

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1480/Chny/2023

The Dementia Care Foundation No.2, Nanjunda Rao Colony, Mylapore, Chennai-600 004.	बनस / Vs.	CIT(Exemption) Chennai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AADTT-4113-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R.M. Narayanan (CA)- Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri N. Balakrishnan (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12-03-2024
घोषणा की तारीख / Date of Pronouncement	:	12-03-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by denial of registration u/s 80G (5) by learned Commissioner of Income Tax (Exemption), Chennai [CIT(E)] vide impugned order dated 10.03.2023, the assessee is in further appeal before us. Upon perusal of paras 5& 6 of the order, it could be seen that though certain details were called from the assessee, it failed to file the same which led to rejection of Form No.10AB as filed by the assessee on 30.09.2022.

2. The registry has noted delay of 219 days in the appeal, the condonation of which has been sought by the Ld.AR on the strength of condonation petition dated 13.12.2023 which read as under:

1. The said appeal has been filed with a delay of 219 days (due date for filing appeal was 09th May 2023, date of filing appeal is 14 December 2023).

In this connection we seek to submit as below the factual position leading to the delay:

The appellant had provisional registration

- under Sub clause (vi) of clause (ac) of sub-section (1) of section 12A with Unique Registration Number AADTT4113AE20221 vide order dated 12-5-22 and
- under Clause (iv) of first proviso to sub-section (5) of section 80G with Unique Registration Number AADTT4113AF20221 vide order dt 13-9-22.

2. The appellant applied for registration (that was required upon commencement of activities) under Sub clause (iii) of clause (ac) of sub-section (1) of section 12A vide Form 10AB with Acknowledgement Number-573706100290922 and under Clause (iii) of first proviso to sub-section (5) of section 80G vide Form 10AB with Acknowledgement Number-607626790300922

3. Both the applications mentioned under item 2 above were rejected vide orders

- * dt 10-3-23 [DIN & Notice No: ITBA/EXM/F/EXM45/2022- 23/1050624007(1) and
- * dt 10-3-23 [DIN & Notice No: ITBA/EXM/F/EXM45/2022- 23/1050624702(1)] respectively.

4. The rejection of the said applications was for the reason that we did not respond to notices

- * dt 22-12-22 and related show-cause notice 4-2-23 (for 12A registration) and
- * dt 23-12-22 and related show cause notice dt 7-2-23 (for 80G registration)

Both the above notices were served by e-mode through ITBA/e-filing portal and both called for the same set of details.

5. We had completely missed these notices as we did not get any email or SMS alert as is usually the case. The information called for was readily available and could have been submitted had only we received alerts about these notices.

6. Pursuant to our visit to the Income-tax office, we were advised to reapply since there were several such similar cases where applications were rejected for lack of response due to notice alerts not being received by the assesseees.

7. Based on this advice, we reapplied under sub clause (iii) of clause (ac) of sub-section (1) of section 12A with Acknowledgement Number 980664690130323.

We were however unable to reapply under clause (iii) of first proviso to sub-section (5) of section 80G since Form 10AB was not enabled in our portal at that point in time. The message we received (screenshot dt 13-3-23 attached - Annexure -1) when we tried to apply stated as below:

Error: Not eligible for registration under the selected section as there exists a valid registration form submission.

8. We thereafter filed a letter on 22nd March 2023 with the Commissioner (Exemptions) (Annexure-2) outlining the above facts and intimating our inability to reapply for the reasons mentioned in point 8 above. We also requested for Form 10AB to be enabled in our portal to permit us to reapply for 80G recognition.

9. We simultaneously filed a grievance application (Acknowledgement Number 11271912 on 15th March 23 - Annexure -3) requesting that the Form be enabled for us to re-apply.

10. All along during the course of our visits to the Department we were given to understand that the Form 10AB for 80G application would be enabled once 12A approval was received. We were also informed that since the earlier rejection on 10 March 2023 was only on technical grounds, the 12A application would be taken up immediately if we made a request to this effect.

11. However, the 12A approval was received finally only on 13th September 2023. Even after this approval, the portal did not permit us to reapply in Form 10AB for 80G approval (screenshot dated 8-12-23 attached as Annexure -4). Finally, during our last visit to the Department on 11th December 2023, we were informed that an appeal to the ITAT was the only recourse.

12. Left with no other choice and since the Department did not enable the portal all along, we are filing this appeal now before the Hon'ble ITAT. The appeal necessarily has to be against the rejection order dated 10th March 2023.

13. We therefore submit that the delay in filing this appeal is only due to the alternative remedy that we were pursuing with the Department and the hope given to us all along that our portal would be enabled for submission of Form 10AB. We were also not unreasonable in believing this as the application for 12A registration pursuant to the rejection order dt 10-3-23 was made possible.

14. We, therefore, humbly submit that there was genuine reason for not having filed the said appeal within time. The delay was entirely due to the alternate remedy pursued that we hoped would work. We therefore request that the said delay may kindly be condoned and the appeal admitted in the interest of justice.

3. After going through the contents of the petition, it could be seen that the assessee was pursuing alternative remedy and making all the efforts to comply with the law. Therefore, the allegation of Ld. CIT(E) that the assessee was not interested in getting the requisite approval could not be sustained. Under these circumstances, we condone the delay and direct Ld. CIT(E) to examine the assessee's registration application on merits after affording opportunity of hearing to the assessee. The assessee is directed to file the requisite details in support of its application.

4. The appeal stand allowed for statistical purposes.

Order pronounced in open court on 12th March, 2024.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 12-03-2024
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आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF