

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**  
**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.3520/Mum./2023**  
**(Assessment Year : 2023-24)**

Sunil Tibrewal Foundation  
House No. 208/5, Building No. K-8 G No 04,  
Arihant Compound Kopar,  
Bhiwandi Dist. Thane Angaon,  
Thane- 421302  
PAN – ABCTS7538N

..... Appellant

v/s

CIT (Exemptions)  
Room No. 322, 3<sup>rd</sup> Floor, Income Tax Office,  
PMT Building, Shankar Seth Road,  
Pune- 411037

..... Respondent

Assessee by : Ms. Anushree Gupta  
Revenue by : Shri Dr. Kishor Dhule

Date of Hearing – 27/02/2024

Date of Order – 28/02/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 29/03/2023 passed under section 80G(5) of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Exemptions), Pune [*"learned CIT(E)"*].

2. The present appeal is delayed by 128 days. Along with the appeal the assessee has filed an application seeking condonation of delay in filing the present appeal duly supported by the affidavit of the trustee. In the aforesaid application, the assessee has made the following submissions:-

*"3. The Order of the Ld. CIT(Exemptions), Pune was served on the Appellant on 29.03.2023. The period of filing an appeal before the Hon'ble ITAT ended on 27.05.2023. The appeal is being preferred on 29.09.2023 with a delay of 125 days. The reasons for delay are explained herewith and in the petition for condonation of delay annexed to this Affidavit.*

*4. The Appellant had filed an application for regular approval under clause (iii) to first proviso to section 80G of the Income-Tax Act, 1961 ('the Act') on 30.09.2022.*

*5. The Appellant had also filed an application for regular registration under section 12A of the Act on 30.09.2022. While selecting the section code in Form No. 10AB for registration under section 12A of the Act, the consultant inadvertently selected "03-Sub clause (iv) of clause (ac) of sub-section (1) of section 12A instead of selecting the section code "02-Sub clause (iii) of clause (ac) of sub- section (1) of section 12A". Section 12A(1)(ac)(iv) of the Act is applicable to such trust / institution whose registration under section 12AB has become inoperative due to application of first proviso to section 11(7) of the Act and the trust/institution intends to make it operative again.*

*6. That on being aware of the incorrect code being selected, immediately filed another application for regular registration under section 12A(1)(ac)(iii) of the Act on 17.02.2023.*

*7. The application filed on 30.09.2022 for registration under section 12A of the Act was rejected vide order dated 29.03.2023 on account of incorrect code selected. Further the application for approval under section 80G of the Act was also rejected vide order dated 29.03.2023 on account of the Appellant's incorrect application filed for 12A registration i.e., the trust was neither registered under section 12AB r.w.s. 12A(1) (ac) (i)/12A(1)(ac) (iii) nor approved under section 10(23C) r.w. clause (i) / (iii) of first proviso to section 10(23C) of the Act.*

*8. Under the new regime, the e-filing portal of the income-tax department does not provide any functionality to re-apply for regular approval under section 80G of the Act against the rejected application unlike the erstwhile regime wherein if the application for approval under section 80G of the Act was rejected, the trust could re-apply for approval and the hardship to file an appeal and appear before the Hon'ble Tribunal was avoided.*

9. Further, the new provisions with respect to the registration under section 12A and approval under section 80G of the Act are still not clear. CBDT vide Circular No. 6 of 2023 dated 24th May, 2023 extended the due date of filing applications for re-registration u/s 12A/re-approval u/s 80G and regular registration u/s 12A of the Act till 30.09.2023. However, the due date for regular approval u/s 80G of the Act was extended causing hardships to the trust / Institutions. Representations were made to the CBDT to extend the due date for 80G regular approvals as well and to allow trusts to re-apply for regular approvals on rejection.

10. Since we were awaiting communication from the CBDT to avoid litigation, there has been a delay in filing the present appeal.

11. If the present appeal is not condoned it will cause hardship to the donor of the trust as well for availing deduction under section 80G of the Act with respect to the donations made during the year 2022-23.

12. We believe that the delay was not wilful or deliberate and that the appeal documents are bonafide. The substantial merits of the case justify condonation of the delay.

13. We have no intention to jeopardise the interest of the Revenue by delaying the filing of the appeal.

14. We hereby request the Hon'ble ITAT to condone the delay in filing the appeal and admit the same for consideration on merits."

3. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the application, we are of the considered view that there exists sufficient cause for not filing the

present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee.

4. The only grievance of the assessee, in the present appeal, is against the denial of registration under section 80G of the Act.

5. We have considered the submissions of both sides and perused the material available on record. The assessee is a trust registered under the Maharashtra Public Trust Act, 1950. The assessee was granted provisional registration on 12/05/2022 in Form No.10AC under clause (iv) of first proviso of section 80G(5) of the Act from 12/05/2022 to the assessment year 2025-26. On 30/09/2022, the assessee filed the application in Form No.10AB for regular approval under section 80G of the Act. Vide impugned order dated 29/03/2023, the learned CIT(E) rejected the application of the assessee and also the provisional approval granted under section 80G(5) of the Act on 12/05/2022 on the basis that the assessee is neither registered under section 12AB read with section 12A(1)(ac)(i)/section 12A(1)(ac)(iii) of the Act nor approved under section 10(23C) read with clause (i)/(iii) of the first proviso to the said section and thus the case is not covered under the exclusion as provided vide proviso to clause (i) of section 80G(5) of the Act. Accordingly, the learned CIT(E), vide impugned order, came to the conclusion that the condition of section 80G(5)(i) of the Act has not been fulfilled in the present case.

6. During the hearing, the learned AR placed on record the copy of the order dated 14/02/2024 passed by the coordinate bench of the Tribunal in assessee's own case in Sunil Tiberwal foundation v/s CIT(Exemption), in ITA No. 3485/Mum/2023. From the perusal of the aforesaid order, we find that the coordinate bench restored the application filed by the assessee for the grant of regular approval under section 12AB of the Act to the file of learned CIT(E). The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

*"4. We have heard both the parties and perused the records. The assessee foundation was granted provisional registration on 31.02.2021 u/s 12AB of the Act and thereafter, it applied for the regular registration which was rejected and the provisional registration was also cancelled on the ground that assessee did not bother to reply to the queries of the Ld. CIT(E). However it has been brought to our notice that neither the show cause notice was never served upon the assessee by post nor on the correct email Id SUNIL@GMEXWORLD.COM. Instead it is noted that the notice from office of Ld. CIT(E) was issued on SUNIL@GMEXWORLD.COM, which is not the email id of assessee. In such scenario, we find force in the submission of the Ld. AR that in the absence of the assessee being aware of the show cause notice [issued by the Ld. CIT(E)], the assessee cannot be faulted for not responding to the quires raised by the Ld. CIT(E) which in this case was never conveyed to the assessee. Therefore, the impugned action of the Ld. CIT(E) cannot be sustained and therefore we are inclined to set it aside and restore the application back to the file of the Ld. CIT(E) with a direction to sent notices to the correct registered email ID of assessee, and after giving proper opportunity to the assessee, the Ld CIT(E) to pass order in accordance to law."*

7. In view of the facts and circumstances as noted above, we deem it appropriate to restore the assessee's application seeking approval under section 80G of the Act also to the file of the learned CIT(E) with a direction to consider the same afresh after the decision in respect of assessee's application for approval under section 12AB of the Act. Needless to mention no order shall be

passed without affording reasonable opportunity of being heard to the assessee. Accordingly, the impugned order passed by the learned CIT(E) is set aside and the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28/02/2024

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

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

**MUMBAI, DATED: 28/02/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai