

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 244/Kol/2024
Assessment Year: N.A.**

***City Level Programme of Action for Street and Working
Children.....Appellant
[PAN: AAAAC 2589 D]***

Vs.

CIT (Exemptions), Kolkata.....Respondent

Appearances:

Assessee represented by: P.K. Ray, Adv.

Department represented by: Abhijit Kundu, CIT D/R.

Date of concluding the hearing : April 22nd, 2024

Date of pronouncing the order : May 2nd, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

The instant appeal filed by the assessee is directed against the order passed by Id. Commissioner of Income-tax (Exemption), Kolkata [in short Id. 'CIT(Exemption)'] in relation to registration applied u/s 80G of the Income Tax Act, 1961 (in brevity the 'Act') dated 19.12.2023.

2. The brief fact of the case of the assessee is that the assessee is a registered Society under the Registrar of Firms, Societies & Non-Trading Corporations, West Bengal and enjoyed the facility of registration u/s 12AA of the Act and approval for exemption u/s 80G(5)(vi) of the Act since the 2001-

02. The assessee was granted provisional approval u/s 80G(5)(iv) of the Act in Form 10AB vide order dated 28.05.2021 for a period from 28.05.2021 to AY 2024-25. Subsequently, an application for approval of the Trust u/s 80G(5)(iii) of the Act was filed electronically. The same is filed on 01.06.2023 in form 10AB. Ld. CIT (Exemption) has rejected the application of the assessee on this ground that application in Form 10AB u/s 80G(5)(iii) of the Act was not filed in time.

3. Ld. Counsel for the assessee challenges the impugned order of ld. CIT (Exemption) thereby submitting that ld. CIT (Exemption) erred not granting the approval u/s 80G of the Act. Only on this ground there is a delay in filing in the Form 10AB. Ld. Counsel for the assessee filed the decision of this Tribunal passed in case of *IAC Patrons Foundation vs. CIT(E)* in ITA No. 320/KOL/2024 order dated 07.03.2024 and submits that the facts of the present case is squarely covered with the facts of the above cited case.

4. Ld. D/R supported the order of ld. CIT (Exemption) thereby submitting that ld. CIT (Exemption) has rightly rejected the appeal of the assessee.

5. We have perused the cited decision and find that in the case of *IAC Patrons Foundation (supra)* the Coordinate Bench of this Tribunal has followed the decision of the Coordinate Bench, Kolkata in the case of *Tomorrow's Foundation vs. CIT(E)* in ITA No. 367/KOL/2024 order dated 27.02.2024. It is essential to quote the relevant part of the order of this Coordinate Bench which is as under:

"3. We have heard the rival submissions and gone through the record. Before proceeding further, it will be relevant to reproduce here the relevant provisions of section 80G(5) of the Act:

"80G(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:-

[(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being [approved by the Principal Commissioner or Commissioner;]

Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

(i) where the institution or fund is approved under clause (vi) (as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020), within three months from the 1st day of April, 2021;

(ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;

(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;

(iv) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;

(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (i) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—

(A) pass an order in writing granting it approval for a period of five years; or”

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

(a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;

(b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;

(c) in any other case, from the assessment year immediately following the financial year in which such application is made.

4. A perusal of the above provisions would reveal that the institutions which stood already approved u/s 80G(5)(vi) on the date of Amendment brought to section 80G of the Act by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 have to re-apply for fresh registration under Clause (i) to the First Proviso to section 80G(5) of the Act and those institutions have to be granted provisional registration for five years by the Id. CIT(Exemption) without any enquiry. The prescribed date for final application for approval under Clause (i) to the First Proviso to section 80G(5) of the Act was stipulated as three months from 1st Day of April 2022. However, the CBDT from time to time extended the date for filing of the said application under Clause (i) to the First Proviso to section 80G(5) of the Act and finally vide Circular No.6 of 2023 dated 24.05.2023, the said date was extended upto 30.09.2023. Further, the institutions which had to apply for the first time or the institutions which did not stand approved on the date of Amendment i.e. 01.04.2021 brought by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, they could apply under Clause (iv) of the First Proviso to section 80G(5) of the Act. In that case, the Id. CIT(Exemption) is supposed to make necessary enquiries and if found satisfied regarding the genuineness of the activities of such an institution would grant provisional approval for five years. In both the cases i.e. institutions which have been granted approval under Clause (i) or the institutions which have been granted approval under Clause (iv) to First Proviso to section 80G(5) of the Act have to apply for final registration under Clause (iii) of First Proviso to section 80G(5). Such institutions are required to apply for final registration at least six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier. In the case in hand, it appears that the assessee-institution instead of applying for renewal of registration under Clause (i) to First Proviso to section 80G(5) of the Act has applied for fresh provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and incidentally, the said fresh provisional registration has also been granted to the assessee-institution from 10.03.2023 to A.Y 2025-26. If the assessee-institution would have applied for renewal of the registration under Clause (i), then its approval u/s 80G(5) would have continued without any break. The last date for making such an application was upto 30.09.2023 as per the extended date from time to time vide Circular no.6 of 2023. However, since the assessee-trust has applied for fresh approval under Clause (iv) to First Proviso to section 80G(5) of the Act, therefore, the assessee-trust was entitled to apply for final registration and there was no bar to the institution for making such application. This issue has already been adjudicated upon by the Coordinate Bench of the Tribunal in the case of "Vivekananda Mission Asram vs. CIT" in ITA No.995/Kol/2023 decided on 08.12.2023 (Judicial Member herein being the author of the said order)

while deliberating upon the provisions of section 80G(5) of the Act, has held as under:

“6. So far as the observation of the Id. CIT(E) that the assessee had already commenced its activities since long and that as per Clause (iii) of 1st Proviso to section 80G(5) of the Act, the application for final registration was to be filed within six months from the commencement of its activities and therefore, the application of the assessee for final registration was time-barred, is concerned, we note that the issue has already been discussed and adjudicated by the Coordinate Bench of the Tribunal in the case of West Bengal Welfare Society vs. CIT(Exemption), Kolkata vide order dated 13.09.23 [one of us i.e. the Judicial Member herein, being the author of the said order], wherein, it has been held that the assessee, who has been granted provisional registration, is eligible to apply for final registration irrespective of the fact that the assessee had already commenced its activity even prior to the date of grant of provisional approval. The relevant part of the order of the Coordinate Bench is reproduced as under:

6. We note that the Id. 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 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.

In view of the above observations, the matter is restored the file of the CIT(E) for decision afresh in the light of the observations made above.”

5. It is to be further noted here that the Id. CIT(Exemption) firstly misconstrued about the CBDT Circulars regarding the exemption of date for final applications for approval. The said Circular/time limits are applicable only for the institutions who stood already registered on the date of

Amendment and have made application for renewal of the registration without any time break. However, the said last date which has been extended to 30.09.23 by CBDT Circular No.6 of 2023 is not applicable for the institutions who have filed application for fresh provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and thereafter for making application under Clause (iii) to First Proviso to section 80G(5) of the Act.

5.1 We deem it appropriate to mention here that CBDT has extended the date upto 30.09.2023 for making application under Clause (i) to First Proviso to section 80G(5) of the Act, which means that the institutions, which were already registered prior to the amendment brought to section 80G(5) by Amendment Act of 2020 w.e.f. 01.04.2021, if an institution for some reasons could not make an application for renewal/ continuance of registration under Clause (i) to First Proviso to section 80G(5) of the Act within the stipulated period of three months, it could still apply under Clause (i) upto 30.09.2023. However, once an institution has applied under Clause (i) to First Proviso to section 80G(5) of the Act on or before 30.09.2023, it will be further governed by the statutory provisions of Clause (iii) of First proviso to section 80G(5) of the Act and not by the CBDT Circular for the purpose of limitation. CBDT Circular is for extension of date to help the institutions which could not apply under Clause (i) within stipulated period of three months, and not for curtailing limitation or barring institutions for final registration under Clause (iii) to First Proviso to section 80G(5) of the Act.

5.2. As observed above, for making application for final registration under Clause (iii) to First Proviso to section 80G(5) of the Act, the institution must have been provisionally registered either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.

5.3. In our humble understanding, if the view of the Id. CIT(Exemption) is accepted to be correct, then no institution which has already been into charitable activities before seeking provisional approval under Clause (iv) to First Proviso to section 80G(5) of the Act would ever be entitled to grant of final registration under Clause (iii) to First Proviso to section 80G(5) of the Act even after grant of provisional approval, which would make the relevant provisions of section 80G(5) otiose and defeat the object and purpose of these statutory provisions.

6. In view of the above discussion, it is held that after grant of provisional approval, the application cannot be rejected on the ground that the institution had already commenced its activities even prior to grant of provisional registration. Under such circumstances, the date of commencement of activity will be counted when an activity is undertaken after the grant of provisional registration either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.

7. In the case in hand, the assessee admittedly has applied for final registration after grant of provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and therefore, the application filed by the assessee is within limitation period. The issue is otherwise squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of *Vivekananda Mission Asram vs. CIT (supra)* and in the case of *“West Bengal Welfare Society vs. CIT(Exemption)” (supra)* and further by the decision in the case of *“Sri Aurobindo Bhawan Trust, Krishnagar vs. CIT(Exemption)”* order dated 20.02.2024 (Judicial Member herein being the author of the said orders). Therefore, the impugned order of the CIT(Exemption) is set aside and the ld. CIT(Exemption) is directed to grant provisional approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. The ld. CIT(A) will decide the application for final registration within three months of the receipt of copy of this order.”

6. In the present case in hand that the assessee is a registered Society under the Registrar of Firms, Societies & Non-Trading Corporations, West Bengal, exemption u/s 80G(5) of the Act on 19.08.2008, application for provisional approval u/s 80G(5)(iv) of the Act was filed on 29.04.2021, Order for provisional approval exemption u/s 80G(5)(iv) of the Act passed on 28.05.2021, and assessee filed application for regular exemption u/s 80G(5)(iii) of the Act on 01.06.2023.

The present case is squarely covered with the aforesaid cited decisions. Therefore, the impugned order is set aside. The appeal of the assessee is allowed and ld. CIT (Exemption) is directed to grant provisional approval to the assessee u/s 80G(5)(iii) of the Act if the assessee is otherwise found eligible. Ld. CIT (Exemption) will decide the application for final registration within three months of the receipt of this order.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 2nd May, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Dated: 02.05.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

1. **City Level Programme of Action for Street and Working Children, 2, Sarat Ghosh Garden Road, Dhakuria, Kolkata-700 031.**
2. **CIT (Exemptions), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata