

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

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.540/Chandi/2024  
Assessment Year: 2023-24

<b>Mahavar Sabha Rewari Jeewali Bazar Near Dholika Kunwa Rewari Haryana PAN No. AABAM1178P</b>	<b>Vs.</b>	<b>Commissioner of income tax Exemption Chandigarh</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Gaurav Jain, Advocate
Respondent by	Ms. Baljeet Kaur, CIT. DR

Date of hearing:	07/01/2025
Date of Pronouncement:	12/02/2025

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal is preferred by the assessee is against the order 15-03-2024 of the Commissioner of Income Tax (Exemption) Chandigarh [hereinafter referred to as "CIT(E)"] rejecting the request for approval pertaining to assessment year

2023-24, under section 80G of the Income Tax Act, 1961 [herein after, the Act ].

2. This appeal was filed by the assessee before the ITAT Chandigarh later on appeal was transferred to the ITAT Delhi by the order of the Hon'ble President ITAT.

3. The brief facts of the case are that appellant/assessee is a registered society under the Haryana Registration and Regulation of Societies Act 2012. The assessee applied for provisional registration under section 80G (5) of the Act on the Form 10A which was granted on 21-01-2023 up to 31-03-2026. Thereafter the assessee applied for permanent registration under clause (iii) of the first proviso of section 80G (5) of the Act in the prescribed Form 10AB of the Income Tax Rules on 27-09-2023, The CIT(E) rejected the said application as non-maintainable on the reasoning that the said application was filed after six months from the commencement of activities.

4. Aggrieved the order of the Ld. CIT(E) the assessee has filed this appeal before the Tribunal.

5. The Ld. AR of the assessee has argued that the clause (iii) of the first proviso of sub section (5) of section 80G of the Act misinterpreted, because it is not possible for a trust or society engaged in charitable activities for several years, to apply for registration u/s 80G (5) of the Act within six months from the commencement of charitable activities. Now it is mandatory for every charitable institution to obtained a provisional registration u/s 80G(5) of the Act and thereafter for regular registration. How a trust or society engaged in charitable activities over the five years could apply for regular registration u/s 80G(5) after six months from the date of commencement of the charitable activities when they had to seek both provisional registration and thereafter regular registration u/s 80G(5)(iii) of the Act. He further submitted that the appellant/ assessee was incorporated on 13-11-1992, could not apply for permanent

registration u/s 80G(5)(iii) of the Act within six months of the commencement of charitable activities, i.e in A.Y.2023-24 in accordance with new provisions of the section 80G(5)(iii) of the Act.

6. The Ld. AR placed reliance on the decision of the Hon'ble Calcutta High Court in case of CIT( E) v. West Bengal Welfare Society Kolkata (ITA/77/2024) where the Hon'ble High Court held as under :-

*"6. We note that the la CIT(E) has misconstrued the aforesaid proviso registration 80G(5) of the d the la. CIT(E) provision, an application for final registration cannot be filed Act. As per the ran 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. However, since we have restored the matter to the ld. CIT(E) for decision afresh on merits on the application for final registration u/s 12A of the Act and since the registration u/s 80G(5) is dependent upon the*

*registration u/s 12A of the Act, therefore, the application of the assessee for registration u/s 80G(5) is also restored to the ld. CIT(E) subject to the observations made above"*

7. The Ld. DR has submitted that amendments introduced by the finance Act (No.2),2024 w.e.f.01-10-2024 by the legislature because the legislature was fully aware of the difficulties faced by charitable societies/trusts. The amendments introduced by the finance Act (No.2) ,2024 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,*

*(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: -*

*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; [or]*

*(iv) 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 at any time after the commencement of such activities:]"*

8. Reliance has placed on the following decisions:

- i. Allied Motors (P.) Ltd. 224 ITR 677 (SC)*
- ii. Calcutta Export Company : 404 ITR 654 (SC)*
- iii. Bhanot Construction & Housing Ltd. 261 Taxman 262 (Del.HC)*
- iv. West Bengal Welfare Society V. CIT(E) ITA No(s) 730 & 731/KOL/2023*
- v. Adarsh Paramedical Welfare, Association v. CIT(E)*
- vi. South Asia Foundation India V. CIT(E) ITA No.1903/Del/2024 dated 27.11.2024*

9. The Allied Motors (P.) Ltd: 224 ITR 677 (SC) the Hon'ble Supreme Court observed as under :-



**Allied Motors (P.) Ltd.; 224 ITR 677 (SC)**

While interpreting section 43B without the first proviso some of the High Courts, in order to prevent undue hardship to the assessee, had taken the view that section 43B would not be attracted unless the sum payable by the assessee by way of tax, duty, cess or fee was payable in the same accounting year. If the tax was payable in the next accounting year, section 43B would not be attracted. This was done in order to prevent any undue hardship to assesseees such as the ones before us. The memorandum of reasons takes note of the combined effect of section 43B and the first proviso inserted by the Finance Act, 1987. After referring to the fact that the first proviso now removes the hardship caused to such taxpayers it explains the insertion of Explanation 2 as being for the purpose of removing any ambiguity about the term 'any sum payable' under clause (a) of section 43B. This Explanation is made retrospective. The memorandum seems to proceed on the basis that section 43B read with the proviso takes care of the hardship situation and hence Explanation 2 can be inserted with retrospective effect to make clear the ambit of section 43B(a). Therefore, section 43B(a), the first proviso to section 43B and Explanation 2 have to be read together as giving effect to the true intention of section 43B. If Explanation 2 is retrospective, the first proviso will have to be so construed. Read in this light also, the proviso has to be read into section 43B from its inception along with Explanation 2.

8. This position is reinforced by a departmental Circular No. 550 dated 1-1-1990 (See Taxmann's Direct Taxes Circulars, Vol. 4, 1995 edn., pp. 2.1741, 2.1750):

"Amendment of provisions relating to certain deductions to be allowed only on actual payment. – 15.1 Under the existing provisions of section 43B of the Income-tax Act, 1961, a deduction for any sum payable by way of tax, duty, cess or fee, etc., is allowed on actual payment basis only. The objective behind these provisions is to provide for a tax disincentive by denying deduction in respect of a 'statutory liability' which is not paid in time. The Finance Act, 1987, inserted a proviso to section 43B to provide that any sum payable by way of tax or duty, etc., liability for which was incurred in the previous year will be allowed as a deduction, if it is actually paid by the due date of furnishing the return under section 139(1) of the Income-tax Act, in respect of the assessment year to which

the aforesaid previous year relates. This proviso was introduced to remove the hardship caused to certain taxpayers who had represented that since the sales-tax for the last quarter cannot be paid within the previous year, the original provisions of section 43B will unnecessarily involve disallowance of the payment for the last quarter.

Certain Courts have interpreted the provisions of section 43B in a manner which may negate the very operation of this section. The interpretation given by these Courts revolves around the use of the words 'any sum payable'. The interpretation given to these words is that the amount payable in a particular year should also be statutorily payable under the relevant statute in the same year. Thus, the sales-tax in respect of sales made in the last quarter was held to be totally outside the purview of section 43B since the same is not statutorily payable in the financial year to which it relates. This is against the legislative intent and, therefore, by way of inserting an Explanation, it has been clarified that the words 'any sum payable' shall mean any sum, liability for which has been incurred by the taxpayer during the previous year irrespective of the date by which such sum is statutorily payable. . . ."

.....

10. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of *R.B. Jodha Mal Kuthiala v. CIT* [1971] 82 ITR 570, this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.

11. This view has been accepted by a number of High Courts. In the case of CIT v. Chandulal Venichand [1994] 209 ITR 7/ 73 Taxman 349, the Gujarat High Court has held that the first proviso to section 43B is retrospective and sales-tax for the last quarter paid before the filing of the return for the assessment year is deductible. This decision deals with the assessment year 1984-85. The Calcutta High Court in the case of CIT v. Sri Jagamathi Steel Corpn. [1991] 191 ITR 676, has taken a similar view holding that the statutory liability for sales-tax actually discharged after the expiry of the accounting year in compliance with the relevant statute is entitled to deduction under section 43B. The High Court has held the amendment to be clarificatory and, therefore, retrospective.



The Gujarat High Court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High Court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores v. Union of India [1991] 189 ITR 70/ 54 Taxman 521. It has held the amendment inserting first proviso to be retrospective. The special leave petition from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to section 43B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of Statutory Interpretation, Fourth edn., page 291, "It is well-settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended". In fact the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained."

10. Reliance also placed the decision of the co-ordinate bench Delhi in the case of Adarsh Paramedical Welfare Association ITA No. 2836/Del/2023 and South Asia Foundation India v, CIT(E) ITA No. 1903/Del/2024. The Ld AR drew our attention to the Circular No. 7/2024 dated 25<sup>th</sup> April, 2024 by which the CBDT had extended the due date for filing form 10A and 10AB under the Act till 30-06-2024.

11. The Ld. CIT -DR supported the order of the Ld CIT( E ) and sought for the dismissal of the appeal.

12. We have heard both the parties and perused the material available on the record. We find force in the argument of the Ld. AR that harmonious interpretation of the section 80G(5) of the Act in this case which the appellant is engaged in the charitable activities since long cannot be done in the above mentioned facts and circumstances. The CBDT has issued the circulars from time to time to ease out difficulties and hardships of the trusts/ societies and to overcome anomalies of the section 80G(5) of the Act. The CBDT, vide Circular No.7/2024 dated 25-04-2024 has extended the due date for filling form 10 A and 10 AB till 30-06-2024.

13. From the above discussion and following the decision of the co-ordinate bench we are of the considered opinion that the Ld CIT( E) has not deal the matter keeping view the facts in entirely and objective of the section 80G(5) of the Act, being welfare legislations. Therefore considering the provisions of section 80G(5) of the Act and the circular no 7/2024 of the CBDT, we are of considered view that the application filed by

the appellant under Form No. 10 AB of the Income Tax Rules should have been treated as filed within the prescribed time. Therefore, we restore the matter back to the learned CIT( E ) to decide as a fresh after giving the opportunity of being heard to the appellant.

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

Order pronounced in the open court on 12.02.2025.

**Sd/-**  
**( PRADIP KUMAR KEDIA )**  
**ACCOUNTANT MEMBER**

*\*Neha, Sr. PS \**

Date: 12.02.2025

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI