

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

Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

M.A. No.: 33/KOL/2024
In I.T.A. No.: 939/KOL/2023
Assessment Year: N.A.

CIT (Exemptions), Kolkata Applicant

Vs.

Ghosaldanga Adibasi Seva Sangha Respondent
At Ghosaldanga, P.O. Sattore,
Dist. Birbhum, West Bengal-731236.
(PAN: AAAAG2891A)

&

I.T.A. No.: 939/KOL/2023
Assessment Year: N.A.

Ghosaldanga Adibasi Seva Sangha Appellant

Vs.

CIT (Exemptions), Kolkata Respondent

Appearances:

Department represented by: Shri S. Datta, CIT DR.
Assessee represented by: Shri P.K. Ray, Advocate

Date of concluding the hearing : January 10th, 2025
Date of pronouncing the order : January 10th, 2025

ORDER

Per Rajesh Kumar, AM:

M.A. No.: 33/KOL/2024

The present Miscellaneous Application has been moved by the Revenue pleading that a mistake apparent on record has occurred in the order of the Tribunal dated 09.01.2024 passed in ITA No. 939/KOL/2023. The present appeal has also been moved by the assessee against the order of Ld. Commissioner of Income-tax (Exemption) dated 11.07.2023.

1.1. It has been pleaded in the present Miscellaneous Application that the assessee Trust was an existing charitable Trust u/s 12A of the Income Tax Act, 1961 (in short the 'Act') before 01.04.2021 and the assessee had applied for fresh registration u/s 12A(1)(ac)(i) of the Act and fresh registration was granted vide Form no. 10AC issued on 07.04.2022 which was valid up to AY 2026-27. However, the assessee again applied for registration u/s 12A(1)(ac)(iii) of the Act, which was rejected by the CIT (Exemptions), Kolkata observing that the registration of the assessee was valid till AY 2026-27 and there was no need to apply again. However, the assessee filed appeal before this Tribunal and the Tribunal set aside the order of ld. CIT (Exemption) and held that there was no bar in moving the application for final registration and restored the matter to ld. CIT (Exemption) to consider the application of the assessee for final registration. It has been pleaded that the registration granted to the assessee vide order dated 07.04.2022 was already a final registration and not a provisional registration. That the provisional registration has to be granted to new Trusts and not to those Trusts which were already registered before 01.04.2021. It has, therefore, been pleaded that a mistake apparent on record has occurred in the order of the Tribunal.

1.2. Ld. Counsel for the respondent has also agreed that the assessee had applied for final registration u/s 12A(1)(ac)(iii) of the Act under a mistaken belief that the earlier was a provisional registration and that the assessee was supposed to apply for final registration u/s 12A(1)(ac)(iii) of the Act.

2. We have considered the rival submission and gone through the record. We find from the record that in this case, the assessee was already registered u/s 12A of the Act as a charitable institution vide order dated 07.04.2022 of ld. CIT (Exemption). An amendment was brought into the relevant provisions, whereby, the institution which stood already registered u/s 12A of the Act on or before 01.04.2021, had to apply for fresh registration under the provisions of Section 12A(1)(ac)(i) of the Act. The assessee accordingly applied for registration u/s 12A(1)(ac)(i) of the Act the said application of the assessee was allowed on 07.04.2022. However, both the assessee as well as the ld. CIT (Exemption) have misconstrued the provisions and were of the view that the

said registration was a provisional registration and that the assessee was supposed to apply for final registration. A perusal of the certificate granted in Form no. 10AC by the ld. CIT (Exemption) dated 07.04.2022 reveals that ld. CIT (Exemption) mentioned in the title “Order for provisional registration” and even in column 9 of the said registration the ld. CIT (Exemption) has expressly mentioned that it was an order of provisional registration. The assessee/appellant under the circumstances applied for final registration u/s 12A(1)(ac)(iii) of the Act. Thereafter, ld. CIT (Exemption) also carried out certain enquiries and investigations and called upon the assessee to furnish certain replies and evidences, which were duly furnished by the assessee. Thereafter, ld. CIT (Exemption) vide a small and cryptic order rejected the application of the assessee stating therein that the earlier order in Form no. 10AC was still valid till AY 2026-27 and the application of the assessee was premature. Being aggrieved by the said order of the ld. CIT (Exemption), the assessee preferred appeal before us.

2.1. It is to be noted at this stage that in many other cases, wherein, the Trusts or institutions have been provisionally registered under Item ‘A’, sub-Clause (vi) of Section 12A(1)(ac) of the Act read with Section 12AB(1)(c) of the Act and such institutions had applied for final registration u/s 12A(1)(ac)(iii) of the Act read with Section 12AB(1)(b) of the Act, in such cases also, the ld. CIT (Exemption) has rejected the application for final registration alleging that the same was premature and this Tribunal in many cases has held that there was no bar to the applicant/assessee society to make an application for final registration even at the earliest possible event and it was not required to wait in the expiry of the provisional registration.

2.2. Since in this case also the ld. CIT (Exemption), in his order dated 11.07.2023, has mentioned that the registration granted to the assessee was provisional and further in the impugned order dated 11.07.2023 has rejected the application of the assessee for final/regular registration stating the same as to be premature, hence, under the circumstances, the assessee had come in appeal before us against the said rejection. This Tribunal under the

circumstances as narrated above, directed the Id. CIT (Exemption) to consider the application of the assessee for final registration.

2.3. However, Ld. CIT, DR pointed out that this issue has been resolved by the Board by issuance of a Circular bearing No. 11 of 2022 on 3rd June, 2022. The Board has clarified as under:-

“5. In view of the above, it is hereby clarified that,-

- (i) *the conditions contained in Form No. 10AC, issued between 01.04.2021 till the date of issuance of this Circular, shall be read as if the said conditions had been substituted with the conditions as provided in the Table 1 with effect from 1st April, 2022;*

Table 1

<i>Sl. No</i>	<i>Section Code</i>	<i>Section under which order is passed</i>	<i>Conditions</i>
<i>1</i>	<i>01</i>	<i>Clause (a) of sub-section (1) of section 12AB</i>	<i>As per Annexure A</i>
<i>2</i>	<i>02</i>	<i>Clause (c) of sub-section (1) of section 12AB</i>	<i>As per Annexure B</i>
<i>3</i>	<i>03 to 06</i>	<i>Clause (i) of second proviso to clause (23C) of section 10</i>	<i>As per Annexure C</i>
<i>4</i>	<i>07 to 10</i>	<i>Clause (iii) of second proviso to clause (23C) of section 10</i>	<i>As per Annexure D</i>
<i>5</i>	<i>11</i>	<i>Clause (i) of second proviso to sub-section (5) of section 80G</i>	<i>As per Annexure E</i>
<i>6</i>	<i>12</i>	<i>Clause (iii) of second proviso to sub-section (5) of section 80G</i>	<i>As per Annexure F</i>

(ii) where due to technical glitches, Form No. 10AC has been issued during FY 2021- 2022 with the heading “Order for provisional registration” or “ Order for provisional approval” instead of “Order for registration” or “ Order for approval”, then all such Form No. 10AC shall be considered as an “Order for

registration or approval” and, in such cases where Form No. 10AC has been issued, -

(a) under section code 01 (applications seeking re-registration),-
(i) in the heading and in rows 6, 7, 9 and 10 the words ,“ provisional registration” shall be read as “registration”;

(ii) in row 8 the word “ provisionally registered” shall be read as “registered”;

(b) under section codes 03, 04, 05, 06 or 11 (applications seeking re-approval),-

(i) in the heading and in rows 6, 7, 9 and 10 the words ,“ provisional approval” shall be read as “approval”;

(ii) in row 8 the word “provisionally approved” shall be read as “approved”;

(iii) row no 5 of Form No. 10AC (issued for all section codes) shall be read as “Unique Registration Number” instead of “Provisional Approval/ Approval Number” or “Provisional Registration/ Registration Number”, as the case maybe”.

He pointed out that under sub-clause (ii) of clause 5 of this Circular, it has been contemplated that where due to technical glitches, Form No. 10AC has been issued during FY 2021- 2022 with the heading “Order for provisional registration” or “ Order for provisional approval” instead of “Order for registration” or “ Order for approval”, then all such Form No. 10AC shall be considered as an “Order for registration or approval” and, in such cases where Form No. 10AC has been issued. Therefore, all registrations issued by CPC, Bengaluru under sub-clause (i) of section 12AC(1) would be construed as if granted for regular purposes.

2.4. Now, the Department has come with Miscellaneous Application stating therein that the observation of this Tribunal is based on incorrect assumption of facts and that the Tribunal has assumed that the assessee has been granted provisional registration whereas, the registration granted to the assessee earlier vide order dated 07.04.2022 was a regular/final registration. As noted above, the aforesaid observation of the Tribunal was on account of the aforesaid confusion created on account of incorrect mention in the relevant columns of Form 10AC stating the said order to be a provisional

order. However, the said confusion stood clarified by the CBDT under circular No. 11 of 12022 (supra), vide which it has been clarified that the provisional registration will be construed as regular registration u/s 12A(1)(ac)(i) read with Section 12AB(1)(a) of the Act. Therefore, there was no requirement of setting aside this matter to the file of the Id. CIT (Exemption). Therefore, under these circumstances, an inadvertent error apparent on record has occurred in the order of the Tribunal because of not bringing the aforesaid developments before this Tribunal. Therefore, the impugned order of the Tribunal dated 09.01.2024 passed in ITA No. 939/KOL/2023 is hereby recalled.

I.T.A. No.: 939/KOL/2023

3. In view of the above facts and circumstances of the case as narrated above while adjudicating M.A. No.: 33/KOL/2024, the present appeal of the assessee is not maintainable as the assessee has already been granted final/regular registration u/s 12A(1)(ac)(i) read with Section 12AB(1)(a) of the Act which is valid up to AY 2026-27. Therefore, there is no requirement of applying for final registration. The present appeal of the assessee, thus, is infructuous and not maintainable and the same is accordingly dismissed. However, it is made clear that the dismissal of the above appeal of the assessee will not in any manner affect the registration granted to the assessee vide order dated 07.04.2022 which is valid up to AY 2026-27.

4. In the result, the Miscellaneous Application filed by the Department is hereby allowed and the appeal of the assessee is dismissed.

Order pronounced in the open Court on 10th January, 2025.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated 10.01.2025

J.Dey (Sr. P.S.)

Copy of the order forwarded to:

1. **CIT(Exemptions), Kolkata.**
2. **Ghosaldanga Adibasi Seva Sangha**
3. CIT(DR), Kolkata Benches, Kolkata.
4. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata