

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.781/Chny/2024
निर्धारण वर्ष/Assessment Year: -

Sri Sankara Health Centre, 8, Katpadi Road, Mottur Village, Vellore-632 006.	v.	The CIT (Exemptions), Chennai.
[PAN: AAKAS 6655 C]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Mahesh, Advocate (virtual)
प्रत्यर्थी की ओर से /Respondent by	:	Shri Nilay Baran Som, CIT
सुनवाईकीतारीख/Date of Hearing	:	22.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Trust against the order of the Learned Commissioner of Income Tax (Exemptions) (hereinafter in short "the Ld.CIT(E)"), Chennai, rejecting the application dated 14.09.2023 seeking approval under clause (iii) of the first proviso to sub-sec.5 of sec.80G of the Income Tax Act, 1961 (hereinafter in short "the Act").



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2. At the outset, the Ld.AR of the assessee brought to our notice that assessee is an old Trust of 1972 and was enjoying registration u/s.12A of the Act and didn't apply for grant of appeal u/s.80G before the year 2021. According to the Ld.AR, the assessee had applied for provisional approval u/s.80G(5)(iv) of the Act on 29.08.2021 and was granted provisional approval on 24.09.2021 till AY 2024-25; And thereafter, assessee applied for regular approval in Form No.10AB clause (iii) of the first proviso to sub-sec.5 of sec.80G of the Act for five years on 14.09.2023. And the Ld.CIT(E) taking note that assessee had commenced its activities in the year 1972 and didn't file Form No.10AB u/s.80G(5)(iii) of the Act within the time limit prescribed therein (i.e. six months from the date of commencement), therefore, he was pleased to dismiss the appeal.

3. Assailing the action of the Ld.CIT(E), the Ld.AR of the assessee submitted that new set of procedure for approval u/s.80G(5) of the Act has been inserted by TOLA-2020 [Taxation and other laws (Relaxation & Amendment of Certain Provision) Act, 2020] and is applicable w.e.f. 01.04.2021 onwards; and the requirement to file the ibid application within six months of commencement of activities has been inserted w.e.f. 01.04.2021. And since, the assessee was created in the year 1972, according to the Ld.AR, it was impossible for the assessee to have filed the application under clause (iii) of sec.80G(5) of the Act and cited the maxim "*lex non cogit ad impossibilia*" which means that the, *Law does not*



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compel a person to do what is impossible; and therefore, the impugned action of Ld CIT(E) is arbitrary and bad in law and pointed out that this principle that the, *Law does not compel a person to do what is impossible* has been recognized by the Hon'ble Apex Court and followed in the following cases;-

- Presidential Poll vs Unknown on 5 June, 1974, (1974) 2 SCC 33.
- Life Insurance Corp Ltd. v. CIT (1996) 219 ITR 410 (SC)
- State of Rajasthan v. Shamsheer Singh 1985 AIR 1082 [SC]
- State of MP Vs. Narmada Bachao Andolan (2011) 7 SCC 639
- Krishnaswamy S. PD. v. Union of India [2006] 281 ITR 305 (SC)
- CIT V. Revathi Equipment Ltd. (2008) 298 ITR 67 (Mad)
- Emperor v. Ganpat Laxman Kalgutkar, AIR 1938 Bom 427

4. We note that the assessee Trust filed an application in Form No.10AB on 19.04.2023 seeking regular approval for five (5) years under clause (iii) of first proviso to sub-section (5) of Sec.80G of the Act. The Ld.CIT(E) while processing the application noticed that the date of creation of the Trust was shown as 24.09.2021 (*but he noticed also that assessee commenced its activities in the year 1972*); 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 24.09.2021 to AY 2024-25. The Ld.CIT(E) rejected the application by taking note of the fact that the assessee had commenced its activities in 1972; and that the application has been preferred by assessee not in accordance to statute,



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i.e, as per the time-line given as per the 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)

5. As noted, 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 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 in 1972 and date of filing application in Form 10AB was 14.09.2023, which is after the expiry of six months of commencement of its activities, therefore, he held that the assessee's application filed on 14.09.2023 in Form No.10AB



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u/s.80G(5)(iii) of the Act, was non-maintainable and he rejected it; and went a step further and cancelled the earlier provisional approval granted up to AY 2024-25 and aggrieved the assessee is in appeal before this Tribunal.

6. As noted, the assessee Trust was created on 24.11.1972 and commenced its activities immediately thereafter in the year 1972. And that the assessee had been granted provisional approval in Form No.10AC from 24.09.2021 u/s.80G(5)(iv) of the Act, for the period commencing from that date to AY 2024-25. Thereafter, the assessee had filed the ibid application u/s.10AB of the Act, on 14.09.2023 seeking approval under Clause (iii) of first proviso to sub-sec.(5) of Sec.80G of the Act, which has been rejected (as well as earlier approval cancelled) citing the reason that the assessee failed to file the ibid application within the time prescribed under Clause (iii) of first proviso to sub-sec.(5) of Sec.80G of the Act (supra) or even within the extended timeline given by the CBDT Circulars as under:

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



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7. 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 14.09.2023 as non-maintainable and also cancelled the provisional approval granted earlier on 24.09.2021 up to AY 2024-25.

8. We do not countenance the impugned action of the Ld.CIT(E) for two reasons, one is that assessee society was registered in November, 1972 and enjoyed sec.12A registration and commenced its activities also from 1972 onwards. It is undisputed that assessee had for first time applied for grant of provisional approval u/s.80G of the Act only on 29.08.2021 and was granted by CPC from 24.09.2021 to Ay 2024-25. Thereafter, assessee had applied for regular approval for five years and filed application for approval in Form 10AB under clause (iii) of proviso to sec.80G(5) of the Act, which the Ld.CIT(E) has rejected citing the reason that assessee didn't file the application for approval within six months of commencement of activities as provided for under clause (iii) of provision of sec.80G(5) (supra), which in this case is impossible, because, then assessee ought to have filed the application in the year



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1973 and the new set of procedure for approval of sec.80G came in the statute only w.e.f.01.04.2021. The whole confusion is because in clause (iii) of sec.80G(5) (supra), there are two time-limits given, the first one gives time line/limit of six months to apply for approval prior to expiry of provisional approval; and second time-limit, gives time limit of six months from commencement of its activities; and out of the two limits given (supra) clause (iii) requires the assessee to apply "whichever is earlier"; this expression "whichever is earlier" has prompted the Ld.CIT(E) to take a view that assessee ought to have filed application under second time-limit of clause (iii), because it commenced its activities in 1972 (which was an earlier event) when compared with the first limb of clause (iii) which is an event well within time. But, the Ld.CIT(E) without going into merits of application, has mechanically rejected the ibid application as not maintainable and cancelled the earlier provisional approval also, which action cannot be accepted because assessee cannot be asked to perform an impossible act, when admittedly the requirement of law only came w.e.f. 01.04.2021 and assessee cannot be expected to file application within six months of commenced its activities, which event falls in the year 1972. In such situation, Rule of harmonious interpretation should be resorted to as held by Hon'ble Apex Court in Sultana Begumv. Prem Chand Jain (1997) 1 SCC 373 = AIR 1997 SC 1006, wherein it was observed that this rule [*Rule of harmonious interpretation*] helps in



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avoiding any inconsistency either with a section or between two different sections or provisions of the same statute. After enumerating various case law where the rule was adopted, Hon'ble Supreme Court summarized principles as follows - (1) It is the duty of the courts to avoid a head on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonize them (2) The provisions of one section of a statute cannot be used to defeat the other provisions, unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them. (3) When there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is essence of rule of harmonious construction. (4) An interpretation which reduces one of the provisions as a 'dead letter' or 'useless lumber' is not harmonious construction (5) To harmonize is not to destroy any statutory provision or to render it otiose.

B. And to avoid absurd results - Maxwell has stated - 'If the language is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to unreasonable result, and adopt the interpretation which leads to a reasonable practical result'. - quoted with approval in Sachinda Nand Singh v. State of Bihar 1998(1) SCALE 307.



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C. In *Narashimha Murthy v. Susheelabai* - (1996) 3 SCC 644 = AIR 1996 SC 1826, it was observed that purpose of law is to meet out justice; in other words to prevent injustice or miscarriage of justice. The interpretation should be consistent with justice, equity and good conscience.

9. As discussed, the requirement under clause (iii) of Sec.80G of the Act, is that the assessee for getting approval for five years 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. Therefore, in the facts of the case, it is noted that the assessee was granted provisional approval on 24.09.2021 till AY 2024-25 and therefore, the time-line as per the first limb of clause (iii) of sec.80G(v) of the Act, the assessee ought to have filed the ibid application at least six months prior to expiry of the provisional approval i.e. before June, 2024 or as per the time line given in second limb i.e. within six months of the commencement of the activities, which event in this case was in the year 1972. And since, the assessee was supposed to have filed the application whichever falls earlier in this case, obviously, it had to file the application within six months of the commencement of the activities meaning in the year 1972, which is an impossible task. In such a scenario, the Ld CIT(E) ought not to have insisted that assessee should have filed the application



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in question *within six months of commencement of its activities*. In the aforesaid circumstances, by applying *Rule of harmonious interpretation*, firstly we should ignore the time line given in the second limb and the Ld.CIT(E) ought to have seen whether the assessee satisfies the time line given in the first limb of clause (iii) of sec.80G(5) of the Act, which will be ideal/pragmatic/practical/appropriate, i.e, whether assessee filed 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/extended time given by CBDT; and we find that in a plethora of cases, this Tribunal has held that the extended time limit of 30.09.2023 as per CBDT Circular would apply to Form 10AB as well. We also take note of the decision of the Hon'ble jurisdictional High Court in the case of Narasimha Priya Charitable Trust in WP No.27030 & Others of 2024 dated 02.04.2024 wherein their Lordships held that Clause 5(ii) of Circular No.6 of 2022 dated 24.05.2023 is illegitimate arbitrary and ultra vires the Constitution of India. We also take note of the recent Circular No.07/2024 issued by CBDT dated 25.04.2024 extending the time limit of all such application to 30.06.2024. therefore, we are of the opinion that the Ld.CIT(E) ought not to have rejected the assessee's application filed in Form No.10AB on 14.09.2023 only for technical reasons; and therefore, we set-aside the impugned order of Ld CIT(E) and direct him to consider the application of the assessee Trust dated 14.09.2023 filed in Form 10AB submitted by it for



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Sri Sankara Health Centre

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approval / recognition / registration under Clause (iii) of the first proviso to sub-sec.(5) of Sec.80G of the Act as within time and after considering the same afresh, pass orders thereon merits in accordance to law. The application of the assessee dated 14.09.2023 is restored back to the file of the Ld.CIT(E) for passing orders on merits.

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

Order pronounced on the 10th day of July, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 10th July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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