

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4663/MUM/2024
Assessment Year: N.A**

Palak Palash Charitable Foundation, 305, Silver Arch CHS, Near Lokhandwala Circle, Shastri Nagar, Andheri (W), Mumbai – 400 053 (PAN : AAETP6975B)	Vs.	Commissioner of Income Tax(Exemption), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rajesh Mehta, CA and
Shri Apurva Mehta, CA

Revenue : Shri Amol Kirtane, CIT DR

Date of Hearing : 22.10.2024

Date of Pronouncement : 28.11.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal is filed by assessee against the order of Ld. CIT(E), Mumbai dated 31.08.2024 passed u/s. 80G(5) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) whereby the application of the assessee for registration u/s. 80G of the Act has been rejected.

2. Assessee has taken the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Exemption), Mumbai (hereinafter referred to as 'the Ld. CIT (E), Mumbai'] has erred in denying registration u/s. 80G of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') without appreciating that the appellant trust is a Charitable Foundation genuinely engaged in charitable activities. Thus, the Order of Rejection u/s. 80G of the Act dated 31.08.2024 is liable to be set aside.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(E). Mumbai has erred in rejecting application for registration u/s. 80G of the Act by stating that the applying Sub-Clause (B) of Clause (iv) of First Proviso to Sub-section (5) of Section 80G of the Act by stating that the appellant has claimed exemption in earlier years and therefore, the application u/s. 80G is not allowable, and doing so is wrong and contrary to the provisions of the Act. 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(E), Mumbai has erred in rejecting the application in Form No. 10AB filed on 12.03.2024, by stating that the appellant has claimed exemption in earlier years, However, the said Sub-Clause (B) of the Clause (iv) of Section 80G(5) of the Act has been deleted vide Finance (No. 2) Act, 2024 and hence, the appellant may kindly be granted registration u/s. 80G(5) of the Act.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(E). Mumbai has erred in not granting Registration u/s. 80G(5) of the Act in the interest of justice without appreciating that the appellant is duly engaged in genuine charitable activities and deserves to be granted Registration u/s. 80G(5) of the Act. Thus, the Order of Rejection dated 31.08.2024 is against the principles of natural justice and is liable to be set aside.

5. On the facts and in the circumstances of the case and in law and without prejudice to the above, the Ld. CIT(E), Mumbai has erred in denying registration to the appellant company merely on technical grounds without appreciating that registration application ought not to have been rejected merely on technical grounds will cause genuine hardship upon the appellant, when the appellant has duly substantiated the genuineness of charitable activities before the Ld. CIT(E), Mumbai.”

3. Brief facts of the case are that assessee is a charitable trust incorporated through Trust Deed dated 05.02.2021, registered under the Bombay Public trust Act, 1951 on 10.05.2021 having Registration No. E-36051 (Mum). Assessee was also granted approval/registration u/s 80G of the Act since 17.12.2009. Assessee is engaged in providing financial support to needy persons for education, food and medical help in some cases. In majority cases, assessee trust makes payments to School / College where the needy student is studying or to coaching institute or to the Hospitals, to medical shops for purchase of medicines or to shops for purchase of kirana (grocery) items, in order to provide support to underprivileged / needy persons belonging to weaker section of the society. Assessee had applied for obtaining provisional registration u/s. 12AB of the Act in Form No. 10A on 12.05.2021. Provisional Registration Certificate in Form No. 10AC was issued to the

assessee on 28.05.2021 granting Provisional Registration u/s. 12AB of the Act w.e.f. AY 2022-23 to AY 2024-25.

3.1. An amendment was brought into the relevant provisions of Section 12A and 80G of the Act vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.04.2021 whereby, an institution, which has already been approved before the aforesaid amendment, was required to re-apply for grant of approval u/s 80G of the Act within three months from the 1st day of April, 2021. The assessee accordingly re-applied for registration u/s 12A of the Act as charitable institution and the assessee was granted approval/registration u/s 12A of the Act vide order dated 04.11.2021 by Id. CIT (Exemption).

3.2. As per the First Proviso to Section 80G(5) of the Act, any trust or institution, who has obtained provisional registration under Clause (iv) of First Proviso to Section 80G(5) of the Act, application for renewal of registration and for obtaining final registration was to be applied under Clause (iii) of First Proviso to Section 80G(5) in Form No. 10AB. However, while filing Form No. 10AB, assessee by an inadvertent mistake, selected sub-clause (B) of Clause (iv) of First Proviso to Section 80G(5) of the Act instead of Clause (iii) of First Proviso to Section 80G(5) of the Act, on the basis of understanding that since the activities of the trust or institution have 'commenced', application is required to be made under clause which contains the words 'commenced'.

3.3. To this effect, Id. CIT(E), Mumbai rejected the application for obtaining 80G Registration of assessee by stating as under:

"3. On verification of the facts and circumstances of the case, it is found that the trust was incorporated on 05.02.2021. The assessee has provisional registration w/s 12A & 80G. Further, the assessee has claimed exemption in previous years and filed ITR 7.

4. As per above mentioned provision of Income Tax Act, the assessee has to file Form 10AB u/s 80G(5) (iv) (B), if the assessee has not claimed exemption in previous year. Since the assessee has claimed exemption in previous years, therefore this application u/s 80G is not allowable. Further, the assessee is not fulfilling the stipulated conditions prescribed for filing application for approval in Form 10AB. In view of the above this application Form is hereby rejected."

5. For statistical purposes, this application is non maintainable and stands rejected."

4. We have heard the rival contentions and gone through the record. In this case, application of the assessee for final approval u/s 80G of the Act has been rejected because of technical reasons for which the assessee cannot be faulted with. All the facts were before Id. CIT (Exemption) when the assessee for the first time applied for the final approval u/s 80G of the Act. Merely, because the assessee out of inadvertence had mentioned another Clause, the same was not an illegality but rather the same was a rectifiable mistake. The facts were on the record that the assessee before the amendment was already approved as a charitable institution u/s 12A as well as 80G of the Act. The assessee duly applied for provisional registration in view of the amended provisions. The same was also granted to the assessee. The next course for the assessee was to apply for the final registration u/s 80G of the Act which was also duly complied by the assessee within the time limit prescribed for the same. However, Id. CIT (Exemption) completely ignored the events which occurred from the date of filing of the application for final approval, leading to rejection of the application. In fact, instead of rejecting the application, Id. CIT (Exemption) was supposed to give opportunity to the assessee to rectify the mistake i.e. mentioning of the appropriate Clause. Id. CIT (Exemption) even could have *suo-moto* passed an order treating the said application under the relevant 'Clause-iii' of Section 80G(5) of the Act.

5. Considering the overall facts and circumstances, the matter is restored back to the file of Id. CIT (Exemption) with a direction that Id. CIT (Exemption) will pass an order on merits for final approval u/s 80G(5) of the Act by treating

the said application under the relevant 'Clause-iii' of Section 80G(5) of the Act.

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

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

Order is pronounced in the open court on 28 November, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 November, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai