

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2596/M/2024  
Assessment Year: 2022-23**

<b>M/s. Asmita Education And Healthcare Foundation,</b> Asmita House, Naya Nagar, Mira Road, Thane Maharashtra - 401 107 <b>PAN: AAVCA3298G</b> (Appellant)	Vs.	<b>CIT Exemption,</b> 322, 3 <sup>rd</sup> Floor, PMT Building, Shankar Seth Road, Pune Maharashtra - 411 037 (Respondent)
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**Present for:**

Assessee by : Shri Rahul Sarda, A.R.  
Revenue by : Shri Prasoon Kabra, CIT-DR.

Date of Hearing : 25 . 07 . 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 against the order dated 29.06.2023, 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. 2022-23.

**2.** At the outset, we observe that there is a delay of 269 days in filing of the instant appeal. On being asked, the Assessee has submitted that initially the Assessee against the order dated 29.06.2023 u/s 80G(5) of the Act has preferred first appeal before Pune Bench on the belief that impugned order has been passed by the

CIT(E), Pune and therefore the jurisdiction lies with Pune Benches. However, co-ordinate Bench of the Tribunal at Pune by realising that the territorial jurisdiction of the Assessee's case is at Thane which comes within the jurisdiction at Mumbai but not at Pune, vide order dated 08.05.2024 dismissed the appeal of the Assessee with liberty to the Assessee to file an appeal afresh before the appropriate Bench at Mumbai. Consequently the Assessee immediately on 23.05.2024 i.e. within 15 days of the order passed by the Pune Benches, filed the instant appeal, which is under consideration. Hence, the delay in filing of the instant appeal, because of pursuing legal remedy before the forum which was not having jurisdiction, has occurred which is neither intentional nor malafide but based on the aforesaid bonafide belief/reason.

**3.** Considering the reason given by the Assessee for the delay as sufficient, bonafide and reasonable, we are inclined to condone the delay in filing the appeal under consideration. Consequently the delay of 269 days in filing the instant appeal is condoned.

**4.** Coming to the merits of the case, we observe that the Assessee has sought exemption u/s 80G(5) of the Act by filing an application on 08.12.2022, which was taken into consideration and certain details/information were called for from the Assessee, in response to which the Assessee filed certain details. On verification of the details, the Assessing Officer (AO) observed some discrepancy and therefore again sought certain information. The Assessee vide letter dated 28.06.2023 replied the notice. Thereafter vide notice dated 21.06.2023 the Assessee was again asked *"as to why the application filed by the Assessee should not be rejected and why the provisional approval should not be cancelled"*. However, the Assessee neither filed any reply nor sought any adjournment, therefore the Ld. Commissioner by observing *"that the application filed in Form No.10AB under clause (iii) of 1<sup>st</sup> proviso to section 80G(5) of*

*the Act is liable to be rejected without going into merits, since the Assessee has not filed the present application within the time limit allowed” not only rejected the application filed by the Assessee but also cancelled the provisional registration granted on 19.03.2022 under clause (iv) for 1<sup>st</sup> proviso to section 80G(5) of the Act.*

**5.** The Assessee, being aggrieved, is in appeal before us. The Assessee has submitted that though there was default of the Assessee for not replying the final show cause notice dated 21.06.2023 due to miscommunication, however, the Assessee has filed various details/clarification in response to the earlier notices issued by the Ld. Commissioner, therefore the Assessee may be given one more opportunity to substantiate its case before the Ld. Commissioner, as the Ld. Commissioner dismissed the application of the Assessee in limine but not on merits.

**6.** On the contrary, the Ld. D.R. refuted the claim of the Assessee and specifically submitted that the Assessee cannot be allowed to argue the case on merits, as nothing appears from the record that the Assessee has ever submitted any details before the Ld. Commissioner.

**7.** We have given thoughtful considerations to the peculiar facts and circumstances of the case. Admittedly, the Ld. Commissioner rejected the application filed by the Assessee u/s 80G(5) of the Act and cancelled the provisional registration u/s 80G(5) of the Act mainly on the reason that the Assessee has not filed the application u/s 80G(5) of the Act within the time limit allowed under clause (iii) of 1<sup>st</sup> proviso to section 80G(5) of the Act, but not on merits, as the Assessee remained un-represented which resulted into passing the order in limine but not on merits. As the Ld. Commissioner was unable to pass the order on merits in the absence of relevant reply/submissions and documents, therefore for the just decision of the case and for the ends of substantial justice, we are inclined to set aside the impugned order

and consequently **the case is remanded to the file of the Ld. Commissioner for decision afresh on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate its claim.**

**8.** We also direct the assessee 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. In case of further default the assessee shall not be entitled for any leniency.

**9.** In the result, the appeal filed by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 31.07.2024.**

**Sd/-  
(GAGAN GOYAL)  
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.