

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.372/KOL/2024**

**Assessment Year:**

Anandilal Poddar Charitable Trust 103, Park Street, Kolkata-700016. (PAN:AAATA4442Q)	Vs.	CIT (Exemption), Kolkata.
<b>(Appellant)(Respondent)</b>		

**Present for:**

Appellant by : Shri Sonu Kumar Agarwal, FCA  
Respondent by : Shri Bibekananda Madhu, JCIT, Sr. DR

Date of Hearing : 09.05.2024  
Date of Pronouncement : 15.05.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Exemption), Kolkata (hereinafter referred to as “the Ld. CIT(E)” passed vide Form No. 10AD rejecting the application of the assessee for final approval as per the provisions of section 80G(5)(iii) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) vide DIN No. ITBA/EXM/F/EXM45/2023-24/1060767878(1) dated 11.02.2024.

2. Grounds of appeal raised by the assessee read as under:

*“1. That the order passed by the learned Commissioner of Income Tax (Exemption) is bad in law and contrary to the provisions of law and facts.*

*2. That the learned Commissioner of Income Tax (Exemption) has erred in rejecting the application filed by the Appellant Trust on the ground that the application filed in Form 10AB has not filed within time limit prescribed and*

*therefore it is non - maintainable by ignoring the CBDT Circular No. 6 of 2023 dated 24.05.2023.*

*3. That on facts and circumstances of the case, the action of Ld. CIT (Exemption) in not condoning the delay in filing application for final approval u/s 80G(5) and rejecting the application so filed is incorrect and unlawful ignoring the binding circular of the CBDT dated 24.05.2023.*

*4. That on facts and circumstances of the case, it is prayed before your Honors' to hold that the Application filed in Form 10AB u/s. 80G(5)(iii) of the Act dated 01-08-2023 is within the prescribed time as per CBDT Circular No.6 of 2023 and necessary directions may please be given to Ld. CIT(E) for granting approval u/s 80G(5)(iii).*

*5. The Appellant craves leave to add, alter, amend and/or withdraw any of the grounds or grounds of appeal either before or at the time of appeal hearing.”*

2. The brief facts of the case are that the assessee was granted provisional approval u/s. 80G(5)(iv) of the Act in Form No. 10AC vide order dated 09.07.2021. However, the assessee trust filed Form No.10AB on 01.08.2023 for final registration u/s. 80G(5)(iii) of the Act, which was rejected by the Ld. CIT(E) vide order dated 11.02.2024 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 the Ld. CIT(E) also cancelled the provisional registration granted u/s. 80G(5) of the Act.

3. The Ld.CIT(E) has mentioned in the order that the submission of the assessee was examined and it was found that the assessee had already commenced its activities from 30.03.1962 and the extended due date for filing application in Form No. 10AB was 30.09.2022 as per the CBDT circular No. 8/2022 dated 31.03.2022. However, the assessee did not file Form No. 10AB within the stipulated time limit and the same was filed on 01.08.2023. A show cause notice was issued to the assessee and the assessee filed its reply mentioning that Anandilal Poddar Charitable Trust was created on 30.03.1962 with the object of helping poor and needy people with their education and medical facilities and the trust has been carrying on charitable activities since inception. The trust was granted registration u/s.

12A from 1963-64 and also registration u/s. 80G from 1963-64 and the last registration u/s. 12AB(1)(b) dated 18.12.2023 was granted by the Ld. CIT(E).The trust was granted provisional registration u/s. 80G(5) of the Act vide order dated 09.07.2021 for the period of AY 2021-22 to 2023-24. The application for registration could not be filed in Form No. 10AB as the accountant of the trust was not aware of the latest amendment of the income tax provision. The delay in filing Form No. 10AB u/s. 80G(5) was due to *bona fide* reasons and there was no *mala fide* intention and the delay was owing to oversight. It was stated that the assessee cannot be penalised for the error of the accountant and the trust was carrying on charitable activities since inception and exemption had been claimed prior to 01.04.2021 also. The assessee requested for condonation of the delay. The Ld. CIT(E) observed that the assessee had filed Form No. 10AB u/s. 80G(5)(iii) of the Act on 01.08.2023 and the document submitted by the assessee showed that its activities commenced from 30.03.1962.After examining the circular issued by the CBDT, he was of the view that the last date for filing Form No. 10AB was 30.09.2022. As the limit was mandatory and in view of the decision in the case of Bishnupur Public Education Institute 139 taxmann.com 121 of the Hon'ble Kolkata Tribunal, wherein it has been held that the CCIT was not empowered to condone the delay for application u/s. 10(23C), he held the application filed in Form No. 10AB u/s. 80G(5)(iii) of the Act as not maintainable as the Circular No. 6/2023 dated 24.05.2023 of the CBDT does not extend the due date to 30.09.2023 in such cases which was 30.09.2022 in such cases. The provisional certificate issued to the assessee was also cancelled.

4. A perusal of annexure to Form No. 10AC shows that exemption u/s. 80G(5)(vi) was granted vide letter No. DIT(E)/1219/8E/42/63-64 dated 05.03.2010 which was valid for the FY 1.4.2009 to 31.12.2012 and the same was extended in perpetuity unless specifically withdrawn vide letter No. DIT(E)/158/8E/42/63-64 dated 23.05.2013 of the Director of Income Tax (E), Kolkata.

5. We have examined the matter and have heard the rival contentions. Ground Nos. 1 and 5 are general in nature and do not require any separate adjudication.

6. Ground Nos. 2, 3 and 4 relate to the rejection of the application of the assessee. As is mentioned above, the assessee is a charitable society and was granted approval in perpetuity by the Director of Income Tax (E). The main controversy arose because the assessee had applied for registration in Form No. 10AC under clause (iv) of the first proviso to sub-section (5) of section 80G instead of clause (i) thereof and the provisional approval was granted on 09.07.2021. The assessee applied for registration u/s. 80G(5)(iv) i.e. as a new trust erroneously and was granted provisional approval on 09.07.2021 in Form No. 10AC. Subsequently, it applied for approval under clause (iii) of first proviso to sub-section (5) of section 80G of the Act on Form No. 10AB on 01.08.2023. Since it was an existing assessee and was granted approval which was deemed to be extended in perpetuity unless specifically withdrawn, post the amendment in the provisions of section 80G(5), it was required to apply for registration under the amended provision under clause (i) of the proviso to section 80G(5) while it incorrectly applied under clause (iv), which is for the case of a new trust. Both the applications u/s. 80G(5)(iv) as well as 80G(5)(iii) were filed within time. The provisional approval clause applies to new applicant only whereas in the case of the assessee being an existing assessee, clause (i) of the proviso to section 80G(5) was applicable. As the approval was granted in perpetuity, therefore, clause (iv) was not applicable but clause (i) was applicable. Further, this fact also escaped the attention of the Ld. CIT(E). Similar issue had come up before the Coordinate Bench in ITA No. 105/Kol/2024 Friends of Kolkata and vide order dated 01.04.2024, the Tribunal "B" Bench has held as under:

*"5. As far as the details of application and their dates, there is not much dispute. The Id. CIT(Exemption) was of the view that activity of the assessee-Trust commenced in 2012 and, therefore, for grant of a regular registration, it ought to have applied within six months from the appointed date, i.e. 1st of April, 2021 extended upto 30th September, 2023. The assessee did not file such application. He further observed that the assessee has applied for grant of a*

*provisional registration under sub-clause (iv) and immediately thereafter applied for grant of a regular registration under sub-clause (iii), which is meant for those Trust or Society, which came after April, 2021. In view of the above, he was of the opinion that being an old Trust, the assessee has applied for a provisional registration and thereafter regular registration. But such application is not in consonance with the procedure laid down under sub-clause (iii) as well as sub-clause (iv) and, therefore, on account of this technical aspect, he rejected the application of the assessee.*

*6. With the assistance of Id. Representatives, we have gone through the record carefully. As observed earlier, had application was moved under sub-clause (i) instead of applying for provisional registration, then no dispute would have come, because the assessee-Trust is an existing Trust and the time limit to move an application under sub-clause (i) has been extended upto 30th September, 2023. Its application alleged to be moved under sub-clause (iii) would have been under clause (i), then it would be construed as within time limit?*

*7. We are of the view that it is only a technical error. The Id. CIT(Exemption) ought to have looked into the matter on this aspect and call for a clarification from the assessee. Once he was seized of the matter and aware that the Trust was enjoying registration under section 80G under old regime, it fulfilled all other conditions, then on account of wrong mention of section (iii) instead of (i), in its application should have not been given much weightage for rejecting the application on technical grounds. Therefore, we set aside the impugned order and relegate this issue to the file of Id. CIT(Exemption) with a direction that application of the assessee be treated under clause (i) and it be decided on merit.”*

7. Further, in another case in ITA Nos. 49 & 50/Kol/2024 Shree Ram Chandra Saraf Seva Nidhi dated 14.03.2024 decided by the Tribunal “C” Bench, Kolkata the Bench vide para 3 has held as under:

*“3. Considering the overall facts and circumstances of the case and also as observed by us in many cases that due to complexity of the newly inserted provisions even the Id. CIT(E)s also could not properly interpret the same, therefore, the assessee cannot be punished on this technical ground. The impugned orders of the CIT(E) are, therefore, set aside and it is directed that the Id. CIT(E) will consider the applications filed by the assessee in Form 10AB as being filed in the relevant prescribed form which is required for making applications for the institutions who are already registered as on 01.04.2021 and the applications moved by the assessee will be treated as being moved u/s. 12A(ac)(i) of the Act and under Clause (i) to the First Proviso to section 80G(5) of the Act respectively and the CIT(E) will grant the provisional registration accordingly. The Id. CIT(E) will decide both the applications of the assessee within two months of the receipt of copy of this order.”*

8. Since it was a technical error due to change in the procedure, therefore, the same is liable to be corrected. Respectfully following the above decisions of the Coordinate Benches, cited supra, we allow the appeal and direct the Ld. CIT(E) to consider the application filed by the assessee in Form 10AB as

being filed in the relevant prescribed Form which is required for making application for the institutions which are already registered on 01.04.2021 and the application filed by the assessee will be treated as filed under clause (i) of the first proviso to sec. 80G(5) of the Act. The Ld. CIT(E) will decide the matter of the assessee within two months of the receipt of this order in accordance with law.

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

Order pronounced in the open court on 15thMay, 2024.

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Rakesh Mishra)  
Accountant Member

***Dated:15th May, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(E), Kolkata
4. TheCIT,
5. DR, ITAT, Kolkata Bench, Kolkata  
//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata