

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.482/Nag./2024
(Assessment Year : N.A.)

Gayatri Gram Vikas Sanstha
Yeota Road, Basera Colony
Malkapur, Akola 444 004
PAN – AAATG9244L

..... Appellant

v/s

Income Tax Officer
Ward-2 (Exemption), Nagpur

..... Respondent

Assessee by : S/Shri Saurabh a/w Ajit Pimparkhede
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 04/02/2025

Date of Order – 25/02/2025

ORDER

PER V. DURGA RAO, J.M.

Assessee's appeal is emanating from the impugned order dated 15/07/2024, passed by the learned Commissioner of Income Tax (Exemption), Pune, [*"learned CIT(E)"*].

2. In its appeal, the assessee has raised following grounds:–

"1. On the facts and circumstances of the law, the CIT (Exemption), Pune is refusing the exemption and registration of the trust u/s 80G.

2. The Hon'ble CIT (exemption) rejected the application for final registration u/s 80G only on the technical grounds that the application for provisional registration made by assessee under different sub-cause of the proviso to sec 80G without verification charitable activities and genuiness of the activities of trust.

1. Any other ground of appeal to be raised at the time of hearing with prior approval of the Hon'ble Authority."

3. The assessee filed application in Form no.10AB under clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 (for short "*the Act*"), on 23/01/2024. Such application was carefully perused and considered along with its annexures. The learned CIT(E) rejecting the application and cancelled the provisional approval which was granted on 10/01/2024, under sub-clause (A) of clause (iv) of first proviso to sub-section (5) of section 80G of the Act. The reason for such cancellation of registration is that the assessee has made mistake and applying wrong section in its application. The observations of the learned CIT(E) are as under:-

"6. The assessee's is not found to be acceptable. In the instant case, the assessee has obtained provisional approval under Sub-clause (A) of clause (iv) of first proviso to sub-section (5) of section 80G of the Act which has been issued by the CPC. As stated in reply, the commencement of activities of the assessee trust is in year 1994-95. It has obtained provisional registration in form 10AC on 10/01/2024 u/s 80G(5) (iv) (A) of the Income-tax Act, 1961. As the activities of the trust were already commenced it was required to file application in form 10AB u/s 80G(5) (iv) (B) of the Income-tax Act, 1961. Said provision is reproduced hereunder for ready reference:

"80G(5)- notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution, -

(iv) in any other case, where activities of the trust or institution 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."

7. As stated by the assessee, its activities were commenced in year 1994-95 i.e. before obtaining the provisional registration in form 10AC on 01/01/2024. Therefore, it was required to file application u/s 80G(5) (iv)(B) of the Income-tax Act, 1961. The assessee's contention that the trust has applied for registration under 80G(5)(iv)(A), which is correct as per revised provisions and to the interpretation of law and that since it do not have registration before 01/04/2021 the sec 80G(5) (i) is not applicable, is also devoid of merit. Sub-clause (A) and Sub-clause (B) are both part of section 80G(5) (iv) of the Act. Thus, the basic document i.e. the provisional approval dt. 10/01/2024 itself is invalid in the assessee's case.

8. Considering the above, and since its activities were already commenced at the time of filing the present application, the assessee trust is not eligible for provisional approval u/s 80G(5) (iv) (A) of the Income-tax Act, 1961. Therefore, the application filed by the assessee is hereby rejected without going into the merits of the case and the provisional approval granted on 10/01/2024 under section 80G(5)(iv)(A) of the Income Tax Act, 1961, is hereby cancelled."

4. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. After perusing the facts on record, it is noted that the assessee has simpliciter made a technical mistake in applying under section 80G(5)(i) of the Act which is not applicable since the activities were already commenced at the time of filing the application and hence the assessee was not eligible for provisional approval under section 80G(iv)(A) of the Act. We are of the considered opinion that mentioning of wrong clause in the application for registration under section 80G out of inadvertence is no basis to deny registration. Consequently, the assessee is directed to file a fresh application under section 80G(5)(iv)(B) of the Act before the learned CIT(E). The learned CIT(E) is directed to consider fresh application to be filed and grant registration in accordance with law. Thus, all the grounds raised by the assessee are allowed, but for statistical purposes.

5. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 25/02/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 25/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur