

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 213/KOL/2024
Assessment Year: 2023-2024**

***Murarka Foundation,.....Appellant
C/o. P.K. Himmatsinghka & Co.,
41, B.B. Ganguly Street,
Central Plaza, 2nd Floor,
Kolkata-700012
[PAN:AAHTM2276P]***

-Vs.-

***Commissioner of Income Tax (Exemption)..Respondent
Kolkata,
10B, Middleton Road,
Kolkata-700071***

Appearances by:

*Shri P.K. Himmat Singhka, A.R., appeared on behalf of the
assessee*

*Shri Subhendu Datta, CIT (D.R.), appeared on behalf of
the Revenue*

Date of concluding the hearing : April 17, 2024

Date of pronouncing the order : April 17, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Exemption), Kolkata dated 18.01.2024 vide which application filed by the assessee in

Form No. 10AB for grant of regular registration under section 80G(5) has been rejected.

2. The Id. Counsel for the assessee while taking us through the record contended that the assessee-Trust incorporated on 11th February, 2021. It has applied for provisional registration under section 12A as well as 80G(5). The application of the assessee moved under sub-clause (iv) of 1st proviso to Section 80G(5) was accepted and a provisional registration under section 80G was granted vide order dated 5th April, 2022 for a period from 5th April, 2022 to A.Y. 2024-25. Meanwhile assessee has applied for grant of regular registration under section 12A, which has been granted to it.

3. The assessee thereafter filed an application under sub-clause (iii) of 1st proviso to Section 80G(5) for grant of regular registration under section 80G. This application of the assessee has been rejected by the Id. CIT (Exemption) on the ground that since the assessee has commenced its activity and such application was not moved within six months from the commencement of the activity, therefore, this application is not maintainable.

4. Ld. Counsel for the assessee on the strength of the ITAT's order dated 13th September, 2023 passed in ITA Nos. 730 & 731/KOL/2023 in the case of West Bengal Welfare Society -vs.- CIT (Exemption), Kolkata contended that the twin conditions incorporated in sub-clause (iii) of 1st proviso to section 80G(5) are not meant for excluding each other, rather if any of the conditions

is available, then regular registration under section 80G(5) is to be granted to an assessee. In other words, even if the assessee has commenced its activities prior in time, but the second condition, i.e. availability of six months from the end of the provisional registration is present, such application will be maintainable. He submitted that ld. CIT(Exemption) has misconstrued this provision of sub-clause 3 of 1st proviso to section 80G(5) and he prayed that the impugned order be set aside and the matter be restored to the file of ld. CIT(Exemption) for deciding the issue on merit.

5. On the other hand, ld. CIT(DR) relied upon the order of ld. CIT(Exemption).

6. We have duly considered the rival contentions and gone through the record carefully. We find that Coordinate Bench of ITAT in the case of West Bengal Welfare Society has made a lucid enunciation of law and facts and we cannot do better than reproduction of that order. The finding recorded in paragraph no. 6 reads as under:-

“6. We note that the ld. CIT(E) has misconstrued the aforesaid proviso to section 80G(5) of the Act. As per the provision, an application for final registration cannot be filed until and unless an assessee/trust has been given provisional approval u/s 80G(5)(iv) of the Act. The assessee was granted provisional approval on 30.11.2022 only, and within a few days i.e. on 03.12.2022, the assessee applied for final registration u/s Clause (iii) of 1st Proviso to section 80G(5) of the Act. Though the assessee might have commenced its activities prior to grant of provisional registration but that does not mean that the assessee in that event will be precluded from applying for final registration even after the grant of provisional registration. The assessee as per statutory provision could not have directly applied for final registration without grant of provisional registration. The aforesaid proviso, therefore, is to be read as that after the grant of provisional registration, if the assessee has not commenced its activities, he

may apply for registration within six months of the commencement of its activities or within the six months prior to the expiry of the period of provisional approval, whichever is earlier. In any case, the assessee is eligible to apply for final registration only after the grant of provisional approval. Therefore, we hold that there is no delay I.T.A Nos.730&731/Kol/2023 Assessment year: 2023-24 West Bengal Welfare Society 4 on the part of the assessee in filing application in the prescribed form for grant of final registration under Clause (iii) of 1st Proviso to section 80G(5) of the Act. However, since we have restored the matter to the ld. CIT(E) for decision afresh on merits on the application for final registration u/s 12A of the Act and since the registration u/s 80G(5) is dependent upon the registration u/s 12A of the Act, therefore, the application of the assessee for registration u/s 80G(5) is also restored to the ld. CIT(E) subject to the observations made above”.

7. Respectfully following the order of Coordinate Bench, we set aside the impugned order and restored this issue to the file of ld. CIT(Exemption). The ld. CIT(Exemption) shall decide the grant of regular registration to the assessee under sub-clause (iii) of 1st proviso to section 80G(5) on merit. He would not dismiss it on account of technicalities.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/04/2024.

Sd/-

(Sanjay Awasthi)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 17th day of April, 2024

*Copies to :(1) Murarka Foundation,
C/o. P.K. Himmatsinghka & Co.,
41, B.B. Ganguly Street,
Central Plaza, 2nd Floor, Kolkata-700012*

(2) *Commissioner of Income Tax (Exemption),
Kolkata,
10B, Middleton Road, Kolkata-700071*

(3) *The Departmental Representative;*

(4) *Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.