

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

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

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

**I.T.A. No.: 857/KOL/2024
Assessment Year: 2021-2025**

Jay Baba Neem Karoli Nirdhan Avam Asahayee Sahayata Kendra (Appellant)	Vs.	CIT (Exemption), Kolkata (Respondent)
PAN: AADTJ9138R		

Appearances:

Assessee represented by : Akshay Ringasia, CA.

Department represented by : A. Kundu, CIT DR.

Date of concluding the hearing : September 12th, 2024

Date of pronouncing the order : December 6th, 2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

The present appeal filed by the assessee pertaining to the assessment year 2021-2025 is against the order of the ld. CIT (Exemption), Kolkata in relation to registration u/s 80G of the Income Tax Act, 1961 (in short the 'Act') dated 27.02.2024.

2. The Grounds of appeal are raised as under:



“1. That the Ld. CIT(E) erred in failing to grant registration only on a mechanical ground that registration application was filed under clause ii of the first proviso to section 80G(5) instead of clause (iii) even when such inadvertent was already clarified by the assessee in subsequent clarifications.

2. That the appellant craves to add, delete or modify any ground of appeal in the course of the hearing.”

2. The brief facts of the case of the assessee are that the assessee had filed an application for final approval u/s 80G of the Act in form 10AB subsequent to the grant of provisional registration. The provisional approval was granted on Form No. 10AC vide order dated 15.10.2021 and was applicable from 15.10.2021 to AY 2024-25. The assessee subsequently filed Form No. 10AB on 30.09.2023. However, the same was filed under Clause (ii) of the first proviso to sub-Section (5) of Section 80G of the Act instead of to be filed under Clause (iii) of sub-Section (5) of Section 80G of the Act. This application was rejected by the Id. CIT (Exemption) on 27.02.2024 by observing as under:

“The assessee has filed an application for registration under section 80G(5)(ii) of the Income Tax Act, 1961 in Form No. 10AB. This application was found to be prima-facie non-maintainable and accordingly vide letter dated 03.01.2024, certain clarifications were sought from the assessee.

On 23.02.2024 the assessee submitted its reply. From the reply of the assessee it is evident that the assessee had selected the wrong section code while applying Form 10AB. Assessee can file afresh Form 10AB selecting the correct section code. Accordingly the application filed by the assessee is treated as non-maintainable and for statistical purpose the application filed by the assessee is treated as ‘rejected’. However, no adverse inference is drawn against the assessee.”

2.1. Aggrieved with the order of the Id. CIT (Exemption), the assessee has filed this appeal before this Tribunal.

3. During the course of appeal, the assessee submitted that the rejection of the application was based purely on technical grounds, specifically the incorrect mention of Clause under sub-Section (5) of



Section 80G of the Act. It is stated that this does not affect the substantive eligibility of the assessee who had complied with the relevant requirements. The assessee has relied upon the order in the case of *Vivekananda Mission Asram vs. CIT(E)* in 995/KOL/2023 order dated 08.12.2023 wherein the Tribunal has held that *such an error constituted a rectifiable mistake and should not serve as grounds for rejection*. It was therefore, requested that the rejection order dated 27.02.2024 may be set aside and application may be treated as validly filed and should be processed on its merits without considering the technical error in the initial filing. The ld. DR relied upon the order of the ld. CIT (Exemption).

4. Rival contentions have been heard and the submissions made have been examined. In this case, the Trust was incorporated on 13.05.2021 i.e. prior to the change in the provision relating to approval of the Trust and provisional approval was granted vide order dated 15.10.2021 which was valid from 15.10.2021 to AY 2024-25 i.e. up to 31.03.2024. The Trust was incorporated on 13.05.2021 and was apparently not registered but provisional registration was granted on Form No. 10AC on 15.10.2021. The relevant extract of the findings in the case of *Vivekananda Mission Asram (supra)* passed by the Coordinate Bench of Hon'ble ITAT is as under:

"4. We have heard the rival contentions and gone through the record. In this case, the 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, due to the mistake in mentioning the proper Clause, the assessee was told to withdraw the application and file a fresh application. The assessee filed the fresh application without any delay. However, ld. CIT (Exemption) completely ignored the events which occurred from the date of filing of the application for final approval and leading to the filing of the fresh application because of the technical mistakes. In fact, instead of getting the application withdrawn, ld. CIT (Exemption) was supposed to give opportunity to the assessee to rectify the mistake i.e. the mentioning of the appropriate Clause. Ld. 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 delay in filing the fresh application is, hereby, condoned. It is directed that the application of the assessee for final registration may be treated as filed within the time limit prescribed and the time consumed by the assessee in filing the revised application will not be taken into consideration. The matter is accordingly restored to the file of ld. CIT (Exemption) with a direction that ld. CIT (Exemption) will pass an order on merits irrespective of the delay occurred in filing the fresh application for final approval u/s 80G(5) of the Act.

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. He note that the Id. 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)(ii) 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.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.”

5. The assessee requested that the matter may be set aside to the Id. CIT (Exemption) by treating the application as filed under Clause (iii) as it was provisionally approved and the mention of incorrect Clause was an error which could be rectified and did not justify rejection of the application. Although the Id. CIT (Exemption) has not drawn any adverse inference against the assessee and had granted liberty to the assessee to file afresh Form No. 10AB selecting the correct clause, however, in view of the decision of the Coordinate Bench, he is directed to treat the application as filed under Clause (iii) since the provisional approval was granted and grant final approval in accordance with law as the application was filed within six months prior to the expiry of the provisional approval which subsisted up to 31.03.2024 and the application on Form No. 10AB was filed on 30.09.2023. For statistical



purposes, Ground No. 1 of the appeal is allowed and the order is restored to the file of Id. CIT (Exemption) to grant the final approval in accordance with law. Ground No. 2 being general in nature, does not require any separate adjudication.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 6th December, 2024.

Sd/-

[Sanjay Garg]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 06.12.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Jay Baba Neem Karoli Nirdhan Avam Asahayee Sahayata Kendra, DL 18 Sita Kunj, Salt Lake Bidhannagar, Kolkata, West Bengal, 700091.**
- 2. CIT (Exemption), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata