

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 Nos.: 1005 & 1006/CHNY/2023

**M/s. Periyar Maniammai
Academy of Higher Education
and Research,**
84/1 (50), Periyar Thidal, EVK
Sampath Salai, Vepery,
Chennai – 600 007.

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

[PAN: AAETP 5479N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G. Baskar & Smt. S. Sree
Lakshmi Valli, Advocates

प्रत्यर्थी की ओर से /Respondent by

: Shri R. Clement Ramesh Kumar,
CIT

सुनवाई की तारीख/Date of Hearing

: 25.03.2024

घोषणा की तारीख/Date of Pronouncement

: 27.03.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee in ITA No.1005/CHNY/2023 is arising out of the order of the Commissioner of Income Tax (Exemption), Chennai rejecting Form No.10AB dated 21.02.2023 filed for seeking approval under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order

dated 30.08.2023 and the appeal in ITA No.1006/CHNY/2023 is against the provisional approval granted u/s.80G(5)(iv) of the Act dated 24.09.2021.

2. The only issue in this appeal of assessee in **ITA No.1005/CHNY/2023** is as regards to the order of CIT(Exemption) rejecting assessee's application filed in Form No.10AB u/s.80G(5)(iii) of the Act dated 21.02.2023 as not maintainable.

3. Brief facts are that the assessee, M/s. Periyar Maniammai Academy of Higher Education and Research, filed an application in Form No.10AB under Rule 11AA of the Income Tax Rules, 1962 (hereinafter the 'Rules') seeking approval under clause (iii) of first proviso to section 80G(5) of the Act. Firstly, an application for registration u/s.12A in Form No.10A of the Act was filed on 30.03.2021 and registration was granted u/s.12A(1)(ac)(vi) of the Act in Form No.10AC on 27.05.2021 for assessment years 2021-22 to 2023-24. Application for continuation for registration was filed on 20.02.2023 in Form No.10AB, which was granted u/s.12A(1)(ac)(iii) of the Act on 24.08.2023 in Form No.10AD for assessment years 2021-22 to 2025-26. Admitted facts are that the trust was established on 15.10.2020 as a charitable trust to provide higher

education, primarily at post-graduate and research degree levels confirming to the concept of University. The trust commenced its activities on 27.05.2021. The assessee filed an application for approval u/s.80G in Form No.10A on 30.08.2021 and provisional approval was granted u/s.80G(5) of first proviso clause (iv) in Form No.10AC on 24.09.2021 from 24.09.2021 to 2024-25. The assessee filed final application for continuation of approval u/s.80G(5) in term of first proviso clause (iii) in Form No.10AB on 21.02.2023. The CIT(Exemption) vide letter dated 10.07.2023 sought detailed note on the activities of the trust actually carried out, which was furnished by the assessee on 02.08.2023. The assessee was again asked by CIT(Exemption) that since the commencement of activities was from 27.05.2021, the CIT(Exemption) sought reasons for not filing application within the due date i.e., six months from the commencement of its activities. The CIT(Exemption) accordingly rejected the assessee's application as not maintainable as beyond time. At this point, the Id.counsel for the assessee stated that this issue is no longer res-integra and covered by the decision of Coordinate Bench of this Tribunal in the case of Shri Ramajayam Charitable Trust vs. ITO in ITA No.1136/CHNY/2023, order dated 08.03.2024.

4. At this point, the Id.Senior DR apart from the arguments made in lead case, he made new arguments that in earlier provisions of section 80G(5)(iv) of the Act, the provision was that in any other case, the application has to be filed at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought. The Id.CIT-DR drew our attention to the new provision brought in by the Finance Act, 2023 w.e.f. 01.10.2023, which reads as under:-

“Provision 80G(5)(iv) in any other case, where activities of the institution or fund have –

(A) not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought;

(B) commenced and where no income or part thereof of the said institution or fund has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) or section 11 or section 12 for any previous year ending on or before the date of such application, at any time after the commencement of such activities,”

The Id.CIT-DR also drew our attention to the Memorandum explaining the provisions of Finance Act, 2023, which reads as under:-

a) New trusts or institutions under both regimes as well under section 80G regime need to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/ approval shall be valid for a period of 3 years.

b) Provisionally registered/approved trusts or institutions under both regimes and section 80G regime will again need to apply for regular registration/approval at least six months prior to expiry of period of the

provisional registration/ approval or within six months of the commencement of activities, whichever is earlier. Regular registration/approval shall be valid for a period of 5 years

He also brought out that the trust and institutions under both regimes are facing difficulties and to remove the same for the trust or institutions formed or incorporated during the previous year, which are not able to get the exemption for that year, in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought, is removed. Further, besides trusts or institutions, where activities have already commenced are required to apply for two registrations i.e., provisional and regular simultaneously. But in the present case, there was no difficulty faced by the assessee trust with regard to this scenario. The assessee has commenced its activities on 27.05.2021 and applied for provisional approval u/s.80G of the Act on 30.08.2021 and this provisional approval needs to be regularized within six months of commencement of activities u/s.80G(5)(iii) of the Act. Considering genuine hardship, the CBDT extended this date further by 30.09.2022 and assessee trust was having sufficient time to convert provisional approval to regular registration and there was no necessity for this trust to apply both provisional and regular

approval simultaneously. Even this amendment of 2023 by the Finance Act, 2023 is not retrospective, it is prospective.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this issue is fully covered now, as the Tribunal in the case of M/s. Shri Ramajayam Charitable Trust, *supra* has considered all the situations and finally 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.

In view of the above, we set aside the order of CIT(Exemption) dated 30.08.2023 and direct him to re-consider the assessee's application for approval u/s.80G(5)(iii) of the Act, on merits. Hence, this appeal of the assessee is allowed for statistical purposes.

6. Coming to ITA No. 1006/CHNY/2023, since we have adjudicated the above appeal in ITA No.1005/CHNY/2023 against the application filed in Form No.10AB u/s.80G(5)(iii) of the Act, the present appeal against provisional approval granted u/s.80G(5)(iv) of the Act of the

Act becomes academic. Hence, need not to be adjudicated. Therefore, this appeal of the assessee is dismissed.

7. In the result, the appeals filed by the assessee in ITA No.1006/CHNY/2023 is dismissed and ITA No.1005/CHNY/2023 is allowed for statistical purposes.

Order pronounced in the open court on 27th 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 27th 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.