

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 169/Ahd/2024

निर्धारणवर्ष/Assessment Year: -

Jan Arogya Seva Trust Valsad, Palihill 4, Bhagdawada, Valsad, Gujarat-396001 PAN : AACTJ 8121 D	Vs.	Commissioner of Income-tax (Exemption), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Rasesh Shah, AR
Revenue by :		Shri Akhilendra Pratap Yadav, CIT-DR

सुनवाई की तारीख/Date of Hearing : 09.05.2024
घोषणा की तारीख /Date of Pronouncement: 29.05.2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order of the learned Commissioner of Income-tax (Exemption), Ahmedabad [hereinafter referred to as "CIT(E)" for short] dated 12.08.2023, rejecting the application of the assessee under Section 80G(5) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short].

2. The assessee has taken the following grounds of appeal:-

"1. On the facts and in circumstances of the case as well as law, the ld. CIT(Exemption) has erred in rejecting assessee's application u/s. 80G(5) filed on 11.02.2023 on the ground that assessee didn't file the application before 30.09.2022 when the assessee has filed the application in time as per the extension granted till 30.09.2023 as per circular no. 6/2023 dated 29.05.2023.

2. Even otherwise, the ld. CIT(Exemption) has erred in rejecting application u/s. 80G(5) filed on 11.02.2023 when the assessee was under honest belief that extension was granted till 30.09.2023 as per circular no. 6/2023 dated 29.05.2023.

3. It is therefore prayed that the CIT(Exemption) should be directed passed u/s. 80G(5) of the I.T. Act, 1961 may please be set aside to the file of CIT(Exemption) with appropriate direction."

3. The brief facts of the case are that the assessee filed application for final approval under Section 80G(5)(iii) of the Act in Form No. 10AB on 11.02.2023. The assessee-Trust had been earlier granted provisional approval in Form No. 10AC on 27.10.2021 under Clause (iv) of first proviso. On receipt of application, Ld. CIT(E) observed that as per provisions of Section 80G(5) as it stands from 01.04.2021, in the present case, since the assessee had got provisional approval under Section 80G(5) of the Act, the applicant was required to file application in Form No. 10AB under Clause (iii) of first proviso to sub-Section (5) of Section 80G of the Act within the time period of at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activity, whichever is earlier. Further, the Ld. CIT(E) was of the view that the aforesaid timeline prescribed are mandatory in nature, in view of the Calcutta Tribunal decision in the case of **Bishnupur Public Education Institute vs. Commissioner of Income Tax (Exemption) 139 taxmann.com 121 (Calcutta)**. Further, Ld. CIT(E) observed that CBDT, on multiple occasions, had extended the time line in filing the application in Form 10AB and vide Circular No. 8/2022 had extended the time line to 30.09.2022. Thereafter, another Circular No. 6/2023 dated 24.05.2023 was introduced, but in such Circular the date so far as filing of Form 10AB under Section 80G(5)(iii) of the Act is concerned, was not extended beyond the period of 30.09.2022. Accordingly, in view of the aforesaid Circular, the last date of filing Form No. 10AB for approval under Section 80G(5)(iii) of the Act was 30.09.2022. However, in this case, the applicant had been granted order for provisional approval in Form No. 10AC under Section 80G(5)(iv) on 27.10.2021 and the applicant filed Form No. 10AB under Section 80G(5) of the Act on 11.02.2023. Accordingly, in view of the above facts, Ld. CIT(E)

observed that, in view of the above provisions, the applicant was required to file application in Form No. 10AB on or before 30.09.2022, which it failed to submit. Accordingly, Ld. CIT(E) rejected the application of the assessee for grant of approval with the following observations:-

"5. The applicant has not filed any response. The applicant has filed Form 10AB, u/s 80G(5) of the Act on (11/2) / 2023 The applicant had been granted order for provisional approval in Form No. 10AC issued on 27-10-2021 under Clause (iv) of first proviso to sub-section (5) of section 80G for the period commencing from 27-10- 2021 to AY 2024-25.

6. The applicant has not furnished date of commencement in spite of specific query raised by this office notice dated 12/07/2023. The date of registration/incorporation in this case is (14/6) / 2017 as per Form No 10AB.

7. Accordingly, show cause notice dated 31/07/2023 was issued to the applicant as under:

"Please refer to your application approval u/s. 80G(5)(iii) of the Act. For further seeking required details for granting approval u/s. 80G, letters/notices were issued on (12/7) / 2023 However, in response to the above, you have not submitted the requisite details. In view of above, you are once again granted one more opportunity to comply with the above referred notice/letter dated 12.07.2023 and submit the details/documents sought for, as detailed therein on or before (7/3) / 2023

2. Further, your kind attention is invited to the provision of section 80G(5)(iii) of the Act which stipulates as under:

"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."

3. In view of the above, you are also requested to state the date of commencement of activities alongwith corroborative evidences. In absence of same, you are hereby further requested to explain as to why the date of Incorporation/Creation/Registration should not be treated as the date of commencement of activities for the purposes of determining 'due date' prescribed under section 80G(5)(iii) of the Act...."

8. In response to the same, the applicant has furnished its response wherein the applicant has submitted that the trust was registered on 14-06-2017 under the Bombay Public Trust Act, 1950. The trust has taken up a project of building a hospital in the rural area of village Vankal, Tal Dharampur in Valsad Dist. For the said purpose, the first donation of Rs. 11,000/- was received on 14 - 1 - 2018 and 24-04- 2018, the trust has received a land in donation of market value of Rs. 12,94,000/-.

Decision

9. In view of the above, it is evident that the activities of trust had commenced long back i.e. (14/1) / 2018 In view of discussion in Para 3 and Para 4 above, the applicant was required to file application in Form 10AB in this case on or before 30.09.2022, which it has failed to submit. Therefore, the present application in Form No.10AB u/s 80G(5) of the Act has not been filed within the time limit prescribed therein and therefore, the same is liable to be rejected as such as non-maintainable.

Therefore, the present application in Form No.10AB u/s 80G(5) of the Act is rejected as non-maintainable and also provisional approval granted in Form No. 10AC, under clause (iv) of first proviso to sub-section (5) of section 80G vide URN: AACTJ8121DF20218 is hereby cancelled."

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(E) rejecting the application filed by the assessee-Trust. Before us, the Counsel for the assessee submitted that the assessee-trust was earlier granted provisional approval on 27.10.2021, and thereafter, the assessee-Trust filed application for grant of final approval under Section 80G(5) of the Act on 11.02.2023. The said application filed by the assessee-Trust was rejected vide order dated 12.08.2023. Accordingly, the Counsel for the assessee submitted firstly that the assessee-Trust had been incorporated on 14.06.2017 and therefore, the assessee-Trust had commenced its activities much prior to the amendment/changes introduced in Section 80G(5) of the Act for grant of approval effective from 14.06.2017. The Counsel for the assessee submitted that, in view of Circular No.7/2024, the due date of filing Form 10A/10AB stands extended to 30.06.2024, and therefore, the assessee has filed application

within the extended timelines and the application filed by the assessee cannot be rejected on this ground alone, without discussing the merits of the case.

5. In response, the Ld. D.R. submitted that the assessee-Trust was issued several notices, and in absence of any details filed by the applicant, the date of commencement is assumed to be the date of incorporation i.e. 14.06.2017 and the applicant-trust was required to file application in Form No. 10AB on or before on 30.09.2022 in terms of Circular No. 8/2022 dated 31.03.2022 which had extended the time for making application in Form 10AB under Section 80G(5)(iii) of the Act to 30.09.2022. Since the assessee-Trust had filed application for grant of registration beyond the stipulated time, there is no error in the order of Ld. CIT(E) denying the grant of registration to the assessee-Trust.

6. We have heard the rival contentions and perused the material on record.

7. In the instant case, we observe that, very recently vide Circular No. 7/2024 dated 25.04.2024, CBDT has further extended the due date of filing Form No. 10A/10AB under the Income-Tax Act till 30.06.2024, taking into consideration the difficulties reiterated by tax payers electronic filing of 10A/10AB. It would be useful to reproduce the Circular for ready reference:-

“

Circular No. 7/2024

*F. No. 173/25/2024-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, Dated 25th April, 2024

Sub: Extension of due date for filing of Form No. 10A/10AB under the Income-tax Act, 1961-reg.

On consideration of difficulties reported by the taxpayers and other stakeholders in the electronic filing of Form No. 10A/10AB, the Central Board of Direct Taxes (the Board) in exercise of its powers under section 119 of the Income-tax Act, 1961 (the Act) extended the due date for filing Form No. 10A to 31.08.2021 by Circular No. 1212021 dated 25.06.2021, to 31.03.2022 by Circular No. 16/2021 dated 29.08.2021, to 25.11.2022 by Circular No. 22/2022 dated 01.11.2022 and further to 30.09.2023 by Circular No. 6/2023 dated 24.05.2023, and extended the due date for filing Form No. 10AB to 30.09.2022 by Circular No. 8/2022 dated 31.03.2022 and further to 30.09.2023 by Circular No. 6/2023 dated 24.05.2023.

2. Representations have been received in the Board with a request to condone the delay in filing Form No. 10A/10AB, as the same could not be filed in such cases within the last extended date, i.e., 30.09.2023.

3. On consideration of the matter, with a view to avoid and mitigate genuine hardship in such cases, the Board, in exercise of the powers conferred under section 119 of the Act, hereby extends the due date of making an application/intimation electronically in –

(i) **Form No. 10A, in case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of an intimation under fifth proviso of subsection (1) of section 35 of the Act, till 30.06.2024;**

(ii) **Form No. 10AB, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30.06.2024.**

4. It may be also noted that extension of due date as mentioned in paragraph 3(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 or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, as the case may be. Hence, in cases where any trust, institution or fund has already made an application in Form No.10AB under the said provisions on or before the issuance of this Circular, 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.

4.1 Further, in cases where any trust, institution or fund has 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 or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 3(ii) i.e. 30.06.2024.

5. It is also clarified that if any existing trust, institution or fund who had failed to file Form No. 10A for A Y 2022-23 within the due date as extended by the CBDT circular no. 6/2023 dated 24.05.2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form No. 10AC and apply for registration for A Y 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time provided in paragraph 3(i) i.e. 30.06.2024."

8. Accordingly, since in the instant facts, it is evident from the various dates mentioned above, the assessee-Trust had filed application for grant of final approval under Section 80G(5) of the Act on 11.02.2023, within the extended due date i.e. 30.06.2024 vide Circular No. 7/2024 dated 25.04.2024.

Accordingly, looking into the instant facts, the matter is restored to the file of Ld. CIT(E) for *de-novo* consideration, after giving due opportunity of hearing to the assessee, and thereafter pass 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 29.05.2024 at Ahmedabad.

Sd/-

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad; Dated 29/05/2024

**%

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

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **संबंधित आयकर आयुक्त** / Concerned CIT
4. **आयकर आयुक्त (अपील)** / The CIT(A)-
5. **विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर** , /DR,ITAT, Ahmedabad,
6. **गार्ड फाईल** /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad