

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1798/DEL/2024 [A.Y. 2024-25]
ITA No. 1799/DEL/2024 [A.Y. 2024-25]

Aggarwal Sabha Puran Enclave
Old Faridabad, 206, Sector 19
Faridabad, Haryana

Vs.

The C.I.T(E)
Chandigarh

PAN : AAFTA 3562 N

(Applicant)

(Respondent)

Assessee By : Shri Alok Kumar Gupta, CA

Department By : Shri Javed Akhtar, CIT-DR

Date of Hearing : 06.02.2025

Date of Pronouncement : 12.02.2025

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

Both the above captioned separate appeals by the assessee are preferred against the order of the ld. CIT(E), Chandigarh dated 23.02.2024 and 11.03.2024 rejecting application for registration u/s 12A

of the Income tax Act, 1961 [the Act, for short] and approval u/s 80G(5) of the Act respectively.

2. Since both the captioned appeals were heard together and pertain to same assessee, they are disposed of by this common order for the sake of convenience and brevity.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

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4. Briefly stated the facts of the case are that the assessee is a trust created on 06.11.2015. The assessee filed an application in form No.10AB on 26.09.2023 seeking registration u/s 12A of the Act.

5. In order to examine and verify the genuineness of the objects of the trust or institution, in the light of the provisions of section 12AA of the Act, the CIT(Exemption) issued a questionnaire electronically on 27.10.2023 to which the assessee filed a reply and sought further time

for more submissions. The CIT (Exemption) considered the submissions filed and held that the assessee does show any charitable activities but objects of the memorandum of Association does not conclusively prove the genuineness of the activities and she rejected the registration.

6. Now the assessee is in appeal before us.

7. Before us, the Counsel for the assessee vehemently stated that the Id. CIT(A) was not right in rejecting the application of the assessee for registration u/s 12A of the Act. The Id counsel of the assessee argued that the society case fell under the provisions of section 12A(1)(ac)(vi), and it filed an application on 16.09.2022. Provisional registration in Form No 10AC was issued on 23.09.2022 for period AY 2023-24 to AY 2025-26. Form No 10AB was filed on 26.09.2023 u/s 12A(1)(ac)(iii). It was rejected by CIT(E) vide Form No 10AD dated 23.02.2024 because according to her the trust could not conclusively prove genuineness of activities. The due date of filing 10AB was extended to 30.09.2023 by Circular No 6/2023 dated 24.05.2023, hence CIT(E) had no objection for not filing the application within 6 months from the date of commencement of operation.

8. The Id AR further submitted that during hearing the assessee filed all necessary documents as required by the Id CIT(E) and there was enough material on record to prove the genuineness of the society and activities carried by it. In Form No 10AD the Id CIT(E) admitted that material filed by the society was showing charitable activities but rejected application by observing that the society could not conclusively prove the genuineness of its activities. The reason was vague. The society vide letter dated 08.02.2024 (P.No 179 of paper book) requested to give 20 days time so that its representative could attend CIT(E) office for further information. It was also requested to Id CIT(E) to depute some one from her office to visit the appellant and check the activities carried by the society. But the request was ignored and order was passed on 23.02.2024 without affording society any further hearing.

9. Per contra, the Id. DR relied upon the orders of the Id. CIT(E).

10. We have given a thoughtful consideration to the order of the CIT (Exemption). We are of the view that there is some typographical error in the findings of the CIT(E) where she accepted the charitable activities of the assessee. Be that it may, we are of the view that the Id. CIT(E) has not given sufficient time to assessee to present its case. The

assessee has furnished several documents and evidences before us to establish the genuineness of the activities of the trust.

10. In view of the above factual position, we are of the considered view that the CIT(E) ought to have given a reasonable and adequate opportunity of being heard to the assessee. Therefore, in the interest of justice and fair play, we deem it fit to restore the appeal to the file of the CIT(E). The CIT(E) is directed to rehear and consider all the documents submitted along with the application after affording a reasonable and adequate opportunity of being heard to the assessee. The ground of the appeal is allowed for statistical purpose.

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11. The solitary grievance of the assessee is that Id. CIT(E) was not justified in not granting approval u/s 80G of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

12. Brief facts of the case is that the society filed Form No 10A u/s 80G(5)(ix) clause (iv) of first proviso on 16.09.2022. Provisional registration in Form No 10AC was issued on 23.09.2022 for the period 23.09.2022 to AY 2025-26. Form No 10AB was filed on 26.09.2023 u/s

80G(5)(ix) clause (iii) of 1st proviso. It was rejected by CIT(E) vide Form No 10AD dated 11.03.2024 because application was late since not made within 6 months from commencement of business which has taken place long back. The due date of filing 10AB was extended to 30.09.2023 by Circular No 6/2023 dated 24.05.2023 but it did not cover the 80G cases. The assessee could not further apply in Form No 10AB in view of time extended upto 30.06.2024 vide Circular No 7 dated 25.04.2024 as u/s 80G(5)(i) assessee was to be registered u/s 12A and its registration application was already rejected by the CIT(E).

13. The counsel of the assessee submitted that as assessee society was incorporated on 16.11.2015 and it had already commenced its activities. The 6 months requirement could never be met and assessee was asked to do something impossible. In such circumstances in clause (iii) of first proviso to section 80G(5), the limit of 6 month from the date of commencement of operations should be omitted and first limb of the proviso of applying within 6 month of due date of expiry the period of approval should survive. The Id AR stated that as provisional registration in Form No 10AC was issued on 23.09.2022 for the period 23.09.2022 to AY 2025-26 and application for regular registration was filed on 26.09.2023, the application was in time. The facts regarding

genuineness of society and its activities are already established, the approval may be granted.

14. It was argued that in the alternate, as the assessee could not subsequently apply in accordance with the circular 7 dated 25.04.2024, because at that time it was not registered u/s 12A as it was required u/s 80G(5)(i) and the rejection was objected in appeal before the hon'ble ITAT. In case the appellant's request to ask Id CIT(E) to grant registration u/s 12AB is accepted, the application for approval u/s 80G may be deemed to have been filed in response to Circular No 7 as mentioned above and approval may be granted in disposal of the registration application.

15. Representatives of both the sides were heard at length. Case records carefully perused.

16. We find that the application for registration u/s 80G(5)(iii) of the Act of the assessee was rejected by the Id. CIT(E) as non-maintainable as the same has not been filed with six months of commencement of activities.

17. In similar facts and circumstances, the issue of filing application within 6 months of commencement of activities was decided in favour of the assessee by the Kolkata ITAT in the case of Tomorrow's Foundation in ITA no 367/Kol/2024 dated 27.02.2024 wherein it has been held as follows:

"4. A perusal of the above provisions would reveal that the institutions which stood already approved u/s 80G(5)(vi) on the date of Amendment brought to section 80G of the Act by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 have to re-apply for fresh registration under Clause (i) to the First Proviso to section 80G(5) of the Act and those institutions have to be granted provisional registration for five years by the Id. CIT(Exemption) without any enquiry. The prescribed date for final application for approval under Clause (i) to the First Proviso to section 80G(5) of the Act was stipulated as three months from 1st Day of April 2022. However, the CBDT from time to time extended the date for filing of the said application under Clause (i) to the First Proviso to section 80G(5) of the Act and finally vide Circular No.6 of 2023 dated 24.05.2023, the said date was extended upto 30.09.2023. Further, the institutions which had to apply for The first time or the institutions which did not stand approved on the date of Amendment i.e. 01.04.2021 brought by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, they could apply under Clause (iv) of the First Proviso to section 80G(5) of the Act. In that case, the Id. CIT(Exemption) is supposed to make necessary enquiries and if found satisfied regarding the genuineness of the activities of such an institution would grant provisional approval for five years. In both the cases the institutions which have been granted approval under Clause (i) or the institutions which have been granted approval under Clause (iv) to First Proviso to section 80G(5) of the Act have to apply for final registration under Clause (iii) of First Proviso to section 80G(5). Such institutions are required to apply for

final registration at least six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier. In the case in hand, it appears that the assessee-institution instead of applying for renewal of registration under Clause (i) to First Proviso to section 80G(5) of the Act has applied for fresh provisional registration under Clause (iv) to First Proviso to section 80G(5) of the Act and incidentally, the said fresh provisional registration has also been granted to the assessee-institution from 10.03.2023 to A.Y 2025-26. If the assessee-institution would have applied for renewal of the registration under Clause (i), then its approval u/s 80G(5) would have continued without any break. The last date for making such an application was upto 30.09.2023 as per the extended date from time to time vide Circular no.6 of 2023. However, since The assessee-trust has applied for fresh approval under Clause (iv) to First Proviso to section 80G(5) of the Act, therefore, the assessee-trust was entitled to apply for final registration and there was no bar to the institution for making such application. This issue has already been adjudicated upon by 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 Id. CIT(E) that the assessee had already commenced its activities since long and that as per Clause (iii) of 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 ie. 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 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)(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."

5. 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.

5.1 We deem it appropriate to mention here that CBDT has extended the date upto 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) upto 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 i to First Proviso to section 80G(5) of the Act.

5.2 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.

5.3 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.

6. 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) 10 First Proviso to section 80G(5) of the Act.

7 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 vs. CIT (supra) and in the case of "West Bengal Welfare Society vs. CIT(Exemption)" (supra) and further by the decision in the case of "Sri Aurobindo Bhawan Trust, Krishnagar vs. CIT(Exemption)" order dated 20.02.2024 (Judicial Member herein being the author of the said orders). Therefore, the impugned order of the CIT(Exemption) is set aside and the Id. CIT(Exemption) is directed to grant provisional 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.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes".

18. Following the decision of the coordinate bench of ITAT above, we allow the appeal of the assessee for grant of approval u/s 80G(5) if otherwise the assessee is eligible. We are however of the view that as we have already set aside the issue of grant of Registration u/s 12A to

the file of the CIT(E) for a fresh determination regarding genuineness of the Trust activity, we deem it fit to set aside this issue of 80G(5) approval also to the file of the CIT(E) with a direction to the Id. CIT(E) not to consider the non-filing of application within 6 months of commencement of activities be an impediment in granting registration u/s 80G of the Act. The ground of appeal is allowed for statistical purpose.

19. In the result, both appeal of assessee in ITA No. 1798/DEL/2024 and ITA No. 1799/DEL/2024 are allowed for statistical purposes.

The order is pronounced in the open court on 12.02.2025.

Sd/-

**[SUDHIR KUMAR]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 12th FEBRUARY, 2025.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	<i>06.02.2025</i>
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	<i>07.02.2025</i>
3.	<i>Date on which the draft Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Despatch of the Order</i>	