

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 504/JP/2023

Go Gram Eco Foundation Plot No. 730 Kirat Singh Ka Baas Tehsil, Chomu, Govindgarh S.O. (Jaipur), Govindgarh, Jaipur.	बनाम Vs.	Commissioner of Income-tax (Exemption), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJCG 3330 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (F.C.A.)
राजस्व की ओर से / Revenue by : Sh. Ajay Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 04/10/2023
उदघोषणा की तारीख / Date of Pronouncement : 28 /11/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Commissioner of Income Tax (Exemption), Jaipur dated 29/06/2023 [here in after referred (Id. CIT(E)].

2. The assessee has marched this appeal on the following grounds:-

"1. The Ld. Commissioner of Income-tax (Exemption) erred in rejecting the application filed by the appellant for approval under Section 80G(5) of the Act as 'non-maintainable.

2. The Ld. Commissioner of Income-tax (Exemption) erred in denying the approval under Section 80G of the Act on the ground that there was a delay on the part of the appellant in filing the application in Form 10AB. The Ld. Commissioner of Income-tax (Exemption) failed to appreciate that:

i. The Appellant was granted registration under Section 12A of the Act and approval under Section 80G of the Act is a natural corollary;

ii. The delay was unintentional and due to genuine difficulties faced by the appellant and ought to have been condoned;

iii. Procedural defect should not be allowed to defeat the substantive cause of justice.

3. The Appellant craves leave to add to, amend or delete the above grounds of appeal.”

3. The fact as culled out from the records is that the applicant filed application on 16.12.2022 in Form No. 10AB for seeking approval u/s 80G (5)(iii) of the Income Tax Act, 1961. The applicant was issued a letter/notice No. ITBA/EXM/F/EXM43/2022-23/1051869216(1) dated 05-04-2023 requesting it to furnish certain documents/explanations by 20-04-2023, In response to the above the AR of the assessee submitted its reply which is not found tenable. Therefore, a show cause letter vide DIN No. ITBA/EXM/F/EXM43/2023-24/1053624660(1) dated 08-06-2023 as final opportunity through which date of hearing was fixed as 12.06.2023, which was duly examined place on record reply was tenable. Since it is a limitation matter, the case decided on the

basis of material placed on record and application of the applicant in Form 10AB for approval u/s 80G was rejected by the Id. CIT(E) by observing as under :

" 2.4 The applicant was provided with another opportunity to clarify the delay of more than six months in filing of Form 10AB vide this office letter dated 19.06.2023, the relevant excerpts from the same are reproduced as under:

"On perusal of the documents furnished, it is seen that the application in form 10AB has been filed on 15.12.2022 whereas the activities are well commenced on 22.03.2015 (as submitted by you in your submission). Furnish an explanation as to why this delay of more than six months should not be considered as violation of section 80G (5)(iii) according to which application under section 80G 5(iii) is to be filed within six months of commencement of activities or six months before expiry of the provisional registration, whichever is earlier."

In response of the notice the A/r of the applicant submitted its reply which is not found tenable. Thus, it is an admitted fact that the applicant had commenced its activities on 22-03-2015 and the present application filed in Form No.10AB clause (iii) of first proviso to sub-section (5) of sec. 80G of the Act has not been filed within the time limit prescribed therein and therefore the same is liable to be rejected as such as non-maintainable. Reliance is also placed on the decision of the Hon'ble Kolkata Tribunal in the case of Bishnupur Public Education Institute, reported in 139 taxmann.com 121, wherein the Hon'ble Tribunal while adjudicating the issue of similar provisions of due date u/s 10(23C) of the Act, after placing reliance on various decisions of the Hon'ble Supreme Court and that of Hon'ble High Court has held as under.

"5. The Hon'ble Madras High Court in the case of All Angels Educational Society (supra) while considering the issue whether the Id. CIT (Exemption) has power to condone the delay in filing application for grant of approval under section 10(23C) or not, has considered the judgments of Hon'ble Supreme Court in the case of State of U.P v. Harish Chandra AIR 1996 SC 2173 as well as Union of India v. Kirloskar Pneumatic Co. Ltd. 1996 taxmann.com 575 (SC) and held that where there is no provision to empower the statutory authority to condone the delay, than the authority cannot condoned. The finding of the Hon'ble Court in Paragraphs no. 15 & 16 worth to note, which read as under:-

*15. However, considering the legal position that there is no power to condone the delay in filing an application under section 10(23C) of the Act, this Court is not inclined to exercise its extraordinary jurisdiction to condone the delay. However, this Court is inclined to give appropriate direction to the respondent to consider the petitioner's application as an application for the subsequent assessment year, namely, 2013-2014 in accordance with law. Such direction is issued considering the peculiar facts and circumstances of the case and that the petitioner could not have made an application for the subsequent assessment year 2013-2014, since their application for assessment year 2012-2013 was still pending consideration and the impugned order came to be passed only on 13-11-2013. The respondent is at liberty to consider the amended objectives of the petitioner Trust.

16. Accordingly, the writ petition is partly allowed and the finding rendered by the respondent that the petitioner's application cannot be considered as the same is time barred is affirmed and the finding with regard to objectives of the Society by respondent holding that the Society cannot be said to be solely for education purpose is set aside. Consequently, the matter is remanded back to the respondent for fresh consideration and the petitioner's application is directed to be considered for the assessment year 2013-2014 in accordance with law and while doing so, may consider the amendments made to the objectives of the petitioner Trust. No Costs. M.P. No. 1 of 2014 is closed".

6. Similar is the view of Hon'ble Andhra Pradesh High Court propounded in Aurora Educational Society case (supra). The Hon'ble Orissa High Court has also considered this aspect in the case of Roland Educational & Charitable Trust (supra). The concluding paragraph of the judgment is worth to note in this aspect, which read as under:-

"Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in presenting the application under section 10(23C) (vi), the Chief Commissioner of Income-tax can exercise any such power".

"7. The adjudicating authorities under the Income-tax Act are quasi judicial authorities. They can grant approval with retrospective effect if such mechanism is provided in the Act. There is no such provision nor there is any power to condone the delay after considering the reasonable reasons. A reasonable cause can be taken into cognizance for condoning the delay, if such provision is provided in the Act while considering any issue for adjudication. Therefore, considering the above proposition, we are of the view that Id. CIT(Exemption) has rightly rejected the application of the assessee for grant of approval

under section 10(23C)(vi) of the Income –tax Act. All these three appeals are rejected.

8. In the result, all the appeals of the assessee are dismissed.”

2.5 Hence, the present application filed in Form No. 10AB under clause (iii) of first proviso to sub-section (5) of sec. 80G the Act is liable to be rejected as non maintainable.

03. In view of above discussion assessee’s claim of exemption u/s 80G is liable to be rejected and thus being rejected.”

4. Feeling dissatisfied with the above finding of the Id. CIT(E) the assessee has preferred this appeal on the grounds as reiterated here in above para 2. To support the various grounds so raised the Id. AR appearing on behalf of the assessee has filed his written submission and the same is reiterated here in below;

1. The assessee is incorporated u/s 8 of the Companies Act, 2013 on 13.10.2021 (PB 25) with the main object to provide, facilitate and channelise all and every kind of assistance to organizations which are working in the field of protection of cows and its progeny (PB 13).
2. The assessee filed an application for provisional registration on 16.10.2021 in Form No.10A u/s 12A(1)(ac)(vi) and under clause (iv) of first proviso to section 80G(5). It was granted provisional registration in Form No.10AC on 27.10.2021 (PB 45) from 27.10.2021 to AY 2024-25.
3. The assessee commenced its activities from 13.10.2021, i.e. from the date of its incorporation. Therefore, it filed an application in Form No.10AB both u/s 12A(1)(ac)(iii) (PB 47-55) and under clause (iii) of first proviso to section 80G(5) (copy enclosed) on 16.12.2022 for permanent registration.
4. The Ld. CIT(E) granted permanent registration in Form No.10AD u/s 12A(1)(ac)(iii) vide order dt. 29.06.2023 (PB 1-4) but refused the registration u/s 80G(5) by giving the following reasons:-

- (i) The application in Form No.10AB under clause (iii) of first proviso to sub-section 80G(5) is required to be filed at least 6 months prior to the expiry of provisional approval or within 6 months of commencement of its activities, whichever is earlier.
- (ii) The assessee commenced the activities on 13.10.2021 (in the order date is wrongly mentioned as 22.03.2015) and thus the application was required to be filed by 13.04.2022 which got extended till 30.09.2022 as per CBDT Circular No.8/2022 dt. 31.03.2022.
- (iii) The assessee filed application for grant of permanent registration on 16.12.2022 which is after the extended due date. No power is given under the Act to CIT(E) to condone the delay and therefore the application filed by the assessee is rejected as non-maintainable for which reliance is placed on the decision of Hon'ble Kolkata ITAT in case of Bishnupur Public Education Institute 139 Taxman.com 121.

Submission:-

1. Section 80G allows deduction to an assessee in computing his total income in respect of donation paid to any fund or institution. However, under sub-section 5, the deduction is allowable only if such fund or institution is established in India for charitable purpose and it fulfills the following conditions:-
 - (i) The income of the fund or institution is exempt u/s 11 & 12.
 - (ii) No part of income or asset of the fund or institution is used for any purpose other than a charitable purpose.
 - (iii) The fund or institution is not for the benefit of any particular religious community or caste.
 - (iv) It maintains regular accounts of its receipt & expenditure.
 - (v) It is constituted as a public charitable trust or registered under Societies Registration Act, 1860 or u/s 8 of Companies Act, 2013
 - (vi) It is approved by the Commissioner.
 - (vii) It prepares & delivers the statement of donation to the prescribed authorities.
 - (viii) It furnishes to the donor a certificate specifying the amount of donation received.

The assessee has satisfied all the conditions mentioned above. It is provisionally approved under clause (vi) of section 80G(5). However, clause (iii) of the proviso to section 80G(5) provides that where the

institution or fund has been provisionally approved, it shall make an application for permanent registration within 6 months of commencement of its activities.

2. In the present case there is a delay of about 2.5 months from the extended date of filing the application for obtaining the permanent registration u/s 80G(5)(vi). The question therefore arises is that if there is a delay, the application itself would be rejected or registration would stand cancelled and whether the Ld. CIT(E) has power to still accept the application and grant permanent registration.
3. It is submitted that condition of section 80G(5)(vi) is that institution or fund is for the time being approved by the PCIT or CIT. There is no dispute as to the fact that assessee is provisionally registered till AY 2024-25 vide order dt. 27.10.2021 (PB 45-46). Thus it has complied with section 80G(5). The proviso to this section only deals with the procedure as to the filing of the application. The law of procedure has to be approached, understood and appreciated as a helpmate in the course of the process of administration of justice. Procedural provision should be so construed as to sub serve the course of justice and not to hinder it. It is a settled proposition of law that technicalities should not come in way in imparting the substantial justice. Hon'ble Supreme Court in case of S. Nagaraj & Others Vs. State Of Karnataka & Another 4 SCC 595 in para 18 of the order has held as under:-

“18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order.”

In view of above, only because there is some delay in moving application for permanent registration u/s 80G(5) when the provisional registration is in force, cannot be a reason to reject the application only on the ground that CIT(E) has no power given in the Statute to condone the delay ignoring that an authority who has the power to grant has inherent power to condone the delay also unless such power is specifically denied as is in second and third proviso to section 254(2A) of the Act. Hence the Ld. CIT(E) be directed to grant permanent registration on the basis of application filed on 16.12.2022.

4. The Ld. CIT(E) has relied on the decision of ITAT, Kolkata Bench. This decision is with reference to exemption u/s 10(23C)(vi) where it was held that CIT(E) does not have any power to condone the delay in granting approval for earlier years. This decision is on section 10(23C)(vi) and thus not applicable. Even the principal laid down in this decision and the High Court decision referred therein is that even if application is filed late, the approval should be granted from the AY relevant to the PY in which the application is filed. Therefore, the permanent registration ought to have been granted to the assessee at least from the date when the application is filed instead of rejecting the application in toto.
5. It is submitted that Hon'ble Supreme Court in case of CIT Vs. Lok Sewa Sansthan Samiti 105 Taxmann.com 203 (copy enclosed) has dismissed the SLP filed by the revenue against the decision of Hon'ble Allahabad High Court where it was held that where the assessee stands registered as a charitable institution u/s 12A of the Act, the natural corollary is that its application under section 80G(5) of the Act also becomes liable to be allowed. In the present case also when the assessee has been granted permanent registration u/s 12A(1)(ac)(iii) on 29.06.2023 in pursuance to the application filed on 16.12.2022, the permanent registration u/s 80G(5) should also be allowed in pursuance to the application filed on same date.
6. Without prejudice to above, it is submitted that clause (iv) of the proviso to section 80G(5) has been substituted by FA, 2023 w.e.f. 01.10.2023 to provide that application can be made at any time after the commencement of the activities where the activities of the institution or funds have commenced and no income or part thereof has been excluded from the total income u/s 11 or 12 for any PY ending on or before the date of such application. In the present case also, when the assessee is given permanent registration u/s 12A of the Act, the application moved u/s 80G(5) after the commencement of the activities should be allowed since

the amended section is to remove the genuine hardship to the assessee and therefore it has a retrospective application as held by Hon'ble Supreme Court in case of CIT Vs. Vatika Township Private Limited (2014) 367 ITR 466 where at Para 32 & 33 it is held that legislations which modify accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect. However, if legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant it to be given a retrospective effect.

7. It is further submitted that the benefit of section 80G is to the donors provided the fund or institution is approved u/s 80G(5). If the registration is not granted to the assessee for the sole reason of delay in filing the application, it would adversely affect the donors who have given the donation. Therefore also, the registration to the assessee should not be refused only because of small delay in filing the application.

In view of above, Ld. CIT(E) be directed to grant registration u/s 80G(5) of the Act in pursuance to the application filed on 16.12.2022.”

4.1 The Id. AR of the assessee in addition to the submission so filed submitted a paper book containing the following evidence in support of the written submission:

S. No.	Particulars	Pg No.
1.	Copy of order in Form 10AD dated 29.06.2023 approving the assessee's registration u/s 12A of the Act	1-4
2.	Copy of Articles of Association and Memorandum of Association	5-24
3.	Copy of Certificate of Incorporation issued by Ministry of Corporate Affairs	25
4.	Copy of license u/s 8 issued by Registrar of Companies	26
5.	Copy of audited financial statements for FY 2021-22	27-42
6.	Copy of acknowledgment of return filed for AY 2022-23	43
7.	Copy of computation of income for AY 2022-23	44

8.	Copy of provisional registration u/s 80G(5) of the Act in Form 10AC dated 27.10.2021	45
9.	Copy of application for registration in Form 10A13 filed on 16.12.2022	47-55
10.	Copy of notice dated 05.04.2023 issued by the CII(Exemptions), Jaipur u/s 80G of the Act	56-61
11.	Copy of reply dated 01.05.2023 and 13.05.2023 filed by the assessee in response to the notice dated 05.04.2023 along with the details of charitable activity carried out by the assessee	62-75 76-78
12.	Copy of notice dated 08.06.2023 issued by the CIT(Exemptions), Jaipur u/s 80G of the Act	
13.	Copy of reply dated 19.06.2023 and 29.06.2023 filed by the assessee in response to the notice dated 08.06.2023	79-89

4.2 The Id. AR of the assessee submitted that delay in making the application is only for 2.5 months from the extended date of filling the application for obtaining the permanent registration u/s. 80G(5)(vi). There is no dispute as to the fact that assessee is provisionally registered till AY 2024-25 vide order dated 27.10.2021 and mere technicality should not come in way in imparting the substantial justice. The reliance made by the Id. CIT(E) on Kolkotta bench of ITAT but has not appreciated that the fact of that case is for exemption u/s. 10(23C)(vi) and whereas the case of the assessee is granting the permanent registration and atleast if the application is delayed then in that case the same should have been granted from the date of making the application.

5. Per contra, the Id. DR representing the revenue categorically submitted that the assessee was given sufficient time but assessee miserably failed to substantiate the delay in making the application for recognition. Therefore, he supported the order of the Id. CIT(E) and submitted that the application for registration has rightly been rejected and he also relied on the judgement cited by the Id. CIT(E).

6. We have heard the rival contentions and perused the material placed on record. The brief facts of the case is that the assessee is incorporated u/s 8 of the Companies Act, 2013 on 13.10.2021 with the main object to provide, facilitate and channelise all and every kind of assistance to organizations which are working in the field of protection of cows and its progeny. The assessee filed an application for provisional registration on 16.10.2021 in Form No.10A u/s 12A(1)(ac)(vi) and under clause (iv) of first proviso to section 80G(5). It was granted provisional registration in Form No.10AC on 27.10.2021 from 27.10.2021 to A.Y. 2024-25. The assessee commenced its activities from 13.10.2021, i.e. from the date of its incorporation. Therefore, it filed an application in Form No.10AB both u/s 12A(1)(ac)(iii) (PB 47-55)

and under clause (iii) of first proviso to section 80G(5) on 16.12.2022 for permanent registration. The Ld. CIT(E) granted permanent registration in Form No.10AD u/s 12A(1)(ac)(iii) vide order dated 29.06.2023 but refused the registration u/s 80G(5) by giving the following reasons:-

(i) The application in Form No.10AB under clause (iii) of first proviso to sub-section 80G(5) is required to be filed at least 6 months prior to the expiry of provisional approval or within 6 months of commencement of its activities, whichever is earlier.

(ii) The assessee commenced the activities on 13.10.2021 (in the order date is wrongly mentioned as 22.03.2015) and thus the application was required to be filed by 13.04.2022 which got extended till 30.09.2022 as per CBDT Circular No.8/2022 dated 31.03.2022.

(iii) The assessee filed application for grant of permanent registration on 16.12.2022 which is after the extended due date. No power is given under the Act to CIT(E) to condone the delay and therefore the application filed by the assessee is rejected as

non-maintainable for which reliance is placed on the decision of Hon'ble Kolkata ITAT in case of Bishnupur Public Education Institute 139 Taxman.com 121.

6.1 The Bench noted that section 80G allows deduction to an assessee in computing his total income in respect of donation paid to any fund or institution. However, under sub-section 5, the deduction is allowable only if such fund or institution is established in India for charitable purpose and it fulfills the following conditions:-

- (i) The income of the fund or institution is exempt u/s 11 & 12.
- (ii) No part of income or asset of the fund or institution is used for any purpose other than a charitable purpose.
- (iii) The fund or institution is not for the benefit of any particular religious community or caste.
- (iv) It maintains regular accounts of its receipt & expenditure.
- (v) It is constituted as a public charitable trust or registered under Societies Registration Act, 1860 or u/s 8 of Companies Act, 2013
- (vi) It is approved by the Commissioner.
- (vii) It prepares & delivers the statement of donation to the prescribed authorities.

- (viii) It furnishes to the donor a certificate specifying the amount of donation received.

The assessee has satisfied all the conditions mentioned above. It is provisionally approved under clause (vi) of section 80G(5). However, clause (iii) of the proviso to section 80G(5) provides that where the institution or fund has been provisionally approved, it shall make an application for permanent registration within 6 months of commencement of its activities. In the present case there is a delay of about 2.5 months from the extended date of filing the application for obtaining the permanent registration u/s 80G(5)(vi). The question therefore arises is that if there is a delay, the application itself would be rejected or registration would stand cancelled and whether the Ld. CIT(E) has power to still accept the application and grant permanent registration. There is no dispute as to the fact that assessee is provisionally registered till A.Y. 2024-25 vide order dated 27.10.2021. Thus it has complied with section 80G(5). The proviso to this section only deals with the procedure as to the filing of the application. The law of procedure has to be approached, understood and appreciated as a helpmate in the course of the process of administration of justice. Procedural

provision should be so construed as to sub serve the course of justice and not to hinder it. It is a settled proposition of law that technicalities should not come in way in imparting the substantial justice. We get support of our this view from the decision of Hon'ble Supreme Court in case of S. Nagaraj & Others Vs. State Of Karnataka & Another 4 SCC 595.

6.2 The Ld. CIT(E) has relied on the decision of ITAT, Kolkata Bench. This decision is with reference to exemption u/s 10(23C)(vi) where it was held that CIT(E) does not have any power to condone the delay in granting approval for earlier years. This decision is on section 10(23C)(vi) and thus not applicable. Even the principle laid down in this decision and the High Court decision referred therein is that even if application is filed late, the approval should be granted from the AY relevant to the PY in which the application is filed. Therefore, permanent registration ought to have been granted to the assessee at least from the date when the application is filed instead of rejecting the application in toto. In the light of the above discussion, we are of the considered view that though the assessee has filed the application of 2.5 months delay and the provisions registration was not cancelled merely for permanent registration the application filed delayed. The assessee

has all the reasons for recognition u/s 80G of the Act at least from the date the assessee filed an application and therefore, in the light of this facts and circumstances of the case we direct the Id. CIT(A) to decide the issue of registration u/s 80G of the Act in accordance with law from the date on which the assessee made an application for permanent registration. In the light of this facts and circumstances of the case the assessee of the assessee is allowed for statistical purpose.

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

Order pronounced in the open Court on 28/10/2023.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/10/2023

*Ganesh Kr, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Go Gram Eco Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- Commissioner of Income Tax (Exemption), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 504/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar