

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोराड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A. No.367/Kol/2024

Tomorrow's Foundation.....Appellant
417, Hossenpur,
KMC Ward No.108,
West Bengal – 700107.
[PAN:AAATT4262B]

vs.

CIT(Exemption), Kolkata..... Respondent

Appearances by:

Shri C. Roy, CA, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 27, 2024

Date of pronouncing the order : February 27, 2024

आदेश / ORDER

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

The present appeal has been preferred by the assessee against the order dated 11.02.2024 of the Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as 'CIT(Exemption)'] rejecting the application of the assessee for final approval as per the provisions of section 80G(5)(iii) of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts of the case are that the assessee was already registered/approved u/s 80G(5) of the Act as a charitable institution since 1999. However, an amendment was brought into the relevant provisions of Section 80G of the Act vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as 'Amendment Act of 2020') with effect from 01.04.2021 whereby, an institution, which has already been approved before the aforesaid

amendment, was required to re-apply for grant of approval under Clause (i) of the First Proviso to section 80G(5) of the Act within three months from the 1st day of April, 2021. The assessee, however, applied for provisional approval under Clause (iv) to First Proviso to section 80G(5) of the Act, which was meant for the institutes who have to apply for the first time and not for revalidating the existing approval prior to amendment. The assessee was granted provisional approval u/s Clause (iv) to First Proviso to section 80G(5) of the Act in Form 10AC vide order dated 10.03.2023 for a period from 10.03.2023 to AY 2025-26. The assessee thereafter applied for final approval under Clause (iii) to First Proviso to section 80G(5) of the Act. However, Id. CIT (Exemption) rejected the application of the assessee observing that the time limit prescribed for making an application for final approval u/s 80G of the Act was at least six months prior to the expiry of the period of the provisional approval or within six months of the commencement of its activities, whichever is earlier. He observed that the assessee had already commenced its activities since long even prior to grant of provisional registration, and since the time period for making application mentioned in Clause (iii) to First Proviso to section 80G(5) of the Act had already expired, therefore, the assessee could not be granted final registration u/s 80G(5) of the Act. He also observed that vide CBDT Circular No. 18/2022 the date for submitting the application for final approval was extended up to 30.09.2022. However, the fresh application by the assessee was filed on 10.02.2023 which was after the extended date of 30.09.2022. He, therefore, rejected the application of the assessee for final approval u/s 80G of the Act.

3. We have heard the rival submissions and gone through the record. Before proceeding further, it will be relevant to reproduce here the relevant provisions of section 80G(5) of the Act:

“80G(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:-

[(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being [approved by the Principal Commissioner or Commissioner;]

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:*

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

- (i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;*
- (ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—*
 - (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—*
 - (A) the genuineness of activities of such institution or fund;*
 - and*
 - (B) the fulfilment of all the conditions laid down in clauses (i) to (v);*
 - (b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—*
 - (A) pass an order in writing granting it approval for a period of five years; or”*

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

- (a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;*

- (b) *clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;*
- (c) *in any other case, from the assessment year immediately following the financial year in which such application is made.*

4. A perusal of the above provisions would reveal that the institutions which stood already approved u/s 80G(5)(vi) on the date of Amendment brought to section 80G of the Act by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 have to re-apply for fresh registration under Clause (i) to the First Proviso to section 80G(5) of the Act and those institutions have to be granted provisional registration for five years by the Id. CIT(Exemption) without any enquiry. The prescribed date for final application for approval under Clause (i) to the First Proviso to section 80G(5) of the Act was stipulated as three months from 1st Day of April 2022. However, the CBDT from time to time extended the date for filing of the said application under Clause (i) to the First Proviso to section 80G(5) of the Act and finally vide Circular No.6 of 2023 dated 24.05.2023, the said date was extended upto 30.09.2023. Further, the institutions which had to apply for the first time or the institutions which did not stand approved on the date of Amendment i.e. 01.04.2021 brought by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, they could apply under Clause (iv) of the First Proviso to section 80G(5) of the Act. In that case, the Id. CIT(Exemption) is supposed to make necessary enquiries and if found satisfied regarding the genuineness of the activities of such an institution would grant provisional approval for five years. In both the cases i.e. institutions which have been granted approval under Clause (i) or the institutions which have been granted approval under Clause (iv) to First Proviso to section 80G(5) of the Act have to apply for final registration under Clause (iii) of First Proviso to section 80G(5). Such institutions are required to apply for final registration at least six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier. In the case in hand, it appears that the assessee-institution instead of applying for renewal of registration under Clause (i) to First Proviso to section 80G(5) of the Act has applied for fresh provisional

registration under Clause (iv) to First Proviso to section 80G(5) of the Act and incidentally, the said fresh provisional registration has also been granted to the assessee-institution from 10.03.2023 to A.Y 2025-26. If the assessee-institution would have applied for renewal of the registration under Clause (i), then its approval u/s 80G(5) would have continued without any break. The last date for making such an application was upto 30.09.2023 as per the extended date from time to time vide Circular no.6 of 2023. However, since the assessee-trust has applied for fresh approval under Clause (iv) to First Proviso to section 80G(5) of the Act, therefore, the assessee-trust was entitled to apply for final registration and there was no bar to the institution for making such application. This issue has already been adjudicated upon by the Coordinate Bench of the Tribunal in the case of "Vivekananda Mission Asram vs. CIT" in ITA No.995/Kol/2023 decided on 08.12.2023 (Judicial Member herein being the author of the said order) while deliberating upon the provisions of section 80G(5) of the Act, has held as under:

"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. It is to be further noted here that the Id. CIT(Exemption) firstly misconstrued about the CBDT Circulars regarding the exemption of date for final applications for approval. The said Circular/time limits are applicable only for the institutions who stood already registered on the date of Amendment and have made application for renewal of the registration without any time break. However, the said last date which has been extended to 30.09.23 by CBDT Circular No.6 of 2023 is not applicable for the institutions who have filed application for fresh provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and thereafter for making application under Clause (iii) to First Proviso to section 80G(5) of the Act.

5.1 We deem it appropriate to mention here that CBDT has extended the date upto 30.09.2023 for making application under Clause (i) to First Proviso to section 80G(5) of the Act, which means that the institutions, which were already registered prior to the amendment brought to section 80G(5) by Amendment Act of 2020 w.e.f. 01.04.2021, if an institution for some reasons could not make an application for renewal/continuance of registration under Clause (i) to First Proviso to section 80G(5) of the Act within the stipulated period of three months, it could still apply under Clause (i) upto 30.09.2023. However, once an institution has applied under Clause (i) to First Proviso to section 80G(5) of the Act on or before 30.09.2023, it will be further governed

by the statutory provisions of Clause (iii) of First proviso to section 80G(5) of the Act and not by the CBDT Circular for the purpose of limitation. CBDT Circular is for extension of date to help the institutions which could not apply under Clause (i) within stipulated period of three months, and not for curtailing limitation or barring institutions for final registration under Clause (iii) to First Proviso to section 80G(5) of the Act.

5.2 As observed above, for making application for final registration under Clause (iii) to First Proviso to section 80G(5) of the Act, the institution must have been provisionally registered either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.

5.3 In our humble understanding, if the view of the Id. CIT(Exemption) is accepted to be correct, then no institution which has already been into charitable activities before seeking provisional approval under Clause (iv) to First Proviso to section 80G(5) of the Act would ever be entitled to grant of final registration under Clause (iii) to First Proviso to section 80G(5) of the Act even after grant of provisional approval, which would make the relevant provisions of section 80G(5) otiose and defeat the object and purpose of these statutory provisions.

6. In view of the above discussion, it is held that after grant of provisional approval, the application cannot be rejected on the ground that the institution had already commenced its activities even prior to grant of provisional registration. Under such circumstances, the date of commencement of activity will be counted when an activity is undertaken after the grant of provisional registration either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.

7. In the case in hand, the assessee admittedly has applied for final registration after grant of provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and therefore, the application filed by the assessee is within limitation period. The issue is otherwise squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of *Vivekananda Mission Asram vs. CIT (supra)* and in the case of "West Bengal

Welfare Society vs. CIT(Exemption)” (supra) and further by the decision in the case of “Sri Aurobindo Bhawan Trust, Krishnagar vs. CIT(Exemption)” order dated 20.02.2024 (Judicial Member herein being the author of the said orders). Therefore, the impugned order of the CIT(Exemption) is set aside and the Id. CIT(Exemption) is directed to grant provisional approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. The Id. CIT(A) will decide the application for final registration within three months of the receipt of copy of this order.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes. (परिणामस्वरूप, निर्धारिती की अपील को सांख्यिकीय उद्देश्यों के लिए स्वीकार्य माना जाता है।)

Kolkata, the 27th February, 2024.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

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

Dated: 27.02.2024.

RS

Copy of the order forwarded to:

1. Tomorrow's Foundation
2. CIT(Exemption), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches