

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

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE HON'BLE SHRI MANU KUMAR GIRI, JM AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1026/CHNY/2024

The Heritage Foundation,
4/270, Mohan Estate
Nericombai,
Kookalthorai,
Kotaqiri 643 217.

The Commissioner of Income Tax
Vs. (Exemptions)
Chennai.

PAN: AADTT 8323J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri. V. Nandakumar, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 24.06.2024

घोषणा की तारीख/Date of Pronouncement

: 26.06.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

Aggrieved by rejection of application filed in Form No.10AB on 11.08.2023 for seeking approval under clause (iii) of first proviso to subsection (5) of Sec.80G of the Income Tax Act, 1961 (in short "the Act") vide impugned order dated 23.02.2024, 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 11.08.2023 seeking registration under clause (iii) of first proviso to sub-section (5) of Sec.80G of the Act. It transpired that the assessee trust was incorporated on 13.05.2020 and it commenced its activities on 22.11.2022. The appellant has been granted order for provisional approval in Form No.10AC issued on 06.01.2022 u/s 80G(5)(iv) of the Act for the period commencing from 06.01.2022 to AY 2024-25. 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 11.08.2023 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. 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.

4. It is admitted fact that the assessee is a new trust having commenced its activities F.Y.2022-23. It sought approval u/s 80G(5)(iii) by filing Form No.10AB on 11.08.2023 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 ld. counsel for the assessee and ld. 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 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.

5. 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.

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

Order pronounced in the open court on 26th June, 2024 at Chennai.

Sd/-

एस.आर. रघुनाथा

(S.R. RAGHUNATHA)

लेखा सदस्य/ ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 26th June, 2024

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER