

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA No. 354/Coch/2024
(Assessment Year: 2024-25)

Gajanana Charitable Trust 2nd/686, Gajanana Opp. Head Post office Hosdurg, Kanhangad 671315 [PAN: AABTG6555F]	vs.	CIT (Exemption) Aayakar Bhaval Old Rly Station Road Ernakulam 682018
(Appellant)		(Respondent)

Appellant by:	Shri K. Suresh Kumar Varma, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	26.09.2024
Date of Pronouncement:	27.09.2024

ORDER

Per Bench

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Exemption), Kochi dated 11.03.2024 for Assessment Year (AY) 2024-25.

2. The only issue raised by the assessee is that the CIT (Exemption) erred in rejecting the application for registration u/s 80G of the Income Tax Act, 1961 (the Act) on the reasoning that the same was filed belatedly.

3. In the present case, the assessee was granted provisional approval u/s 80G of the Act dated 18.10.2021 in Form 10AC under section 80G(5)(iv) of the Act. Subsequently the assessee has applied for permanent registration in Form 10AB

under clause (iii) to sub-section (5) of section 80G of the Act dated 24.09.2023. Admittedly, the trust was established in the year 2011 and its activities commenced much earlier. Therefore, the learned CIT (Exemption) was of the view that the application for permanent registration should have been filed by the assessee before the extended time allowed by the CBDT in its circular bearing No. 8/22 up-to the date 30.09.2022 wherein the application has been filed belatedly dated 24.09.2023. On questioned by the learned CIT (Exemption), the assessee submitted that the provisional registration was valid till AY 2024-25 and the assessee has applied for permanent registration much before the expiry of the provisional registration. Therefore, the assessee cannot be denied registration on the reasoning that the application has been filed belatedly. The assessee in support of its contention relied on the order of the ITAT Surat Bench in ITA No. 728&732/SRT/2023 wherein identical issue was decided in favour of the assessee. However, the learned CIT (Exemption) disagreed with the contention of the assessee by observing as under: -

“In reply to ordersheet noting dated 18/2/2024, the applicant relied on the order of ITAT surat Bench in ITA 728 & 739 of 2023. However, the said order of the ITAT Surat Bench is not applicable in the case of the applicant as the said decision has not reached finality and the department is preferring further appeal against the referred order. Hence the present application in Form 10AB filed on 24/9/2023 u/s. 80G is belated and is rejected. Provisional registration u/s.80G in Form 10AC is also cancelled.”

4. Being aggrieved by the order of the learned CIT(Exemption) the assessee is in appeal before us.

5. The learned A.R. before us contended that the ITAT Surat Bench in the case of Vananchal Kelavani Trust v. CIT (Exemption) reported in [2024] 159 taxmann.com 634 (Surat-Trib) allowed identical issue in favour of the assessee.

6. On the other hand, the learned CIT-DR vehemently supported the orders of the learned CIT (Exemption).

7. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, we note that identical issue involved in the present case has been answered by the ITAT Surat Bench in the case of Vananchal Kelavani Trust (supra) in favour of the assessee. The relevant extract is reproduced as under: -

Therefore, it is undue hardship to the assessee, as the CBDT, in the latest Circular No. 6/2023 dated 24-5-2023, about application for registration or approval under section 80G, in form No. 10AB, did not mention the extended period. Thus, we find merit in the submission of ld Counsel to the effect that assessee is an old trust, which had registered on 29-11-2001 and commenced its activities from 2001, therefore, it is impossible to file the application u/s 80G(5) (iii) of the Act, "within six months of commencement of its activities" as stated in above clause (iii) of 3rd proviso of section 80G(5) of the Act. Besides, as per circular No. 8/2022 of CBDT dated 31-3-2022, the extended time is up to 30-9-2022, however, the assessee filed Form No. 10AB, u/s 80G(5) (iii) on 24-2-2023, therefore, application filed by the assessee before the ld CIT(E) is delayed by 147 days (approx.), and hence ld CIT(E) rejected application of assessee in Form No. 10AB, u/s 80G(5) (iii) of the Act, as not maintainable and also cancelled the provisional approval granted in Form No. 10AC, under clause (iv) of first proviso to sub-section (5) of section 80 G of the Act.

17. Therefore, in this ambiguity situation in circular No. 8/2022 of CBDT dated 31-3-2022 and latest Circular No. 6/2023 dated 24-5-2023, of the CBDT, we do not have any option but to condone the delay in filing application in Form No. 10AB, u/s 80G(5) of the Act. We note that Co-ordinate Bench of Jodhpur in the case of Bhamashah Sundarlal Daga Charitable Trust v. CIT (Exemption) [IT Appeal No. 278 (JODH) of 2023, dated 10-11-2023] dealt with the issue of clause-(iii) 3rd proviso u/s 80G(5) of the Act stating that "whichever is earlier" is applicable only to the newly constructed trust. The findings of the Co-ordinate Bench in the case of Bhamashah Sundarlal Daga Charitable Trust (supra) is reproduced below:

"10.1 In this background, we need to read the sub-clause (iii) of the Proviso to Section 80G(5) of the Act. For ready reference it is again reproduced here 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 earlier"

10.2 The sub-clause says that the Institution which have provisional registration have to apply at-least six months prior to expiry of the provisional registration or within Six months of commencement of activities, whichever is earlier.

10.3 In continuation of this when we read the 'sub clause iii of Proviso' of section 80G(5), which we have already reproduced above, it is clear that the intention of parliament in

putting the word "or within six months of commencement of its activities, whichever is earlier" is in the context of the newly formed Trust/institutions. For the existing Trust/Institution, the time limit for applying for Regular Registration is within six months of expiry of Provisional registration if they are applying under sub clause (iii) of the Proviso to Section 80G(5) of the Act. This will be the harmonious interpretation.

11. If we agree with the interpretation of the ld.CIT(E), then say a trust which was formed in the year 2000, performed charitable activities since 2000, but did not applied for registration u/s.80G, the said trust will never be able to apply for registration now. This in our opinion is not the intention of the legislation. This interpretation leads to absurd situation.

8. Respectfully following the same we do not find any merit in the order passed by the learned CIT (Exemption) and accordingly we set aside the same with the direction to grant exemption to the assessee u/s 80G of the Act as per the provisions of law. Hence the ground of appeal of the assessee is hereby allowed.

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

Order pronounced on 29th September, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K.)
JudicialMember

Sd/-
(Waseem Ahmed)
AccountantMember

Cochin, Dated: 27th September, 2024

n.p.

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1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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Assistant Registrar
ITAT, Cochin