

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. No.83/Kol/2024

K.C.A Charitable Trust.....Appellant
5th Floor,,
Continental Chambers,
15A, Hemanta Basu Sarani,
Dalhousie,
Kolkata – 700001.
[PAN:AAETK6583A]

vs.

CIT (Exemption), Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri Subhendu Datta, CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing :April 29, 2024

Date of pronouncing the order :June 13, 2024

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 20.11.2023 of the Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as 'CIT(Exemption)'] rejecting the application of the assessee for final approval as per the provisions of section 80G(5)(iii) of the Income Tax Act (hereinafter referred to as the 'Act').

2. The only issue raised in the various grounds of appeal is against the order of Ld. CIT(E), Kolkata not granting the approval u/s 80G(5)(iii) of the Act on the ground that the application filed in Form 10AB u/s 80G(5)(iii) was not maintainable.

3. Facts in brief are that the assessee was granted provisional approval u/s 80G(5)(iv) of the Act in Form 10AC vide order dated 31.12.2021 for a period from 31.12.2021 to AY 2024-25. Thereafter an application for approval of the trust u/s 80G(5)(iii) of the Act was electronically filed on 4.05.2023 in Form 10AB under Rule 17A of the Income Tax Rules, 1962(hereinafter referred to as Rules). The Ld. CIT(E), after calling for reply and

explanation on the point and after taking into account various evidences filed by the assessee, observed that the provisions of Section 80G(5)(iii) stipulate a time limit within which the assessee is required to file application u/s 80G(5)(iii) of the Act whereas the assessee has filed application on 04.05.2023 which is beyond the time frame as mentioned in that Section. The Ld. CIT(E) further observed that the assessee was required to file application in Form 10AB u/s 80G(5)(iii) within a time period of six months of the commencement of its activities or before the expiry of six months prior to expiry of the period of the provisional registration whichever is earlier. The Id CIT(E) also noted that the filing of application for approval within such time is mandatory and he has no power under the Act to condone the delay in filing the said application. Accordingly he dismissed the application as not maintainable.

4. After hearing the rival contentions and perusing the material on record, we find that the assessee is duly registered u/s 12A of the Act enjoying exemption u/s 80G(5) of the Act. We note that the assessee is an old one and the activities of the institution were started long ago. We are also mindful of the recent CBDT F. No. 173/25/2024-ITA-I, Circular no. 7/2024 dated 25.04.2024 allowing the various trust/institution file application for approval u/s 80(5) electronically up to 30.06.2024. The said circular is extracted below for the sake of convenience and 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. 12/2021 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 sub-section (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 (ii) 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 AY 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 AY 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.

6. Hindi version to follow.

Vikas Singh
(Vikas Singh)
Director (ITA-I)

Copy to:-

1. PS to FM/OSD to FM/PS to MoS (R)/OSD to MoS(R)
2. PS to Revenue Secretary
3. Chairman, CBDT & All Members, CBDT
4. All Principal Chief Commissioners of Income-tax / Principal Director Generals of Income-tax.
5. DGIT(Systems), New Delhi
6. All Joint Secretaries/CsIT, CBDT
7. Web Manager, O/o DGIT(Systems) with request to upload on the departmental website of incometaxindia.gov.in.
8. Pr. Commissioner of Income-tax (Media & TP) and official Spokesperson, CBDT, New Delhi.
9. JCIT, Data-Base Cell for uploading on irsofficeronline.gov.in.
10. Guard File

Vikas Singh
Director (ITA-I)

We note that since the assessee is duly registered u/s 12A of the Act and was granted provisional approval under section 80G(5)(iv) up to AY 2024-25 vide order dated 31.12.2021 in Form 10AC and there is no change in the activities of the assessee whatsoever. Therefore we are of the view that the filing of application is just procedural formality and would not substantially change the position of the assessee vis-à-vis the provisions of Act. Moreover in view of Circular No. 7/2024 dated 25.04.2024, now the

assessee can apply for approval up to 30.06.2024. Considering these facts and circumstances of the case, we restore the issue back to the Ld. CIT(E) with direction to decide the issue of approval after treating the application already filed by the assessee as filed within the due time.

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

Order is pronounced in the open court on 13th June, 2024

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rajesh Kumar]
Accountant Member

Dated: 13.06.2024.

RS

Copy of the order forwarded to:

1. K.C.A Charitable Trust
2. CIT (Exemption), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches