

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.996/Kol/2023

Doshar Vaishya Bhawan Trust.....Appellant
2, Grant Street,
Dharmatalla, Kolkata-700013.
[PAN: AABTD0334K]

vs.

PCIT(Exemption), Kolkata..... Respondent

Appearances by:

Shri S. K. Pransukha, FCA, appeared on behalf of the appellant.

Shri Rakesh Kumar Das, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 20, 2023

Date of pronouncing the order : December 11, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee-trust against the order dated 30.08.2023 of the Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as 'CIT(E)'].

2. The assessee is aggrieved by the action of the CIT(E) in rejecting the application of the assessee for final registration u/s 80G(5)(iii) of the Income Tax Act (hereinafter referred to as the 'Act').

3. The brief facts as pointed out by the ld. Counsel for the assessee are as under:

1. TRUST is established on 8.4.75 and have been doing charitable activity.
2. It is registered as per new registration scheme u/s 12A (ac) () for five years
3. Application was made for the first time for registration u/s 80G(5) clause (iii) of the first proviso in form 10A on 31.12.21

4. *Provisional registration was granted on 7.1.22 for three years*
5. *Application for final registration form 10AB (paper book page no 7) was made on 7.9.22 u/s 80G(5) clause (iii) to first proviso, however in the application, inadvertently clause (ii) was mentioned instead of (iii).*
6. *CIT(E) was informed by letter dt 7.2.23 requesting to treat the clause (i) as clause(i) PB 4*
7. *CIT exemption rejected the application on 11.2.23 merely on such technical error PB 11.2.23 PB 2 and directed to file fresh form 10AB*
8. *Application was again made on 15.2.23 PB 16*
9. *However application was again rejected on 30.8.23 on the ground that application is time barred i.e beyond 30.9.22 time granted by circular no 6 dt. 24.5.23*

4. We have heard the rival contentions and gone through the record. The issue emerging from the aforesaid facts is squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of Vivekananda Mission Asram vs. CIT(E) in ITA No.995/Kol/2023 order dated 08.12.2023 [one of us i.e. the Judicial Member herein, being the author of the said order]. The relevant part of the order of the Coordinate Bench of the Tribunal is reproduced as under:

“4. We have heard the rival contentions and gone through the record. In this case, the application of the assessee for final approval u/s 80G of the Act has been rejected because of technical reasons for which the assessee cannot be faulted with. All the facts were before ld. CIT (Exemption) when the assessee for the first time applied for the final approval u/s 80G of the Act. Merely, because the assessee out of inadvertence had mentioned another Clause, the same was not an illegality but rather the same was a rectifiable mistake. The facts were on the record that the assessee before the amendment was already approved as a charitable institution u/s 12A as well as 80G of the Act. The assessee duly applied for provisional registration in view of the amended provisions. The same was also granted to the assessee. The next course for the assessee was to apply for the final registration u/s 80G of the Act which was also duly complied by the assessee within the time limit prescribed for the same. However, due to the mistake in mentioning the proper Clause, the assessee was told to withdraw the application and file a fresh application. The assessee filed the fresh application without any delay. However, ld. CIT (Exemption) completely ignored the events which occurred from the date of filing of the application for final approval and leading to the filing of the fresh

application because of the technical mistakes. In fact, instead of getting the application withdrawn, ld. CIT (Exemption) was supposed to give opportunity to the assessee to rectify the mistake i.e. the mentioning of the appropriate Clause. Ld. CIT (Exemption) even could have suo-moto passed an order treating the said application under the relevant 'Clause-iii' of Section 80G(5) of the Act.

5. Considering the overall facts and circumstances, the delay in filing the fresh application is, hereby, condoned. It is directed that the application of the assessee for final registration may be treated as filed within the time limit prescribed and the time consumed by the assessee in filing the revised application will not be taken into consideration. The matter is accordingly restored to the file of ld. CIT (Exemption) with a direction that ld. CIT (Exemption) will pass an order on merits irrespective of the delay occurred in filing the fresh application for final approval u/s 80G(5) of the Act.

6. So far as the observation of the ld. CIT(E) that the assessee had already commenced its activities since long and that as per Clause (iii) of 1st Proviso to section 80G(5) of the Act, the application for final registration was to be filed within six months from the commencement of its activities and therefore, the application of the assessee for final registration was time-barred, is concerned, we note that the issue has already been discussed and adjudicated by the Coordinate Bench of the Tribunal in the case of West Bengal Welfare Society vs. CIT(Exemption), Kolkata vide order dated 13.09.23 [one of us i.e. the Judicial Member herein, being the author of the said order], wherein, it has been held that the assessee, who has been granted provisional registration, is eligible to apply for final registration irrespective of the fact that the assessee had already commenced its activity even prior to the date of grant of provisional approval. The relevant part of the order of the Coordinate Bench is reproduced as under:

"6. We note that the ld. CIT(E) has misconstrued the aforesaid proviso to section 80G(5) of the Act. As per the provision, an application for final registration cannot be filed until and unless an assessee/trust has been given provisional approval u/s 80G(5)(iv) of the Act. The assessee was granted provisional approval on 30.11.2022 only, and within a few days i.e. on 03.12.2022, the assessee applied for final registration u/s Clause (iii) of 1st Proviso to section 80G(5) of the Act. Though the assessee might have commenced its activities prior to grant of provisional registration but that does not mean that the assessee in that event will be precluded from applying for final registration even after the grant of provisional registration. The assessee as per statutory provision could not have directly applied for final registration without grant of provisional registration. The aforesaid proviso, therefore, is to be read as that after the grant of provisional registration, if the assessee has not commenced its activities, he may apply for

registration within six months of the commencement of its activities or within the six months prior to the expiry of the period of provisional approval, whichever is earlier. In any case, the assessee is eligible to apply for final registration only after the grant of provisional approval. Therefore, we hold that there is no delay on the part of the assessee in filing application in the prescribed form for grant of final registration under Clause (iii) of 1st Proviso to section 80G(5) of the Act.”

In view of the above observations, the matter is restored the file of the CIT(E) for decision afresh in the light of the observations made above.

5. Since, the facts and issue involved in the present appeal are identical, therefore, the matter in this appeal is restored to the file of the CIT(E) to decide the application of the assessee afresh in the light of the observations/directions given by the Coordinate Bench of the Tribunal as reproduced above.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 11th December, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 11.12.2023.

RS

Copy of the order forwarded to:

1. Doshar Vaishya Bhawan Trust
2. PCIT(Exemption), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches