

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 773/KOL/2024
Assessment Year: N.A.

Shri Parasnath Digamber Jain Trust.....Appellant
[PAN: AAETS 6242 E]

Vs.

CIT(Exemption), Kolkata.....Respondent

Appearances:

Assessee represented by: R.K. Patodia, AR.

Department represented by: A. Kundu, CIT DR.

Date of concluding the hearing : October 18th, 2024

Date of pronouncing the order : October 18th, 2024

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Exemption), Kolkata [hereinafter referred to as Id. 'CIT (Exemption)'] in relation to registration applied u/s 80G(5)(iii) of the Income Tax Act, 1961 (in brevity the 'Act') dated 01.03.2024.

2. The brief fact of the case is that the assessee is a charitable Trust registered u/s 12A of the Act. Assessee was earlier granted provisional approval u/s 80G(5)(iv) of the Act vide order dated 27.01.2023 of the Id. CIT (Exemption) valid up to AY 2025-26. Further, the Trust applied for permanent

registration under clause (iii) of first proviso to sub-Section (5) of Section 80G of the Act on 27.09.2023. But ld. CIT (Exemption) rejected the application observing that the assessee Trust had already commenced its activities from 12.06.1995 and that the application for final approval could have been filed within 6 months of the commencement of activities. Being aggrieved by the said order of the ld. CIT (Exemption) the assessee has come in appeal before us.

3. The issue is squarely covered in favour of the assessee by the decision of 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 ld. 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 ld. 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.”

3.1. 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.

3.2. We deem it appropriate to mention here that CBDT has extended the date up to 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) up to 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.

3.3. 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.

3.4. 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.

3.5. 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.

4. 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 (supra)* and in the case of *West Bengal Welfare Society (supra)*. Therefore, the impugned order of the Id. CIT (Exemption) is set aside and the Id. CIT (Exemption) is directed to grant final 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.”

5. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open Court on 18th October, 2024.

Sd/-

[Rakesh Mishra]

Accountant Member

Sd/-

[Sanjay Garg]

Judicial Member

Dated: 18.10.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Arihant Dredging Developers Pvt. Ltd., 6B, Dr. Rajendra Prasad Sarani, Mezanine Floor, Kolkata, West Bengal, 700001.**
- 2. ITO, Ward-4(3), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata