

आयकर अपीलीय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष  
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.:1480/KOL/2023  
Assessment Year: N.A.**

***Udaan People's Foundation.....Appellant  
[PAN: AABAU7982R]***

**Vs.**

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

**Appearances:**

***Assessee represented by:*** S. Jhajharia, A/R.

***Department represented by:*** Sanjay Mukherjee, CIT-D/R.

Date of concluding the hearing : May 13<sup>th</sup>, 2024

Date of pronouncing the order : June 19<sup>th</sup> 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

The instant appeal filed by the assessee is directed against the order passed by Id. Commissioner of Income-tax (Exemption), Kolkata [in short Id. 'CIT(Exemption)'] in relation to registration applied u/s 80G(5)(iii) of the Income Tax Act, 1961 (in brevity the 'Act') dated 22.08.2023.

2. Ld. Counsel for the assessee before entering into the merit of the case has submitted regarding condonation petition as appeal has been filed after a delay of 69 days. Ld. Counsel for the assessee submitted that the order of

ld. CIT(Exemption) was received by the trustee on 22.08.2023 and the person who looks after the taxation and the accounts of the Trust, due to his medical grounds was travelling from one and around and due to this, the assessee being a Trust, indeed, actually came to know about the order passed on 22.08.2023 on third week of December 2023. Ld. Counsel for the assessee submits that due to the said reason, the appeal could not be filed in time and accordingly, the delay was not intentional, rather it was *bona fide* in the hand of the assessee Trust. Ld. CIT(Exemption) did not oppose on the condonation petition.

On perusal of the condonation petition and in view of the settled law of the Hon'ble Apex Court, the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The condonation petition of the assessee is hereby allowed and appeal is taken for hearing.

3. Ld. Counsel for the assessee challenges the impugned order of the ld. CIT(Exemption) thereby submitting that the ld. CIT(Exemption) misconstrued the provisions laid down u/s 80G(5) of the Act thereby rejecting the final approval of the Trust on this ground that there is a delay of filing application for final approval and that is beyond the period of six months. Ld. Counsel for the assessee further submits that appellant Trust have been granted provisional approval u/s 80G(5)(iv) of the Act on 19.01.2023 and as such the activity of the Trust can be treated as beginning only after such date and as such the application for approval was well within the six months from the commencement of this activity. Ld. Counsel for the assessee cited several decisions of this Court which is as follows:

- i) *Diamond Cares vs. CIT (Exemption)* in ITA No. 877/KOL/2023 order dated 10.01.2024 (ITAT, Kolkata)
- ii) *West Bengal Welfare Society vs. CIT (Exemption)* in ITA Nos. 730 & 731/KOL/2023 order dated 13.09.2023 (ITAT, Kolkata)

4. Ld. D/R has only supported the impugned order of ld. CIT(Exemption).

5. On perusal of the record the following facts have been emerged:
- i) The appellant Trust is duly registered u/s 12A(1)(AC)(iv) of the Act for AY 2022-23 to AY 2026-27.
  - ii) The appellant Trust have been granted provisional approval u/s 80G(5)(iv) of the Act on 19.01.2023.
  - iii) The appellant Trust has applied for final approval u/s 80G(5)(iii) of the Act on 07.02.2023. Ld. CIT(Exemption) has in its order has rejected the application on this ground that since the assessee has already commenced its activities much earlier i.e. from 15.03.2020, so the application for final approval should be filed within six months from the commencement of the activities.

5.1. We have perused the cited judgment of this Coordinate Bench and find that the Coordinate Bench has held thus:

*“6. We note that the ld. CIT(E) has misconstrued the aforesaid proviso to section 80G(5) of the Act. As per the provision, an application for final registration cannot be filed until and unless an assessee/trust has been given provisional approval u/s 80G(5)(iv) of the Act. The assessee was granted provisional approval on 30.11.2022 only, and within a few days i.e. on 03.12.2022, the assessee applied for final registration u/s Clause(iii) of 1<sup>st</sup> Proviso to section 80G(5) of the Act. Though the assessee might have commenced its activities prior to grant of provisional registration but that does not mean that the assessee in that event will be precluded from applying for final registration even after the grant of provisional registration. The assessee as per statutory provision could not have directly applied for final registration without grant of provisional registration. The aforesaid proviso, therefore, is to be read as that after the grant of provisional registration, if the assessee has not commenced its activities, he may apply for registration within six months of the commencement of its activities or within the six months prior to the expiry of the period of provisional approval, whichever is earlier. In any case, the assessee is eligible to apply for final registration only after the grant of provisional approval. Therefore, we hold that there is no delay I.T.A Nos.730&731/Kol/2023 Assessment year: 2023-24 West Bengal Welfare Society on the part of the assessee in filing application in the prescribed form for grant of final registration under Clause (iii) of 1<sup>st</sup> Proviso to section 80G(5) of the Act. However, since we have restored the matter to the ld. CIT(E) for decision afresh on merits on the application for final registration u/s 12A of the Act and since the registration u/s 80G(5) is dependent upon the registration u/s 12A of the Act, therefore, the application of the*

*assessee for registration u/s 80G(5) is also restored to the ld. CIT(E) subject to the observations made above.”*

6. Keeping in view the above cited decision and the facts of the case, we are of this view that the present case is squarely covered with the aforesaid judgment. Accordingly, the case is hereby remanded back to the file of ld. CIT (Exemption) for grant of registration in view of the above discussion and the appeal is hereby allowed.

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

**Order pronounced in the open Court on 19th June, 2024.**

**Sd/-**

**[Rajesh Kumar]**

Accountant Member

Dated: 19.06.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Udaan People's Foundation, C/o M/s. Salarpuria Jajodia & Co., 7, C.R.Avenue, 3<sup>rd</sup>Floor, Kolkata, West Bengal, 700072.**
- 2. CIT (Exemption), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

**Sd/-**

**[Pradip Kumar Choubey]**

Judicial Member

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata