

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH
**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No. 580/Ahd/2023

Avani Thakkar Charitable Trust, C-51, Dakshinamurti Residency, Opp. SUN Pharma Lab Atladra, Vadodara, Gujarat-390012 PAN: AADTA4132E (Appellant)	Vs	The CIT (Exemption), Ahmedabad (Respondent)
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Assessee Represented: Shri Sunil Talati, A.R.
Revenue Represented: Shri Sanjeev Jain, CIT-DR

Date of hearing : 25-01-2024
Date of pronouncement : 10-04-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against the rejection order dated 28.05.2023 passed by the Commissioner of Income Tax (Exemption), Ahmedabad denying Final Registration under section 80G(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The only reason for rejecting the application for final Registration is that the assessee filed its Application u/s. 80G(5)(iii) of the Act in Form No.10AB belatedly on 23.11.2022.

2. The brief facts of the case is that the assessee is a Trust incorporated on 06.05.2011 with the object to promote education. The assessee was granted Registration u/s. 12A of the Act and also granted approval u/s. 80G of the Act. There was an amendment brought out to the provisions of Section 12A and 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 re-apply 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 re-applied for Registration u/s. 12AB of the Act as charitable institution and was granted Registration 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 11.02.2022 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 23.11.2022. This application was treated as not maintainable and Ld. CIT(E) rejected the same by observing as follows:

“11. The submissions of the applicant/assessee have been considered carefully and it is an admitted fact that the applicant/assessee vide submission dated 15/05/2023 had submitted copies of registration/approval granted in the old regime u/s. 12A & 80G (5) dated 26.09.2012 and 30.10.2015 respectively along with proofs of activities done by the trust in the past which proves that the activities of the trust/institution were commenced long back. However, the applicant/assessee has remained silent on the point of maintainability of present application filed in form 10AB

on account of not filed within prescribed due date. In view of the above, the assessee/applicant was required to file this present application in form 10AB on or before the extended time i.e. 30/09/2022 allowed by CBDT vide circular No.8/2022 whereas it has been filed on 23/11/2022 and the present application filed in Form No. 10AB u/s 80G(5) of the Act has not been filed within the time limit prescribed therein and therefore, the same is liable to be rejected as such as non-maintainable, without going into the merits/other aspects of the case.”

3. Aggrieved against the Rejection order the assessee is in appeal before us raising the following Grounds of Appeal:

1. The Ld. CIT(E) has erred in passing an order in Form 10AD by rejecting the appellant's application for registration or approval u/s 80G(5) of the Income Tax Act, 1961 stating that such application is Non maintainable. It is submitted that the order passed by Ld. CIT(E) is incorrect and illegal both on facts and on law and the same be deleted

2 The Ld. CIT(E) has erred in rejecting application of the Appellant for approval us 80G(5) of the Act without appreciating facts of the case that the appellant had "Order for Provisional approval as per Form 10AC, which was subsequently considered as "Order for Approval" as per CBDT Circular 11/2022. Therefore, an application (Form 10AB) was not required to be filed but the same was erroneously filed due to lack of knowledge It is submitted that the order of rejection, passed by Ld. CIT(E) is now prayed to be considered as NULL and VOID

3. The order passed by Ld. CIT(A) is bad in law and is contrary to the provisions of law and facts. It is submitted that the same be held now.

4. Heard rival submissions in detail and perused the material available on record including the Paper Books filed by the assessee and have given our thoughtful consideration. It is undisputed fact that the Trust was created on 06-05-2011 and Final registration u/s. 12AB of the Act was granted to the Assessee Trust. Similarly, Provisional registration u/s. 80G was granted on 11-02-2022. However, the assessee failed to File final registration under 80G(5) within six months period but filed on 23-11-2022 is barred by limitation and treated the Application as not maintainable.

4.1. On identical issue, Co-ordinate Bench of this Tribunal in the case of Best Buds Pet Care -Vs.- CIT(E) in ITA No. 731/Ahd/2023 vide order dated 30.11.2023, whereby set aside the rejection order with a direction to reconsider Form 10AB for Final Registration u/s. 80G of the Act by observing as follows:

“...6.1 For better understanding, section 80G(5)(3) of the Act reads as follows:-

“(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;”

6.2. Reading of the above sub-section makes it clear that there is no provision to condone the delay in Registration of the Trust. However, the CBDT has extended the above time limits by invoking section 119 of the Act by issuing circular No. 8 of 2022, dated 31-03-2022 extending the time limit upto 30th September, 2022. It is thereafter by circular No. 6 of 2023 dated 24-05-2023 clarified as follows:-

“7. It may be also noted that the extension of due date as mentioned in paragraph 5(ii) shall also apply in case of all pending applications under clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act, as the case may be. Hence, in cases where the trust has already made an application in Form Ho. 10AB under the said provisions but such application has been furnished after 30.09.2022 and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application. Further, in cases where the trust had already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date, the trust may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 5(ii) i.e. 30.09.2023.”

However, this clause (7) was not referred by the CIT(E) in his order while rejecting the registration u/s. 80G of the Act to the assessee

on the sole ground that he has no power to condone the delay of belated filing of Form no. 10AB u/s. 80G(5) of the Act.

6.3 Reading of the above circular makes it clear that the time is extended up till 30-09-2023, whereas the assessee filed belated application on 28-02-2023. The above circular also clarified that even in case, where the application in Form No. 10AB was rejected by the CIT(E) on or before issuance of this circular dated 24-05-2023, the assessee trust can make fresh application in Form 10AB on or before 30-09-2023. Thus, the ld. CIT(E) has not considered the clause 7 of the Circular no. 6 of 2023 thereby rejected the application which is in our considered view is against the circular issued by the CBDT. Therefore, we hereby set aside the impugned order passed by CIT(E) with a direction to reconsider the Form No.10AB for final registration u/s. 80G of the Act by giving proper opportunity of being heard to the assessee trust. Needless to say the assessee trust should co-operate by furnishing all the required details as mandated under the law for granting final registration u/s. 80G of the Act.”

5. Even in the present case the above Circular No. 6 of 2023 dated 24-05-2023 was not considered by Ld CIT[E] while rejecting Final registration u/s.80G of the Act vide order dated 28-05-2023. This Circular clarified that even in case, where the application in Form No. 10AB was rejected by the CIT(E) on or before issuance of this circular dated 24-05-2023, the assessee trust can make fresh application in Form 10AB on or before 30-09-2023. Thus, the ld. CIT(E) has not considered the clause 7 of the Circular No.6 of 2023 thereby rejected the application, which is in our considered view is against the circular issued by the CBDT.

5.1. Respectfully following the above decision and CBDT Circular, we hereby set aside the impugned order passed by CIT(E) with a direction to reconsider the Form No.10AB for Final Registration u/s. 80G of the Act by giving proper opportunity of being heard to the assessee trust. Needless to say the assessee trust should co-

operate by furnishing all the required details as mandated under the law for granting final registration u/s. 80G of the Act.”

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

Order pronounced in the open court on 10 -04-2024

Sd/-

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 10/04/2024

(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