

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
"D" BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.934/AHD/2023  
(निर्धारणवर्ष/Asstt. Year: N.A.)

Historical And Cultural Research Centre, A-31, Karnavati Society, Nr. Swaminarayan Mandir Nava Narod, Ahmedabad-382346  <b>PAN: AAATH8364E</b>	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
<b>(Applicant)</b>		<b>(Respondent)</b>

Assessee by :	Shri Jaimin Shah, A.R.
Revenue by :	Dr. Darsi Suman Ratnam, CIT D.R.

सुनवाईकीतारीख/**Date of Hearing** : **07/03/2024**

घोषणाकीतारीख/**Date of Pronouncement**: **15/05/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Exemption), (in short "Ld. CIT(E)"), Ahmedabad order dated 25.09.2023.

2. The only issue raised by the assessee is that the learned CIT (Exemption) erred in not granting registration under section 80G of the Act.

3. The assessee in the present case is a trust which was registered 17<sup>th</sup> October 2008 under Bombay Public Trust Act, 1950. The assessee was granted provisional registration in Form-10AC issued under clause (iv) 1<sup>st</sup> proviso to sub-section 5 of section 80G of the Act vide order dated 12<sup>th</sup> of May 2022 for the period commencing from 12<sup>th</sup> May 2022 to assessment year 2025-26. The

assessee subsequently filed the application for the regular registration in Form-10AB under section 80G(5) of the Act dated 31.3.2023. However, the learned CIT exemption found that such application should have been filed for regular registration on before 30<sup>th</sup> September 2022 but the assessee failed to do so and therefore the Id. CIT exemption rejected the application for the registration under section 80G(5) of the Act holding the same is non maintainable.

4. Aggrieved assessee preferred an appeal before us. The Id. AR before us filed a paper book running from pages 1 to 45 and submitted that application for registration was not filed within the stipulated time due to wrong advice of the tax consultant. To this effect, the Id. AR has also filed the affidavit of the trustee which is placed on record. The Id. AR further submitted that this tribunal in the identical facts and circumstances in the case of Best Buds Pet Care vs. CIT(E) in ITA No. 731/Ahd/2023 has restored the issue to the file of the Id. CIT exemption to decide the issue on merit. Thus, the Id. AR before us to prayed to restore the issue to the file of the Id. CIT exemption for fresh adjudication the issue on merit and as per the provisions of law.

5. On the other hand, the learned DR vehemently supported the order of the Id. CIT exemption.

6. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the identical issue came up before this Tribunal in the case of Best Buds Pet Care vs. CIT(E) in ITA No. 731/Ahd/2023 vide order dated 30<sup>th</sup> November 2023 wherein the issue was set aside to the file of the Id.CIT exemption for fresh adjudication on merit and as per the provisions of law. The relevant extract of the order is reproduced as under:

*"6. We have given our thoughtful consideration and perused the material available on record. It is undisputed fact that the Trust was created on 29-04-2021 and Final registration u/s. 12A(i) of the Act was granted to the Assessee Trust vide order dated 17-09-2022 for the assessment years 2022-23 to 2024-25. Similarly, Provisional registration u/s. 80G was granted on 01-10-2021. However, the assessee failed to file final registration under 80G(5) within six months period. It is further seen from the affidavits filed by the*

*Trustee and the Accountant, that they were in the bonafide wrong impression that the Provisional Registration granted u/s. 80G(5) on 01-10-2021 is the sufficient registration and not aware of the Final Registration which is required to be applied within six months of the provisional registration or six months of the commencement of the activities of the Trust. It is only when the assessee trust approached their Chartered Accountant, the assessee trust realized the mistake and filed the same in Form 10AB for final registration u/s. 80G(5) of the Act on 28-02-2023.*

6.1 For better understanding, section 80G(5)(3) of the Act reads as follows:-

*"(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;"*

6.2 Reading of the above sub-section makes it clear that there is no provision to condone the delay in Registration of the Trust. However, the CBDT has extended the above time limits by invoking section 119 of the Act by issuing circular No. 8 of 2022, dated 31- 03-2022 extending the time limit upto 30th September, 2022. It is thereafter by circular No. 6 of 2023 dated 24-05-2023 clarified as follows:-

*"7. It may be also noted that the extension of due date as mentioned in paragraph 5(ii) shall also apply in case of all pending applications under clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act, as the case may be. Hence, in cases where the trust has already made an application in Form No. 10AB under the said provisions but such application has been furnished after 30.09.2022 and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application. Further, in cases where the trust had already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date, the trust may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 5(ii) i.e. 30.09.2023."*

*However, this clause (7) was not referred by the CIT(E) in his order while rejecting the registration u/s. 80G of the Act to the assessee on the sole ground that he has no power to condone the delay of belated filing of Form no. 10AB u/s. 80G(5) of the Act.*

6.3 Reading of the above circular makes it clear that the time is extended up till 30-09-2023, whereas the assessee filed belated application on 28-02-2023. The above circular also clarified that even in case, where the application in Form No. 10AB was rejected by the CIT(E) on or before issuance of this circular dated 24-05- 2023, the assessee trust can make fresh application in Form 10AB on or before 30-09-2023. Thus, the Id. CIT(E) has not considered the clause 7 of the Circular no. 6 of 2023 thereby rejected the application which is in our considered view is against the circular issued by the CBDT. Therefore, we hereby set aside the impugned order passed by CIT(E) with a direction to reconsider the Form No.10AB for final registration u/s. 80G of the Act by giving proper opportunity of being heard to the assessee trust. Needless to say the assessee trust should co-operate by furnishing all the required details as mandated under the law for granting final registration u/s. 80G of the Act."

7. The facts of the case on hand are identical to the facts of the case discussed above, therefore respectfully following the same, we are setting aside

the issue to the file of the Id. CIT exemption for fresh adjudication as per the provisions of law and in the light of the above cited case law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

**Order pronounced in the Court on 15/05/2024 at Ahmedabad**

**Sd/-**

**Sd/-s**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Ahmedabad; Dated 15/05/2024

*Tanmay*

**(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**आदेशकीप्रतिलिपियेपित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation :03/05/2024 (Dictated by Hon'ble Member over his dragon software)
2. Date on which the typed draft is placed before the Dictating Member 03/05/2024
3. Date on which the approved draft comes to the Sr.P.S./P.S. - /05/2024
4. Date on which the fair order is placed before the Dictating Member for Pronouncement /05/2024
5. Date on which the file goes to the Bench Clerk.. : /05/2024
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
8. Date of Dispatch of the Order.....