

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री संजय अवरथी, लेखा सदस्य
के समक्ष

Before
SRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 7/GTY/2024
Assessment Year: N.A.

Bosco Institute.....Appellant
[PAN: AAAAB 7449 M]

Vs.

ITO, Ward-2(3), Exempt, Guwahati.....Respondent

Appearances:

Assessee represented by: Anil Kumar Agarwala, FCA.

Department represented by: P.S. Themreikan, DR.

Date of concluding the hearing : July 4th, 2024

Date of pronouncing the order : August 29th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case there is a delay of 319 days in filing this appeal for which the Appellant has filed a request for condoning the delay, along with an affidavit, which reads as under:

“Prayer for Condonation of delay in filing appeal u/s 253

Most Respected Sirs,

The appellants have preferred an appeal in Form 36 before the Hon'ble Bench against the order of the Ld. CIT(Exemption) passed under Section 80G(5)(iii).

As per the provisions of section 253(3), the appeal should have been filed on or before 24th February 2023. However, the appeal could be filed only on 8th January 2024 with a delay of 317 days owing to the following reasons:

- 1. The underlying order was passed on 26.12.2022 rejecting our application for approval u/s 80G filed u/s 80G(5)(iii);*
- 2. The ground on which the application was rejected was that the institution did not have approval u/s 12A(l)(ac)(iii). This ground of rejection being apparently erroneous, we had preferred a rectification petition which was filed before the Hon'ble CIT on 15.05.2023;*
- 3. The rectification petition is lying undisposed before the CIT(Exemp) till date;*
- 4. Since we were hopeful of a favourable outcome against our rectification petition, we did not deem it necessary to file appeal before your honours and therefore, the appeal could not be filed in time.*
- 5. A sworn affidavit in support of whatever has been stated above is attached.*

Sirs, the denial of registration u/s 80G by the Hon'ble CIT(Exempt) is apparently against the facts and law. The Learned CIT (Exemption) had summarily rejected our application for approval without going into the merits of our case. The grounds of rejection are factually not correct. Our rectification petition is also not disposed by hon'ble CIT (Exemption). The delay in filing this appeal was due to the fact that we were waiting for disposal of our rectification petition. If condonation is not granted, merits our case will go completely unheard.

The order of learned CIT (Exemption) has will adversely effect the operations of the appellant organisation which is a purely charitable organisation engaged in the welfare of the poor, spread of education and advancement of objects of general public utility.

In view of the aforesaid, we humbly pray before your honours to admit the appeal by condoning the delay in filing the appeal.”

1.1. In the interest of substantive justice and the fact that the rectification application has apparently still not been disposed off by the Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as Id. 'CIT(E)'], we

deem it fit to condone the delay in filing the appeal and thereafter, we proceed to adjudicate on the issues ventilated through the following grounds of appeal:

“1. For that the Learned Commissioner of Income Tax (Exemption) was unjustified in law as well as on facts in rejecting the application for approval filed u/s 80G(5)(iii).

2. For that the appellant urges leave to add to, modify or delete any ground of appeal, before or at the time of hearing of the appeal.”

1.2. In this case the Id. CIT (Exemption) has passed an order rejecting the application for registration u/s 80G(5)(iii) of the Act in Form-10AB through the impugned order as under:

“The assessee has filed an application for registration under section 80G(5)(iii) of the Income Tax Act, 1961 in Form No. 10AB. This application was found to be prima-facie non-maintainable and accordingly vide letter dated 29.11.2022, certain clarifications were sought from the assessee.

It is observed that assessee has not received any approval under section 12A(1)(ac)(iii) in Form 10AD. Therefore, application filed by the assessee is treated as non-maintainable and for statistical purpose, the application filed by the assessee is ‘rejected.’

Keeping in view of the above the application u/s 80G(5)(iii) is hereby rejected.”

1.3. The Id. Counsel for the assessee has filed a paper book containing 55 pages in which the following documents have been placed before us:

- a) Approval u/s 12AA of the Act granted by Id. CIT(A)-Jorhat dated 04.09.2008.
- b) Form-10A- Application u/s 12A(1)(ac) of the Act dated 07.05.2021.
- c) Form-10AC- Approval u/s 12AB(1)(a) of the Act dated 28.05.2021.
- d) Form-10AC- Provisional approval u/s 80G(5) of the Act dated 16.04.2022.
- e) CBDT Circular No. 11/2022 dated 03.06.2022.

1.4. It has been felt necessary to give a narration of the documents placed before us to enable an understanding of the issue. As is clear from the reading of the impugned order, Id. CIT (Exemption) rejected the application merely on

the ground that approval u/s 12A(1)(ac)(iii) of the Act in Form-10AB was not filed by him. The ld. A/R took us through the facts that the appellant had received the order for provisional approval in Form-10AC on 16.04.2022 and thereafter, applied for final approval of registration u/s 80G(5)(iii) of the Act. It was averred that the appellant Trust is registered u/s 12A(1)(ac)(i) of the Act through an appropriate order dated 28.05.2021. Pursuant to this registration, which is valid till AY 2026-27, they were not required to obtain registration u/s 12A(1)(ac)(iii) of the Act. Ld. A/R also pointed out that as per clarification contained in CBDT Circular No. 11/2022 dated 03.06.2022 it is clear that the phrase “provisional registration” has been inadvertently mentioned and the position has been clarified as under:

“(ii) where due to technical glitches, Form No. 10AC has been issued during FY 2021-2022 with the heading “Order for provisional registration” or “Order for provisional approval” instead of “Order for registration” or “Order for approval”, then all such Form No. 10AC shall be considered as an “Order for registration or approval” and, in such cases where Form No. 10AC has been issued, -

(a) under section code 01 (applications seeking re-registration),-

(i) in the heading and in rows 6, 7, 9 and 10 the words, “provisional registration” shall be read as “registration”;

(ii) in row 8 the word “provisionally registered” shall be read as “registered”;

(b) under section codes 03, 04, 05, 06 or 11 (applications seeking re-approval),-

(i) in the heading and in rows 6, 7, 9 and 10 the words, “provisional approval” shall be read as “approval”;

(ii) in row 8 the word “provisionally approved” shall be read as “approved”;”

1.5. The ld. D/R relied on the impugned order.

2. We have carefully considered the documents placed before us and the position of law applicable to this case. It is clear that the ld. CIT (Exemption) has erred in insisting on approval in Form-10AD whereas in the case of the appellant the approval accorded in Form-10AC itself is sufficient to merit

registration u/s 80G(5)(iii) of the Act. The Id. CIT (Exemption) is hereby directed to grant registration as asked for by the appellant.

3. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 29th August, 2024 under Rule 34 of the Income Tax Appellate Tribunal Rule, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Dated: 29.08.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Bosco Institute, Life Plus, Baghchung, Jorhat, PO Jorhat, Jorhat, Assam, 785001.**
- 2. ITO, Ward-2(3), Exempt, Guwahati.**
3. CIT(A)-.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

//True copy //

Sd/-

[Sanjay Awasthi]
Accountant Member

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata