IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.786/PUN/2024

Shri Gangadhar Shastri Patwardhan Trust, 1481, Shukrawar Peth, Pune 411 002, Maharashtra PAN : AAETS5918B	Vs.	CIT (Exemption), Pune
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Keyur Patel, CIT-DR
Date of hearing	:	31.07.2024
Date of pronouncement	:	31.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee trust directed against the order of ld. Commissioner of Income Tax (Exemptions), Pune dated 11.03.2024 denying grant of approval u/s.80G(5) of the Income Tax Act, 1961 (hereinafter also called 'the Act').

2. The appellant is a trust, applied for approval in Form No.10AB under clause (iii) of the first proviso to sub-section (5) of section 80G. The trust was granted provisional approval vide order dated 14.10.2021 valid upto the 13.10.2024. Subsequently, the appellant trust filed application in Form No. 10AB under clause (iii) of first provision to sub-section (5) of section 80G of the Act on 29.09.2023. The said application came to be rejected vide impugned order dated 11.03.2024 on the ground that the appellant trust had not filed the application

within the prescribed time limit under clause (iii) of first provision to sub-section (5) of section 80G of the Act. According to the ld. CIT(Exemptions), the appellant trust was required to file the application in Form No.10AB for regular approval within six months from the date of provisional approval, i.e. on or before 13.04.2022, or as extended upto 30.09.2022 as per the CBDT Circular No.08/2022 dated 31.03.2022 whichever is earlier. Since the activities of the trust were commenced on 15.10.2021. The present application in Form No.10AB was filed by the appellant trust only on 29.09.2023. Therefore, the ld. CIT(Exemptions) denied the grant of approval on the grounds of delay.

3. Being aggrieved, the appellant trust is in appeal before us in the present appeal.

4. When the matter was called on, none represented the case of the assessee despite due service of notice of hearing. We, therefore, proceed to dispose of the appeal after hearing the ld. Departmental Representative.

5. The ld. Sr. DR supporting the order of CIT(Exemptions) submits that no interference by this Tribunal is called for.

6. We heard the ld. Departmental Representative and perused the material on record. In the present case, admittedly, the appellant trust has commenced the activities on 15.10.2021. In this connection, for better appreciation relevant provisions of *proviso* to section 80G are extracted below :

> *"**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;

The literal interpretation of clause (iii) of proviso means that in case the institution has been provisionally approved, application in the prescribed form for grant of the requisite approval u/s.80G(5) is required to be made six months prior to expiry of the provisional approval or within six months of commencement of the activities whichever is earlier.

7. There can be two categories of institutions; (1) the institutions which had commenced the activity subsequent to the grant of provisional approval (2) the institutions which had commenced the activity much before the date of grant of provisional approval (2). No doubt, in the case of former category the literal interpretation of clause (iii) of proviso to section 80G(5) does not lead to any hardship, absurdity or injustice. It is only in the case of later category the literal interpretation leads to hardship, absurdity or injustice as it is impossible to comply with the time limits prescribed under the proviso which had commenced the activities six months prior to the date of grant of provisional approval. Thus, the provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature. In such a situation, it is now a settled rule of construction that the courts may modify the language used by the Legislature or even "do some violence" to it, so as to achieve the obvious intention of the Legislature and produce a rational construction vide *Luke V. IRC (1996) 54 ITR 692*. The court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.

8. In our considered opinion, in the light of the above discussion, a fair and reasonable construction clause (iii) of proviso to section 80G(5) would be to read into it a condition that in the place of word '*earlier*' word "*later*" be substituted and can be read as under :

> *"(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 later;*

9. We are also fortified in adopting the above construction by the decision of *Hon'ble Supreme Court in the case of K.P. Varghese Vs. ITO 131 ITR 597 (SC).*

10. Adverting to the facts of the present case, undisputedly, the appellant trust commenced its actual activities on 15.10.2021 and in view of the above construction of clause (iii) of proviso to section 80G(5) the appellant trust is entitled to file the application for regular approval prior to six months of expiry of the provisional approval, i.e., on or before 13.04.2024 or 14.04.2022 whichever is later. In the present case, since the application in Form No.10AB under clause (iii) of the first proviso to sub-section (5) of section 80G was filed on 29.09.2023, it cannot be said that the application filed by the appellant trust for grant of regular approval is barred by limitation prescribed under the proviso to section 80G(5). Therefore, the ld. CIT(Exemptions) is not justified in denying the grant of approval u/s.80G(5) to the appellant trust on the ground of delay in submission of Form No.10AB. Therefore, we remand the matter back to the file of CIT(Exemptions) for *denovo* disposal of the application on merits in accordance with law.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 31st day of July, 2024.

sd/-	sd/-
(SATBEER SINGH GODARA)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune / Dated : 31st July, 2024.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**A**" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.