

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI
BEFORE MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No. 2119/DEL/2024

FOUNDATION FOR ADVANCEMENT OF MICRO ENTERPRISES, UNIT NO. 701 TO 711, 7 TH FLOOR, UNITECH COMMERCIAL, TOWER 2, SECTOR-45, GURUGRAM, HARYANA- 122003	Vs.	CIT(EXEMPTIONS), CHANDIGARH
PAN :AADCF6999F		
(Appellant)		(Respondent)

Assessee by	Shri Suresh Wadhwa, FCA
Department by	Shri Surender Pal, CIT, DR

Date of hearing	24.09.2024
Date of pronouncement	22.10.2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the assessee is directed against the order dated 16.03.2024 passed by the CIT(Exemptions), Chandigarh, whereby and whereunder the application for approval under section 80G(5)(iii) of the Income-tax Act, 1961(hereinafter referred to as 'the Act ') made by the appellant has been rejected.

2. At the time of hearing of the matter, the Ld. Counsel appearing for the assessee submitted before us that the assessee trust created

on 04.04.2019 made an application in Form 10AB on 30.09.2023 seeking approval under Clause(iii) of first proviso to sub-section (5) of Section 80G of the Income Tax Act, 1961. The assessee was issued questionnaire on 14.11.2023 electronically requesting to furnish certain documents/evidences in support of such prayer for approval under section 80G(5)(iii) of the Act which was duly complied with fact of which was also recorded by the CIT(E) in the impugned order. However, the CIT(E) rejected the same with the findings that the earlier application for approval under section 80 G (5)(iii) made by the assessee was rejected on 25.05.2023 and since there is no change in the Aims and Objects of the trust and nature of activities of the assessee remains the same, the application made by the assessee for approval under section 80 G (5)(iii) dated 30.09.2023 deserves to be rejected. In this connection, it was specifically contended by the Ld. AR that such rejection was made earlier by the CIT(Exemptions), Chandigarh on 25.05.2023 simply on the ground of limitation and he has drawn our attention to page 26 of the compilation wherein para 13 of the said order dated 25.05.2023 states as follows:

“13. From the above, it is evident that the activities of the applicant has commenced since FY 2019-20 and the present application filed in Form No.10AB under Clause (i) of first proviso to sub-section (5) of section 80G of the Act has not been filed within the time limit prescribed therein and also the assessee has not filed its application within the extended time limit provided by CBDT vide its circular No. 12 of 2021 dated 25.06.2021, circular No. 16 of 2021 dated 29.08.2021 and circular No. 8 of 2022 dated 31.03.2022 which are discussed in Para 8 above. Therefore the above application is liable to be rejected as non-maintainable, without going into the merits.

Reliance is also placed on the decision of the Hon'ble Kolkata Tribunal in the case of Bishnupur Public Education Institute, reported in 139 taxmann.com 121, wherein the Hon'ble Tribunal while adjudicating the issue of similar provisions of due date under section 10(23C) of the Act, after placing reliance on various decisions of the Hon'ble Supreme Court and that of Hon'ble High Court has held as under:-

"5. The Hon'ble Madras High Court in the case of All Angels Educational Society (supra) while considering the issue whether the Id. CIT (Exemption) has power to condone the delay in filing application for grant of approval under section 10(23C) or not, has considered the judgments of Hon'ble Supreme Court in the case of State of U.P v. Harish Chandra AIR 1996 SC 2173 as well as Union of India v. Kirloskar Pneumatic Co. Ltd. 1996 taxmann.com 575 (SC) and held that where there is no provision to empower the statutory authority to condone the delay, than the authority cannot condoned. The finding of the Hon'ble Court in Paragraphs no. 15 & 16 worth to note, which read as under:-

"15. However, considering the legal position that there is no power to condone the delay in filing an application under section 10(23C) of the Act, this Court is not inclined to exercise its extraordinary jurisdiction to condone the delay. However, this Court is inclined to give appropriate direction to the respondent to consider the petitioner's application as an application for the subsequent assessment year, namely, 2013-2014 in accordance with law. Such direction

is issued considering the peculiar facts and circumstances of the case and that the petitioner could not have made an application for the subsequent assessment year 2013-2014, since their application for assessment year 2012-2013 was still pending consideration and the impugned order came to be passed only on 13-11-2013. The respondent is at liberty to consider the amended objectives of the petitioner Trust.

16. Accordingly, the writ petition is partly allowed and the finding rendered by the respondent that the petitioner's application cannot be considered as the same is time barred is affirmed and the finding with regard to objectives of the Society by respondent holding that the Society cannot be said to be solely for education purpose is set aside. Consequently, the matter is remanded back to the respondent for fresh consideration and the petitioner's application is directed to be considered for the assessment year 2013-2014 in accordance with law and while doing so, may consider the amendments made to the objectives of the petitioner Trust. No Costs. M.P. No. 1 of 2014 is closed".

6. *Similar is the view of Hon'ble Andhra Pradesh High Court propounded in Aurora Educational Society case (supra). The Hon'ble Orissa High Court has also considered this aspect in the case of Roland Educational & Charitable Trust (supra). The concluding paragraph of the judgment is worth to note in this aspect, which read as under :—*

"Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in

presenting the application under section 10(23C)(vi), the Chief Commissioner of Income-tax can exercise any such power".

7. The adjudicating authorities under the Income-tax Act are quasi judicial authorities. They can grant approval with retrospective effect if such mechanism is provided in the Act. There is no such provision nor there is any power to condone the delay after considering the reasonable reasons. A reasonable cause can be taken into cognizance for condoning the delay, if such provision is provided in the Act while considering any issue for adjudication. Therefore, considering the above proposition, we are of the view that Id. CIT (Exemption) has rightly rejected the application of the assessee for grant of approval under section 10(23C)(vi) of the Income-tax Act. All these three appeals are rejected.

8. In the result, all the appeals of the assessee are dismissed."

14. Accordingly, the present application filed in Form No.10AB under Clause (iii) of first proviso to sub-section (5) of section 80G of the Act is **rejected as non maintainable.**"

3. The application preferred by the assessee under section 80G (5)(iii) since was not within the time limit prescribed therein neither it has been filed within the extended time limit provided by CBDT vide its Circular No. 12/2021 dated 25.06.2021, Circular No. 16.2021 dated 29.08.2021 and Circular No. 8/2022 dated 31.03.2022 the same was found to be liable to be rejected and therefore finally rejected by the CIT(Exemptions) therein, whereupon

the assessee made a fresh application dated 30.09.2023 seeking approval under section 80G(5)(iii) of the Act afresh. In that view of the matter the finding of fact made by the CIT(Exemptions) in the order impugned that the aims and objectives of the trust and neither all activities since have not changed having regard to the order of rejection dated 25.05.2023 filed by the CIT(Exemptions), the fresh application preferred by the assessee dated 30.09.2023 is liable to be rejected is not the correct finding of fact and thus not sustainable in the eyes of law. Under these circumstances, the Ld. AR finally pressed for re-consideration of the application made by the assessee in Form 10AB dated 30.09.2023 seeking approval under Clause(iii) of 1st proviso of sub-section 80G of the Act by the Ld. CIT(Exemptions). We considering both the orders passed by Ld. CIT(E) find that the order impugned is not sustainable as the same has been passed on a wrong finding of fact as already narrated above. The submissions made by the Ld. AR for reconsideration of the issue afresh by the Ld. CIT(E) has not been objected by the Ld. DR with all his fairness.

4. Having heard the Ld. Counsel appearing for the parties, having regard to the facts and circumstances of the matter we find it fit and proper to remit the issue to the file of the CIT(Exemptions) to consider the application preferred by the assessee dated 30.09.2023 seeking approval under Clause(iii) of first proviso to sub-section (5) of Section 80G afresh upon granting an opportunity of being heard to the assessee and upon considering the evidences on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that the Ld. CIT(E) will not draw any inference from the order of rejection dated 25.05.2023 passed by the CIT(Exemptions) on the earlier application made by

the assessee dated 02.11.2022 while considering the application preferred by the trust dated 30.09.2023 under section 80G (5)(iii) of the Act afresh on merit. In the result appeal filed by the assessee is allowed for statical purpose.

Order pronounced in the open court on 22nd October,2024.

**Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

Dated: 22nd October,2024

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi