

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.732/KOL/2024
Assessment Year: 2024-25**

Hayden Hall Institute, C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2 nd Floor, Kolkata - 700069 (PAN: AADAH2690H)	Vs	Commissioner of Income Tax (Exemption), Kolkata, 10B, Middleton Road, Kolkata – 700071
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Agarwal, Advocate
Respondent by : Shri Subhendu Datta, CIT-DR

Date of Hearing : 02.07.2024
Date of Pronouncement : 26.07.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as “the Ld. CIT(E)”] passed u/s. 80G(5)(iii) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2024-25 dated 07.03.2024.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1. For that on the facts and circumstances of the case, the Ld. CIT(Exemption), Kolkata was not justified in rejection the application for grant of approval u/s 80G(5)(iii) filed by the assessee trust/institution in Form No. 10AB under Rule 17A of the Income Tax Rules, 1962.

2. *The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”*

3. Brief facts of the case are that the assessee was granted provisional approval under Section 80G(5)(iii) of the Act in Form No. 10AB vide order dated 23.02.2022 for a period from 23.02.2022 to Assessment Year 2024-25. Subsequently, an application for approval of the trust, under Section 82G(5)(iii) of the Act was filed electronically and as per data available in ITBA, the same was filed on 28.09.2023 by the assessee in Form No. 10AB under Rule 17A of the Income Tax Rules, 1962 (for short 'the Rules). Accordingly, notice was issued to the application/assessee on 29.12.2023 with the request to furnish detailed note on the activities carried out by the assessee as well as certain other details/documents as mentioned therein. This was required in view of the provision of Section 80G(5)(iii) of the Act. In response to the notice, the assessee furnished certain details/documents which were examined and it was found from the audit report that the assessee had already commenced its activities from 13.02.1976. The extended due date for filing the application in Form No. 10AB was 30.09.2022 as per the CBDT's Circular No. 8/2022 dated 31.03.2022. However, the assessee did not file Form No. 10AB within the stipulated time limit. A show cause notice dated 03.02.2024 was issued but no reply was received. Further, on perusal of the income and expenditure details filed for the year ended 31.03.2021, it was observed that the assessee had debited expenses on account of Mother and Child Health Program at Rs. 43,93,042/- and donation/gifts at Rs. 22,52,059/-. According to the Ld. CIT(E), these facts proved that the activities of the applicant/assessee had already commenced during F.Y. 2020-21. The Ld. CIT(E) was of the view that since the assessee had filed the application in Form No. 10AB under Section 80G(5)(iii) of the Act, he analysed the provisions of Section 80G(5)(iii) of the Act and held that the assessee was required to file the application in Form No. 10AB under section 80G(5)(iii) of the Act

within the time period or at least 6 months prior to expiry of period of provisional approval or within six months of commencement of activities, whichever is earlier. He was also of the view that the time limit provided as per the provisions of Section 80G(5)(iii) of the Act was mandatory and the Ld. CIT(E) had no power to condone the delay in filing the application in Form No. 10AB. He analysed the various circulars issued by the CBDT to conclude that last date for filing Form 10AB for registration under Section 10(23C)/12A/80G falling on or before 29.09.2022 was extended up to 30.09.2022. Thereafter, no further extension for filing form No. 10AB was granted by the CBDT and the same is evident from the CBDT's Circular No. 22/2022 dated 01.11.2022 through which the CBDT extended the time limit for filing application in Form No. 10A under various sections made therein up to 25.11.2022. Further, in the said Circular No. 22/2022, no further extension of time was granted for filing Form No. 10AB. Relying upon the decision of Hon'ble Kolkata Bench of the Tribunal in the case of Bishnupur Public Education Institute reported in 139 taxmann.com 121, he held that the application filed in Form No. 10AB, under section 80G(5)(iii) of the Act was non maintainable and the Circular No. 6 of 2023, dated 24.05.2023 issued by the CBDT, also did not extend the benefit of extension of due date to 30.09.2023 to cases under Section 80G(5) of the Act as the due date to file such an application under Section 10AB of the Act was 30.09.2022.

4. Aggrieved with the order of the Ld. CIT(E), the assessee has filed this appeal.

5. We have heard the rival contentions and also examined the record. Clause (iii) of section 80G(5) is applicable to a new trust whereas it is evident from the clause 4b of Form No. 10AB that the assessee was incorporated on 13th February, 1976 and, therefore, the application should have been filed under clause (i) of the first proviso to Section

80G(5) instead of filing the same under clause (iii) of first proviso to sub-Section (5) of section 80G. The assessee was granted registration under Section 80G of the Act from 23.02.2022 as it had erroneously filed the application on Form No. 10AB under Clause (iii) i.e. as a new trust whereas it was an old trust and there was no need to file an application under clause (iii) in case prior approval was granted. Similar issue came up for consideration in the case of Loyola Charitable Society Vs. CIT (Exemption), Kolkata, (ITA No. 580/KOL/2024, dated 19.06.2024) which was held as under:

“5. Ground No. 1 relates to the rejection of the application of the assessee. It applied for approval u/s. 80G(5)(iv) whereas being an old trust and apparently granted approval earlier, the same should have been applied in clause (i) of the proviso to sub-section 5 of section 80G if the approval was granted earlier. The assessee applied for registration u/s. 80G(5)(iv) i.e. as a new trust erroneously and was granted provisional approval from 02.09.2022 to 2025-26 in Form No. 10AC. Subsequently, it applied for approval under clause (iii) of first proviso to sub-section (5) of section 80G of the Act on Form No. 10AB on 30.09.2023. Since it was an existing assessee and was granted approval from FY 2012-13 u/s. 12AA post the amendment in the provisions of section 80G(5), it was required to apply for registration under the amended provision under clause (i) of the proviso to section 80G(5) while it incorrectly applied under clause (iv), which is for the case of a new trust. Both the applications u/s. 80G(5)(iv) as well as 80G(5)(iii) were filed within time. The provisional approval clause applies to new applicant only whereas in the case of the assessee being an existing assessee, clause (i) of the proviso to section 80G(5) was applicable, therefore, clause (iv) was not applicable but clause (i) was applicable. Further, this fact also escaped the attention of the Ld. CIT(E). Similar issue had come up before the Coordinate Bench in ITA No. 105/Kol/2024 Friends of Kolkata and vide order dated 01.04.2024, the Tribunal “B” Bench has held as under:

“5. As far as the details of application and their dates, there is not much dispute. The ld. CIT(Exemption) was of the view that activity of the assessee-Trust commenced in 2012 and, therefore, for grant of a regular registration, it ought to have applied within six months from the appointed date, i.e. 1st of April, 2021 extended upto 30th September, 2023. The assessee did not file such application. He further observed that the assessee has applied for grant of a provisional registration under sub-clause (iv) and immediately thereafter applied for grant of a regular registration under sub-clause (iii), which is meant for those Trust or Society, which came after April, 2021. In view of the above, he was of the opinion that being an old Trust, the assessee has applied for a provisional registration and thereafter regular registration. But such application is not in consonance with the procedure laid down under sub-clause (iii) as well as sub-clause (iv) and, therefore, on account of this technical aspect, he rejected the application of the assessee.

6. *With the assistance of ld. Representatives, we have gone through the record carefully. As observed earlier, had application was moved under sub-clause (i) instead of applying for provisional registration, then no dispute would have come, because the assessee-Trust is an existing Trust and the time limit to move an application under sub-clause (i) has been extended upto 30th September, 2023. Its application alleged to be moved under sub-clause (iii) would have been under clause (i), then it would be construed as within time limit?*

7. *We are of the view that it is only a technical error. The ld. CIT(Exemption) ought to have looked into the matter on this aspect and called for a clarification from the assessee. Once he was seized of the matter and aware that the Trust was enjoying registration under section 80G under old regime, it fulfilled all other conditions, then on account of wrong mention of section (iii) instead of (i), in its application should have not been given much weightage for rejecting the application on technical grounds. Therefore, we set aside the impugned order and relegate this issue to the file of ld. CIT(Exemption) with a direction that application of the assessee be treated under clause (i) and it be decided on merit.”*

6. *Further, in another case in ITA Nos. 49 & 50/Kol/2024 Shree Ram Chandra Saraf Seva Nidhi dated 14.03.2024 decided by the Tribunal “C” Bench, Kolkata the Bench vide para 3 has held as under:*

“3. Considering the overall facts and circumstances of the case and also as observed by us in many cases that due to complexity of the newly inserted provisions even the ld. CIT(E)s also could not properly interpret the same, therefore, the assessee cannot be punished on this technical ground. The impugned orders of the CIT(E) are, therefore, set aside and it is directed that the ld. CIT(E) will consider the applications filed by the assessee in Form 10AB as being filed in the relevant prescribed form which is required for making applications for the institutions who are already registered as on 01.04.2021 and the applications moved by the assessee will be treated as being moved u/s. 12A(ac)(i) of the Act and under Clause (i) to the First Proviso to section 80G(5) of the Act respectively and the CIT(E) will grant the provisional registration accordingly. The Ld. CIT(E) will decide both the applications of the assessee within two months of the receipt of copy of this order.”

6. Since it was a technical error due to change in the procedure, therefore, the same was liable to be corrected. Respectfully following the above decisions of the Coordinate Benches, cited supra, we allow the appeal and direct the Ld. CIT(E) to consider the application filed by the assessee in Form 10AB as being filed in the relevant prescribed Form which is required for making application for the institutions which are already registered on 01.04.2021, subject to the verification that the approval u/s. 80G(5) was granted prior to 01.04.2021 as well and if it is so, the application filed by the assessee will be treated as filed under

clause (i) of the first proviso to sec. 80G(5) of the Act. The Ld. CIT(E) will decide the application of the assessee within two months of the receipt of this order in accordance with law.

7. In result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26th July, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 26th July, 2024

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(E), Kolkata
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order
Assistant Registrar
ITAT, Kolkata Benches, Kolkata