

आयकर अपीलीय अधिकरण "A" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE
BEFORE SHRI SATBEER SINGH GODARA,
JUDICIAL MEMBER

AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.718/PUN/2024
निर्धारण वर्ष / Assessment Year: NA

Chopade Charitable Trust, C/O ChopadeMemorial Hospital, Behind Ram Mandir , Sangli, Maharashtra-416416 PAN NO. AAATC1115C Appellant/Assessee	Vs	Commissioner of Income Tax (Exemption), Pune Respondent/Revenue
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Assessee by	Adv. Deepa Khare - AR
Revenue by	Shri Amol Khairnar, Commissioner of Income Tax- DR
Date of hearing	08/10/2024
Date of Pronouncement	18/10/2024

आदेश / ORDER

PER DR.DIPAK RIPOTE, Hon'ble Accountant Member,

This is an appeal filed by the assessee against the order of rejection passed by Commissioner of Income Tax (exemption) Pune of Assessee's Application filed u/s 80G(5) of the Income tax Act .

2) **Submission of Ld.AR** : Ld.AR relied on the order of ITAT Pune in the case of T.B.Lulla Charitable Foundation ITA 1220/PUN/2023 . Ld.AR explained that the assessee had filed an application for approval u/s 80G of the Act on 26/09/2023 , which was before the expiry of Provisional Approval. Hence the application was filed within time. Ld.AR filed copy of Provisional Approval dated 24/09/2021 and explained that provisional approval u/s 80G(5) of the Act is upto AY 2024-25. Ld.AR submitted that CIT has no jurisdiction to cancel the Provisional Approval without giving proper show cause notice .

3) **Submission of Ld.DR:** Ld.DR relied on the order of the CIT(E) .

4) **Findings and Analysis :**

We have heard both the parties and perused the records. It is an admitted fact that Assessee filed an application u/s 80G(5) of the Act in the prescribed form on 26/09/2023. The Commissioner of Income Tax(exemption) rejected the application of the assessee accusing it to be beyond time. The relevant Paragraph of the CIT(E) order is reproduced here as under :

Quote, "In view of the above, the present application filed in Form 10AB under clause (iii) of First proviso to section 80G(5) of the Act is liable to be rejected without going into the merits since the assessee has not filed the present application within the time limit allowed under clause (iii) of first proviso to section 80G(5) of the Income Tax Act 1961 "Unqote.

4.1) In this case the assessee had started activities in 1986.

4.2) The CIT(E) held that the assessee's application dated 26/9/2023 was filed beyond the statutory time limit.

4.3) In this case assessee has provisional approval u/s80G(5) of the Act upto AY 2024-2025. In this scenario the Assessee was required to apply before six months of expiry of provisional registration as per Section 80G(5) of the Act. The assessee filed application on 26/09/2023. Thus, the assessee had applied well in advance .

4.4) The relevant part of Section 80G(5) is reproduced here as under :

80G. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

(i) ...

(ii)

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) any sums paid by the assessee in the previous year as donations to—

.....

or

(iv) any other fund or any institution to which this section applies; or

(v) the Government or any local authority, to be utilised for any charitable purpose other than the purpose of promoting family planning; or

(vi)

(via)

(vii)

(b)

(c)

(d).....

(4)

(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 :—

(i) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23AA) or clause (23C) of section 10 :

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

- (a) the institution or fund maintains separate books of account in respect of such business;
 - (b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and
 - (c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;
- (ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;
- (iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;
- (iv) the institution or fund maintains regular accounts of its receipts and expenditure;
- (v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25⁷¹ of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;
- (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;
- (vii).....
- (viii)
- (ix).....

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; (emphasis supplied)**

⁷²[(iv) *in any other case, where activities of the institution or fund have—*

- (A) *not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought;*
- (B) *commenced and where no income or part thereof of the said institution or fund has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or section 11 or section 12 for any previous year ending on or before the date of such application, at any time after the commencement of such activities:]*

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) [*or sub-clause (B) of clause (iv)*] 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

- [B] *if he is not so satisfied, pass an order in writing,—*

- (I) *in a case referred to in clause (ii) or clause (iii) of the first proviso, rejecting such application and cancelling its approval; or*

- (II) *in a case referred to in sub-clause (B) of clause (iv) of the first proviso, rejecting such application,*

- after affording it a reasonable opportunity of being heard;]*

- [(iii) where the application is made under sub-clause (A) of clause (iv) of the said proviso or the application is made under clause (iv) of the said proviso as it stood immediately before its amendment vide the Finance Act, 2023, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the approval is sought,]*

and send a copy of such order to the institution or fund:

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the [*second*] proviso shall be passed in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:

4.5) Thus, apparently, as per the Proviso to Section 80G(5) the time limit where assessee has already received Provisional Approval is Six months before the expiry of the provisional approval or within Six months of Commencement of its activities whichever is earlier.

4.6) The Commissioner of Income Tax (Exemption) in the case of the Assessee held that the Activities of the Assessee had commenced in 1986 , hence the assessee was liable to make application for Approval u/s 80G of the Act on or before 30/June /2021 which was extended to 30/9/2022 by various circulars of CBDT. Since assessee made application in Sep 2023, the CIT(E) held it to be time barred.

4.7) However, the CIT(E) had erred in ignoring the most important fact in this case that the Assessee had received valid Provisional Approval and it was valid till AY 2024-25. Therefore, in this case when we read the sub clause (iii) of the Proviso, we have to understand that ‘within six months of commencement of activities’ is applicable only for those newly formed trusts which have received the provisional approval without commencement of activities. If we interpret it in this way then

the sub clause (iii) will be harmoniously interpreted otherwise it will defeat the purpose of the Section itself.

4.8) We derive the same understanding from the Budget Speech of the Hon'ble Finance Minister and Memorandum of Finance Bill 2020.

It was in the Finance Bill 2020 the concept of "Provisional Registration" was introduced. It was in Finance Bill the validity of the registration granted was restricted to five years. As, a result all the existing Trust/Institutions which were already having registration u/s12AA or 80G(5) was asked to re-apply for registration as per the amendment brought in 2020.

Hon'ble Finance Minister in Budget Speech 2020 has said as under :

Quote " In order to simplify the compliance for the new and existing charity institutions, I propose to make the process of registration completely electronic under which a unique registration number (URN) shall be issued to all new and existing charity institutions. Further, to facilitate the registration of the new charity institution which is yet to start their charitable activities, I propose to allow them provisional registration for three years. " Unquote.

Finance Bill 2020

"(vi) an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier"

4.9) Thus, when we read the Budget Speech of Hon'ble Finance Minister 2020 and the Memorandum of Finance Bill 2020 together, it becomes clear that the concept of Provisional registration was mainly to facilitate the registration of newly formed Trust/Institutions which have not yet begun the activities. 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 subclause (iii) of the Proviso to Section 80G(5) of the Act.

4.10) If we agree with the interpretation of the CIT(E), then say a trust which was formed in the year 1986 , performed charitable activities since 1986, 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.

4.11) Even otherwise, the Provisional Approval is upto AY 2024-25, and it can be cancelled by the CIT(E) only on the specific violations by the assessee.

4.12) Therefore, in these facts and circumstances we hold that the Assessee had made the application in form 10AB within the prescribed time limit and hence it is valid application .However, the CIT(E) has not discussed whether the Assessee fulfils all other conditions mentioned in the section as he rejected it on technical ground. Therefore, we direct the CIT(E) to treat the application as filed within statutory time and verify assessee’s eligibility as per the Act. The CIT(E) shall grant opportunity to the assessee. Assessee shall be at liberty to file all the necessary documents before the CIT(E).

5) Accordingly, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on 18th October, 2024

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे/Pune : /Dated : 18th October, 2024

आदेशकीप्रतिलिपिअगरेषित/Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant.
2. प्रत्यर्थी/The Respondent
3. The CIT(A), concerned.

4. The Pr. CIT, concerned
5. विभागीयप्रतिनिधि” ,आयकरअपीलीयअधिकरण ,एसएमसी,बेंच “
पुणे/DR, ITAT, “SMC” Bench, Pune.
6. गार्डफाइल/Guard File.

आदेशानुसार/BY ORDER,

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Senior Private Secretary
आयकरअपीलीयअधिकरण/ITAT, Pune.