

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 1472 & 1473/Kol/2023**

<b>Recycle India Foundation</b> 230A, AJC Bose Road 4 <sup>th</sup> Floor, Unit-42 Chitrakoot Building Kolkata - 700020 <b>[PAN : AADTR9420N]</b>	Vs	<b>CIT (Exemption), Kolkata</b>
--	----	---------------------------------

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	Shri Ramesh Patodia, Advocate
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 10/04/2024  
घोषणा की तारीख /Date of Pronouncement: 02/05/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

Both these appeals are directed at the instance of the assessee against the separate orders of the learned Commissioner of Income Tax (Exemptions), (hereinafter the "ld. CIT(E)") dt. 09/02/2023 & 29/08/2023.

2. At the outset, we find that ITA No. 1472/Kol/2023, challenging the impugned order of the ld. CIT(E) rejecting the application of the assessee for registration under clause (ii) of Section 80G of the Income Tax Act, 1961 (hereinafter 'the Act') filed in Form 10AB dt. 24/09/2022, to be non-maintainable on the ground that the assessee has filed another application, seeking registration u/s under clause (ii) of Section 80G of the Act filed in Form 10AB dt. 15/02/2023. We, however, find no reason to interfere with such finding and decision of the ld. CIT(E) curbing

multiplicity of proceedings. Accordingly appeal of the assessee in ITA No. 1472/Kol/2023 is hereby dismissed as non-maintainable.

3. That leaves us with the appeal of the assessee in ITA No. 1473/Kol/2023, wherein the sole issue challenged by the assessee is against the action of the ld. CIT(E) in rejecting the application of the assessee for final approval u/s 80G(5)(iii) of the Act.

4. At the outset, the ld. Counsel for the assessee, submitted that the assessee was granted provisional approval u/s 80G of the Act vide order dt. 28/05/2021 which was valid from 25/05/2021 till financial year 2023-24. Subsequently, application for final approval was filed 15/02/2023 in Form 10AB. However, the ld. CIT(E) rejected the application on the ground that the assessee commenced its activities on 27/09/2019 and the criteria laid down under explanation to clause (iii) of Section 80G(5) has not been fulfilled as per which the assessee had to apply for the final registration at least six months prior to the expiry of period of the provisional registration or within six months of commencement of its activities whichever is earlier. He submitted that the ld. CIT(E) took the basis of commencement of activities and rejected the application as non-maintainable, even though the assessee has followed the conditions. He placed reliance on the recent decision of the Co-ordinate Bench of this Tribunal in the case of *Diamond Cares vs. CIT in ITA No. 877/Kol/2023, order dt. 10/01/2023.*

The ld. D/R vehemently argued supporting the order of the ld. CIT(E).

5. We have heard rival contention and perused the material placed before us. We find that this issue is squarely covered in favour of the

assessee by the decision of this Tribunal in the case of *Diamond Cares vs. CIT in ITA No. 877/Kol/2023 (supra)*, wherein the Tribunal under identical facts and circumstances has held under:-

*“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 from 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 Id. 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 Id. 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 Id. 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 Id. CIT(E) is set aside and the Id. 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.*

7. *In the result, appeal of the assessee is allowed.”*

**{Emphasis ours}**

6. As the facts involved in the present case are identical to those in the case of *Diamond Cares vs. CIT(supra)* and also taking note of the recent CBDT Circular dt. 25/04/2024 extending the due date of filing Form No. 10A/10AB upto 30/06/2024, we set aside the impugned

order of the ld. CIT(E) with a direction to admit the application filed in Form 10AB on 15/02/2023 and grant final approval to the assessee u/s 80G(5)(iii) of the Act, if the assessee is found to be eligible, irrespective of the date of application.

7. In the result, appeal of the assessee in ITA NO. 1472/Kol/2023 is dismissed and ITA No. 1473/Kol/2023 is allowed for statistical purposes.

**Order pronounced in the Court on 2<sup>nd</sup> May, 2024 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 02/05/2024

*SJG*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata