

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.666/Kol/2024
Assessment Year: 2023-24

Shalimar Chemical Charitable Trust.....Appellant
92E, Patwari House,
Alipore Road,
West Bengal – 700027.
[PAN: AADTS7353R]

vs.

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

Appearances by:

Shri S. Banerjee, AR, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 24, 2024

Date of pronouncing the order : July 09, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 14.03.2024 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 brief facts of the case are that the assessee applied for provisional approval under Clause (iv) to First Proviso to section 80G(5) of the Act and the same was granted by the CIT(Exemption) in Form 10AC vide order dated 04.09.2023, valid from A.Y 2024-25 to A.Y 2026-27. The assessee thereafter applied for final approval under Clause (iii) to First Proviso to section 80G(5) of the Act. However, ld. CIT (Exemption) rejected the application of the assessee observing that the

time limit prescribed for making an application for final approval u/s 80G of the Act was at least six months prior to the expiry of the period of the provisional approval or within six months of the commencement of its activities, whichever is earlier. He observed that the assessee had already commenced its activities since F.Y 2020-21 i.e. even prior to grant of provisional approval, and since the time period for making application mentioned in Clause (iii) to First Proviso to section 80G(5) of the Act had already expired, therefore, the assessee could not be granted final approval u/s 80G(5) of the Act. He also observed that vide CBDT Circular No. 18/2022, the date for submitting the application for final approval was extended up to 30.09.2022, however, the fresh application by the assessee was filed on 27.09.2023 which was after the extended date of 30.09.2022. He, therefore, rejected the application of the assessee for final approval u/s 80G of the Act.

3. We have heard the rival submissions and gone through the record. Before proceeding further, it will be relevant to reproduce here the relevant provisions of section 80G(5) of the Act:

“80G(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:-

[(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being [approved by the Principal Commissioner or Commissioner;]

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) where the institution or fund is approved under clause (vi) (as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020), within three months from the 1st day of April, 2021;

- (ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;
- (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) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

- (i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;
- (ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—
 - (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the genuineness of activities of such institution or fund; and
 - (B) the fulfilment of all the conditions laid down in clauses (i) to (v);
 - (b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—
 - (A) pass an order in writing granting it approval for a period of five years; or”

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

- (a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;
- (b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;
- (c) in any other case, from the assessment year immediately following the financial year in which such application is made.

4. A perusal of the above provisions would reveal that the institutions which stood already approved u/s 80G(5)(vi) on the date of

Amendment brought to section 80G of the Act by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 have to re-apply for fresh registration under Clause (i) to the First Proviso to section 80G(5) of the Act and those institutions have to be granted approval for five years by the Id. CIT(Exemption) without any enquiry. The prescribed date for final application for approval under Clause (i) to the First Proviso to section 80G(5) of the Act was stipulated as three months from 1st Day of April 2022. However, the CBDT from time to time extended the date for filing of the said application under Clause (i) to the First Proviso to section 80G(5) of the Act and finally vide Circular No.6 of 2023 dated 24.05.2023, the said date was extended upto 30.09.2023. Further, the institutions which had to apply for the first time or the institutions which did not stand approved on the date of Amendment i.e. 01.04.2021 brought by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, they could apply under Clause (iv) of the First Proviso to section 80G(5) of the Act. In that case, the Id. CIT(Exemption) is supposed to make necessary enquiries and if found satisfied regarding the genuineness of the activities of such an institution, would grant provisional approval for five years. Such institutes who have been granted provisional approval under clause (iv) to First Proviso to section 80G(5) of the Act, have to apply for final approval under Clause (iii) of First Proviso to section 80G(5). Such institutions are required to apply for final approval at least six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier. In the case in hand, provisional approval has also been granted to the assessee-institution from A.Y 2024-25 to A.Y 2026-27, therefore, the assessee-trust was entitled to apply for final approval and there was no bar to the institution for making such application. This issue has

already been adjudicated upon by the Coordinate Bench of the Tribunal in the case of “Vivekananda Mission Asram vs. CIT” in ITA No.995/Kol/2023 decided on 08.12.2023 (Judicial Member herein being the author of the said order) while deliberating upon the provisions of section 80G(5) of the Act, has held as under:

“6. So far as the observation of the ld. CIT(E) that the assessee had already commenced its activities since long and that as per Clause (iii) of 1st Proviso to section 80G(5) of the Act, the application for final registration was to be filed within six months from the commencement of its activities and therefore, the application of the assessee for final registration was time-barred, is concerned, we note that the issue has already been discussed and adjudicated by the Coordinate Bench of the Tribunal in the case of West Bengal Welfare Society vs. CIT(Exemption), Kolkata vide order dated 13.09.23 [one of us i.e. the Judicial Member herein, being the author of the said order], wherein, it has been held that the assessee, who has been granted provisional registration, is eligible to apply for final registration irrespective of the fact that the assessee had already commenced its activity even prior to the date of grant of provisional approval. The relevant part of the order of the Coordinate Bench is reproduced as under:

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 1st 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 on the part of the assessee in filing application in the prescribed form for grant of final registration under Clause (iii) of 1st Proviso to section 80G(5) of the Act.

In view of the above observations, the matter is restored the file of the CIT(E) for decision afresh in the light of the observations made above.”

5. *It is to be further noted here that the ld. CIT(Exemption) firstly misconstrued about the CBDT Circulars regarding the exemption of date for final applications for approval. The said Circular/time limits are applicable only for the institutions who stood already registered on the date of Amendment and have made application for renewal of the registration without any time break. However, the said last date which has been extended to 30.09.23 by CBDT Circular No.6 of 2023 is not applicable for making application under Clause (iii) to First Proviso to section 80G(5) of the Act.*

5.3 *In our humble understanding, if the view of the ld. CIT(Exemption) is accepted to be correct, then no institution which has already been into charitable activities before seeking provisional approval under Clause (iv) to First Proviso to section 80G(5) of the Act would ever be entitled to grant of final registration under Clause (iii) to First Proviso to section 80G(5) of the Act even after grant of provisional approval, which would make the relevant provisions of section 80G(5) otiose and defeat the object and purpose of these statutory provisions.*

6. *In view of the above discussion, it is held that after grant of provisional approval, the application cannot be rejected on the ground that the institution had already commenced its activities even prior to grant of provisional registration. Under such circumstances, the date of commencement of activity will be counted when an activity is undertaken after the grant of provisional registration either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.*

7. *In the case in hand, the assessee admittedly has applied for final registration after grant of provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and therefore, the application filed by the assessee is within limitation period. The issue is otherwise squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of Vivekananda Mission Asram vs. CIT (supra) and in the case of “West Bengal Welfare Society vs. CIT(Exemption)” (supra) and further by the decision in the case of “Sri Aurobindo Bhawan Trust, Krishnagar vs. CIT(Exemption)” order dated 20.02.2024 (Judicial Member herein being the author of the said orders). Therefore, the impugned order*

of the CIT(Exemption) is set aside and the ld. CIT(Exemption) is directed to grant provisional approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. The ld. CIT(A) will decide the application for final registration within three months of the receipt of copy of this order.

5. Further, the Coordinate Bench of the Tribunal in the case of “Anudip Foundation for Social Welfare vs. CIT(Exemption), Kolkata” in I.T.A No. 1341/Kol/2023 order dated March 4th, 2024 in almost similar facts and circumstances has made the following further observations:

“4.1. It is further directed that, if the assessee is granted final approval by the ld. CIT(E) then, the benefit of approval u/s 80G of the Act, available to the assessee prior to the Amendment brought vide Amending Act of 2020, will be deemed to be continued without any break. The assessee will not be deprived of the benefit during the time period falling between 31/03/2021 and the date of grant of provisional approval under clause (iv) i.e., 28/05/2021, due to technical errors occurred in making the application under the relevant provisions of the Act because of the confusion and misunderstanding on part of the assessee as well as on part of the ld. CIT(E) in properly interpreting the relevant provisions.”

6. The facts and issues involved in the case in hand being identical to that of the above referred to cases and in view of the findings given by the Coordinate Benches of the Tribunal, the appeal of the assessee is allowed accordingly and the ld. CIT(Exemption) is directed to grant final approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. It is directed that the ld. CIT(E) will decide the application of the assessee for final approval as expeditiously as possible but not later than two months from the receipt of this order. It is further directed that, if the assessee is granted final approval by the ld. CIT(E) then, the benefit of approval u/s 80G of the Act, if it was available to the assessee prior to the Amendment brought vide Amending Act of 2020, will be deemed to have been continued without any break. The assessee will not be deprived of the benefit during the time period falling between

31/03/2021 and the date of grant of provisional approval under clause (iv) i.e., 04/09/2023, due to technical errors occurred in making the application under the relevant provisions of the Act because of the confusion and misunderstanding on part of the assessee as well as on part of the ld. CIT(E) in properly interpreting the relevant provisions.

7. With the above observations, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 9th July, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 09.07.2024.

RS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches