

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA Nos.	Appellant	Respondent	Appellant By (Shri)	Respondent By (Shri)
ITA No.827/CHNY/2023	M/s. CIT-1982 Charitable Trust, 14, Krishna Gardens, Nanjundapuram Road, Coimbatore – 641 036. PAN: AACTC 8560B	The Income Tax Officer, Exemptions, Chennai.	N. Arjun Raj, CA	R. Clement Ramesh Kumar, CIT
ITA No.875/CHNY/2023	M/s. Madurai Agri Business Incubation Forum, Directorate of Agribusiness Development , Tamilnadu Agri University, Lawly Road, Coimbatore – 641 003. PAN: AALCM 8277H	The Commissioner of Income Tax (Exemption), Chennai.	H. Yeshwanth Kumar, CA	R. Clement Ramesh Kumar, CIT
ITA No.1136/CHNY/2023	M/s. Shri Ramajayam Charitable Trust, 28, Third Cross Extension, Thanthai Periyar Nagar, Puducherry – 605 005. PAN: AAUTS 0393L	The Income Tax Officer, Exemptions, Chennai.	N. Arjun Raj, CA	R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 07.02.2024

घोषणा की तारीख/Date of Pronouncement : 08.03.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These three appeals by different assessees are arising out of the orders of the Commissioner of Income Tax (Exemption), Chennai in Form No.10AD vide ITBA/EXM/F/EXM45/2023-24/1053305142(1) & ITBA/EXM/F/EXM45/2023-24/1053304311(1) both dated 30.05.2023 and ITBA/EXM/F/EXM45/2023-24/1056508251(1) dated 25.09.2023.

2. The issue involved in all these appeals is common and hence, by way of this common order, these appeals are being disposed off. The facts and circumstances are exactly identical in all the appeals. For the purpose of adjudication, we take the facts from ITA No.1136/CHNY/2023.

3. The only issue in this appeal of assessee is against the order of CIT(Exemption) rejecting Form No.10AB dated 17.03.2023 filed for seeking approval under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961 (hereinafter the 'Act') treating the same as belated. For this, assessee has raised multiple grounds numbering 13 in all and all are factual or argumentative and hence, need not be reproduced.

4. Brief facts are that the assessee is old trust continuing to exist since 14.07.2017, as per the date of incorporation/registration. The assessee trust exists much before the commencement of new regime of registration and approval. The assessee trust namely Shri Ramajayam Charitable Trust with PAN Number AAUTS0393L filed an application dated 17.03.2023 in Form 10AB under Rule 11AA of the Income Tax Rules, 1962 (hereinafter the 'Rules'), seeking approval under clause (iii) of first proviso to sub-section (5) of section 80G of the Act. The CIT(Exemption) noted that the assessee had been granted provisional approval in Form No.10AC on 23.09.2021 u/s.80G(5)(iv) of the Act, for the period commencing 23.09.2021 to assessment year 2024-25. Before CIT(Exemption), the assessee vide letter dated 10.08.2023 admitted that the date of commencement of the activities of the Trust is 14.07.2017. The CIT(Exemption) noted that as per the provisions of section 80G(5) of the Act, various time limit has been prescribed within which the assessee is required to file application for approval, depending upon the various categories of trusts/institutions mentioned therein. He noted the fact that in the present case, the assessee is provisionally approved u/s.80G(5)(iv) of the Act and therefore, the assessee was required to file application in Form No.10AB u/s.80G(5)(iii) of the Act within the time period of six months prior to expiry of period of the

provisional approval or within six months of commencement of its activities, whichever is earlier. From the provisions of section 80G(5)(iii) of the Act, the CIT(Exemption) noted that the time limit prescribed therein is mandatory and the CIT(Exemption) has no power to condone the delay in filing application in Form No.10AB. He noted that in the present case, the date of commencement of its activities is 14.07.2017 and the date of filing of application in Form No.10AB is 17.03.2021, which is after expiry of six months of commencement of its activities. The CIT(Exemption) further noted that with the advent of new regime of registration of trusts/institutions seeking registration under the Act, the CBDT on multiple occasions had extended time line in filing the application in Form No.10A or Form No.10AB as under:-

Sl .	CBDT Circular	Extension upto
1	No.12 of 2021 dated 25-06-2021	31-08-2021
2	No.16 of 2021 dated 29-08-2021	31-03-2022
3	No.08 of 2022 dated 31-03-2022	30-09-2022

4.1 From the above, the CIT(Exemption) noted that CBDT vide Circular No.6 of 2023 dated 24.05.2023 extended the due date for filing of applications in Form No.10AB to 30.09.2022 to 30.09.2023 only in respect of trusts/institutions registered u/s.10(23C) & 12AB of the Act. He noted that this circular did not mention any such extension of due date for filing of Form No.10AB to get approval

u/s.80G of the Act. He also noted that on earlier occasions, even vide Circular No.8 of 2022 dated 31.03.2022, the assessee whose last date for filing Form No.10AB for registration u/s.10(23C)/12A/80G was falling on or before 29.09.2022 was extended up-to 30.09.2022 but thereafter, there was no further extension for delay in filing Form No.10AB by CBDT and the same is evident from CBDT Circular No.22/2022 dated 01.11.2022 through which the CBDT extended the time limit for filing of application in Form No.10A under various sections made therein up to 25.11.2022. But in the said Circular No.22/2022, no further extension of time was granted for filing of Form No.10AB. Hence, he noted that since the said circular did not mention any such extension of due date for filing of Form No.10AB to get approval u/s.80G of the Act, the application filed by the assessee trust on 17.03.2023 was to be treated as time barred and invalid one, as the same was not filed within the due date. Hence, the CIT(Exemption), considering the decision of Co-ordinate Bench of Kolkata Tribunal in the case of Bishnupur Public Education Institute in ITA Nos.585 to 587/Kol/2020, order dated 20.04.2022 (reported in 139 taxman.com 121), rejected the assessee's application filed on 17.03.2023 in Form No.10AB u/s.80G(5)(iii) of the Act as not-maintainable. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id. counsel for the assessee Shri N. Arjun Raj, CA argued and admitted the facts as narrated above. He admitted that the assessee trust commenced its activities on 14.07.2017 and assessee's present application was filed on 17.03.2023 in Form No.10AB u/s.80G(5) of the Act. He also admitted that the assessee is provisionally approved u/s.80G(5)(iv) of the Act. But, he took us through the first proviso to sub-section (5) of section 80G of the Act and argued the first proposition. The first proposition of the assessee trust is that the timelines prescribed for filing Form No.10AB for recognition/registration u/s.12A of the Act has been extended up-to 30.09.2023 after considering the genuine hardship faced by charitable entities and in fact the conditions are *pari-materia* to the provisions of clause (iii) to proviso to section 80G of the Act. The Id. counsel took us through Circular No.6 of 2023 issued vide F.No.370133/06/2023-TPL by Central Board of Direct Taxes dated 24.05.2023, wherein the CBDT has issued clarification regarding applicability of provisional registration. He, drawing corollary, which are similar in filing Form No.10A for recognition/registration u/s.12A of the Act, argued that similarly the timelines prescribed for filing Form No.10AB for approval u/s.80G of the Act have also to be considered as extended up-to 30.09.2023 for trusts filing registration under clause (i) to first proviso to section

80G of the Act. He argued that the above extension was not extended beyond 30.09.2022, unlike other forms which were extended up-to 30.09.2023 to the disputed forms namely Form No.10AB for renewal or recognition u/s.80G under clause (iii) to first proviso to section 80G of the Act. The said extension / relaxation by CBDT in extending the timeline up-to 30.09.2023 should also be made applicable for the applications filed in Form No.10AB under clause (iii) to first proviso to section 80G of the Act, for obtaining final registration in consequence to provisional registration available, in view of the continuation of recognition flows from the continuous availability of registration as tax exempt entity u/s.12A of the Act by setting aside the order of CIT(Exemption) by holding the proceedings initiated by the assessee maintainable for grant of final recognition u/s.80G(5) of the Act.

5.1 The second proposition of the assessee is that the timeline prescribed under clause (iii) to first proviso to section 80G of the Act should be reckoned as directory and not mandatory. The transitional nature of the amendments/new regime has been brought in and hence, Ld. AR pleaded for remanding the issue to the file of CIT(Exemptions) for adjudication of approval u/s.80G of the Act on

merits by dispensing with the technicalities namely the filing of stated Form No.10AB within the prescribed time limit.

5.2 The third proposition put forward by Ld. AR is that with respect to charitable entities formed prior to 01.04.2021, the timelines prescribed relating to the commencement of activities in clause (iii) to proviso to Section 80G of the Act may not be applied since the commencement of the activities had happened prior to introduction of new regime and he further pleaded for treating the compliance of the timeline of six months prior to the expiry of provisional registration, which expires on 30.09.2023 and complied with by the assessee as full compliance by holding the proceedings initiated by the assessee as maintainable for grant of final recognition/approval u/s.80G(5) of the Act.

5.3 Alternative and fourth proposition set out by Id. counsel is that the final recognition has to be granted from the date of application filed by the assessee and hence, pleaded that the order of CIT(Exemption) be set aside with a direction that the application filed by assessee is maintainable and to decide the final approval u/s.80G(5) of the Act on merits from the date of such application. The Id. counsel for the assessee relied on the decision of Co-ordinate

Bench of Jaipur Tribunal in the case of Go Gram Eco Foundation in ITA No.504/JP/2023, order dated 28.11.2023 and Jodhpur Tribunal in the case of Bhamashah Sundarlal Daga Charitable Trust in ITA No.278/JODH/2023, order dated 10.11.2023. Further, the Id. counsel prayed that in the light of amendment brought in by the Finance Act, 2023 effective from 01.10.2023 by substitution of clause (iv) sub clause B of proviso to Section 80G of the Act, the doors for eligible entities for filing fresh registration application is shut up, the appropriate directions may be issued for entertaining the applications filed before the CIT(Exemptions) for grant of approval/recognition u/s.80G of the Act.

6. The Id. CIT-DR, Shri Clement Ramesh Kumar assisted by Ms. M Gayathri (Advocate) engaged by department as Young Professional, argued on behalf of revenue. He stated that in these appeals the common issue is the rejection of approvals sought u/s 80G of the Act by the CIT(E) as the assessee trusts have filed Form 10AB u/s 80G(5)(iii) of the Act belatedly after 30.09.2022. He drew reference to the provisions of clause (iii) of the proviso to section 80G(5) of the Act, which reads 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.”

He narrated that there are two due dates mentioned in the aforesaid provision, firstly, within six months of commencement of activities henceforth called as Due Date 1 or henceforth called as D1 in short. Secondly, at least six months prior to expiry of provisional approval henceforth called as Due Date 2 or henceforth called as D2 in short. As per the aforesaid clause, the assessee trust should apply on or before the aforesaid due dates, whichever is earlier. He stated the fact that the above due dates D1 was extended by CBDT to 30.09.2022; And the second due date D2 is common for all the impugned cases is 30.09.2023.

6.1 The Ld. CIT-DR classified assessee trusts into two categories as under:-

- a. New Trust cases which are applying for 12A and 80G of the Act as a new case in new regime
- b. Old Trust cases which are already having 12A of the Act registration in old regime but applying for 80G of the Act as new case in new regime

6.2 As per Ld. CIT-DR, for the old trust cases, Form 10AB u/s 80G(5)(iii) of the Act must have been filed within the time limit extended by CBDT which was 30.09.2022. Having not filed within CBDT extended due date, the belated filing of Form 10AB was rightly

rejected by CIT(E). He submitted that the CIT(E) does not have powers to condone the aforesaid delay as per the Act. The assessee trusts have contravened the provisions of law by not following the timeline specified therein and not filing the relevant Form 10AB within the specified due dates. Hence, its submitted that even if these trust cases are sent back to CIT(E), CIT(E) has no power to condone delay thereon. In this context, the revenue placed reliance on decisions quoted by CIT(E), the case of the Hon'ble Jurisdictional Madras High court in the case of *All Angels Educational Society v CCIT [2016] 72 taxmann.com 251*. In this case, while considering the issue whether the CIT(E) has power to condone the delay in filing application for grant of approval under section 10(23C) of the Act or not, the Hon'ble High Court held that where there is no provision to empower the statutory authority to condone the delay, then the authority cannot condone such delay. The Hon'ble High Court has considered the judgments of Hon'ble Supreme court in the case of *State of U.P v Harish Chandra AIR 1996 SC 2173* as well as *UOI v Kirloskar Pneumatic Co. Ltd. 1996 taxmann.com 575 (SC)*. Thus, in conclusion, it was stated by Ld CIT-DR that as these old trusts have not filed the relevant Form 10AB in time and therefore, the rejection of the same is in order. Hence the orders of CIT(E) may be upheld.

6.3 The details of cases under appeal are considered as New Trust cases and are tabulated below:-

S.No.	Name of the Trust& ITA No.	Provision Applied – 12A	Provision Applied – 80G	Previous Rejection if any from Records Available
1	MADURAI AGRI BUSINESS INCUBATION FORUM ITA 875/CHNY/2023	NEW TRUST CASE 12A(1)(ac)(vi)	80G(5)(iv) & 80G(5)(iii)	Earlier 12AA rejected on 30.09.2019 by CIT(E), thus assessee is filing as new trust case
2	CIT 1982 CHARITABLE TRUST ITA 827/CHNY/2023	NEW TRUST CASE 12A(1)(ac)(vi)	80G(5)(iv) & 80G(5)(iii)	
3	RAMAJAYAM CHARITABLE TRUST ITA 1136/CHNY/2023	NEW TRUST CASE 12A(1)(ac)(vi)	80G(5)(iv) & 80G(5)(iii)	Earlier 12AA rejected on 26.02.2020 by CIT(E), thus assessee is filing as new trust case.

It was argued that these trust cases have applied for registration u/s 12A of the Act as a new trust case. It was brought to our notice that in some of these cases such as Madurai Agri Business Incubation Forum, the trust as such is an old trust but their original registration had been rejected and this trust also has applied for re-registration under the new provision meant for new trust cases only i.e., 12A(1)(ac)(vi) of the Act. Hence, in all these cases which have applied for 12A registration under 12A(1)(ac)(vi) of the Act are now to be considered as new trusts only. Thus, the due date D1 for all

these cases was 30.09.2022 only. The due date D2 is 30.09.2023, thus the date whichever is earlier is 30.09.2022. This applicability of both due dates to these new trusts has been confirmed by various ITAT decision. The Id. CIT-DR relied on the decision in the case of *Bhamashah Sundarlal Daga v The Commissioner of Income Tax - Exemption, Jaipur in ITA No.278/JODH/2023*, the Hon'ble Tribunal had held that the condition prescribed in clause (iii) of the proviso to section 80G(5) of the Act is applicable for all new trust cases. The relevant portion in Para 10.3 is reproduced below:

“It is clear that the intention of Parliament in putting the word “or within six months of commencement of its activities, whichever is earlier” is in the context of the newly formed Trust/ Institutions. For the existing Trust/ Institution, the time limit for applying for regular registration is within six months of expiry of provisional registration if they are applying under sub clause (iii) of proviso to section 80G(5) of the Act. This will be harmonious interpretation.”

He argued that it would be pertinent to note that the assessee trusts have also relied on the case of *Bhamashah Sundarlal Daga (supra)* in their favour. However, in the said case, the Tribunal has clearly held that clause (iii) to proviso to section 80G(5) of the Act would apply to new trust cases, as reproduced above. Thus, it was argued that all these trust cases where assessee has applied u/s 12A(1)(ac)(vi) and 80G(5)(iv) of the Act in new regime are to be considered as new trust cases and for such new trust cases, both the due dates - D1 and D2 are applicable. Among the two due dates, whichever being

the earliest is to be considered as due date for filing Form 10AB. i.e., assessee trust should file Form 10AB within six months of commencement of activities (D1 being the earliest) or within the time limit extended by CBDT last extended till 30.09.2022 for approval u/s 80G of the Act.

6.4 Further, it was argued that in some trust cases, as stated above, wherein registration u/s 12A of the Act was rejected in old regime, the assessee trusts have applied as new trusts in order to get exemption benefits in new regime in spite of their earlier rejection. It is further argued that the present appeals before ITAT involve interpretation of the provisions of section 80G(5) of the Act, which is not a charging section but it is a provision which confers tax benefit on a donor of a trust. Thus, it has an impact of reducing tax collection that comes to the revenue and consequently increases the tax burden on the other tax payers, in general. It was argued that provision of section 80G of the Act has the character of conferring tax benefit to the donor of trust and that there is no ambiguity in the provisions of section 80G of the Act and therefore, the same provision needs to be interpreted strictly. In this regard attention was drawn to the recent amendment to section 80G(5)(iv) of the Act where new sub clause (B) was introduced. From the plain reading of

this newly brought in sub clause, it was argued that the Act has been amended to provide an opportunity to the old trust which hitherto have not claimed registration u/s 12A of the Act can now apply for regular approval u/s 80G of the Act to confer benefits to its donors. In other words, although act has been amended to facilitate an old trust which hitherto has claimed for registration u/s 12A of the Act benefits, it is argued that the act has not been amended to bring in a new provision to extend the due dates for applying approvals u/s 80G of the Act benefits nor to cover any other group of trust cases and to facilitate them to apply and get benefits u/s 80G of the Act. Thus, the act has been consistently amended by the parliament to restrict the procedure of applying for availing benefits by the trusts. Thus, keeping in mind this intention of the parliament, the bench is requested to interpret the relevant provisions, which are not charging sections, very strictly. In this regard, the revenue relied on the ratio laid down by the five-member constitutional bench of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai v M/S. Dilip Kumar and Company &Ors*, [2018] 9 SCC 1 (FB)(SC), 2018 (5) ABR 802. In this decision, the Hon'ble SC has held that even when there is an ambiguity, an exemption provision/notification should be interpreted strictly and that the burden of proving applicability would be on the taxpayer to show

that its case comes within the parameters of the exemption notification and it was further held that when there is ambiguity in the exemption notification, which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the taxpayer and it must be interpreted in favour of the revenue. In light of the above decision, it was argued that if at all there is any ambiguity in interpreting the proviso to section 80G, it must be interpreted in favor of the revenue as the same provision is not a charging section. In this context attention is drawn to Paragraphs 3,7,10,12,20,28,38, 41,43,46,47,48 and 52 of the Apex court decision.

6.5 Further reliance was placed by Ld. CIT-DR on the decision rendered by Hon'ble SC in the case of *Checkmate Services P. Ltd v Commissioner of Income Tax*[2022] 143 taxmann.com 178 (SC). In this case, the Hon'ble Supreme Court in its judgment in para 48 held that: -

“One of the rules of interpretation of a tax statute is that if a deduction or exemption is available on compliance with certain conditions, the conditions are to be strictly complied with. This rule is in line with the general principle that taxing statutes are to be considered strictly, and that there is no room for equitable considerations. Those deductions are to be granted only when the conditions which govern them are strictly complied with”.

In view of this, it was argued that section 80G of the Act is an exemption provision conferred to donors of the trusts and hence the

conditions laid in the relevant provision are to be strictly complied with for obtaining tax benefits.

6.6 As against this, the Assessee trusts are requesting for liberal Interpretation of clause (iii) of the proviso to section 80G(5) of the Act, that the due dates mentioned are to be ignored, which is the first level of liberal interpretation sought; thereafter, these trusts are seeking condonation of the delay in filing Form 10AB which is the second stage of liberal interpretation sought and thereafter these trusts are requesting ITAT to direct the CIT(E) to consider the Form 10AB filed belatedly as a valid form which is the third level of liberal interpretation sought by the counsels of the assessee trust. The revenue stated that these requests to interpret the relevant provision of section 80G of the Act liberally may kindly be rejected by ITAT considering the ratio laid down by the Hon'ble Supreme Court in the judgments referred in earlier paras, which stated that even in the case of ambiguity in the interpretation of exemption provisions, the same should be decided in favor of the revenue.

6.7 Finally, it was argued that in the present cases, Form 10AB has not been filed within the due dates as mentioned in the Act or within the time limits extended by CBDT. Currently, all these trusts have been granted Provisional approval u/s 80G of the Act up to AY 2024-

2025 and there is no loss to these trusts up to AY 2024-2025. Therefore, Ld CIT DR stated that in such cases where conditions mentioned in the Act are not complied by the assessee trusts, they may not be granted further benefit or exemption under the Act. It was further stated that for all the new trust cases filed u/s 12A(1)(ac)(vi) and 80G(5)(iv) of the Act, both due dates D1 and D2 are applicable (D1 being the earliest to be taken into consideration) and hence the approvals sought u/s.80G belatedly have rightly been denied. In respect of the old trust cases, filing u/s 12A(1)(ac)(i) and 80G(5)(iv) of the Act, the revenue relies on the CIT(E) grounds for rejection.

7. We have heard rival contentions and gone through the facts and circumstances of the case. First of all, it is to be noted that the assessee trust has commenced its activities on 14.07.2017 and assessee is also provisionally approval u/s.80G(5)(iv) of the Act. The assessee trust was required to file application in Form No.10AB u/s.80G(5)(iii) of the Act within the time period of six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier, in term of clause (iii) of first proviso to sub-section (5) of section 80G of the Act. The relevant proviso reads 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, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought;”

7.1 Further, we have gone through the CBDT Circular No.6 of 2023 dated 24.03.2023 and noted that the CBDT has clarified the provision relating to charitable and religious trusts and has extended the timeline for furnishing Form No.10A seeking provisional registration/approval within the extended period up-to 30.09.2023 and the relevant portion reads as under:-

1. Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Income-tax Act, 1961 ("the Act") or any trust or institution registered under section 12AA or section 12AB of the Act (hereinafter referred to as "the trust") is exempt subject to the fulfilment of the conditions provided under relevant sections of the Act. Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

amended the provisions related to application by a trust for registration or approval by amending the first and second proviso to clause (23C) of section 10, clause (ac) of sub-section (1) of section 12A of the Act, inserting section 12AB of the Act and amending the first and second proviso to sub-section (5) of section 80G of the Act. The amended provisions provide for the following:

- (a) All the existing trusts were required to apply for registration/approval on or before 30.06.2021. However, on consideration of difficulties in the electronic filing of Form No. 10A, the Central Board of Direct Taxes (the Board) in exercise of the powers conferred upon it under Section 119 of the Act extended the due date for filing Form No. 10A in such cases to 31.08.2021 vide Circular No.12 of 2021 dated 25.06.2021, to 31.03.2022 vide Circular No. 16 of 2021 dated 29.08.2021 and further till 25.11.22 vide Circular No. 22 of 2022 dated 01.11.2022. Such registration/approval shall be valid for a period of 5 years. Thus, existing trusts are required to apply for fresh registration/approval and once the registration/approval is granted it is valid for five years.*
- (b) New trusts are required to apply for provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/approval is valid for a maximum period of three years.*
- (c) Provisionally registered/approved trusts will again need to apply for regular registration/approval in Form No. 10AB at least six months prior to the expiry of the period of provisional registration/approval or within six months of the commencement of activities, whichever is earlier. This registration/approval is valid for a period of five years. On consideration of difficulties in electronic filing of Form No. 10AB, the Board in exercise of its powers under section 119 of Act extended the due date for electronic filing of Form No. 10AB to 30.09.2022 vide Circular No 8 of 2022 dated 31.03.2022.*
- (d) The trusts once approved/registered for five years are required to apply at least six months prior to the expiry of the period of five years.*
- (e) The deduction under section 80G of the Act in respect of a donation made by a donor to a fund or institution referred to in sub-clause (iv) of clause (a) of sub-section (2) of section 80G, shall be all owed to the donor only if a statement of such donations is furnished by the donee in Form 10BD. The certificate of such donation is required to be provided in Form No. 10BE. Further, Form No. 10BD and Form No.*

10BE are required to be furnished on or before the 31st May, immediately following the financial year in which the donation is received.

2. Representations received from stakeholders requesting for clarity on provisions related to trusts are dealt with as under:

Clarification regarding application of section 115TD for failure to apply to registration/approval

3. Finance Act, 2023 has, inter-alia, amended section 115TD of the Act, so as to provide that the accreted income of the trusts not applying for registration/ approval, within the specified time, shall be made liable to tax in accordance with the provisions of section 115TD of the Act. This amendment has come into effect from 01.04.2023 and therefore applies to assessment year 2023-24 and subsequent assessment years.

4. Representations have been received stating that several trusts have not been able to apply for registration/ approval within the required time due to genuine hardship. This has also led to rejection of applications simply on the ground that these were delayed. As mentioned in para 1(a) above, the last date for filing an application by the existing trusts seeking registration/ approval was extended to 25.11.2022 vide Circular No. 22 of 2022 dated 01.11.2022. Further, as stated in 1 (c) above, the due date for furnishing application for registration/approval by the provisionally registered/ approved trusts was extended till 30.09.2022. These trusts shall be subject to tax under section 115TD of the Act in accordance with the provisions of the said section, as amended by the Finance Act, 2023 if the application is not made by 25.11.2022 or 30.09.2022, as the case may be.

5. In order to mitigate genuine hardship in such cases, the Board, in the exercise of the power under section 119 of the Act, extends the due date of making an application in,-

(i) Form No.10A, in case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G of the Act, till 30.09.2023 where the due date for making such application has expired prior to such date;

(ii) Form No. 10AB, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (I) of section 12A of the Act, till 30.09.2023 where the due date for making such application has expired prior to such date.

6. In view of the above, trusts may now apply for registration/approval under clause (i) or clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause (i) or sub-clause (iii) of clause (ac) of sub-section (I) of section 12A of the Act by 30.09.2023 and where such application is made by the said date and registration/approval is granted, the provisions of clause (iii) of sub-section (3) of section 115TD of the Act shall not apply on account of delay in making application in accordance with the provisions of clause (i) or (i ii) of the first proviso to clause (23C) of section 10 or sub-clause (i) or (iii) of clause (ac) of sub-section (I) of section 12A of the Act.

7. It may be also noted that the extension of due date as mentioned in paragraph 5(ii) shall also apply in case of all pending applications under clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause (iii) of clause (ac) of sub-section (I) of section 12A of the Act, as the case may be. Hence, in cases where the trust has already made an application in Form No. 10AB under the said provisions but such application has been furnished after 30.09.2022 and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. 10AB may be treated as a valid application. Further, in cases where the trust had already made an application in Form No. 10AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date, the trust may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 5(ii) i.e. 30.09.2023.

8. It is also clarified that where trusts have missed the deadline of 25.11.2022, as mentioned in para 1(a) above, for making an application for registration/ approval in Form No. 10A, and have subsequently furnished Form No. 10A seeking provisional registration/approval, the relevant functionality on the e-filing portal may be used for surrendering the Form No. 10A seeking provisional registration/approval and such trusts can

make a new application in Form No. 10A for registration/ approval within the extended period up to 30.09.2023, as mentioned in paragraph 5(i).

7.2 The legislature by way of amendment introduced new regime for taxation of trusts w.e.f. 01.04.2021 and this amendment was made with the objective that it needs improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/approval/notification before actually starting the activities. To make the process of registration completely electronic under a 16 digit Unique Registration Number (URN), the new regime was introduced for new as well as to existing charitable institutions. Due to change in law, a new clause (ac) has been inserted in sub-section (1) of section 12A w.e.f. 01.04.2021 which states that notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income who wants to claim benefit of section 11 & 12 is to made an application in the prescribed form 10A or 10AB and in prescribed manner to the Principal Commissioner or Commissioner, for registration of the trust or institution.

7.3 Similarly, for approval u/s.80G of the Act, similar changes were effected in the provisions of section 80G(5), the first and second provisos, which were made applicable with effect from 01.04.2021 for existing trusts as well as new trusts or entities. This amendment

is brought in by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application by a trust for registration or approval by amending the first and second proviso to clause (23C) of section 10, clause (ac) of sub-section (1) of section 12A of the Act, inserting section 12AB of the Act and amending the first and second proviso to sub-section (5) of section 80G of the Act.

7.4 We are concerned with the provisions of section 80G of the Act in these cases. In view of the above provisions, the deduction u/s.80G of the Act in respect of a donation made by a donor to a fund or institution referred to in sub-clause (iv) of clause (a) of sub-section (2) of section 80G, shall be allowed to the donor only if a statement of such donations is furnished by the donee in Form 10BD. The certificate of such donation is required to be provided in Form No. 10BE. Further, Form No. 10BD and Form No. 10BE are required to be furnished on or before the 31st May, immediately following the financial year in which the donation is received. The timeline provided for filling of application for approval of trust or any institution under the first and second proviso to sub-section (5) of section 80G of the Act is within six months of commencement of activities or at least six months prior to expiry of provisional

approval. These two timelines are provided in first proviso to section 80G(5) of the Act. But, the CBDT time and again considering the difficulties in filing in the electronic mode of filing of Form No.10A or 10AB, in exercise of powers conferred upon it u/s.119 of the Act, extended the due date for filing Form No.10A or 10AB up to 30.09.2022 vide Circular No.16/2021 dated 29.08.2021 and further, vide Circular No.6/2023 dated 24.05.2023 up to 30.09.2023. But the CBDT has extended this date up to 30.09.2023 in filing Form No.10A for registration u/s.12A of the Act vide paras 6 to 8 of the Circular (which is reproduced in this order at para 7.1 above). The Revenue has filed the date and events which are undisputed in this case and as admitted by Revenue that in this case, provisional registration was granted u/s.80G(5) of the Act in Form No.10A under the new regime under clause (iv) of the said provision vide dated 23.09.2021. Even the final registration was granted u/s.12A of the Act in Form No.10AD under the new regime vide dated 13.09.2023 but rejected the application for final approval applied u/s.80G of the Act in Form No.10AB vide order dated 25.09.2023 by CIT(Exemption) on the reason that the application was filed by assessee only on 17.03.2023, which is belated application. There is no dispute about the final registration granted to the assessee trust u/s.12A of the Act in Form No.10AD under the new regime vide

order dated 13.09.2023 but rejected assessee's application filed in Form No.10AB u/s.80G of the Act dated 17.03.2023 vide order dated 25.09.2023 as the application is a belated one.

7.5 We have considered the case laws of Co-ordinate Bench of Jaipur Tribunal in the case of Go Gram Eco Foundation, *supra* and noted that the Jaipur Bench has considered this issue of delay in application filed in Form No.10AB in term of clause (iii) of first proviso to section 80G(5) of the Act, wherein the provisional registration was granted to the assessee trust on 16.10.2021 in Form No.10A u/s.12A(1)(ac)(vi) and under clause (iv) of first proviso to section 80G(5) of the Act. In that case, the provisional registration was granted in form No.10AC on 27.10.2021. Admitted fact in the case is that the assessee trust commenced its activities from 13.10.2021 being new trust and assessee filed application for grant of approval under clause (iii) of first proviso to section 80G(5) on 16.12.2022, which is delayed by almost about 2.5 months from the extended date. The Tribunal considered this issue and finally in para 6.1 noted and the relevant reads as under:-

There is no dispute as to the fact that assessee is provisionally registered till A.Y. 2024-25 vide order dated 27.10.2021. Thus it has complied with section 80G(5). The proviso to this section only deals with the procedure as to the filing of the application. The law of procedure has to be approached, understood and appreciated as a helpmate in the course of the

process of administration of justice. Procedural provision should be so construed as to sub serve the course of justice and not to hinder it. It is a settled proposition of law that technicalities should not come in way in imparting the substantial justice. We get support of our this view from the decision of Hon'ble Supreme Court in case of S. Nagaraj & Others Vs. State of Karnataka & Another 4 SCC 595.

7.6 Even in the decision of Jodhpur Bench of this Tribunal in the case of Bhamashah Sundarlal Daga Charitable Trust, *supra*, the assessee trust received provisional approval u/s.80G(5) vide order dated 16.08.2022 for the period from 16.08.2022 to A.Y. 2025-26. The assessee has also got approval u/s.12A(1)(ac) of the Act from A.Y. 2022-23 to A.Y. 2026-27 and assessee filed application in Form No.10AB for approval u/s.80G(5) of the Act on 11.01.2023, which was treated as belated application and appropriate authority rejected the approval application filed by the assessee. But the Tribunal allowed the maintainability of application and directed the CIT(Exemption) to re-decide on merits. Hence, these decisions favors the case of the assessee and clearly applicable to the facts of present case before us.

7.7 The case law cited by the Revenue of Kolkata Tribunal in the case of Bishnupur Public Education Institute, *supra* wherein the Kolkata Tribunal has relied on the decision of Hon'ble High court of Madras in the case of All Angels Educational Society, *supra* and the

Hon'ble High Court of Andhra Pradesh in the case of Aurora Educational Society vs. CCIT reported in 20 taxmann.com 46, after considering these decisions has decided the issue on the approval of application filed u/s.10(23C)(vi) of the Act rejected by CIT(Exemption) relating to assessment years 2016-17, 2017-18 & 2018-19. The assessee's application was dated 11.02.2019 under the old regime. The new regime of taxation of charitable trusts / institutions started w.e.f. 01.04.2021 and hence, reliance placed by Revenue on the Co-ordinate Bench decision of Kolkata Tribunal in the case of Bishnupur Public Education Institute, *supra* is not at all relevant and even the case law of Hon'ble High Court of Madras and the Hon'ble High Court of Andhra Pradesh are also relating to taxation of old regime prior to 01.04.2021. Hence, these are clearly distinguishable on facts and hence, not applicable. In term of the above, we now go through the factual aspect.

7.8 After hearing the arguments of Id. counsel for the assessee and Id. CIT-DR as noted above, we find from the facts that the timeline prescribed for filing Form No.10AB for registration u/s.12A of the Act in the case of assessee trust has been extended up-to 30.09.2023 after considering the genuine hardship faced by charitable institutions vide various CBDT circulars and finally, vide Circular

No.6/2023 dated 24.05.2023. Similarly, the timeline prescribed for filing Form No.10A for recognition u/s.80G of the Act was also extended up-to 30.09.2023 by the same circular for trusts filing registration under clause (i) to first proviso to section 80G(5) of the Act. But the above extension was not extended beyond 30.09.2022, unlike other forms which were extended up to 30.09.2023 to the disputed forms namely Form No.10AB for renewal of recognition u/s.80G(5) of the Act under clause (iii) of the first proviso to section 80G(5) of the Act. Once, the CBDT has extended the timeline for filing Form No.10AB for recognition u/s.12A of the Act and also for filing Form No.10A for recognition u/s.80G of the Act extended up to 30.09.2023 for trusts filing registration under clause (i) of first proviso to section 80G(5) of the Act, we find no difference in continuing hardship as recognized by CBDT even in filing Form No.10AB for renewal of recognition u/s.80G of the Act under clause (iii) of first proviso to section 80G(5) of the Act. In our view, this being a genuine hardship case, which is recognized by Revenue or CBDT by issuing a general circular, we are of the view that this specific provision of clause (iii) to first proviso to section 80G(5) cannot be excluded and or it has not been the intention of the CBDT while issuing the circular. There cannot be a distinction within the same provision without bringing out any exception and even this

provision is for the benefit of the donors who are donating money to the charitable trusts for claiming exemption in their returns of income. In our view, we agree with the argument of Id. counsel for the assessee that the timeline prescribed under clause (iii) of first proviso to section 80G(5) of the Act should be treated as directory and not mandatory especially considering the transitional nature of the amendment as brought out by the taxation of other laws (relaxation and amendment of certain provisions) act 2020 for bringing new regime. Hence, in our view, the CIT(Exemptions) should not have rejected the assessee's application in Form No.10AB only for this technical reason. We are of the view that the intention of CBDT in its circular clearly reflects their mind that once the timeline prescribed for filing Form No.10AB for recognition u/s.12A of the Act has been extended up to 30.09.2023, the same may be treated as extended for forms namely Form No.10AB for renewal of approval/recognition/registration under clause (iii) of first proviso to section 80G of the Act also. Hence, we accept the plea of assessee and agree with the arguments of Id. counsel for the assessee and remand the matter back to the file of the CIT(Exemption) to decide the issue on merits. Hence, the order of CIT(Exemption) on this issue is set aside and matter is remanded back to the file of the

CIT(Exemption) for re-deciding the issue on merits as per law. The appeal of the assessee is allowed for statistical purposes.

8. Now coming to the case of CIT-1982 Charitable Trust vs. ITO in **ITANo.827/CHNY/2023**, the trust was incorporated on 24.03.2021 and assessee filed application for obtaining provisional registration u/s.12A of the Act in Form No.10A on 29.04.2021. The CIT(Exemption) granted provisional registration u/s.80G(5) of the Act in Form no.10A on 28.05.2021. The assessee moved final registration application u/s.12A of the Act in Form No.10AB on 29.09.2022 and final registration was granted u/s.12A of the Act in Form No.10AD vide dated 30.05.2023. The assessee finally moved application for obtaining final registration u/s.80G of the Act in Form No.10AB on 14.11.2022. The final registration was rejected by CIT(Exemption) u/s.80G of the Act on 30.05.2023. The Revenue brought out the fact that the date of commencement of activities is also 30.03.2022 but assessee wrongly claimed commenced of activity date as 27.05.2022, which is an afterthought. According to Revenue, the assessee is covered by the extended date of 30.09.2022, extended by CBDT and not eligible for final registration u/s.80G and the CIT(Exemption) has rightly rejected the approval. It was argued by CIT-DR that having applied provisional registration

u/s.80G of the Act on 28.05.2021 and having commenced activities on 30.03.2022, the assessee could have filed application in Form No.10AB on or before 30.09.2022, which the assessee failed to do. We noted that all these aspects are dealt with in the above appeal in ITA No.1136/CHNY/2023 and facts being identical, we set aside the order of CIT(Exemption) on the same reason and remand the matter back to the file of the CIT(Exemption) for deciding the issue on merits as per law. The appeal of the assessee is allowed for statistical purposes.

9. Coming to **ITA No.875/CHNY/2023** in the case of Madurai Agri Business Incubation Forum vs. CIT, the Id. counsel for the assessee stated that the date of incorporation of this trust is 10.05.2018 and assessee filed application for obtaining provisional registration u/s.12A of the Act in Form No.10A under the new regime, first time vide dated 02.12.2020. The provisional registration was granted by CIT(Exemption) u/s.12A of the Act in Form No.10AC under the new regime on 27.05.2021. Subsequently, the assessee filed application for obtaining provisional approval / registration u/s.80G of the Act in Form No.10A on 15.11.2021 and consequently provisional registration was granted u/s.80G(5) of the Act in Form No.10A on 22.11.2021. The assessee filed application

for obtaining final registration u/s.12A of the Act in Form No.10AB by renewing under the new regime on 25.11.2022 and assessee was granted final registration u/s.12A of the Act by issuing Form No.10AD on 29.05.2023. The assessee filed application for obtaining final registration u/s.80G of the Act in Form No.10AB by renewing the provisional registration under the new regime vide application dated 24.11.2022. The final registration was rejected by CIT(Exemption) u/s.80G of the Act vide letter dated 30.05.2023 for the reason that the application is belated one. The Id. counsel for the assessee adopted the same argument as in the case of CIT-1982 Charitable Trust in ITA No.1136/CHNY/2023.

10. The Id. CIT-DR stated that the extended date as extended by CBDT is 30.09.2022 is applicable in this case. But assessee filed belated application in Form No.10AB on 24.11.2022 and hence, the CIT(Exemption) has rightly rejected the same.

11. We noted that the facts and circumstances are exactly identical to the case of CIT-1982 Charitable Trust in ITA No.1136/CHNY/2023, dealt above and facts being identical, we set aside the order of CIT(Exemption) on the same reason and remand the matter back to

the file of the CIT(Exemption) for deciding the issue on merits as per law. The appeal of the assessee is allowed for statistical purposes.

12. In the result, all the appeals filed by the assessees are allowed for statistical purposes.

Order pronounced in the open court on 8th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 8th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.