

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 1825/MUM/2025
Assessment Year: 2022-23**

The AnjumaneTaiyebi
Husaini Masjid Bldg 1st Floor
66-68 Husainiyah Ma, Mandvi Post
Office, Mumbai- 400013

Vs.

CIT exemption
Room No. 601 6thFlr,
CamballaHill, MTNL Building,
Pedder Road, Dr. Gopalrao
Deshmukh Marg,
Mumbai-400013

**PAN NO. AAATA 000 7 H
Appellant**

Respondent

Assessee by : Ms. Sakina Murtuza Imani
Mr. Abdulhusein Yusuf Ratlamwala
Revenue by : Mr. Satya Pal Kumar, Sr. DR

Date of Hearing : 30/04/2025
Date of pronouncement : 30/04/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 31.08.2024 passed by the Ld. Commissioner of Income-tax (Exemption), Mumbai [in short 'the Ld. CIT(E)']. wherein the application of the assessee for registration u/s 80G(5) of the Income-tax Act, 1961 (in short the Act) has been rejected.



2. At the outset, the Learned Counsel for the assessee addressed the defect pointed out by the Registry regarding the delay of 180 days in filing the appeal. She referred to the affidavit filed by the trustee of the assessee, wherein it was explained that the delay occurred due to the assessee exhausting alternative remedies before the Learned CIT(Exemptions). The relevant portion of the affidavit is reproduced below:

“2. That the order under appeal was passed by the Commissioner of Income Tax (Exemptions), Mumbai on 31/08/2024, rejecting the Trust's application for re-registration under Section 80G of the Income Tax Act, 1961.

3. That as per the provisions of the Income Tax Act, the appeal against the said order was required to be filed within sixty (60) days from the date of the order. ic., on or before 18/3/2005.

4. That a single opportunity of hearing was granted on 14/06/2024, the notice of which was served on the Trust's email. However, due to inadvertence and oversight, the said notice was not acted upon. Additionally, the said notice was not visible on the Income Tax portal, resulting in the professional engaged by the Trust remaining unaware of the said hearing.

5. That due to an inadvertent clerical error and a misunderstanding of procedural requirements, the appeal could not be filed within the prescribed period.

6. That a re-application for re-registration under Section 80G was made on 12/12/2024, accompanied by a request for condonation of delay. However, this application was not processed. The professional handling the application continuously tracked its status.

7. That the initial application, submitted on 18/03/2024, was processed and culminated in a rejection order dated 31/08/2024, approximately 166 days after its filing. Based on this timeline, it was anticipated that the subsequent application made on 12/12/2024 would be processed by February / March 2025. Consequently, the professional handling the matter reasonably awaited the completion of this time frame before pursuing any further action.



8. That upon raising a grievance regarding the non-processing of the second application, the response received indicated that the application would be processed by June 2025. This was a significant factor in the professional's decision to await further developments before taking additional steps.

9. That it was only upon visiting the office of the Commissioner of Income Tax (Exemptions) on 24/02/2025 that the professional was orally informed that an appeal must be filed with the Hon'ble Income Tax Appellate Tribunal (ITAT) to seek relief from the rejection order dated 31/08/2024, as the second application for re-registration would not be considered.

10. That upon receiving this information, the present appeal is being filed expeditiously and without any further delay.”

3. We have heard the rival submissions on the issue of condonation of delay in filing the appeal. The Learned Departmental Representative did not seriously object to the assessee's request. In our view, the reasons provided constitute **sufficient cause** for the delay in filing the appeal. Accordingly, we condone the delay and admit the appeal for adjudication.

4. As regards the grounds raised in the appeal, the Learned Counsel for the assessee submitted that an **inadvertent error** occurred while filing the application in Form No. 10AB for registration under Section 80G. She explained that in the said application, the assessee erroneously selected **clause (ii)** of the first proviso to Section 80G(5), instead of the applicable **clause (iii)**. She therefore prayed that the assessee may be granted an opportunity to rectify the error and that the matter may be **restored to the file of the Learned CIT(Exemptions)** for reconsideration.



5. We have heard the rival submissions and perused the relevant material on record. The Learned CIT(Exemptions) rejected the assessee's application with the following observation:

“As the trust is provisionally approved, provisions of clause (iii) of first proviso to sub-section (5) of section 80G are applicable to it, which is reproduced as under.

“(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,”

3. On perusal of the Form 10AB filed by the assessee it was observed that the assessee has applied under clause (ii) of first proviso to sub-section (5) of section 80G i.e. for renewal of approval and not for regularisation of provisional approval. Hence this Application is hereby rejected.

4. For statistical purposes, this application is non maintainable and stands rejected.”

6. Before us the Ld. counsel for the assessee relied on the decision of the coordinate bench in the case of **Rambha Charitable Trust in ITA No. 5111/Mum/2024**, wherein the Tribunal in similar circumstances, restore the matter back to the Ld. CIT(E) for considering the application of the assessee for registration . The relevant finding of the Tribunal is reproduced as under:

“The assessee in terms of the above provisions first applied for a provisional approval under sub-clause (B) of clause (iv) of first proviso to subsection (5) of section 80G within and subsequently (refer clause 2 in Form 10A) and was given the provisional registration up to AY 2025-26 on 30.11.2022. In the application for final approval in Form 10AB, it noticed that the assessee has once again mentioned same section i.e. sub-clause (B) of clause (iv) of first proviso to subsection (5) of section 80G whereas the correct section code under which the assessee ought to have sought approval is clause (iii) of first proviso to subsection (5) of section 80G. We also noticed that the CIT(E) has treated the application as one filed under sub-clause (B) of clause (iv) of first proviso to



subsection (5) of section 80G and accordingly rejected the application for not fulfilling the stipulated conditions prescribed for filing application for approval in Form 10AB. From the perusal of forms filed and the facts of the case, in our considered view, there is merit in claim of the Id AR that the assessee has selected the wrong section code inadvertently while filing the application for final registration in Form 10AB. Further, we notice that the assessee did not have the opportunity of being heard before CIT(E) due to incorrect course of action advised, and that otherwise the assessee might have explained the facts before the CIT(E) to avoid rejection. In view of these discussions and respectfully following the above decision of the Kolkata Bench in the case of North Eastern Social Research Centre (supra) we remit the issue back to CIT(E) with a direction to grant final approval to the assessee under Clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. We also direct the CIT(E) to decide the application of the assessee for final approval as quickly as possible before the expiry of the provisional approval granted in order to enable the assessee to have the benefit of section 80G without any break. It is ordered accordingly.”

7. Having regard to the discussion above, we are of the considered opinion that the error committed by the assessee in selecting the incorrect clause in Form No. 10AB was inadvertent and procedural in nature, and in the absence of any mala fide intent, such a trivial mistake ought not to result in the denial of a substantive statutory benefit. The law does not demand the infliction of hardship where the lapse is purely technical and does not go to the root of the eligibility. In the peculiar facts and circumstances of the case, and in the interest of substantial justice, we deem it appropriate to set aside the order passed by the Learned Commissioner of Income Tax (Exemptions) and remand the matter to his file with a direction to afford the assessee an opportunity to rectify the clerical error in Form No. 10AB and to thereafter consider



the assessee's request for regularisation of registration under Section 80G(5) of the Income Tax Act, 1961, strictly in accordance with law and upon affording due opportunity of hearing. The grounds of the assessee are accordingly allowed for statistical propose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court .

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 30/04/2025
Disha Raut, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai