectified; therefore, the assessee's application for registration under sub-clause (iii) needs to be treated as if assessee



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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 (supra) by CBDT was for mitigating the hardships faced by assessee, we set aside the impugned order of the Ld.CIT(E) dated 17.05.2024 and restore the assessee's application for registration back to the file of the Ld.CIT(E) and direct him to process the application filed by assessee on 08-11-2023 in Form 10 as if filed u/s.12A(1)(ac)(i); and if necessary, 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 pass orders in the light of discussion (supra) and in accordance to law.

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

Order pronounced on 08th January, 2025.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 08th January, 2025.

DS



ITA No. 1665/Chny/2024
ARREDS Trust

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF