

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2159/Mum./2021**

(Assessment Year : 2022-23 to 2026-27)

Tata Education and Development Trust  
Bombay House, Ground Floor  
24, Homi Mody Street, Mumbai 400 026  
PAN – AABTT5628C

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)  
Mumbai

.....Respondent

**ITA No.2160/Mum./2021**

(Assessment Year : 2022-23 to 2026-27)

The J.N. Tata Endowment for the  
Higher Education of Indians  
6<sup>th</sup> Floor, Cumballa Hill, MTNL Building  
Pedder Road, Mumbai 400 026  
PAN – AAATJ0085C

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)  
Mumbai

.....Respondent

**ITA No.2202/Mum./2021**

(Assessment Year : 2022-23 to 2026-27)

The J R D Tata Trust  
Bombay House, Ground Floor  
24, Homi Mody Street, Fort  
Mumbai 400 026 PAN – AAATT0165F

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)  
Mumbai

.....Respondent

**ITA No.2208/Mum./2021**  
(Assessment Year : 2022-23 to 2026-27)

The JRD and THELMA J Tata Trust  
Bombay House, Ground Floor  
24, Homi Mody Street, Fort  
Mumbai 400 026 PAN – AAATT9833G

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)  
Mumbai

.....Respondent

Assessee by : Shri Sukhsagar Syal  
Revenue by : Shri Harishankar Lal

Date of Hearing – 15/11/2022

Date of Order – 16/11/2022

**ORDER**

**PER BENCH**

The present batch of 4 appeals has been filed by the assessee trust challenging the separate impugned orders of even date 24/09/2021 passed by the learned Principal Commissioner of Income Tax / Commissioner of Income Tax granting registration under clause (i) of first proviso to section 80G(5) of the Income Tax Act, 1961 (*'the Act'*), for assessment years 2022-23 to 2026-27.

2. We find that all these appeals are delayed by 3-7 days. In all these appeals, the impugned order was received by the assessee on the very same date of passing the order. Thus, as per the provisions of section 253(3) of the Act, the assessee was required to file the appeal within 60 days from the date of receipt of the order. However, the appeals were filed after a delay of 3 – 7 days. We find that the Hon'ble Supreme Court, vide order dated 10/01/2022,

passed in M.A. no.21 of 2022, in M.A. no.665 of 2021, in Suo-Motu Writ Petition (Civil) no.3 of 2020, directed that the period from 15/03/2020 till 28/02/2022, shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi judicial proceedings. As the due date for filing the present appeals was falling within the aforesaid time-period, in view of the order passed by the Hon'ble Supreme Court, there is no delay in filing the present appeals and we proceed to decide the appeals on merits.

3. In all these appeals, the assessee trust has raised similar grounds of appeal. For reference, the grounds of appeal raised in ITA No. 2159/Mum./2021 are as under:

*"1. The Learned Principal Commissioner of Income-Tax (PCITY/ Commissioner of Income- Tax (CIT) grossly erred in issuing order granting registration under section 80G of the Income Tax Act, 1961 (ITA) dated 24.09.2021 which imposed conditions on the basis of which the registration was granted, even though there is no provision in the ITA which permits the PCIT to grant conditional registration.*

*2. The PCIT failed to appreciate that there is no provision in ITA which permits withdrawal/cancellation of section 80G certificate/order.*

*3. The PCIT grossly erred in holding that the order granting registration is liable to be withdrawn in the circumstances specified in the order.*

*4. The appellant craves leave to add to, alter, amend and/or delete in all the foregoing grounds of appeal."*

4. In all these appeals, the only grievance of the assessee trust is against the grant of registration under section 80G of the Act subject to certain conditions as mentioned in column No. 10 of the impugned order passed in Form No. 10 AC.

5. When these appeals came up for hearing, the learned Representatives appearing for the parties fairly agreed that the issue arising in the present appeals is covered by a recent decision of the Co-ordinate Bench of the Tribunal in Chamber of Indian Charitable Trusts vs PCIT, in ITA no. 2168 & 2169/Mum./2021, vide order dated 28/09/2022.

6. We find that the Co-ordinate Bench of the Tribunal in Chamber of Indian Charitable Trusts (supra) allowed the appeal filed by the assessee on similar issue, by observing as under:-.

*"38. Now we take up the appeal in ITA No. 2169/Mum/2021. It is noted that, the assessee trust had submitted an application u/s 80G of the Act and vide order dated 28th May, 2021 in Form No. 10AC, the Ld. CIT(E) granted the registration under clause (iii) of the second proviso to section 80G(5) of the Act. It is noted that the Ld. CIT(E) again imposed conditions while passing the impugned order. Being aggrieved by the Ld. CIT(E)'s action of stipulating several conditions while granting registration u/s 80G, the assessee is in appeal before us.*

*39. It was brought to our notice by the Ld. Sr Counsel appearing on behalf of the assessee that, clause (vi) of Section 80G of the Act provided that the Trust has to be approved by the PCIT or CIT. He thereafter invited our attention to the provisos the said Section which lays down the form and manner for the PCIT or CIT for granting of approval. Taking us through the same, the Ld. AR submitted that the Ld. PCIT / CIT were not conferred with any powers to impose conditions while granting provisional approval u/s 80G and therefore urged that these conditions be struck down. He pointed out that, similar to section 12AB, the second proviso to section 80G(5) only grants the Commissioner the power to grant registration. And no power to impose any conditions has been conferred on the Commissioner. For this, Shri Pardiwala invited our attention to clause (iii) of the second proviso, which reads as under-*

*"(iii) where the application is made under clause (iv) of the said proviso, pass an order in writing granting it approval provisionally 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 institution or fund"*

*40. For completeness, Shri Pardiwala further showed us that section 80G lays down six (6) conditions, the violation of which can lead to the cancellation of the approval. The said conditions are contained in the second proviso to section 80G(5) and read as under-*

*(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—*

*(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—*

*(A) the genuineness of activities of such institution or fund; and*

*(B) the fulfilment of all the conditions laid down in clauses (i) to (v);*

*(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—*

*(A) pass an order in writing granting it approval 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 approval after affording it a reasonable opportunity of being heard;*

41. Further, the conditions specified in clauses (i) to (v) read as under-

*"(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :*

*Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—*

*(a) the institution or fund maintains separate books of account in respect of such business; (b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and*

*(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;*

*(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;*

*(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;*

*(iv) the institution or fund maintains regular accounts of its receipts and expenditure;*

*(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 253 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any*

*University established by law, or is an institution financed wholly or in part by the Government or a local authority;”*

42. Referring to the above, Shri Pardiwala submitted that, in law, an approval under section 80G can only be cancelled if the activities of the Trust are not genuine or the conditions specified in clauses (i) to (v) above are violated. He pointed out that none of the conditions imposed in the impugned order are in conformity with the six (6) conditions mentioned in the second proviso to section 80G(5) of the Act.

43. It was submitted that Circular no. 11 of 2022 has also retrospectively modified the conditions imposed in all orders passed under section 80G of the Act between 1 st April, 2021 and 3 rd June, 2022. The said circular provides for the following (4) four conditions-

*"1. The registration granted under section 12AB or approval granted under clause (23C) of section 10 has not been cancelled by the Principal Commissioner or Commissioner for specified violations as mentioned in subsection (4) of section 12AB or under fifteenth proviso to clause (23C) of section 10.*

*2. The form for approval in Form No 10A has been duly filled in by providing all the information or documents and no false or incorrect information or documents have been provided.*

*3. The registration granted under section 12AB or approval granted under clause (23C) of section 10 has not been cancelled by the Principal Commissioner or Commissioner as authorised by the Board for non-compliance of conditions mentioned in rule 2C or rule 17A of the Incometax Rules, 1962.*

*4. Where the institution or fund is required to furnish application for approval under clause (ii) of first proviso to sub-section (5) of section 80G, the said institution or fund shall furnish such application within the time allowed under that clause.”*

44. Correlating the above conditions with the provisions of Section 80G, the Ld. Sr. counsel submitted that only the first condition mentioned in the aforesaid Circular is in accordance with section 80G of the Act. Therefore, without prejudice to any of the aforesaid submissions, even if the Commissioner can be said to have the power to impose conditions, then also it was only the first condition of the aforesaid Circular that could at the most be sustained and under any circumstances, the other conditions ought to be struck down. All other submissions made by the Ld. Sr. counsel on the correctness of the order passed under section 80G was *mutatis mutandis* to the submissions made in relation to the grounds raised in the appeal filed in ITA No.2168/Mum/2021 against the order u/s 12AB of the Act. Per contra, the Ld. CIT-DR was unable to point out any provision in the Act or Rule which could allow the Ld. PCIT/ CIT to prescribe/impose the conditions other than what is stipulated in statute while granting approval u/s 80G of the Act.

45. Therefore, following our conclusions drawn while adjudicating the appeal in ITA No.2168/Mum/2021 holding that the Ld. CIT(E) did not enjoy the power to prescribe/impose any conditions on his own (other than what is stipulated in law) while granting the registration u/s 12AB of the Act (*supra*), we similarly hold that the Ld. CIT(E) lacked jurisdiction to impose any conditions on his

*(other than what is stipulated in law) while granting the approval u/s 80G of the Act as well. Accordingly, this appeal also stands allowed. Needless to say, any violations of the conditions prescribed by the statute, will have consequence as sanctioned by law and our observation set out in Para 37 above shall apply with equal force in the context of this registration accorded by the Ld. CIT(E) u/s 80G of the Act as well."*

7. As similar issue is arising in the present batch of appeals, we see no reason to deviate from the view so taken by the Co-ordinate Bench in the aforesaid decision. Accordingly, respectfully following the aforesaid decision, grounds raised by the assessee trust in the present batch of appeals are allowed. We may however clarify that our findings in the present batch of appeals will not and cannot have any consequence, in case, any of the present assessees at any time is found to be at fault for violation of any condition specified under the Act, in which case the Revenue can take appropriate action as per law.

8. In the result, the present batch of appeals before us are allowed.  
Order pronounced in the open Court on 16/11/2022

**Sd/-**  
**AMARJIT SINGH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 16/11/2022**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai