

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1106/Chny/2024
निर्धारण वर्ष/Assessment Year: -

Emma & Tharyan Koshi Foundation, 6, 10 th East Cross Road, Gandhi Nagar, Vellore-632 006.	v.	The Commissioner of – Income Tax (Exemptions), Chennai.
[PAN: AABTE 1861 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Mahesh, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh – Kumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	22.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	31.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Trust against denial of registration u/s.80G(5) of the Income Tax Act, 1961 (hereinafter 'the Act') by the Commissioner of Income Tax (Exemptions), Chennai, (hereinafter 'Ld.CIT(E)') vide impugned order dated 26.02.2024.

2. The brief facts of the case are that the assessee Trust filed an application in Form No.10AB on 09.08.2023 seeking approval under clause (iii) of first proviso to sub-section (5) of Sec.80G of the Act. And



:: 2 ::

the Ld.CIT(E) while processing the application noticed that the date of creation of the Trust was on 24.09.2021 and that it had been granted provisional approval in Form No.10AC on 24.09.2021 u/s.80G(5)(iv) of the Act, for period commencing from 09.12.2022 to AY 2024-25. The Ld.CIT(E) rejected the application dated 09.08.2023 by taking note of the fact that the assessee had commenced its activities on 06.10.2021; and according to him the application has been preferred by assessee not in accordance to statute, i.e, first proviso to sub-section (5) of Sec.80G of the Act, and more particularly, sub-clause (iii) [reproduced as under]:-

"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)

(ii)

(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)

3. The Ld.CIT(E) noted that the assessee was provisionally approved u/s. 80G(5)(iv) of the Act and therefore, the assessee was required to file application in Form No.10AB u/s 80G(5) (ii) of the Act at least six months prior to expiry of period of the provisional approval or within six months of commencement of its activities, whichever is earlier. According to him, the time line prescribed therein is mandatory and the Commissioner of



:: 3 ::

Income Tax has no power to condone the delay in filing application Form No. 10AB. According to him, in the present case, since, the date of commencement of its activities is 06.10.2021 and date of filing application in Form 10AB was 09.08.2023, which is after expiry of six months of commencement of its activities, therefore, he held that the assessee's application filed on 09.08.2023 in Form No.10AB u/s.80G(5)(iii) of the Act, was non-maintainable and he rejected it.

4. Aggrieved, the assessee is in appeal before this Tribunal.

5. We have heard both the parties and perused the material available on record. We note that the assessee Trust was created on 24.09.2021 and commenced its activities on 06.10.2021. And that the assessee had been granted provisional approval in Form No.10AC issued on 24.09.2021 u/s.80G(5)(iv) of the Act, for the period commencing from 24.09.2021 to AY 2024-25. The assessee had filed application u/s.10AB of the Act, on 09.08.2023 seeking approval under Clause (iii) of first proviso to sub-sec.(5) of Sec.80G of the Act, which has been rejected citing the reason that the assessee did not file application within the time prescribed under Clause (iii) of first proviso to sub-sec.(5) of Sec.80G of the Act (supra) as well as it did not file application u/s.10AB of the Act, within the extended timeline given by the CBDT Circulars as under:



:: 4 ::

Sl.No.	CBDT Circular	Extension Up to
1	No. 12 of 2021 dated 25-06-2021	31-08-2021
2	No. 16 of 2021 dated 29-08-2021	31-03-2022
3	No. 08 of 2022 dated 31-03-2022	30-09-2022

6. Further, the Ld.CIT(E) noted that the CBDT thereafter had issued Circular No.6 of 2023 dated 24.05.2023, extending the due date for filing the applications in Form 10AB from 30.09.2022 to 30.09.2023 only in respect of trusts/institutions approved u/s.10(23C) and registered u/s.12AB of the Act. However, since, the said Circular did not mention any such extension of due date for filing Form No.10AB to get approval u/s.80G of the Act, he rejected the application filed on 09.08.2023 as non-maintainable and also went a step further by cancelling the provisional registration granted up to 2024-25.

7. We do not countenance the impugned action of the Ld.CIT(E) and note that this issue is no longer *res integra*. We find that similar issue had come up for consideration before this Tribunal in the case of Teddy Trust in ITA No.1315/Chny/2023 dated 10.04.2024, wherein, on identical facts/reasons, the Ld.CIT(E) had rejected the application of that Trust; and the Tribunal taking note of the decision dated 08.03.2024 of the coordinate Bench in the case of M/s.CIT-1982 Charitable Trust & Others in ITA No.827/Chny/2023 as well as the decision of the Hon'ble jurisdictional High Court in the case of Narasimha Priya Charitable Trust in WP



:: 5 ::

No.27030 & Others of 2024 dated 02.04.2024 held that the Ld.CIT(E) ought not to have rejected the assessee's application filed in Form No.10AB only for technical reasons and held that the extended time limit of 30.09.2023 as per CBDT Circular No.6 of 2023 dated 24.05.2023 would apply to applications filed in Form No.10AB (for renewal of approval/recognition/ registration under Clause (iii) of first proviso to sub-sec.(5) of Sec.80G of the Act) as well. The co-ordinate Bench of the Tribunal held in the case of Teddy Trust as under:

1. Aggrieved by denial of registration u/s. 80G(5) of the Act by learned Commissioner of Income Tax (Exemption), Chennai [CIT(E)] vide impugned order dated 25.09.2023, the assessee is in further appeal before us.
2. From the record, it emerges that the assessee trust filed an application in Form No.10AB on 30.03.2023 seeking registration under clause (iii) of first proviso to sub-section (5) of Sec.80G. It transpired that the assessee trust was incorporated on 04.11.1992 and it commenced its activities on 17.01.1992. The assessee was granted provisional approval in Form No.10AC u/s 80G(5)(iv) for the period commencing from 21.10.2022 to AY 2025-26. The first proviso to Sec. 80G(5), provided 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 30.03.2023 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.
3. It was further noted by Ld. CIT(E) that the assessee trust was an old trust continuing to exist much before commencement of new regime of registration effective from 01.04.2021 and therefore, it could seek registration under new regime in Form No.10A u/s 80G(5)(i) itself under which it would have got registration for five years. Instead, the assessee wrongly made an application in Form No.10A u/s 80G(5)(iv) and received provisional approval for 3 years.
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



:: 6 ::

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 trust and it has already commenced its activities on 17.01.1992. It could further be noted that the assessee has already received provisional approval u/s 80G(5)(iv) for a period commencing from 21.10.2022 to AY 2025-26. It sought approval u/s 80G(5)(iii) by filing Form No.10AB on 30.03.2023 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 as under: -

7.8 After hearing the arguments of Id. counsel for the assessee and Id. CIT-DR as noted above, we find from the facts that the timeline prescribed for filing Form No.10AB for registration u/s.12A of the Act in the case of assessee trust has been extended up-to 30.09.2023 after considering the genuine hardship faced by charitable institutions vide various CBDT circulars and finally, vide Circular - 29 - ITA Nos.827, 875 & 1136/Chny/2023 No.6/2023 dated 24.05.2023. Similarly, the timeline prescribed for filing Form No.10A for recognition u/s.80G of the Act was also extended up-to 30.09.2023 by the same circular for trusts filing registration under clause (i) to first proviso to section 80G(5) of the Act. But the above extension was not extended beyond 30.09.2022, unlike other forms which were extended up to 30.09.2023 to the disputed forms namely Form No.10AB for renewal of recognition u/s.80G(5) of the Act under clause (iii) of the first proviso to section 80G(5) of the Act. Once, the CBDT has extended the timeline for filing Form No.10AB for recognition u/s.12A of the Act and also for filing Form No.10A for recognition u/s.80G of the Act extended up to 30.09.2023 for trusts filing registration under clause (i) of first proviso to section 80G(5) of the Act, we find no difference in continuing hardship as recognized by CBDT even in filing Form No.10AB for renewal of recognition u/s.80G of the Act under clause (iii) of first proviso to section 80G(5) of the Act. In our view, this being a genuine hardship case, which is recognized by Revenue or CBDT by issuing a general circular, we are of the view that this specific provision of clause (iii) to first proviso to section 80G(5) cannot be excluded and or it has not been the intention of the CBDT while issuing the circular. There cannot be a distinction within the same provision without bringing out any exception and even this provision is for the benefit of the donors who are donating money to the charitable trusts for claiming exemption in their returns of income. In our view, we agree with the argument of Id. counsel for the assessee that the timeline prescribed under clause (iii) of first proviso to section 80G(5) of the Act should be treated as directory and not mandatory especially considering the transitional nature of the amendment as brought out by the taxation of other laws (relaxation and amendment of certain provisions) act 2020 for



:: 7 ::

bringing new regime. Hence, in our view, the CIT(Exemptions) should not have rejected the assessee's application in Form No.10AB only for this technical reason. We are of the view that the intention of CBDT in its circular clearly reflects their mind that once the timeline prescribed for filing Form No.10AB for recognition u/s.12A of the Act has been extended up to 30.09.2023, the same may be treated as extended for forms namely Form No.10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G of the Act also. Hence, we accept the plea of assessee and agree with the arguments of Id. counsel for the assessee and remand the matter back to the file of the CIT(Exemption) to decide the issue on merits. Hence, the order of CIT(Exemption) on this issue is set aside and matter is remanded back to the file of the CIT(Exemption) for redeciding the issue on merits as per law. The appeal of the assessee is allowed for statistical purposes.

The bench thus 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. It has been held as under: -

7. In the result, these Writ Petitions are allowed on the following terms: -

- (i) The clause 5(ii) of Circular No.6 of 2023 bearing F.No.370133/06/2023-TPL, dated 24.05.2023 of the first respondent is declared as illegitimate, arbitrary, and ultra vires the Constitution of India;
- (ii) The respondents are directed to consider the applications submitted by the petitioners as to the recognition/approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the Act as within time and consider the same and pass orders thereon on merits, in accordance with law within six months from the date of receipt of a copy of this order;

Respectfully following the same, we set aside the impugned order and direct Ld. CIT(E) to consider the application on merits without raising the issue of timeline.

7. The appeal stand allowed for statistical purposes in terms of our above order.

8. In the light of the aforesaid judicial precedents and especially that of the binding decision of the Hon'ble jurisdictional Madras High Court in the case of Sri Nrisimha Priya Charitable Trust (supra), and since no change in facts or law could be pointed out, we apply the principles *mutatis mutandis* to the present case and opine that once the timeline



:: 8 ::

prescribed for filing in Form No.10AB for recognition u/s.12A of the Act, has been extended up to 30.09.2023, the same need to be treated as extended for forms viz., Form No.10AB for renewal of approval/recognition/registration under Clause (iii) of first proviso to sub-sec.(5) of Sec.80G of the Act; and therefore, we direct the Ld.CIT(E) to consider the application of the assessee Trust submitted by it for approval / recognition / registration under Clause (iii) of the first proviso to sub-sec.(5) of Sec.80G of the Act as within time and consider the same and pass orders thereon merits in accordance to law. The application of the assessee dated 09.08.2023 in Form 10AB is restored back to the file of the Ld.CIT(E) for passing orders on merits.

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

Order pronounced on the 31st day of May, 2024, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st May, 2024.

TLN, Sr.PS



ITA No.1106/Chny/2024
Emma & Tharyan Koshi Foundation

:: 9 ::

आदेश की प्रतिलिपि अग्रेषित / **Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF