

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.236/PUN/2024 (E-Appeal)

Smt. Mangla Ramniwas Mandhani ABMM Awas Yojana Foundation, House No.1-28-4118/3, Karwa Nagar, Jalna – 431 203 Maharashtra PAN : ABJCS3083L	Vs.	CIT(Exemption) Pune
Appellant		Respondent

Assessee by : Shri Anand Partani &
Shri Santosh Garud
Revenue by : Shri Keyur Patel
Date of hearing : 15.05.2024
Date of pronouncement : 16.05.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order passed by the Id. Commissioner of Income Tax, Exemption, Pune [‘the CIT, Exemption’] dated 16.12.2023 denying the grant of approval u/s.80G(5) of the Income Tax Act, 1961 (‘the Act’).

2. Briefly, the facts of the case are that the appellant is a charitable Trust formed with the object of providing relief to poor and deserving persons by way of giving reliefs for setting up homes and hostels for women, orphans old age homes, day care centres and such other

facilities for senior citizens and measures etc. The appellant was granted provisional approval u/s.80G(5)(vi) read with clause (iv) of first proviso to section 80G(5) of the Act on 24.09.2022. Thereafter, the appellant trust had filed application in Form 10AB under clause (iii) of first proviso to sub-section (5) of section 80G on 29.08.2023. The said application came to be rejected by the Id. CIT, Exemption vide order dated 16.12.2023 on the ground that the application was not filed within six months from the date of grant of provisional approval, i.e., on or before 28.06.2023. Since the application was filed by the appellant on 29.08.2023, the Id. CIT, Exemption placing reliance on the judgment of Hon'ble Supreme Court in the case of *State of UP Vs. Harish Chandra AIR 1996 SC 2173 as well as Union of India Vs. Kirloskar Pneumatic Co. Ltd. 1996 taxmann.com 575 (SC)* held that in the absence of power to condone the delay the statutory authority cannot condone the delay. Thus, the Id. CIT, Exemption denied the approval u/s.80G(5) of the Act.

3. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

4. The Id. AR submits that by virtue of CBDT Circular No.07/2024, dt.25.04.2024 the benefit of extended time for filing application Form 10AB may be granted to the appellant trust.

5. On the other hand, Id. CIT-DR opposed the above submission by contending that in view of contents of para 4.1 of the said CBDT

circular, benefit of circular cannot be extended to the appellant trust as the application made by the appellant trust was disposed of before the issue of said circular.

6. We heard the rival submissions and perused the materiel on record. The provisional approval was granted to the appellant trust u/s.80G(5) on 24.09.2022. Then, the appellant had made application in Form 10AB on 28.08.2023. The appellant trust was required to file application in Form 10AB on or before 28.06.2023 but the same came to be filed on 29.08.2023. It is an admitted fact that the Id. CIT, Exemption had already disposed the application before the issue of CBDT Circular No.07/2024, dt. 25.04.2024, therefore, we concur with the submission of Id. CIR-DR that benefit of said circular cannot be extended to the appellant trust. The relevant provisions of section 80G(5) read as under :

“(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 :—

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10.

.....

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, where activities of the institution or fund have—*

- (A) *not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought;*
- (B) *commenced and where no income or part thereof of the said institution or fund has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or section 11 or section 12 for any previous year ending on or before the date of such application, at any time after the commencement of such activities:]*

.....

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the [*second*] proviso shall be passed in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:

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.

From the above provisions, it is very clear that no power is conferred upon neither on the CIT to condone the delay in filing Form 10AB, nor on Appellate Authority.

7. In the present case, the provisional approval u/s.80G(5) was granted to the appellant trust on 24.09.2022. The appellant trust was required to file application in Form 10AB on or before 28.06.2023 but the same came to be filed on 29.08.2023. Thus, there is a delay of more than six months. Therefore, the question to be answered is that whether the Tribunal, while exercising the power vested under the provisions of

section 80G(5) can condone the delay occurred in filing the appeal. A mere perusal of provisions of section 80G(5), it would reveal that the Legislature has not vested the Tribunal with the power to condone the delay in filing the appeal. The scheme of the Act would disclose that the Legislature had deliberately excluded the application of the principles underlying section 5 and 14 of the Limitation Act in relation to the provisions of section 80G of the Income Tax Act. However, the Legislature had vested the power to condonation of delay in relation to the provisions of section 249 and section 254 of the Act. Thus, the very fact that the Legislature had provided for a power to condonation of delay in relation to the provisions of section 249 and section 254 of the Act shows that the Legislature had consciously excluded the power of Tribunal to condone the delay in relation to the provisions of section 80G(5) of the Act. In this connection, we would like reference to the order of the Hon'ble Supreme Court in the case of *Nityananda M. Joshi vs. Life Insurance Corporation of India*, AIR 1970 SC 209 held that in view of section 4 & 5 of the Limitation Act, it would be clear that the scheme of the Act is that it only deals with applications to courts and the Labour Court is not a court within the meaning of the Limitation Act, and, therefore, an application u/s 33C(2) cannot be held to be barred under Article 137, insofar as the claim was for a period beyond three years.

8. It is settled position of law that in the absence of any statutory provisions, no power exists in the authority to condone the delay. It is also equally settled position of law that the provisions of section 5 of the Limitation Act have no application to the proceedings before the Tribunal. In the case of *CIT vs. Western India Engineering Co. Ltd.*, 77 ITR 165, the Division Bench of the Hon'ble Gujarat High Court has held that the Appellate Tribunal under Section 66(1) of the Income Tax Act, 1961 is not a court but is merely a tribunal exercising the judicial power of the State. As the provisions of the Limitation Act are not intended to be made applicable to proceedings before authorities other than courts governed by the Code of Civil Procedure or the Code of Criminal Procedure, Section 5 of the Limitation Act, will not apply to applications made to the Appellate Tribunal and, therefore, the Tribunal has no power to condone delay in filing reference applications under Section 66(1) of the Income Tax Act, 1961.

9. In *Comm, of Agrl. I.T. vs. Thalayar Rubber Industries*, 131 ITR 162 a Full Bench of the Hon'ble Kerala High Court has held that Section 69 of the Kerala Agricultural Income Tax Act, 1950, indicates that provisions of sections 4 to 24 of the Limitation Act are not attracted to proceedings under the Act and the Tribunal has no jurisdiction to condone delay in filing an application for reference under Section 60(1) of the said Act.

10. In *Insp. Asst CIT vs. Kedar Nath Jhunjhunwalla*, 133 ITR 746 a Division Bench of the Hon'ble Patna High Court has held that Section 29(2) of the Limitation Act will apply to appeals and applications filed under a special law only where the scheme of the special law does not exclude its application. Neither the provision of Section 5 nor that of Section 12(2) of the Limitation Act will apply to appeals filed under Section 269H of the Income Tax Act, 1961.

11. On the conspectus of the decisions referred to above and their ratios, it would be clear that the Tribunal constituted under the provisions of Income Tax Act, 1961 is not a Court but a Tribunal unless there is express power conferred by the said Act to condone the delay or exclude any period of limitation, the Tribunal would not be clothed with the power to condone the delay. It is trite law that in the absence of any conferment of power by the statute, the Tribunal cannot condone the delay in filing the application in Form 10AB. Thus, the Id. CIT, Exemption had rightly denied the grant of approval u/s.80G(5) by placing reliance on the judgment in the case of *State of UP Vs. Harish Chandra AIR 1996 SC 2173 as well as Union of India Vs. Kirloskar Pneumatic Co. Ltd. 1996 taxmann.com 575 (SC)*

12. In view of the above legal position, the Id. CIT, Exemption, Pune is justified in denying grant of approval u/s.80G(5) of the Act.

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 16th day of May, 2024.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16th May, 2024

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune