

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1807/M/2024
Assessment Year: 2024-25**

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| M/s. Angel Xpress Foundation, 601, 6 th Floor Satguru Dhrishti, Kahr Pali Road, Khar West, Mumbai – 400 052 PAN: AALCA1104B (Appellant) | Vs. | Commissioner of Income Tax (Exemptions) Room No.601, 6 th Floor, Cumbala Hill, MTNL Bldg., Pedder Road, Maharashtra- 400 026 (Respondent) |
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Present for:

Assessee/Appellant by : None

Revenue by : Shri Ajay Chandra, D.R.

Date of Hearing : 27 . 06 . 2024

Date of Pronouncement : 31 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee/Appellant herein against the order dated 05.12.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Exemptions) (in short Ld. Commissioner) under section 80G(5) of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2024-25.

2. At the outset, we observe that there is a delay of 65 days in filing the instant appeal. The Appellant by filing an application has claimed that though the Appellant requested its chartered accountant to file an appeal before the Hon'ble Tribunal against the impugned order, however, due to rush of work related to financial year closing,

the appeal could not be filed within the limitation period. The delay occurred in fact was neither deliberate nor malafide but based on the aforesaid reason. Therefore the Hon'ble Tribunal is requested to condone the delay which is otherwise meager. On the contrary, the Ld. D.R. refuted the claim of the Appellant qua condonation of delay. We have given thoughtful consideration the rival claims of the parties. We also do not find any material or reason to controvert the claim of the Appellant qua condonation of delay, which is otherwise meager, hence the delay is condoned.

3. Coming to the merits of the case, we observe that the Appellant was granted provisional approval under section 80G(5) of the Act and therefore in pursuance of that applied for registration under section 80G(5) of the Act. On perusal of the application filed by the Appellant it was observed by the Ld. Commissioner that the Appellant has applied under clause (ii) of first proviso to section 5 of section 80G(5) of the Act i.e. for renewal of approval and not for regularization of provisional approval and therefore the application is rejected with liberty to the Appellant to re-apply for registration in form No.10AB along with necessary documents as prescribed in Rule 11AA(2) of the Income Tax Rules, 1962 (in short 'the Rules).

4. The Appellant, being aggrieved, is in appeal before us.

5. We have given thoughtful considerations to the peculiar facts and circumstances of the case. It is admitted fact that the Appellant was granted provisional approval/registration under section 80G(5) of the Act and therefore had applied for regularization of such provisional registration granted to it. May be inadvertently or mistakenly or otherwise, the Appellant mentioned the wrong provision which resulted into rejection of regularization of provisional approval or granting of regular approval under section 80G(5) of the Act by the Ld. Commissioner who acted hyper technically. In our considered view,

the Ld. Commissioner should have treated the application filed by the Appellant for regularization of registration provisionally granted under section 80G(5) of the Act, by ignoring the section mentioned in the application.

Hence, for the just decision of the case and for the ends of substantial justice, we remand the instant case to the file of the Ld. Commissioner for decision afresh by treating the application filed by the Appellant as valid for seeking registration/ regularization under section 80G(5) of the Act, suffice to say by affording reasonable opportunity to the Appellant to substantiate its claim.

6. We also direct the Appellant to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and required by the Ld. Commissioner for proper adjudication of the case. We clarify that in case of further default the Appellant shall not be entitled for any leniency. Hence, the case is remanded accordingly.

7. In the result, the appeal filed by the Appellant stands allowed for statistical purposes.

Order pronounced in the open court on 31.07.2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.