

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

ITA No. 92/Ahd/2024

Shree Smasta Gurjar Kshatriya Kadiya Samaj Navsari Laxminagar-1, Opp Gopalnagar, Vijalpore, Navsari, 11 Gujarat-396450 PAN: AAQTS1063H (Appellant)	Vs	Commissioner of Income Tax (Exemption), Ahmedabad (Respondent)
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**Assessee Represented: Shri Hiren Vepari, A.R.
Revenue Represented: Shri Purushottam Kumar, Sr.D.R.**

Date of hearing : 22-04-2024
Date of pronouncement : 30-04-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against Rejection of final registration under section 80G of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 03.03.2020 passed by the Commissioner of Income (Exemption), Ahmedabad (hereinafter referred to as 'the CIT(E)').

2. The brief facts of the case, the assessee is a trust which was created on 23-09-2015 with objects of medical relief and help to poor & needy people. The assessee trust was granted Final Registration u/s. 12AB(i) of the Act by the CIT(E) vide order dated 23-09-2021. The assessee trust also granted provisional registration u/s. 80G(5) of the Act vide order dated 24-03-2023 up to A.Y. 2025-26. However, the assessee filed Form 10AB for final registration u/s. 80G(5) of the Act on 30-03-2023, which was rejected by the CIT(E) on the ground that the application was filed beyond the limitation period prescribed under the Act and extended period of limitation granted by the CBDT by way of various Circulars issued from time to time and thus also rejecting the provisional registration granted under 80G(5) of the Act.

3. Aggrieved against the above rejection order, the assessee is in appeal before us raising the following grounds of appeal:-

“1. The Learned Commissioner of Income Tax (Exemption) was not justified in rejecting application for final approval u/s 80G of the Act.

2. The Learned Commissioner of Income Tax (Exemption) was not justified in rejecting u/s 80G application on technical grounds.

3. The appellant craves leave to add, alter or vary any other grounds of appeal.”

4. We have given our thoughtful consideration and perused the material available on record. It is undisputed fact that the Trust was created on 23-09-2015 and Final registration u/s. 12A(i) of the Act was granted to the Assessee Trust vide order dated 23-09-2021 for the assessment years 2022-23 to 2024-25. Similarly,

Provisional registration u/s. 80G was granted on 24-03-2023 and filed Application for final registration under 80G(5) on 30-03-2023.

4.1 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;"

4.2 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.

5. 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 30-03-2023. 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.

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

Order pronounced in the open court on 30-04-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 30/04/2024

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