

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 2763/DEL/2023
U/s 80G of the I.T. Act, 1961**

Freepathshala, H. No. 555, First Floor, Housing Board Colony, Sector-51, Gurgaon, Haryana-122002. PAN- AAATF5723B	<u>Vs</u>	Commissioner of Income-tax (Exemptions), Chandigarh.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Ved Jain, Adv.;; Ms. Uma Upadhyay, CA; & Ms. Srashti Agarwal, CA	
Department represented by	Sh. T. James Singson, CIT(DR)	
Date of hearing	17.01.2024	
Date of pronouncement	23.01.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order dated 11.08.2023, passed by the learned Commissioner of Income-tax (Exemptions), [“CIT(E)” in

short], rejecting assessee's application for registration u/s 80G(5) of the Income-tax Act, 1961 (the "Act"). The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case, the order passed by Learned Commissioner of Income Tax (Exemptions), Chandigarh rejecting the application of the assessee for approval under section 80G(5) of the Income Tax Act is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(E) has erred both on facts and in law in passing the order holding that application filed by the assessee in Form 10AB under clause (iii) of first proviso to sub-section (5) of the Section 80G of the Act as 'non maintainable' as the same has not been filed within the due date specified under the Act.

3. On the facts and circumstances of the case, the Ld. CIT(E) has erred both on facts and in law in ignoring the fact that the assessee was provisionally registered w.e.f. 13.03.2023 to AY 2025-26 vide order dated. 13.03.2023 and impugned application for registration under clause (iii) of first proviso to sub-section (5) of the Section 80G was filed on 15.03.2023 and hence the application was filed within the time limit prescribed under the Act.

4. On the facts and circumstances of the case, the Ld. CIT(E) has erred both on facts and in law in misinterpreting the provisions of law with regard to the time limits for filing the application specified under clause (iii) of first proviso to sub-section (5) of the Section 80G of the Act.

5. On the facts and circumstances of the case, the Ld. CIT(E) has erred both on facts and in law In ignoring the fact that the assessee has been granted the registration under section 12A(1)(ac) (iii) vide order dated 10.08.2023 wherein the similar time limits are applicable for filing of application by the assessee and the same was accepted by the CIT(E) and held as filed within the time limit.

6. On the facts and circumstances of the case, the order passed by Id. CIT(E) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

7. On the facts and in the circumstances of the case, Ld CIT(E) erred in rejecting the application for registration u/s 80G(5) of the Act, 1961 of the

assessee despite the fact that there is no adverse finding regarding the aims, objects and genuineness of activities of the Society and hence application for registration cannot be rejected.

8. On the facts and in the circumstances of the case, Ld CIT(E) erred in rejecting the application for registration u/s 80G(5) of the Act, 1961 despite the fact that the assessee has been granted registration under section 12A(1)(ac) (III) of the Act vide order dated 10.08.2023.

9. On the facts and circumstances of the case, the Ld. CIT(E) has erred both on facts and in law in relying upon the judgments which are contrary to the facts of the present case and distinguishable.

10. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

2. Facts, in brief, are that the assessee, a trust, filed application seeking registration u/s 80G(5) of the Act. The said application was rejected by the learned CIT(E) on the ground that same was not filed within the prescribed time.

3. Apropos to the grounds of appeal, learned counsel for the assessee vehemently argued that the learned CIT(E) was not justified in rejecting the application filed by the assessee. He submitted that under identical facts, coordinate Bench of this Tribunal in the case of Shri Kailash Math Trust v. CIT(E) in ITA No. 1177/PUN/2023, order dated 05.01.2024 has decided the issue in favour of the assessee. He took us through the relevant provisions of law and further pointed out that under identical set of facts, the same Officer granted registration u/s 12A(1)(ac)(iii) vide order dated 10.08.2023 of the Act. He

submitted that in the light of decision of the coordinate Bench, the learned CIT(E) may be directed to grant registration u/s 80G as prayed in the application.

4. On the other hand, learned CIT(DR) opposed the submissions and submitted that there is no ambiguity under the provisions of law. The assessee trust was required to file application within six months from the date of grant of provisional registration or commencement of the activity, whichever is earlier. In the present case the assessee trust had commenced its activities way back in 2017, therefore, the application filed by the assessee on 15.03.2023 was barred by time.

5. In rejoinder, learned counsel for the assessee submitted that intent of the legislature has to be construed in the context it was brought on the statute book. If the provision is read as construed by the learned CIT(E), then the assessee trust, which had commenced activities but was not registered prior to the amendment in law, would never be able to apply for registration u/s 80G.

6. We have heard rival submissions and perused the material available on record. The only dispute is with regard to the correctness of the order of the learned CIT(E) for rejecting the application filed by the assessee trust for registration u/s 80G of the Act. For the sake of clarity the first proviso to subsection (5) of Section 80G of the Act is reproduced as under:

"Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,-

(i) where the institution or fund is approved under clause (vi) [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020], within three months from the 1st day of April, 2021;

(ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;

(iii) where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier.

(iv) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought."

6.1 As per clause (iii) of the aforesaid proviso, the assessee was required to file application within six months from the date when the provisional registration was granted or the commencement of activities by the assessee, whichever is earlier. If the provision is read literally, it would close the doors for all such trusts who had commenced activity long ago but had not registered itself u/s 80G(5). This, in our considered view, would defeat the intent of law and frustrate the cause of law. The Coordinate Bench of this tribunal under the identical facts has decided the issue in favour of the assessee in ITA no. 1177/PUN/2023 dated 05.01.2024 by observing as under:

“11.2 Thus, as observed by the Hon'ble Supreme Court, that the statutory provision shall be interpreted in such a way to avoid absurdity. In this case to avoid the absurdity as discussed by us in earlier paragraph, we are of the opinion that the words. "within six months of commencement of its activities" has to be interpreted that it applies for those trusts/institutions which have not started charitable activities at the time of obtaining Provisional registration, and not for those trust/institutions which have already started charitable activities before obtaining Provisional Registration. We derive the strength from the Speech of the Hon'ble Finance Minister and the Memorandum of Finance Bill. 2020.

11.3 Therefore, in these facts and circumstances of the case. we hold that the Assessee Trust had applied for registration within the time allowed under the Act. Hence, the application of the assessee is valid and maintainable.

12. Even otherwise, the Provisional Approval is upto A.Y. 2025-26, and it can be cancelled by the Id.CIT(E) only on the specific violations by the assessee. However, in this case the Id.CIT(E) has not mentioned about any violation by the Assessee. Therefore, even on this ground the rejection is not sustainable.

13. However, the Id.CIT(E) has not discussed whether the Assessee fulfils all other conditions mentioned in the section as he rejected it on technical ground. Therefore, in these facts and circumstances we hold that the Assessee had made the application in form 10AB within the prescribed time limit and hence it is valid application. Therefore, we direct the Id.CIT(E) to treat the application as filed within statutory time and verify assessee's eligibility as per the Act. The Id.CIT(E) shall grant opportunity to the assessee. Assessee shall be at liberty to file all the necessary documents before the Id.CIT(E).”

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6.2. We do not see any reason to deviate from the aforementioned decision of Co-ordinate Bench. Moreover, the same officer has allowed application of the assessee seeking registration u/s 12A of the Act de hors the provision is worded

similarly to section 80G(5). We, therefore, set aside the order and restore the application before learned CIT(E) for decision afresh in accordance with law.

7. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in open court on 23rd January, 2024.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**