

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1145/CHNY/2023

M/s. SBethanasamy Trust,
Flat No.4/5,
Dev Apartments, No.4,
Somasundaram Street,
T.Nagar, Chennai – 600 017.

**Vs. The Commissioner of Income
Tax (Exemptions),**
Chennai -34.

[PAN: AAMTS 5540D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: 1153/CHNY/2023

M/s. Althaf Trust,
No.19, C-Block, 1st Floor,
Anugraha Apartments,
Nungambakkam High Road,
Chennai – 600 034.

**Vs. The Commissioner of Income
Tax (Exemptions),**
Chennai -34.

[PAN: AAETA 7085R]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellants by
प्रत्यर्थी की ओर से /Respondent by

: Shri N. Arjun Raj, CA
: Shri R. Clement Ramesh Kumar,
CIT

सुनवाई की तारीख/Date of Hearing

: 08.02.2024

घोषणा की तारीख/Date of Pronouncement

: 20.03.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These two appeals by the assesseees are arising out of the respective orders of the Commissioner of Income Tax (Exemption), Chennai rejecting Form No.10AB filed for seeking approval under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961 (hereinafter the 'Act') treating the same as belated vide orders dated 30.08.2023 & 31.07.2023.

2. The issue involved in these two appeals is common and hence, by way of this common order, these two appeals are being disposed off. The facts and circumstances are exactly identical in all these assesseees appeals.

3. The only issue in these appeals of assessee is against the order of CIT(Exemption) rejecting Form No.10AB dated 02.02.2023 filed for seeking approval under clause (iii) of first proviso to section 80G(5) of the Act, treating the same as belated. For this, assessee has raised various ground numbering 13 and all are factual or argumentative and hence, need not be reproduced.

4. First, we will deal with ITA No.1145/CHNY/2023. Brief facts are that the assessee is old trust continuing to exist since 23.01.2013, as per the date of incorporation/registration. The assessee trust exists much before the commencement of new regime of registration and approval. The assessee trust namely SBethanasamy Trust with PAN Number AAMTS5540D filed an application dated 02.02.2023 in Form 10AB under Rule 11AA of the Income Tax Rules, 1962 (hereinafter the 'Rules'), seeking approval under clause (iii) of first proviso to sub-section (5) of section 80G of the Act. The CIT(Exemption) also noted that the assessee had been granted provisional approval in Form No.10AC dated 07.04.2022 u/s.80G(5)(iv) of the Act, for the period commencing 07.04.2022 to assessment year 2024-25. The assessee before CIT(Exemption) vide letter dated 19.07.2023 admitted that the date of commencement of the activities of the Trust is 06.03.2021. The CIT(Exemption) noted that as per the provisions of section 80G(5) of the Act, various time limit has been prescribed within which the assessee is required to file application for approval, depending upon the various categories of trusts/institutions mentioned therein. He noted the fact that in the present case, the assessee is provisionally approved u/s.80G(5)(iv) of the Act and therefore, the assessee was required to file application in Form No.10AB u/s.80G(5)(iii) of the Act within the time period of six

months prior to expiry of period of the provisional approval or within six months of commencement of its activities, whichever is earlier. From the provisions of section 80G(5)(iii) of the Act, the CIT(Exemption) noted that the time limit prescribed therein is mandatory and the CIT(Exemption) has no power to condone the delay in filing application in Form No.10AB. He noted that in the present case, the date of commencement of its activities is 23.01.2013 and the date of filing of application in Form No.10AB is 02.02.2023, which is after expiry of six months of commencement of its activities. The CIT(Exemption) further noted that with the advent of new regime of registration of trusts/institutions seeking registration under the Act, the CBDT on multiple occasions had extended time line in filing the application in Form No.10A or Form No.10AB as under:-

Sl .	CBDT Circular	Extension upto
1	No.12 of 2021 dated 25-06-2021	31-08-2021
2	No.16 of 2021 dated 29-08-2021	31-03-2022
3	No.08 of 2022 dated 31-03-2022	30-09-2022

4.1 From the above, the CIT(Exemption) noted that CBDT vide Circular No.6 of 2023 dated 24.05.2023 extended the due date for filing of applications in Form No.10AB to 30.09.2022 to 30.09.2023 only in respect of trusts/institutions registered u/s.10(23C) & 12AB of the Act. He noted that this circular did not mention any such

extension of due date for filing of Form No.10AB to get approval u/s.80G of the Act. He also noted that on earlier occasions, even vide Circular No.8 of 2022 dated 31.03.2022, the assessee whose last date for filing Form No.10AB for registration u/s.10(23C)/12A/80G was falling on or before 29.09.2022 was extended upto 30.09.2022 but thereafter, there was no further extension for delay in filing Form No.10AB by CBDT and the same is evident from CBDT Circular No.22/2022 dated 01.11.2022 through which the CBDT extended the time limit for filing of application in Form No.10A under various sections made therein up to 25.11.2022. But in the said Circular No.22/2022, no further extension of time was granted for filing of Form No.10AB. Hence, he noted that since the said circular did not mention any such extension of due date for filing of Form No.10AB to get approval u/s.80G of the Act, the application filed by the assessee trust on 02.02.2023 is treated as time barred and invalid one, as the same was not filed within the due date. Hence, the CIT(Exemption) considering the decision of Co-ordinate Bench, of Kolkata Tribunal in the case of Bishnupur Public Education Institute in ITA Nos.585 to 587/Kol/2020, order dated 20.04.2022 (reported in 139 taxman.com 121), rejected the assessee's application filed on 02.02.2023 in Form No.10AB u/s.80G(5)(iii) of the Act as not-maintainable. Aggrieved, assessee is in appeal before the Tribunal.

5. The ld.counsel for the assessee relied on the arguments made in lead case of M/s. Shri Ramajayam Charitable Trust vs. ITO in ITA No.1136/CHNY/2023, wherein the Tribunal has heard the matter and judgment is reserved. We have taken cognizance of judgment passed in the case of M/s. Shri Ramajayam Charitable Trust vs. ITO in ITA No.1136/CHNY/2023, wherein the order is passed on 08.03.2024 and pronounced the judgment and held that the timelines prescribed for filing Form No.10AB for recognition u/s.12A of the Act has been extended up-to 30.09.2023, the same may be treated as extended for forms namely Form No.10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G of the Act also. Similar view is taken by the Tribunal in the case, wherein it is held as under:-

7.8 After hearing the arguments of ld. counsel for the assessee and ld. CIT-DR as noted above, we find from the facts that the timeline prescribed for filing Form No.10AB for registration u/s.12A of the Act in the case of assessee trust has been extended up-to 30.09.2023 after considering the genuine hardship faced by charitable institutions vide various CBDT circulars and finally, vide Circular No.6/2023 dated 24.05.2023. Similarly, the timeline prescribed for filing Form No.10A for recognition u/s.80G of the Act was also extended up-to 30.09.2023 by the same circular for trusts filing registration under clause (i) to first proviso to section 80G(5) of the Act. But the above extension was not extended beyond 30.09.2022, unlike other forms which were extended up to 30.09.2023 to the disputed forms namely Form No.10AB for renewal of recognition u/s.80G(5) of the Act under clause (iii) of the first proviso to section 80G(5) of the Act. Once, the CBDT has extended the timeline for filing Form No.10AB for recognition u/s.12A of the Act and also for filing Form No.10A for recognition u/s.80G of the Act extended up to 30.09.2023 for trusts filing registration under clause (i) of first proviso to section 80G(5) of the Act, we find no difference

in continuing hardship as recognized by CBDT even in filing Form No.10AB for renewal of recognition u/s.80G of the Act under clause (iii) of first proviso to section 80G(5) of the Act. In our view, this being a genuine hardship case, which is recognized by Revenue or CBDT by issuing a general circular, we are of the view that this specific provision of clause (iii) to first proviso to section 80G(5) cannot be excluded and or it has not been the intention of the CBDT while issuing the circular. There cannot be a distinction within the same provision without bringing out any exception and even this provision is for the benefit of the donors who are donating money to the charitable trusts for claiming exemption in their returns of income. In our view, we agree with the argument of ld. counsel for the assessee that the timeline prescribed under clause (iii) of first proviso to section 80G(5) of the Act should be treated as directory and not mandatory especially considering the transitional nature of the amendment as brought out by the taxation of other laws (relaxation and amendment of certain provisions) act 2020 for bringing new regime. Hence, in our view, the CIT(Exemptions) should not have rejected the assessee's application in Form No.10AB only for this technical reason. We are of the view that the intention of CBDT in its circular clearly reflects their mind that once the timeline prescribed for filing Form No.10AB for recognition u/s.12A of the Act has been extended up to 30.09.2023, the same may be treated as extended for forms namely Form No.10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G of the Act also. Hence, we accept the plea of assessee and agree with the arguments of ld. counsel for the assessee and remand the matter back to the file of the CIT(Exemption) to decide the issue on merits. Hence, the order of CIT(Exemption) on this issue is set aside and matter is remanded back to the file of the CIT(Exemption) for re-deciding the issue on merits as per law. The appeal of the assessee is allowed for statistical purposes.

Respectfully following the same, we set aside the order of CIT(Exemption) and remand the matter back to his file to decide the issue on merits. The appeal of the assessee is allowed for statistical purposes.

6. Now coming to the case of Althaf Trust in **ITA No.1153/CHNY/2023**, the trust was incorporated on 20.03.2015 and assessee filed application for obtaining provisional registration u/s.12A of the Act in Form No.10A under the new regime on 05.10.2021. The provisional registration was granted CIT(Exemption) u/s.12A of the Act in Form No.10AC under the new regime on 15.10.2021. Subsequently, the assessee filed application for obtaining provisional approval / registration u/s.80G of the Act in Form No.10A on 05.10.2021 and consequently provisional registration was granted u/s.80G(5) of the Act in Form No.10A on 14.10.2021. The assessee filed application for obtaining final registration u/s.80G of the Act in Form No.10AB by renewing the provisional registration under the new regime vide application dated 20.01.2023. The final registration was rejected by CIT(Exemption) u/s.80G of the Act on 31.07.2023 for the reason that the application is belated one. The Revenue brought out the fact that the date of commencement of activities is 20.03.2015. According to Revenue, the assessee is covered by the extended date of 30.09.2022, extended by CBDT and not eligible for final registration u/s.80G and the CIT(Exemption) has rightly rejected the approval. It was argued by CIT-DR that having applied provisional registration u/s.80G of the Act on 14.10.2021 and having commenced activities on 20.03.2015,

the assessee could have filed application in Form No.10AB on or before 30.09.2022, which the assessee failed to do. We noted that all these aspects are dealt with in the case of Shri Ramajayam Charitable Trust vs. ITO in ITA No.1136/CHNY/2023 and facts being identical, we set aside the order of CIT(Exemption) on the same reason and remand the matter back to the file of the CIT(Exemption) for deciding the issue on merits as per law. The appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeals filed by the assesseees in ITA Nos.1145 & 1153/CHNY/2023 are allowed for statistical purposes.

Order pronounced in the open court on 20th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 20th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.