

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**आ.अ.सं./ITA No.619/SRT/2023** (AY 2023-24)

(Hybrid hearing)

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| Navsari Surat Aththavisi Modh Chaturvedi Brahmin Ghyati Samast,<br>1, Modh Brahmin Wadi, Opp. Municipal Office Dudhiya Talav, Navsari-396445<br><b>PAN No. AAATN 1884 H</b> | Vs | Commissioner of Income Tax (Exemption)<br>Ahmedabad-380015 |
| <b>अपीलार्थी</b> /Appellant   |    | <b>प्रत्यर्थी</b> /Respondent                              |

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| निर्धारिती की ओर से /Assessee by        | Shri Sujesh C Suratwala, CA |
| राजस्व की ओर से /Revenue by             | Shri Ashish Pophare, CIT-DR |
| अपील पंजीकरण/Appeal instituted on       | 11.09.2023                  |
| सुनवाई की तारीख/Date of hearing         | 20.11.2023                  |
| उद्घोषणा की तारीख/Date of pronouncement | 29.11.2023                  |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Commissioner of Income Tax (Exemption), Ahmedabad [for short to as "Ld. CIT(E)"] dated 24.07.2023, wherein the application of assessee for approval of its fund under section 80G(5)(iii) of the Income Tax Act, 1961 ('the Act'), was rejected. The assessee has raised following grounds of appeal:

*"1. Learned CIT(E), Ahmedabad erred in rejecting the final approval u/s 80G(5) of the assessee trust by wrongly interpreted Circular No.6/2023 dated 24.05.2023. As a matter of fact, as per para 5(i) of Circular No.6/2023 dated 24.05.2023 the due date for filing form No.10A for getting approval u/s 80G(5)(iv) has been extended till 30.09.2023.*

*2. Based on application filed by the assessee trust in Form No.10AB dated 24.01.2023 for availing provisional registration in to final approval learned CIT(E), Ahmedabad erred in rejecting the final approval and passed the rejection order in Form No.10AD citing the reason of "delay*

*in filling Form No.10AB which he believes till 30.09.2022 as per Circular No.06/2023 dated 24.05.2023”, as provision laid down by CBDT for registration/s 12AB of the Act the Trust or Institution has to first apply in Form No.10A and the same has been approved by the appropriate authority inform No.10AC. the provisional approval in Form No.10AC is for the period of 5 years / 3 years as the case may be. Thereafter, Trust or Institution has to convert of provisional registration into regular registration by way of Filing Form No.10AB at least 6 months prior to expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier. In the present case, assessee trust has duly approved in Form NO.10AC on 19.01.2023 and subsequently filed Form 10AB on 24.01.2023 which was well within the prescribe time limit hence, there is no delay at all on the part of assessee trust for filing Form No. 10AB hence order passed in Form 10AB is become null and void.*

*3. After getting approval in Form No.10AC for the period from 19.01.2023 to A.Y 2025-26 u/s 80G(5)(iv) the trust is established and carrying its activities since 18/06/1984 upto receiving the provisional registration in Form No.10AC for the period of 19.01.2023 to A.Y. 2025-26 assessee trust has immediately applied in Form No.10AB for final registration which was required to be applied at least 6 months prior to expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier hence, there was no delay on the part of assessee trust as they have applied within 6 days only as their activities were already undertaken since long.*

*4.The appellant craved leave to add, alter, delete, amend or rescind any of the above grounds of appeal s and when necessary with the permission of Income Tax Appellate Tribunal, Surat.”*

2. Brief facts of the case are that assessee is a trust registered with Office of the Assistant Charity Commissioner, Navsari vide registration No. A/458/Navsari dated 18.06.1984. The assessee-trust was also having registration under section 12A vide registration No.110/274/N/85. After changes in the provision of under Section 12A with effect from 01.04.2021, where the trust or institution which were registered under section 12A or 12AA was required to obtain fresh registration under section 12AB of the Act as per scheme provided by Finance Act, 2020.

The assessee, accordingly obtained registration under section 12AB for a period of five years from assessment year 2022-23 to 2026-27 vide document identification number (DIN) PAN AAATN1884H1984101 dated 24.09.2021. The assessee after obtaining registration under section 12AB, filed application for approval under clause (iii) of first proviso to sub-section-(5) of Section 80G in Form No.10AB. On obtaining provisional approval under section 80G(5) vide approval dated 19.01.2023, the assessee filed application under Form-10AD for seeking approval final approval, vide application dated 24.01.2023. On filing such application, the assessee was issued show cause notice dated 05.07.2023 and was asked to explain as to why its application filed under section 80G(5)(iii) in Form 10AB should not be treated as not filed within due date as specified in the Act and not rejected as “not maintainable”. It was also mentioned in the show cause notice that assessee commenced its activities from 18.06.1984, thus, apparently assessee has not filed application under section 80G(ii) in Form 10AB within due date. The assessee filed its reply on 15.07.2023. In the reply, the assessee stated that their trust is very old and small one and engaged in charitable activities in surrounding area from last so many years. The assessee for the first time has made application for provisional approval under section 80G, which was granted on 19.01.2023 for three years from 19.01.2023 to assessment year 2025-26, copy of which was annexed. The assessee on receipt of provisional approval filed application in Form No.10AB for final approval on

24.01.2023 *i.e.*, within week of provisional approval. The assessee never obtained approval of their fund, though their activities commenced in the year 1984. The assessee also referred and relied upon the Central Board of Direct Tax (CBDT) Circular No.6/2023 dated 24.05.2023 and by referring para-7 thereof, the assessee requested to issue final approval.

3. The reply of assessee was not accepted by Ld.CIT(E) by taking view that CBDT in its Circular No.6/2023 dated 24.05.2023 has not extended time so far as filing of Form-10AB under section 80G(v) is concerned. The assessee was required to file present application in Form-10AB on or before extended period *i.e.*, 30.09.2022 allowed by CBDT, *whereas* assessee has filed this application only on 23.01.2023 and was it dismissed as not maintainable. Feeling aggrieved by the rejection of approval application under section 80G, the assessee has filed present appeal before Tribunal.
4. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income-Tax- Departmental Representative (Ld.CIT-DR) for the Revenue. The Ld. AR for the assessee made his submission on the basis of his contention made in response to show cause notice before Ld.CIT(E) and would submits that assessee was granted provisional approval for three years from 19.01.2023, which is otherwise not in dispute. The assessee immediately within a week made application in Form10AB for final approval on 24.01.2023. In past, assessee never made such application for approval fund under

section 80G. The assessee for the first time filed application for provisional approval as per newly inserted provision by way of Finance Act, 2020 though assessee was allowed provisional approval, which was made within a prescribed period of limitation and on allowing provisional approval, the assessee immediately within a week applied for final approval. The Ld.CIT(E) wrongly concluded that assessee was required to file application on or before 3.09.2022 as allowed by CBDT in its Circular No.8/2022 dated 31.03.2022.

5. On the other hand, Ld. CIT-DR for the Revenue supported the order of Ld.CIT(E) and submits that Ld.CIT(E) while rejecting the application clearly held that assessee has not filed its application within extended period that was unto 30.09.2022.
6. We have considered the rival submissions of both the parties and have gone through the order of Ld.CIT(E) carefully. We have also seen the copy of provisional approval accorded to the assessee vide order dated 19.01.2023. We find that the case of the assessee is that they have made application for provisional approval under section 80G, which was granted on 19.01.2023 for three years from 19.01.2023 to assessment year 2025-26, which was allowed and on receipt of provisional approval filed application in Form No.10AB for final approval on 24.01.2023 *i.e.*, within week of provisional approval. The assessee never obtained approval of their fund in past, though their activities commenced in the year 1984, so the application of the assessee is not to be treated as time barred. We find that for obtaining

approval under section 80G, the primary condition is to first avail registration under section 12AB, which the assessee has already been allowed. We further find that the Id CIT(E) has not examined other requisite condition for approval of fund under section 80G and dismissed the application in *limine*, therefore, the application of the assessee is restored back to the file of Id CIT(E) to examine other required condition and pass the order in accordance with law. Needless to direct that before decision the Id CIT(E) shall grant opportunity of hearing to the assessee. The assessee is also directed to provide all required details, information and evidence to the Id CIT(E). In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 29/11/2023.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**[लेखा सदस्य/ACCOUNTANT MEMBER]**

**Sd/-**  
**(PAWAN SINGH)**  
**[न्यायिक सदस्य/JUDICIAL MEMBER]**

Surat, Dated: 29/11/2023

*Dkp. Out Sourcing Sr.P.S*

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2. Respondent-
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4. DR
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Sr. Private Secretary /Private Secretary  
/Assistant Registrar, ITAT, Surat