

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

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री संजय अवरथी, लेखा सदस्य

के समक्ष

Before

**SRI RAJPAL YADAV, VICE-PRESIDENT**

&

**SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 208/KOL/2024**

**Assessment Year: N.A.**

***Suchana The Uttor Chandipur Community Society.....Appellant  
[PAN: AADAS 8151 Q]***

***Vs.***

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

**Appearances:**

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

***Department represented by: Subhendu Datta, CIT D/R.***

Date of concluding the hearing : April 17<sup>th</sup>, 2024

Date of pronouncing the order : May 6<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

The present appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Exemption) [in short ld. 'CIT(Exemption)'] dated 17.01.2024.

2. The assessee is aggrieved with the action of ld. CIT (Exemption) in rejecting the registration u/s 80G(5)(iii) of the Income Tax Act, 1961 (in short the 'Act') and has taken the following grounds:

“1) That the impugned Order of the Ld. Commissioner of Income Tax (Exemptions), Kolkata is arbitrary, illegal, contrary to the material on records and in excess of his jurisdiction while issuing the Order.

2) That the Rejection of Registration u/s 80G(5)(iii):

The Ld. Commissioner of Income Tax (Exemptions), Kolkata erred in law and fact having not to grant the benefit for granting Permanent exemption u/s 80G(5)(iii) of the Income Tax Act, 1961 of the Institution without any prejudice, merely quoting in the order that “the present application filed in Form No. 10AB u/s 80G(5)(iii) of the Act is non maintainable” under the Income Tax Act.

Although, the Appellant complied necessary Rule 17A of Income Tax Rules, 1962 for application along with requisite documents for application and also complied the section 80G(5)(iii) from time to time for granting exemptions under section 80G(5)(iii) of the Income Tax Act, 1961.

Therefore, your Appellant prays before the Hon’ble Members of the Appellate Tribunal for direction to grant Permanent exemption u/s 80G(5)(iii) of the Income Tax Act, 1961 to the Ld. of Commissioner of Income Tax (Exemptions), Kolkata.

The Appellant craves the leave of the Hon’ble Members of Income Tax Appellate Tribunal to urge further ground(s) at the time of hearing and to produce the documents in support of its argument, if required.”

3.1. The brief facts of the case are that the assessee Trust obtained certificate of registration from the Registrar of Firms, Societies & Non-Trading Corporations, West Bengal dated 23.06.2005. Thereafter, exemption u/s 80G(5)(iii) of the Act was granted by ld. CIT, Burdwan in 26.02.2009. Thereafter, the assessee Trust filed an application for provisional exemption u/s 80G(5)(iv) of the Act on 07.11.2021. Following this, a provisional approval for exemption was granted by the CIT(CPC) on 14.11.2021 for a period from 14.11.2021 to AY 2024-25. Subsequently, the assessee applied for regular exemption u/s 80G(5)(iii) of the Act on 01.07.2023, which resulted in the impugned rejection order dated 17.01.2024,

3.2. In the impugned order, it is mentioned that through the audit report filed by the assessee Trust there was commencement of activities visible from FY 2019-20. Ld. CIT (Exemption) has also recorded that in the income & expenditure account for the year ended 31.03.2021 the assessee had debited

expenses on account of COVID Recovery Class amounting to Rs. 2,00,938/-. These items of expenditure enabled him to form an opinion that the assessee Trust had already commenced activities and was thus, liable to be dealt with adversely under the provisions of Section 80G(5)(iii) of the Act of proviso, which he has extracted in the impugned order as under:

*“Provided That.....  
that)*

*(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.”*

3.3. The ld. CIT (Exemption) concluded from the above proviso that since the assessee had already commenced activities in the FY 2020-21 or even earlier, he was required to file application for final registration within six months from the commencement of activities. He therefore, concluded that the application of the assessee for final registration was time barred and thereby worthy of rejection.

4. Aggrieved by the said order of ld. CIT (Exemption) the assessee has come in appeal before us.

5. Right at the outset, the ld. Counsel for the assessee relied on several orders of Coordinate Benches of ITAT, Kolkata on identical grounds through which this issue has been dealt with in favour of the assessee. One such order is relied upon here in the case of *Diamond Cares vs. CIT(Exemption)* in ITA No. 877/KOL/2023 order dated 10.01.2024. The relevant findings in the said order are extracted as under:

*“5. At the outset, the ld. Counsel for the assessee has relied on the decision of the Co-ordinate Bench of the Tribunal in the case of West Bengal Welfare Society vs. CIT(E), Kolkata in ITA Nos. 730 & 731/Kol/2023; order dt. 13/09/2023, wherein under somewhat similar circumstances, the Tribunal has held 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 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.”*

*6. As observed by the Co-ordinate Bench of the Tribunal in the case of West Bengal Welfare Society (supra) that though the assessee may have commenced its activities prior to applying for provisional approval u/s 80G(5) of the Act, but that does not mean that once the assessee has commenced its activities or already has been doing charitable activities and it has not opted for getting benefits under the Income-tax Act, then such an assessee trust/charitable institution is barred in future from applying for registration/approval under the relevant provision of the Income-tax Act. In the present case, the assessee might have commenced its activities in the F.Y. 2020-21 as observed by the ld. CIT(E), however, the assessee for the first time, applied for grant of provisional registration u/s 80G(5) of the Act from Assessment Year 2023-24 onwards only. The ld. CIT(E) taking note of the past activity of the assessee has granted a provisional registration. The assessee did not carry out any activity after the grant of provisional registration on 26/05/2022. The assessee for the first time started its activity after grant of provisional registration on 15/09/2022, on which date the trust received donation. The assessee made donation and the assessee trust thereafter applied for final registration on 30/12/2022 which was well within the period of six months from the commencement of its charitable activity after the date of provisional registration. If the view of the ld. CIT(E), under such circumstances, is considered to be correct then, any trust which is or has been already into charitable activities and has been granted provisional registration, the same will never be entitled for grant of final*

*registration. Such an interpretation of the provisions of Section 80G(5) of the Act will defeat its purpose. Therefore, taking the reasonable construction of the said provision, the assessee is well within the prescribed limitation period to apply for the final approval u/s 80G(5) of the Act. The decision of the Co-ordinate Bench of the Tribunal in the case of West Bengal Welfare Society (supra) is fairly applicable in the present case. Therefore, the impugned order of the ld. CIT(E) is set aside and the ld. CIT(E) is directed to grant final approval to the assessee u/s 80G(5)(iii) of the Act, if the assessee is otherwise found eligible, irrespective of the date of application as discussed above.”*

6. The ld. D/R was content to rely on the order of ld. CIT (Exemption). However, since the present case is almost on identical footing to the case of ITAT (supra) under consideration, we allow the appeal of the assessee, and direct ld. CIT (Exemption) to grant final approval u/s 80G(5)(iii) of the Act to the applicant.

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

**Order pronounced in the open Court on 6<sup>th</sup> May, 2024.**

*Sd/-*

**[Rajpal Yadav]**  
Vice President

Dated: 06.05.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Suchana The Uttor Chandipur Community Society, Uttor Phalgoni, Khanjanpur, Uttor Chandipur, Khanjanpur, B.O. Birbhum-731 236.**
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