

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, 'DB': AMRITSAR**

BEFORE SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.612/ASR/2024

[Assessment Year: N/A]

IIT Ropar Technology Business Incubator Foundation, Nangal Road, Ropar, Punjab-140001	Vs	The CIT(Exemptions), Chandigarh, Room No.1, 5 th Floor, C.R. Building, Himalaya Marg, Sector-17-E, Chandigarh-160017
PAN-AAECI1487Q		
Appellant		Respondent

Appellant by	Ms. Bhavna Kapila, Adv.
Revenue by	Shri Ravinder Mittal, CIT-DR

Date of Hearing	23.05.2025
Date of Pronouncement	20.08.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Exemption), Chandigarh (hereinafter referred to 'ld. CIT(E)') dated 25.09.2024.

2. Brief facts of the case:- An application for approval u/s 80G(5)(iii) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') was filed by the assessee on 18.03.2024 in Form No.10AB. During the course of hearing proceedings, the Ld. CIT(E) noted that the assessee had started its activities in FY 2019-20 and observed that the assessee had long back commenced its activity when it had

applied for provisional approval which was granted to it by CPC on 12.02.2024. The Id. CIT(E) also observed that as per the Income Tax Act, post 01.10.2023 provisional approval can be granted/sought by a trust or institution which has not yet commenced its activity. Thereafter, the Ld. CIT(E) quoted the provisions of section 80G(5) (w.e.f. 01.10.2023) as under

“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 fulfills the following conditions, namely:-

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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,—

(iv) in any other case, 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 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:]

3. In view of the above position of law, the Ld. CIT(E) held that it is evident that the provisional approval could not have been granted in the case as the assessee had already commenced its activities in

FY 2019-20. In view of this fact, the ld. CIT(E) held that the present application of the assessee filed in Form 10AB u/s 80G(5)(iii) of the Act was not maintainable since the provisional approval granted was bad in law and hence rejected the said application. The ld. CIT(E) further held that this rejection will also supersede any approval granted u/s 80G by any authority at any earlier time.

4. Aggrieved with the said order, the assessee is in appeal before us by raising the following grounds of appeal:-

1. That the Ld. CIT (Exemptions) has erred in rejecting the application for granting approval u/s 80G(5)(iii) of the Income Tax Act.

2. That the rejection of application u/s 80G is against the facts and circumstances of the case.

3. That the replies as filed during the course of proceedings before the CIT(Exemptions) have not been considered properly.

5. During the course of hearing before us, the assessee had filed a written submission on 23.05.2025 along with a paper book containing pages 1 to 66. Thereafter, on clarification hearing on 23.05.2025, the assessee filed a written submission which is reproduced as under:-

1. At the outset, it is submitted that the Assessee Foundation was incorporated on 20.05.2016, copy of the incorporation certificate placed at Page No. 9 of the Paper Book.

2. The Assessee is a section 8 company established up under the NIDHI TBI Scheme of the Department of Science and Technology, Government of India.

3. The Assessee started its activities since Financial Year 2019-20.

4. The Assessee has been granted registration u/s 12A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide order dated 19.12.2023, copy of the order is placed at Page No. 31-34 of the Paper Book. No doubt has been raised on the aims and objectives as well as activities of the Assessee.

5. Now, we tabulate hereunder the details of the applications made by the Assessee for the grant of approval u/s 80G of the Act in the chronological order as under:

Particulars	Date of application	Section under which application was filed	Provisions of the Section Remarks
Application for Provisional approval u/s 80G	05.02.2024	<u>INCORRECT SECTION</u> Sub-clause (A) of Clause (iv) of first proviso to sub-section (5) of Section 80G	The provisions of this sub-clause states, that, application can be filed by institution who has not commenced and the application is filed one month prior to the commencement of the AY for which approval is sought, copy of the application is placed at Page No. 18-21 of the Paper Book. However, the CORRECTION Section was sub-clause (B) of clause (iv) of first proviso to sub-section 80G
Order of provisions Approval u/s 80G	12.02.2024		The provisional approval was granted to the Assessee for the period of three years vide Unique Registration No.AAECL1487QF20241, Copy of the order is placed at page no.22-23 of the paper book.

CORRECT SECTION:

The Assessee was supposed to file the application CORRECTLY under Sub-clause (B) of Clause (iv) of first proviso to sut section (5) of Section 80G.

The provisions of this sub-clause states, that, application can be filed by such institutions who have already commenced its activities before filing of the application for approval, but have not claimed any exemption u/s 11 or 12 or 10(23C)(iv)/(v)/(vi)/(via) for any previous year ending on or before the date of application.

The approval for such application is 'FINAL APPROVAL', granted for the

<i>period of 5 years.</i>			
<i>Consequential Application for Final Approval U/s 80G After Receiving provisional Approval</i>	<i>18.03.2024</i>	<i>Clause (iii) of first proviso to sub-section (5) of Section 80G The provisions of this clause states, that, application can be filed by the institutions having provisional approval, within six months of commencement of activities. The FINAL APPROVAL for such application is otherwise granted for the period of 5 years.</i>	<i>The impugned order dated 25.09.2024 passed in the case of the assessee and the application for final approval was rejected and the provisional approval granted earlier was cancelled by stating that the 'Provisional application granted was bad in law'. It is also worth submitting that if the Appellant committed a bonafide error/mistake in selecting the sub-clause in the application form, the equal mistake lies on the part of the Department itself in granting the Provisional Registration against such incorrect form despite having full information and details on record.</i>

ASSUMING THE CORRECT SCENARIOS

SCENARIO 1:

Had the assessee filed its first application by selecting the correct sub-clause (B) of Clause (iv) of first proviso to subsection (5) of Section 80G, the assessee would have been granted FINAL APPROVAL for the period of 5 years I.e., AY 2024-25 to AY 2028-29.

SCENARIO 2:

Had the Worthy CIT (Ex.), Chandigarh, passed the order in the case of the assessee by considering the judgments of the coordinate Bench of ITAT, Chandigarh in case of Society for Technology Business Incubator vs. The CIT(E), Chandigarh in ITA No. 1134/Chd/2024 dated 27.03.2025 and Indian Institute of Management Sirmaur vs. The CIT(E), Chandigarh in ITA No. 1122/Chd/2024 dated 01.05.2025 and granted relief by ignoring the bonafide mistake of the counsel of the Assessee, the approval would have been granted FINAL APPROVAL for the period of 5 years f.e., AY 2024-25 to AY 2028-29.

6. So, in view of the facts stated in the above table, it is very humbly requested that the mistake on the part of the counsel of the assessee should not be fatal to the otherwise eligible claim of assessee in view of the settled law in case of the Hon'ble Punjab and Haryana High Court in the case of Manoj Ahuja (Minor) & An. Vs Inspecting Assistant Commissioner reported in 43CTR 229, more so when in both the scenarios, as explained above, the assessee would have been granted FINAL APPROVAL for the period of 5 years i.e., AY 2024-25 to AY 2028-29.

7. Thus, it is very humbly requested before the Hon'ble Bench to direct the Worthy CIT(Ex.), Chandigarh to reconsider the application filed by the Assessee on 18.03.2024, as filed by selecting the correct section and necessary approval may please be granted to the assessee from the date of filing of application.”

6. We have heard both the parties and perused the material available on record. On similar facts, the Co-ordinate Bench of the Tribunal in the case of Society for Technology Business Incubator vs CIT(Exemption) in ITA No.1134/CHD/2024 relied upon by the assessee on similar facts, held that an application filed in time but mentioning a wrong section cannot be a ground for rejecting the application for approval u/s 80G(5)(iii) of the Act. In the said case, the Co-ordinate Bench directed the ld. CIT(Exemption) to grant approval to the assessee as if it is an old institution which came into existence prior to 01.04.2021 and entitled for registration. The Co-ordinate Bench further directed that such registration be granted to the assessee by treating the application under sub-clause (i) for grant of regular registration and not as a provisional registration and the necessary certificate be issued accordingly. The relevant finding of the Tribunal is reproduced as under:-

“The present appeal is directed at the instance of the assessee against the order of ld. CIT (Exemptions) dated 15.10.2024 vide which registration under Section 80G(5) of the Income Tax Act, 1961 was denied to the assessee.

2. Before adverting to the facts of present application, we deem it appropriate to discuss the position of law governing grant of registration under Section 80G(5) of the Income Tax Act.

3. With the assistance of ld. Representative, we have gone through the record carefully. Section 80G is a very lengthy Section. Its heading read as under :

“DEDUCTION IN RESPECT OF DONATIONS TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS, ETC.

Sub-section 1 of Section 80G provides that :

“In computing the total income of the assessee, there shall be deduction in accordance with and subject to the provisions of this Section”.

3.1 Sub-Section (5) clause (vi) is the relevant provision of this Section for the purpose of the controversy in hand. Therefore, we take note of the relevant part of this Section. S

Sub 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 it fulfills the following conditions namely:-

x x x x

(vi) In relation to donations made after 31st day of March 1992, the institution or fund is for the time being [approved by the Principal Commissioner or Commissioner]

x x x x

3.2 Thereafter, 1st and 2nd proviso to sub-section (5) are the relevant provisions which contemplate the procedure required to be fulfilled. We take note of these provisions which read as under :

“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;

[(iv) in any other case, 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 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:]

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years;

(ii) where the application is made under clause (ii) or clause (iii) 73[or subclause (B) of clause (iv)] of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (i) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of subclause (a),—

(A) pass an order in writing granting it approval for a period of five years; or

[(B) if he is not so satisfied, pass an order in writing,—

(I) in a case referred to in clause (ii) or clause (iii) of the first proviso, rejecting such application and cancelling its approval; or

(II) in a case referred to in sub-clause (B) of clause (iv) of the first proviso, rejecting such application,

after affording it a reasonable opportunity of being heard;]

[(iii) where the application is made under sub-clause (A) of clause (iv) of the said proviso or the application is made under clause (iv) of the said proviso as it stood immediately before its amendment vide the Finance Act, 2023, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the approval is sought,]

and send a copy of such order to the institution or fund:

Provided also that the order under clause (i), sub-clause (b) of clause (ii) and clause (iii) of the 76[second] proviso shall be passed in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received:

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

(a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;

(b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;

(c) in any other case, from the assessment year immediately following the financial year in which such application is made.]

4. Now we revert to the facts of the present case. The assessee is a Charitable Institution. It is enjoying benefit of Section 12AA of the Act because it is registered by CIT (Exemptions) Chandigarh under Section 12AA of the Income Tax Act. The Registration No. is AAQAS3676K23CD01. This registration was granted on 24.01.2024 and valid from 01.04.2024. On the strength of this registration, assessee has applied for registration and in Form 10AB at Sr.No. 2, it has filled the column as under :

“2. Section Code : 14-Clause(iii) of first proviso to sub-section (5) of Section 80G.

5. The ld. CIT (E) did not dispute about the charitable activities carried out by the assessee but denied the registration on the ground that assessee was earlier granted

provisional registration which should not have been granted to it because it has commenced its activities in Financial Year 2016-17. It is pertinent to note that assessee Society came into existence on 08.08.2016 and its registration of incorporation number is 87 of 2016-17. The position of law for grant of registration under Section 80G(5) has been changed w.e.f. 01.04.2021 by the relaxation and amendment of Certain Provisions Act, 2020. Reverting back to the first proviso of Section 80G, we find that this proviso contemplates that institution or fund referred to in clause (vi) would make an application in prescribed form and manner to Principal Commissioner or Commissioner for grant of approval. Thereafter, under clause No. (1) to (IV) of this proviso, the category of the Societies/Trust has been divided in two parts. If the Institution was approved in subclause (vi) before the Amendment given effect from 01.04.2021, then such an Institution would straight away apply for a registration within three months and after satisfying the activities of the assessee by the ld. Commissioner as contemplated in second proviso. In all other cases, first provisional registration will be granted under sub-clause (III) of Section 80G(5)(vi).

6. The mistake committed by the assessee is that it should have applied under sub-clause (i) of the first proviso to Section 80G(5). The assessee instead of filing under subclause (i) has filed under sub-clause (iii) which is meant for new institutions which came into existence after 01.04.2021 and due to this anomaly, ld. Commissioner did not grant approval to the assessee under Section 80G(5)(vi) of the Income Tax Act. We find that assessee Trust is already registered and only error committed by the assessee is the filing of the application under a wrong Section. Otherwise, it fulfills all the ingredients for grant of approval. Though under sub-clause (i) of the first proviso, the time limit was provided as three months from 1st day of April,2021 but this time limit has been extended by the CBDT time to time and lastly it was available upto the end of June, 2024 vide Circular No. 7 of 2024. The assessee has filed application on 07.05.2024. Thus, its application was within time but only error committed by the assessee was mentioning of the wrong Section. Therefore, we set aside the order of the CIT(Exemptions) and direct the CIT to grant approval to the assessee as if it is an old Institution which came into existence prior to 01.04.2021 and entitled for registration. Such registration be granted to the assessee by treating the application under sub-clause (i) for grant of regular registration and not as a provisional registration. The necessary certificate be issued accordingly.

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8. In the result, appeal of the assessee is allowed.”

6.1. Further, the CBDT vide Circular no.14 XL-35 dated 11.04.1995 states that it is one of their duties of the Officers of the Department to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. The grant of approval u/s 80G(5)(iii) of the Act to the assessee as applied by it is definitely a relief to the assessee as by virtue of this approval, the assessee will be able to receive donation to carry out its charitable activities as per the objects of the trust. The said Circular of the CBDT is reproduced as under:-

“3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assesseees on whom it is imposed by law, officers should

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b) freely advise them when approached by them so to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.”

6.2. As discussed above, the present application of the assessee filed in Form 10AB u/s 80G(5)(iii) of the Act was hereby rejected by the Ld. CIT(E) on the ground that the provisional approval granted u/s 80G(5) of the Act dated 12.02.2024 (placed on page nos.22 to 23 of the paper book and discussed in the next para of this order) was bad in law. The ld. CIT(E) further held that this rejection will also supersede any approval granted u/s 80G by any authority at any earlier time.

6.3. However, this mistake happened because the assessee in this case had applied in Form No.10AB under the incorrect section Sub-clause (A) of Clause (iv) of first proviso to sub-section (5) of Section 80G instead under the correct Sub-clause (B) of clause (iv) of first proviso to sub-section (5) of Section 80G which was a curable defect and in such situation, in view of the above Board Circular it was the duty of the ld. CIT(E) to inform the assessee about the said mistake and ask the assessee to rectify it. However, despite the mistake in the said application, the provisional registration certificate in Form No.10AC dated 12.02.2024 was granted for AY 2024-25 to AY 2026-27 under Sub-clause (A) of Clause (iv) of first proviso to sub-section (5) of section 80G of the Act. The assessee in sync with the said approval applied under Clause (iii) of first proviso to sub-section (5) of Section 80G of the Act, which states, that, application can be filed

by the institutions having provisional approval, within six months of commencement of activities.

6.4. As per the second proviso to sub-section-5 of 80G of the Act, the Id. CIT(E) on receipt of an application made under the second proviso and where the application is made under clause (ii) or clause (iii) [or subclause (B) of clause (iv)] of the said proviso, may reject an application or cancel its approval only when the Id. CIT(E) was not satisfied about the genuineness of the activities under item (A) and the fulfillment of all the condition under item (B) of sub-clause (a) of the said section. The relevant provisions of section 80G(5) of the Act is reproduced as under:-

“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,—

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[(iv) in any other case, where activities of the institution or fund have—

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(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:]

Provided further that the Principal Commissioner or Commissioner, on receipt of an application made under the first proviso, shall,—

(ii) where the application is made under clause (ii) or clause (iii) [or subclause (B) of clause (iv)] of the said proviso,—

(a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of such institution or fund; and

(B) the fulfilment of all the conditions laid down in clauses (i) to (v);

(b) after satisfying himself about the genuineness of activities under item (A), and the fulfilment of all the conditions under item (B), of subclause (a),—

(A) pass an order in writing granting it approval for a period of five years; or

[(B) if he is not so satisfied, pass an order in writing,—

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(II) in a case referred to in sub-clause (B) of clause (iv) of the first proviso, rejecting such application,

after affording it a reasonable opportunity of being heard;]

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6.5. Thus, we are of the considered view that an application of an assessee for approval u/s 80G(5)(iii) of the Act can be rejected or the approval granted can be cancelled only when the ld. CIT(E) was not satisfied about the genuineness of the activities under item (A) and the fulfillment of all the condition under item (B) as provided in sub-clause (a) of the said proviso. The same cannot be rejected for any other curable mistake like making an application under a wrong section or in the wrong form and in such a situation, it is the duty

of the ld. CIT(E) to inform the assessee about the said mistake(s) and ask the assessee to rectify it rather than reject the application on merely such a technical mistake.

6.6. Therefore, relying upon the order of the Co-ordinate Bench of the Tribunal in the case of Society for Technology Business Incubator vs CIT(Exemption) (Supra) and in view of the above discussion we direct the ld. CIT(Exemption) to treat the provisional registration granted vide order dated 12.02.2024 as referred above as a valid registration granted. Further, the Ld. CIT(E) is directed that registration be granted to the assessee from the date of the filing of the said application dated 18.03.2024 by treating the present application dated 18.03.2024 in Form No.10AB of the assessee as if made under sub-clause (B) of clause (iv) of first proviso to sub-section (5) of section 80G of the Act after satisfying himself about the genuineness of the activities of the assessee under item (A) and the fulfillment of all the condition under item (B) as provided in sub-clause (a) of the said proviso.

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

Order pronounced in the open court on 20th August, 2025

Sd/-
[UDAYAN DAS GUPTA]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 20.08.2025.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(E)
4. DR

Asst. Registrar,
ITAT, Amritsar