

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 211/Chd/2024
निर्धारण वर्ष / Assessment Year : 2024-25

Sri Guru Har Rai Ji Religious and Charitable Trust, C/o Tejmohan Singh, Advocate @ 527, Sector 10-D, Chandigarh-160011	बनाम	The CIT (Exemptions) Chandigarh
स्थायी लेखा सं. / PAN NO: AAKTS8660A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vineet Krishan, Advocate for
Shri Tejmohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख/ Date of Hearing : 12/09/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 30/09/2024

आदेश/ Order

PER PARESH M. JOSHI :

This is an appeal filed by the assessee against the order of the Ld. CIT(E), Chandigarh dt. 26/02/2024 rejecting it's application seeking registration under Section 80G of the Act.

2. Briefly the facts of the case are that the assessee had moved an application for provisional registration which was allowed on 08/04/2022. Thereafter, the assessee society moved an application in Form 10AB for seeking **final registration** under Section 80(G)(5)(iii) on 30/09/2023.

3. The application so filed by the assessee was rejected by the Id CIT(E) for the reason that Form 10AB was filed beyond time limits prescribed under Clause (iii) of first proviso to sub-section (5) of section 80G of the Act and various other circulars issued by the Department from time to time and **without going into the merits of the application.**

4. Being aggrieved, the assessee has filed the present appeal before us.

5. During the course of hearing, Ld. AR submitted that the assessee was granted provisional registration on 08/04/2022 and it has applied for the final registration on 30/09/2023 within the prescribed limitation period. It was submitted that the relevant provisions state that the **application for final registration has to be applied atleast six months prior to expiry of the period of the provisional registration or within six months of commencement of its activities, whichever is earlier**. It was submitted that the assessee couldn't have applied for the final registration prior to the grant of the provisional registration and therefore, even where it has commenced its activities on 11/09/2011, **the earliest it can apply for the final registration is soon after getting the provisional registration which it has duly complied with even though belatedly**. It was submitted that the application seeking final registration has been wrongly dismissed by the Id CIT(E) and the order rejecting application of the assessee for registration under section 80G may kindly be quashed and the matter be restored to the file of the Id CIT(E) to **be adjudicated on merits** after allowing necessary opportunity to the assessee society. In support, reliance was placed on the Coordinate Bench decision in case of Anudip Foundation for Social Welfare vs CIT(Exemption) (ITA No. 1341/Kol/2023 dated 11/03/2024).

6. In his submissions, the Id CIT/DR submitted that the Central Board Direct Taxes (Circular no. 07/2024, dated 25-Apr-2024) has issued a circular whereby an extended time limit has now been granted to all charitable trusts and societies to file fresh application in Form 10AB and relevant paragraph 4.1 of the said circular reads as under:

"Further, in cases where any trust, institution or fund has already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the

wrong section code, it may furnish afresh application in Form No. 10AB within the extended time provided in paragraph 3(H) i.e. 30.06.2024.”

7. The Id CIT/DR fairly submitted that since the time limit for filing fresh application as so stated in the CBDT circular has expired and to avoid any further technicalities/complexity, it would be in fitment of things that since the Bench is ceased of the present matter, the matter be set-aside to the file of the Id CIT(E) and where the Bench so decide, the Revenue has no objection for the Id CIT(E) to examine the same on merits of the case.

8. Heard both the parties and perused the material available on record. Admittedly the application seeking final registration under Section 80G has been moved by the assessee on 30/09/2023 after getting the provisional registration on 08/04/2022. We therefore find merit in the contention advanced by the Id AR that the application seeking final registration has been moved finally and deep prejudice would be caused if application is not decided on merits by the Ld. CIT(E). As far as requirement of second limb of moving such application within six months of commencement of its activities, the same doesn't apply in the facts of the present case as the assessee has already commenced its activities well before seeking the provisional registration and the period of six months of its activities had already expired well before applying the provisional registration thus, making the said requirement as not applicable. Similar view has been taken by various Benches of the Tribunal and useful reference can be drawn to the decision of the Coordinate Bench in case of Anudip Foundation for Social Welfare (*Supra*) and the relevant findings read as under:

3. The issue is squarely covered by the decision of the Coordinate Kolkata Bench of the Tribunal in the case of "Tomorrow's Foundation vs. CIT(Exemption)" in ITA No.367/Kol/2024 order dated 27.02.2024 (the Judicial Member herein being the author the said order also). The relevant part of the order of the Coordinate Bench is reproduced as under:

"3. We have heard the rival submissions and gone through the record. Before proceeding further, it will be relevant to reproduce here the relevant provisions of section 80G(5) of the Act:

“80G(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:-

[(vi) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being [approved by the Principal Commissioner or Commissioner;]

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) where the institution or fund is approved under clause (vi) (as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020), within three months from the 1st day of April, 2021;

(ii) where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;

(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;

(iv) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought:

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;

(ii) where the application is made under clause (ii) or clause (iii) of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (i) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of sub-clause (a),—

(A) pass an order in writing granting it approval for a period of five years; or”

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

(a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;

(b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;

(c) in any other case, from the assessment year immediately following the financial year in which such application is made.

4. A perusal of the above provisions would reveal that the institutions which stood already approved u/s 80G(5)(vi) on the date of Amendment brought to section 80G of the Act by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 have to re-apply for fresh registration under Clause (i) to the First Proviso to section 80G(5) of the Act and those institutions have to be granted provisional registration for five years by the Id. CIT(Exemption) without any enquiry. The prescribed date for final application for approval under Clause (i) to the First Proviso to section 80G(5) of the Act was stipulated as three months from 1st Day of April 2022. However, the CBDT from time to time extended the date for filing of the said application under Clause (i) to the First Proviso to section 80G(5) of the Act and finally vide Circular No.6 of 2023 dated 24.05.2023, the said date was extended upto 30.09.2023. Further, the institutions which had to apply for the first time or the institutions which did not stand approved on the date of Amendment i.e. 01.04.2021 brought by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, they could apply under Clause (iv) of the First Proviso to section 80G(5) of the Act. In that case, the Id. CIT(Exemption) is supposed to make necessary enquiries and if found satisfied regarding the genuineness of the activities of such an institution would grant provisional approval for five years. In both the cases i.e. institutions which have been granted approval under Clause (i) or the institutions which have been granted approval under Clause (iv) to First Proviso to section 80G(5) of the Act have to apply for final registration under Clause (iii) of First Proviso to section 80G(5). Such institutions are required to apply for final registration at least six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier. In the case in hand, it appears that the assessee-institution instead of applying for renewal of registration under Clause (i) to First Proviso to section 80G(5) of the Act has applied for fresh provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and incidentally, the said fresh provisional registration has also been granted to the assessee-institution from 10.03.2023 to A.Y 2025-26. If the assessee-institution would have applied for renewal of the registration under Clause (i), then its approval u/s 80G(5) would have continued without any break. The last date for making such an application was upto 30.09.2023 as per the extended date from time to time vide Circular no.6 of 2023. However, since the assessee-trust has applied for fresh approval under Clause (iv) to First Proviso to section 80G(5) of the Act, therefore, the assessee-trust was entitled to apply for final registration and there was no bar to the institution for making such application. This issue has already been adjudicated upon by the Coordinate Bench of the Tribunal in the case of "Vivekananda Mission Asram vs. CIT" in ITA No.995/Kol/2023 decided on 08.12.2023 (Judicial Member herein being the author of the said order) while deliberating upon the provisions of section 80G(5) of the Act, has held as under:

“6. So far as the observation of the Id. CIT(E) that the assessee had already commenced its activities since long and that as per Clause (iii) of 1st Proviso to section 80G(5) of the Act, the application for final registration was to be filed within six months from the commencement of its activities and therefore, the application of the assessee for final registration was time-barred, is concerned, we note that the issue has already been discussed and adjudicated by the Coordinate Bench of the Tribunal in the case of West Bengal Welfare Society vs. CIT(Exemption), Kolkata vide order dated 13.09.23 [one of us i.e. the Judicial Member herein, being the author of the said order], wherein, it has been held that the assessee, who has been granted provisional registration, is eligible to apply for final registration irrespective of the fact that the assessee had already commenced its activity even prior to the date of grant of provisional approval. The relevant part of the order of the Coordinate Bench is reproduced as under:

6. We note that the Id. CIT(E) has misconstrued the aforesaid proviso to section 80G(5) of the Act. As per the provision, an application for final registration cannot be filed until and unless an assessee/trust has been given provisional approval u/s 80G(5)(iv) of the Act. The assessee was granted provisional approval on 30.11.2022 only, and within a few days i.e. on 03.12.2022, the assessee applied for final registration u/s Clause (iii) of 1st Proviso to section 80G(5) of the Act. Though the assessee might have commenced its activities prior to grant of provisional registration but that does not mean that the assessee in that event will be precluded from applying for final registration even after the grant of provisional registration. The assessee as per statutory provision could not have directly applied for final registration without grant of provisional registration. The aforesaid proviso, therefore, is to be read as that after the grant of provisional registration, if the assessee has not commenced its activities, he may apply for registration within six months of the commencement of its activities or within the six months prior to the expiry of the period of provisional approval, whichever is earlier. In any case, the assessee is eligible to apply for final registration only after the grant of provisional approval. Therefore, we hold that there is no delay on the part of the assessee in filing application in the prescribed form for grant of final registration under Clause (iii) of 1st Proviso to section 80G(5) of the Act.

In view of the above observations, the matter is restored the file of the CIT(E) for decision afresh in the light of the observations made above.”

5. It is to be further noted here that the Id. CIT(Exemption) firstly misconstrued about the CBDT Circulars regarding the exemption of date for final applications for approval. The said Circular/time limits are applicable only for the institutions who stood already registered on the date of Amendment and have made application for renewal of the registration without any time break. However, the said last date which has been extended to 30.09.23 by CBDT Circular No.6 of 2023 is not applicable for the institutions who have filed application for fresh provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and thereafter for making application under Clause (iii) to First Proviso to section 80G(5) of the Act.

5.1 We deem it appropriate to mention here that CBDT has extended the date upto 30.09.2023 for making application under Clause (i) to First Proviso to section

80G(5) of the Act, which means that the institutions, which were already registered prior to the amendment brought to section 80G(5) by Amendment Act of 2020 w.e.f. 01.04.2021, if an institution for some reasons could not make an application for renewal/continuance of registration under Clause (i) to First Proviso to section 80G(5) of the Act within the stipulated period of three months, it could still apply under Clause (i) upto 30.09.2023. However, once an institution has applied under Clause (i) to First Proviso to section 80G(5) of the Act on or before 30.09.2023, it will be further governed by the statutory provisions of Clause (iii) of First proviso to section 80G(5) of the Act and not by the CBDT Circular for the purpose of limitation. CBDT Circular is for extension of date to help the institutions which could not apply under Clause (i) within stipulated period of three months, and not for curtailing limitation or barring institutions for final registration under Clause (iii) to First Proviso to section 80G(5) of the Act.

5.2 As observed above, for making application for final registration under Clause (iii) to First Proviso to section 80G(5) of the Act, the institution must have been provisionally registered either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.

5.3 In our humble understanding, if the view of the Id. CIT(Exemption) is accepted to be correct, then no institution which has already been into charitable activities before seeking provisional approval under Clause (iv) to First Proviso to section 80G(5) of the Act would ever be entitled to grant of final registration under Clause (iii) to First Proviso to section 80G(5) of the Act even after grant of provisional approval, which would make the relevant provisions of section 80G(5) otiose and defeat the object and purpose of these statutory provisions.

6. In view of the above discussion, it is held that after grant of provisional approval, the application cannot be rejected on the ground that the institution had already commenced its activities even prior to grant of provisional registration. Under such circumstances, the date of commencement of activity will be counted when an activity is undertaken after the grant of provisional registration either under Clause (i) or Clause (iv) to First Proviso to section 80G(5) of the Act.

7. In the case in hand, the assessee admittedly has applied for final registration after grant of provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and therefore, the application filed by the assessee is within limitation period. The issue is otherwise squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of Vivekananda Mission Asram vs. CIT (supra) and in the case of "West Bengal Welfare Society vs. CIT(Exemption)" (supra) and further by the decision in the case of "Sri Aurobindo Bhawan Trust, Krishnagar vs. CIT(Exemption)" order dated 20.02.2024 (Judicial Member herein being the author of the said orders). Therefore, the impugned order of the CIT(Exemption) is set aside and the Id. CIT(Exemption) is directed to grant provisional approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. The Id. CIT(A) will decide the application for final registration within three months of the receipt of copy of this order.

4. The facts and issues involved in this case in hand are identical to that of the above referred to decision, the appeal of the assessee is allowed accordingly

and the Id. CIT(Exemption) is directed to grant provisional approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. It is directed that the Id. CIT(E) will decide the application of the assessee for final approval as expeditiously as possible but not later than two months from the receipt of this order.

4.1. It is further directed that, if the assessee is granted final approval by the Id. CIT(E) then, the benefit of approval u/s 80G of the Act, available to the assessee prior to the Amendment brought vide Amending Act of 2020, will be deemed to be continued without any break. The assessee will not be deprived of the benefit during the time period falling between 31/03/2021 and the date of grant of provisional approval under clause (iv) i.e., 28/05/2021, due to technical errors occurred in making the application under the relevant provisions of the Act because of the confusion and misunderstanding on part of the assessee as well as on part of the Id. CIT(E) in properly interpreting the relevant provisions.

5. With the above observations, the appeal of the assessee is treated as allowed for statistical purposes.

9. Having said that, we find that CBDT has also received certain representation on difficulties being faced by the assessee and has come out with a Circular no. 07/2024 dated 25/04/2024. It has been provided in the said circular that where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of the Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code, it may furnish afresh application in Form No. 10AB within the extended time provided in paragraph 3(H) i.e. 30/06/2024. In the instant case, we find that the application of the assessee has been rejected vide order dated 26/02/2024 before the issuance of the aforesaid circular dated 25/04/2024 and though the time limits prescribed therein have expired, going **by intent and spirit of the circular** so issued by the CBDT and submissions so made by the Id AR and Id CIT/DR, the assessee application deserve to be examined on merits and cannot be dismissed as barred by limitation.

10. In light of the same, we remit the matter to the file of the Id CIT(E) to admit the application of the assessee as filed within the stipulated period and examine the same on merits as per law as expeditiously as possible preferably within two

months of receipt of this order after providing reasonable opportunity to the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/09/2024 .

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar