

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 954/KOL/2024**

Prameya Foundation, Vill- Boinchberia, PO- Kaikhali Falta Boinchberia, Falta South, 24 Parganas - 743503 (PAN: AADTP0927G)	Vs	CIT (Exemption), Kolkata, Income Tax Office, 10B, Middleton Road, Kolkata - 700071
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : None  
Respondent by : A. Kundu, CIT DR  
  
Date of Hearing : 07.10.2024  
Date of Pronouncement : 15.10.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Exemption), Kolkata, [hereinafter referred to as “the Ld. CIT(E)”], dated 26.02.2024 against the order passed u/s 80G(5)(iii) of the Income Tax Act, 1961 (in short ‘the Act’).

2. The grounds of appeal raised by the assessee are reproduced as under:

“1 In law and in the facts and circumstances of the appellant's case, the impugned order rejecting the application made under Section 80G (5) of the Income Tax Act, 1961 is bad in law and deserves to be cancelled.

2. In law and in the facts and circumstances of the appellant's case, CIT(EXEMPTION) has erred in rejecting the application for final registration on the ground that the said application is belatedly filled without considering genuine hardship faced in filling Form 10AB which is also an admitted position in the CBDT circular dated 24 May, 2023.

3. In law and in the facts and circumstances of the appellant's case, the Ld. CIT (EXEMPTION) erred in drawing a conclusion that application filled under

*Section 80G for final registration is beyond time limit prescribed under the referred Section without considering the effect of provisions of sub-Clause (iii) to first proviso of sub-Clause (5) to Section 80 G of the Act under which the only effective condition which is applicable in the current case for filling of such application was that the same has to be made 6 months prior to the expiry of the period of provisional registration and the application so filled was within such time frame as prescribed in the referred condition.*

4. *In law and in facts and circumstances of the appellant's case, the Ld. CIT (EXEMPTION) has grossly erred in not considering the fact that the one of the conditions provided in sub-Section (5) of Section 80G of the Income Tax Act, 1961 which is relevant for reckoning the time limit for filling the application, being that the application must be filled within a period of 6 month from the date of commencement of its activities, was rendered otiose or nugatory due to technical default on the part of department to make available such form before such period expired in terms of said condition.*

5. *In law and in facts and circumstances of the appellants case the Ld. CIT (EXEMPTION) has grossly erred in not considering the fact that since one of the two conditions providing for arriving at period within which the application for final registration ought to be filled under sub- Section (5) of Section 80G of the Income Tax Act, 1961 was already rendered otiose and therefore, the time limit for filling the application under Section 80 G (5) had to be reckoned only with reference to sole condition being "at least 6 months prior to expiry of the period of the provisional approval "(quoted).*

*For that the appellant craves leave to file additional grounds or amend or alter the grounds already taken either before or at the time of hearing of the appeal.*

3. Brief facts of the case are that the assessee is an existing trust but was granted provisional approval u/s 80G(5)(iv) of the Act in Form No.10AC vide order dated 24.09.2021 for a period from 24.09.2021 to A.Y. 2024-25. Subsequently, an application for approval of the trust, u/s 80G(5)(iii) of the Act was filed electronically on 29.09.2023 in Form No. 10AB under Rule 17A of the I.T. Rules, 1962. A notice was issued to the applicant/assessee to furnish detailed note on the activities carried out by the assessee, as well as certain details/documents as mentioned therein. The inquiry about the actual activities of the trust is necessary in view of the mandatory provisions of the procedure for approval u/s 80G(5)(iii) of the Act. The assessee responded to the said notice but no reply was filed in response to the subsequent notice issued by the Ld. CIT(E) on 03.02.2024.

3.1 The Ld. CIT(E) examined the submission of the assessee but did not find them acceptable. It is mentioned in the order that from perusal of details available on records it was observed that the assessee/applicant had filed Form No. 10AB u/s 80G(5)(iii) of the Act on 29.09.2023 but its activities had commenced from F.Y. 2020-21 as the assessee had debited an expenditure of Rs. 859721/- on account of Amphan Relief Expenses and Rs. 10,000/- on account of medical relief expenses as was evident from a perusal of the Income & Expenditure details filed for the year ended 31.03.2021 and though it was an old trust but no exemption was apparently claimed prior to 01.04.2021. The Ld. CIT(E) was of the view that the assessee was provisionally approved under section 80G(5)(iv) of the Act and therefore, the applicant/assessee was required to file application in Form No. 10AB u/s 80G(5)(iii) of the Act within the time period of at least six months prior to expiry of period of the provisional approval or within six months of commencements of its activities, whichever is earlier. From the provisions of section 80G(5)(iii) of the Act, it is evident that the time limits prescribed therein is mandatory and the Commissioner of Income Tax has no power to condone the delay in filing application in Form No. 10AB. Although the dates for filing various forms were extended by the CBDT, however the date for filing application for approval under section 80G was extended up to 30<sup>th</sup> September, 2022 and, therefore, the application in Form No. 10AB u/s 80G(5)(iii) had not been filed in time. He was of the view that the activities of the applicant/assessee had already commenced and the present application filed in Form No.10AB u/s 80G(5)(iii) of the Act has not been filed within the time limit prescribed therein and therefore the same is liable to be rejected as such as non-maintainable, without going into the merits. Reliance was 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 u/s 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 that the adjudicating authorities under the Income-tax Act are quasi-judicial authorities and they can grant approval with retrospective effect if such mechanism is provided in the Act. As 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, they have held that the ld. CIT (Exemption) had rightly rejected the application of the assessee for grant of approval under section 10(23C)(vi) of the Income-tax Act. The Ld. CIT(E) was of the view that the Circular no. 6 of 2023, dated 24th May 2023 issued by the CBDT, also does not extend the benefit of extension of due date to 30.09.2023 to cases u/s 80G(5) of the Act. Thus, it is evident that the due date to file such an application u/s 10AB was 30.09.2022. In view of the above, the application filed in Form No.10AB u/s 80G(5)(iii) of the Act was rejected as non-maintainable and the Provisional Certificate issued to the assessee was also cancelled w.e.f. the date of its issue. Aggrieved with the order of the Ld. CIT(E), the assessee has filed this appeal before the Tribunal.

4. Rival contentions were heard and the submissions made and the records were examined. An extract from the Statement of Facts is reproduced as under:

6. *It is submitted that the ITAT has the power to condone the delay in filing of Form 10AB of the Act for obtaining the final registration under Section 80G of the Act. It is further submitted that the appellant could not file the application for final registration in time due to amendment in law regarding provisional and regular registration. It is a matter of fact that that the entire procedure of certification of trusts has undergone a substantial change/overhaul and various Circulars have been brought out by CBDT to mitigate the hardship to file the application for final registration of trust, and the time limit has been extended many times.*

7. *It is imperative to note that timeline prescribed under Clause (iii) of first proviso to Section 80G(5) should be treated as directory and not mandatory, hence, once timeline prescribed for filing Form No. 10A for recognition under Section 12A had been extended up to 30.09.2023, same may be treated as extended for forms namely Form No. 10AB for renewal of approval/recognition/registration under Clause (iii) of first proviso to Section 80G also. There is no reason to provide for a distinction within the same provision, so as to have a different timeline for accepting application for grant of final approval in respect of grant of registration in Form No. 10AB for registration under Section 12A of the Act and for grant of final registration under Section 80G(5) of the Act. There cannot be a distinction within the same provision for having different time-lines, without bringing out any exception and further, even the provisions of Section 80G are for the benefit of the donors, who are donating money to the charitable trust for claiming exemption in their returns of Income. The timeline provided for filling of application for approval of trust or any Institution under the first and second proviso to sub-section (5) of section 80G of the Act is within six months of commencement of activities or at least six months prior to expiry of provisional approval. These two timelines are provided in first proviso to section 80G(5) of the Act. But, the CBDT time and again considering the difficulties in filing in the electronic mode of filing of Form No.10A or 10AB, in exercise of powers conferred upon it u/s. 119 of the Act, extended the due date for filing Form No.10A or 10AB up to 30.09.2022 vide Circular No.16/2021 dated 29.08.2021 and further, vide Circular No.6/2023 dated 24.05.2023 up to 30.09.2023. But the CBDT has extended this date up to 30.09.2023 in filing Form No.10A for registration u/s. 12A of the Act vide paras 6 to 8 of the Circular.*

4.1 In order to decide the appeal, it is imperative to understand the provisions of the Act in this regard. The relevant provisions of the relevant sub-sections of section 80G as applicable to the facts of the case of the assessee are extracted below. Broadly speaking, these are the provisions which were applicable to the facts of the case of the assessee and are 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,—*

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(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<sup>10</sup> 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 2512 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;**

**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, 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:*

...

5. The scheme of granting approval underwent drastic change ('the amended provisions') w.e.f. 01.04.2021. In this case, the clause (vi) was substituted with effect from 01.04.2021 requiring the approval of the Principal Commissioner or the Commissioner under the new scheme. As the assessee was not approved earlier, clause (i) of the First Proviso was not applicable to it as it refers to institution or fund which is approved under clause (vi). The assessee was an old and existing trust which was not approved under the pre 01.04.2021 provisions ('the old provisions') of the Act by the Commissioner or the Principal Commissioner of Income-tax but which had commenced its activities in the F.Y. 2020-21, as is mentioned in the order of the Ld. CIT(E). As it was not approved prior to 01.04.2021 it had not claimed any exemption earlier. The assessee applied for approval under the amended provisions and was granted provisional approval under clause (iv) of the First Proviso to sub-section (5) of section 80G vide order dated 24.09.2021, which was for a period from 24.09.2021 to AY 2024-25. **As the activities had already commenced but the trust was not approved earlier, therefore this approval was under sub-clause (B) of clause (iv) to sub-section (5) of section 80G of the Act and the application could have been made at any time after the commencement of such activities.** As it was not approved earlier, provisional approval was granted by Ld. CIT(E), which is in accordance with the provisions of the Act. It applied for final approval on 29.09.2023. As it

was provisionally approved, as per clause (iii) of the First Proviso of sub-section (5) of section 80G, it was required to apply for grant of final approval *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*. Since the provisions were amended *w.e.f. 01.04.2021* and activities had commenced from *02.11.2019*, the assessee could not have possibly applied under the amended provisions within six months from the commencement of its activities as the period fell before *01.04.2021* when the new scheme of approval of trust and institution/funds came into force, as doing so would amount to asking the assessee to do the impossible; thereby implying that the first limb of clause (iii) of the First Proviso to sub-section (5) of section 80G only was applicable to the assessee. There is a Latin legal maxim “**Lex non cogit ad impossibilia**” that translates to “The law does not compel the impossible” in English. This principle is fundamental in legal systems worldwide and signifies that individuals cannot be required to do something impossible for them to accomplish. The provisional approval was granted upto the period relevant for assessment year 2024-25, and therefore was applicable till the end of the FY 2023-24 i.e. the period ending on *31.03.2024*. Since the application for final approval was filed on 29.09.2023, it was filed six months prior to expiry of the period of the provisional approval and was therefore filed in time. Thus, there was no justification for cancellation of the provisional approval and the assessee ought to have been considered for approval as per the procedure prescribed in clause (ii) of the Second Proviso to sub-section (5) of section 80G of the Act as a valid application seeking approval was filed under clause (iii) of the First Proviso to sub-section (5) of section 80G of the Act for approval.

Thus, the order of the Ld. CIT(E) treating the application filed by the assessee for final approval as not maintainable and also cancelling the provisional certification issued to the assessee is legally not sustainable and

is hereby set-aside with the direction to consider the application filed, which was filed within time as is highlighted above, for granting the final approval to the assessee in accordance with law and grant the approval u/s 80G(5) if the assessee is otherwise found to be eligible. Thus, Ground Nos. 1 to 5 of the appeal are allowed and the Ld. CIT(E) was not justified in cancelling the provisional approval granted to the assessee. He ought to have proceeded under clause (ii) of the Second Proviso to sub-section (5) of section 80G for granting final approval in accordance with law.

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

Order pronounced in the open court on 15<sup>th</sup> October, 2024.

*Sd/-*  
(Sonjoy Sarma)  
Judicial Member

*Sd/-*  
(Rakesh Mishra)  
Accountant Member

***Dated: 15<sup>th</sup> October, 2024***

AK, P.S.

Copy to:

1. The Appellant;
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata