

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No. 1090/Ahd/2023

Uttar Gujarat Shikshan Seva Trust, 2-A, Nandishwar Tenament, Nr. Someshwar Part 3, Ghatlodia, Ahmedabad Gujarat-380061 PAN: AAATU2182R (Appellant)	Vs	The CIT (Exemption), Ahmedabad (Respondent)
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Assessee Represented: Shri Parin Shah, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR

Date of hearing : 20-03-2024
Date of pronouncement : 05-04-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the order dated 06.11.2023 passed by the Commissioner of Income Tax (Exemption), Ahmedabad rejecting final Registration under section 80G(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only reason for rejecting the application for final Registration is that the assessee filed its Application u/s. 80G(5)(ii) of the Act instead of u/s. 80G(5)(iii) of the Act.

2.1. The Grounds of Appeal raised by the Assessee reads as follows:

1. The order passed by CIT (Exemption) is bad in law and required to be quashed.

2. Ld. CIT (Exemption) N.A. erred in rejecting application for registration by observing that trust was provisionally registered under clause (iv) of first proviso to section 80G(5) and accordingly, impugned application was required to made under clause (iii) of first proviso instead of clause (ii) of first proviso.

3. Ld. CIT (Exemption) ought to have considered the fact that filing an application under wrong clause of proviso does not alter the objects or activities of trust and its procedural error or technical error and accordingly he ought to have granted registration.

4. Ld. CIT (Exemption) ought to have considered the fact that procedural or technical error does not take away fundamental rights which are otherwise available to the applicant.

3. The brief facts of the case is that the assessee is a Trust incorporated on 01.01.2000 with the object to promote education. The assessee was granted Registration u/s. 12A of the Act since 2000 and also granted approval u/s. 80G of the Act. There was an amendment brought out to the provisions of Section 12A & 80G of the Act vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.04.2021 whereby any Trust, Society or Institution has already been approved before the said amendment was required to reapply for grant of approval u/s. 12AB and 80G of the Act, within three months from the 1st day of April, 2021. The assessee accordingly reapplied Registration u/s. 12AB of the Act as charitable institution and was granted Registration vide order dated 27.05.2021 by Ld. CIT(E). The assessee Trust also applied for fresh grant of approval

u/s. 80G(5)(iv) of the Act in Form 10AC and the assessee was granted Provisional Registration vide order dated 24.09.2021 for the period of three years upto Asst. Year 2024-25 by Ld. CIT(E). It is thereafter, the assessee filed an application for approval for Permanent Registration in Form No. 10AB on 02.05.2023. This application was treated as not maintainable and Ld. CIT(E) rejected the same by observing as follows:

“...2. On perusal of the details available on record, it is found that the applicant has been granted provisional approval 24-09-2021 under Clause (iv) of first proviso to sub-section (5) of section 80G vide order for the period from 24-09-2021 to AY 2024-25. Accordingly, the assessee was required to file the application u/s. 80G(5)(iii) in lieu of 80G(5)(ii)

3. In view of the above, the application filed on 02/05/2023 in Form No. 10AB, U/s 80G(5) of the I.T Act has to be treated as non-maintainable and liable to be rejected as such, without going into the merits. Therefore, the present application is rejected.”

4. Ld. Counsel Shri Parin Shah appearing for the Assessee submitted before us that this issue was considered by Kolkata Bench of the Tribunal in ITA No. 994/Kol/2023 in the case of Sarada Mission Sevasram Vs. CIT(E) vide order dated 31.01.2024 by observing as follows:

“...4. We have heard the rival contentions and gone through the record. In this case, the application of the assessee for final approval u/s 80G of the Act has been rejected because of technical reasons for which the assessee cannot be faulted with. All the facts were before ld. CIT (Exemption) when the assessee for the first time applied for the final approval u/s 80G of the Act. Merely, because the assessee out of inadvertence had mentioned another Clause, the same was not an illegality but rather the same was a rectifiable mistake. The facts were on the record that the assessee before the amendment was already approved as a charitable institution u/s 12A as well as 80G of the Act. The assessee duly applied for provisional registration in view of the amended provisions. The same was also granted to the assessee. The next course for the assessee was to apply for the final registration u/s 80G of the Act which was also duly complied by the assessee within the time limit prescribed for the same. However, due to the mistake in mentioning the proper Clause, the assessee was told to withdraw the application and file a fresh application. The assessee filed the fresh application without any delay. However, ld. CIT (Exemption) completely ignored the events which occurred from the date of filing of the application for final approval and leading to the filing of the fresh

application because of the technical mistakes. In fact, instead of getting the application withdrawn, ld. CIT (Exemption) was supposed to give opportunity to the assessee to rectify the mistake i.e. the mentioning of the appropriate Clause. Ld. CIT (Exemption) even could have suo-moto passed an order treating the said application under the relevant 'Clause-iii' of Section 80G(5) of the Act.

5. Considering the overall facts and circumstances, the delay in filing the fresh application is, hereby, condoned. It is directed that the application of the assessee for final registration may be treated as filed within the time limit prescribed and the time consumed by the assessee in filing the revised application will not be taken into consideration. The matter is accordingly restored to the file of ld. CIT (Exemption) with a direction that ld. CIT (Exemption) will pass an order on merits irrespective of the delay occurred in filing the fresh application for final approval u/s 80G(5) of the Act."

4.1. Thus Ld. Counsel pleaded that the present assessee case also be set aside to the file of Ld. CIT(E) and give an opportunity to the assessee to rectify the mistake by mentioning appropriate clause (iii) of 1st proviso to Section 80G(5) of the Act.

5. Per contra, Ld. CIT-DR Shri Kamlesh Makwana appearing for the Revenue supported the order passed by the Ld. CIT(E) and submitted when a wrong provision was filed by the assessee, the Revenue has no option to rectify the mistake. Therefore he pleaded to uphold the order passed by Ld. CIT(E).

6. We have given our thoughtful consideration and perused the materials available on record. It is undisputed fact that the assessee was granted Provisional Registration u/s. 80G(5) of the Act by Ld. CIT(E) on 24.09.2021 for a period of three years upto the Asst. Year 2024-25. The only reason for rejecting Permanent Registration u/s. 80G(5) of the Act, the assessee wrongly filed the application under 80G(5)(ii) instead of u/s. 80G(5)(iii) of the Act. It is undisputed fact that the assessee Trust is carrying out the charitable activities and granted registration u/s. 12AB of the Act

on 27.05.2021 and also Provisional Registration u/s. 80G of the Act on 24.09.2021. Thus the genuineness of the activities carried out by the Trust is not doubted by the Ld. CIT(E), denial of Permanent Registration only the count of wrong mentioning of sub clause 80G(5) will certainly affects the charitable activities carried out by the Trust. In similar circumstances, the Co-ordinate Bench of the Kolkata Tribunal has set aside the matter to the file of Ld. CIT(E) and to pass order on merits, irrespective of the delay occurred in filing the fresh application for final approval u/s. 80G(5) of the Act.

6.1. Respectfully following the same, the present impugned order passed by Ld. CIT(E) is hereby set aside with a direction to Ld. CIT(E) to pass order on merits on the rectified application to be filed by the assessee. Needless to say, the assessee should file the application for Permanent Registration under clause (iii) of first proviso to Section 80G of the Act before Ld. CIT(E).

7. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 05 -04-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 05/04/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT

4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद