

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.2250/Kol/2024**

**Shree Raghwendra Charitable Trust,**

Bajoria House S P Mukherjee Road,

Kalighat, Kolkata - 700026

[PAN: AADTS4476M]

..... **Appellant**

**vs.**

**CIT (Exemption), Kolkata,**

10B, Middleton Row,

Kolkata- 700071

..... **Respondent**

**Appearances by:**

Assessee represented by : Giridhar Dhelia, Advocate

Department represented by : P.N. Barnwal, CIT-DR

Date of concluding the hearing : 29.01.2025

Date of pronouncing the order : 05.02.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. The present appeal arises from order passed by the Ld. Commissioner of Income (Exemption), Kolkata [hereafter the Ld. CIT(E)] rejecting the assessee's application for registration under Section 12A(1)(ac)(iv) of the Income Tax Act, 1961 (hereafter 'the Act'). The order of Ld. CIT(E) may be extracted as under for reference:

*"The assessee has filed an application dated 16.03.2024 for registration under section 12A(1)(ac)(iv) of the Income Tax Act, 1961 in Form No. 10AB. This application was found to be prima-facie non-maintainable and accordingly vide letter dated 12.06.2024, certain clarifications were sought from the assessee.*

*In response, assessee has submitted various details along with supporting documents. However, it is observed from the submission that the assessee has filed application in wrong section. Accordingly, the application filed by the assessee is treated as non-maintainable and for statistical purpose the application filed by the assessee is treated as rejected. However, no adverse inference is drawn against the assessee."*

1.1 Aggrieved with this action of the Ld. CIT(E), the assessee has approached the ITAT through following grounds:

*“1) For that the Order passed by the Ld. CIT (Exemption), Kolkata under section 12A(1)(ac) (iv) of the Income Tax Act dated 25/09/2024 is bad in law as well as on facts and hence the same be quashed and/or set aside.*

*2) For that the Order passed by the Ld. CIT (Exemption), Kolkata rejecting the application for regularizing the provisional registration into normal registration on the technical ground that the appellant has filed the application in wrong section is bad in law because the appellant out of inadvertence had mentioned another Clause, the same was not an illegality but rather the same was a rectifiable mistake.*

*3) For that the Order passed by the Ld. CIT (Exemption), Kolkata failed to follow the order of Hon'ble ITAT having jurisdiction in the matter and hence the Order so passed to be quashed and/or set aside.*

*4) The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds on or before the date of hearing of the appeal.”*

2. Before us, the Ld. AR filed a paper book and also an order of Co-ordinate Bench of ITAT in the case of Nitdaa Foundation Vs. CIT(E), Kolkata, ITA No. 667/Kol/2024, order dated 20.08.2024. The Ld. AR argued that the assessee should not be penalised for simply mentioning a wrong section when filing an application, especially when there was no other reason for doing so except oversight. The Ld. AR relied on the case of Nitdaa Foundation (supra) in his support.

2.1 The Ld. Departmental Representative relied on the order of Ld. CIT(E).

3. We have carefully considered the order of Ld. CIT(E) and the documents before us and also the order of Co-ordinate Bench. Right at the outset, it needs to be mentioned that the assessee should not be penalised for merely mentioning a wrong section. The relevant portion from the order of Nitdaa Foundation (supra) deserves to be extracted:

*“12. Thus, the whole controversy arose due to incorrect mention of the clause under which the application was required to be filed, which was mentioned as clause (iv) of the first proviso to sub-section (5) of section 80G in column 6 of Form No. 10AC whereas the same should have been mentioned as clause (i) of the first proviso to sub-section (5) of section 80G and the Ld. AR also admitted this fact in the course of the hearing. Since, Form No. 10AC was filed in time, the error on the part of the assessee for mentioning the wrong clause is deemed to be a curable defect and the application on Form No. 10AC is deemed to be filed under clause (i) of the first proviso to sub-section*

*(5) of section 80G. The order of the Ld. CIT(Exemption) is hereby set aside and he is required to consider the application as filed under clause (i) of the first proviso to section 80G(5) of the Act and consider the same for grant of approval under section 80G(5) to the trust in accordance with law within a period of 2 months from the date of receipt of this order. The assessee shall file all necessary evidence before him.”*

3.1 Even though the discussion in the order of Nitdaa Foundation (supra) is on section 80G(5) of the Act but the principles contained therein are valid for the issue at hand also. Accordingly, it needs to be decided that this matter should be remanded to the file of Ld. CIT(E) for considering the application of the assessee on merits and thereby he may consider granting exemption as per law.

4 With these remarks, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the court on 05.02.2025

Sd/-  
**(Pradip Kumar Choubey)**  
**Judicial Member**

Sd/-  
**(Sanjay Awasthi)**  
**Accountant Member**

Dated: 05.02.2025  
AK, P.S.

*Copy of the order forwarded to:*

1. Shree Raghwendra Charitable Trust
2. CIT (Exemption), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches