

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.588/Chny/2024

Meenakshi Academy of Higher Education & Research 12, Vembuliamman Koil Street, West KK Nagar, Chennai-600 078.	बनम/ Vs.	ITO Exemption Ward-2 Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAETM-9880-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri I. Dinesh (Advocate) – Ld.AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri V. Nandakumar (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	20-05-2024
घोषणा की तारीख / Date of Pronouncement	:	20-05-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by rejection of an application filed in Form No.10AB on 03.10.2022 for seeking approval under clause (iii) of first proviso to sub-section (5) of Sec.80G vide impugned order dated 29-04-2023, the assessee is in further appeal before us.
2. The registry has noted a delay of 252 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of affidavit of Founder Trustee of the assessee. Considering the period of

delay, the delay is condoned and we proceed with disposal of the appeal.

3. From the record, it emerges that the assessee trust filed an application in Form No.10AB on 03.10.2022 seeking registration under clause (iii) of first proviso to sub-section (5) of Sec.80G. It transpired that the assessee trust was incorporated on 14.06.2004 and it commenced its activities on same day. The assessee was granted provisional approval in Form No.10AC u/s 80G(5)(iv) for the period commencing from 22.06.2022 to AY 2025-26. The first proviso to Sec. 80G (5), provide timeline for an application to be filed under clause (iii) of first proviso to sub-section (5) of Sec.80G. As per sub-clause (iii) of this proviso, the assessee was required to file this application at least before 6 months prior to expiry of provisional approval or within 6 months from the date of commencement of its activities, whichever is earlier. The said timeline was mandatory in nature. As against this, the assessee filed application on 03.10.2022 which was much after expiry of 6 months from commencement of its activities. Accordingly, it was held by Ld. CIT(E) that the application was time barred and liable to be rejected.

4. The Ld. CIT(E) also noted that under the new regime, CBDT, on multiple occasions, extended time limit for filing the application in Form No.10A and / or 10AB. The latest Circular No.08 of 2022 dated 31.03.2022 extended the time limit to 30.09.2022 beyond which there was no further extension. This was evident from subsequent CBDT Circular No.22/2022 dated 01.11.2022 through which CBDT extended time limit for filing application in Form No.10A under various Sections, up-to 25.11.2022. However no further extension was granted for filing of Form No.10AB. Also, CBDT issued another Circular No.6/2023 on

24.05.2023 extending due date for filing application in Form No.10AB from 30.09.2022 to 30.09.2023 only in respect of trusts / institutions registered u/s 10(23C) and 12AB. The said Circular did not mention any such extension of due date for filing Form No.10AB to get approval u/s 80G. Therefore, the application was treated as time barred and rejected as non-maintainable. Aggrieved, the assessee is in further appeal before us.

5. It is admitted fact that the assessee is an old new trust having commenced its activities on 14.06.2004. It could further be noted that the assessee has already received provisional approval u/s 80G(5)(iv) for a period commencing from 22.06.2022 to AY 2025-26. It sought approval u/s 80G(5)(iii) by filing Form No.10AB on 03.10.2022 which has been rejected by Ld. CIT(E) on the ground that the assessee had violated the mandatory time lines as statutorily provided. However, we find that this issue has been decided by co-ordinate bench in bunch of appeals titled as **M/s CIT-1982 Charitable Trust & Ors, ITA No.827/Chny/2023 order dated 08.03.2024** wherein the bench held that the extended time limit of 30.09.2023 as per CBDT Circular would apply to Form No.10AB as well.

6. The bench also takes note of the latest decision of Hon'ble High Court of Madras in the case of **Sri Nrisimha Priya Charitable Trust** in WP Nos.27030 & ors. of 2024 order dated 02.04.2024 wherein Hon'ble Court has held that clause 5(ii) of Circular No.6 of 2023 dated 24.05.2023 is illegitimate, arbitrary and ultra vires the constitution of India.

7. We also take note of the recent Circular No.07/24 issued by CBDT on 25.04.2024 extending time limit for all such applications to 30.06.2024. Therefore, we set aside the impugned order and direct Ld.

CIT(E) to consider the application on merits without raising the issue of timeline.

8. The appeal stand allowed for statistical purposes.

Order pronounced on 20th May, 2024.

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 20-05-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF