

। आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 877/Kol/2023
Assessment Year: 2023-24

Diamond Cares C/o M/s. Salarpuria Jajodia & Co. 7, C.R. Avenue 3 rd Floor Kolkata - 700072 [PAN : AADTD7296A]	Vs	Commissioner of Income Tax (Exemption), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Jhajharia, FCA
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 12/12/2023
घोषणा की तारीख/Date of Pronouncement : 10/01/2024

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Exemption), [hereinafter the "ld. CIT(E)"] dt. 28/06/2023.

2. The assessee is this appeal has agitated against the action of the ld. CIT(E) in rejecting the application of the assessee for final approval u/s 80G(5)(iii) of the Income Tax Act, 1961 (in short 'the Act').

3. Brief facts of the case are that the assessee trust has already been duly registered u/s 12A(1)(ac)(iii) of the Act for Assessment Year 2023-24 to 2027-28. The assessee trust has also applied for provisional approval u/s 80G(5)(iv) of the Act which was granted by the ld. CIT(E) for the period from 26/05/2022 to Assessment Year 2025-26. Subsequently, the assessee moved an application for final approval u/s 80G(5)(iii) of the Act on 30/12/2022. However, the ld. CIT(E) has rejected the said application. The ld. CIT(E) in this respect referred to

the said clause (iii) of 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."

The Id. CIT(E) concluded from the above proviso that the assessee has already commenced its activities in the financial year 2020-21 and that as per Clause (iii) of 1st Proviso to section 80G(5) of the Act, the application for final registration was to be filed within six months from the commencement of its activities. He, therefore, held that the application of the assessee for final registration was time-barred.

4. Aggrieved by the said order of the Id. CIT(E), the assessee has come in appeal before us.

5. At the outset, the Id. Counsel for the assessee has relied on the decision of the Co-ordinate Bench of the Tribunal in the case of *West Bengal Welfare Society vs. CIT(E), Kolkata in ITA Nos. 730 & 731/Kol/2023; order dt. 13/09/2023*, wherein under somewhat similar circumstances, the Tribunal has held as under:-

"6. We note that the Id. CIT(E) has misconstrued the aforesaid proviso to section 80G(5) of the Act. As per the provision, an application for final registration cannot be filed until and unless an assessee/trust has been given provisional approval u/s 80G(5)(iv) of the Act. The assessee was granted provisional approval on 30.11.2022 only, and within a few days i.e. on 03.12.2022, the assessee applied for final registration u/s Clause (iii) of 1st Proviso to section 80G(5) of the Act. Though the assessee might have commenced its activities prior to grant of provisional registration but that does not mean that the assessee in that event will be precluded from applying for final registration even after the grant of provisional registration. The assessee as per statutory provision could not have directly applied for final registration without grant of provisional registration. The aforesaid proviso,

therefore, is to be read as that after the grant of provisional registration, if the assessee has not commenced its activities, he may apply for registration within six months of the commencement of its activities or within the six months prior to the expiry of the period of provisional approval, whichever is earlier. In any case, the assessee is eligible to apply for final registration only after the grant of provisional approval. Therefore, we hold that there is no delay on the part of the assessee in filing application in the prescribed form for grant of final registration under Clause (iii) of 1st Proviso to section 80G(5) of the Act. However, since we have restored the matter to the ld. CIT(E) for decision afresh on merits on the application for final registration u/s 12A of the Act and since the registration u/s 80G(5) is dependent upon the registration u/s 12A of the Act, therefore, the application of the assessee for registration u/s 80G(5) is also restored to the ld. CIT(E) subject to the observations made above."

6. As observed by the Co-ordinate Bench of the Tribunal in the case of *West Bengal Welfare Society (supra)* that though the assessee may have commenced its activities prior to applying for provisional approval u/s 80G(5) of the Act, but that does not mean that once the assessee has commenced its activities or already has been doing charitable activities and it has not opted for getting benefits under the Income-tax Act, then such an assessee trust/charitable institution is barred in future from applying for registration/approval under the relevant provision of the Income-tax Act. In the present case, the assessee might have commenced its activities in the F.Y. 2020-21 as observed by the ld. CIT(E), however, the assessee for the first time, applied for grant of provisional registration u/s 80G(5) of the Act from Assessment Year 2023-24 onwards only. The ld. CIT(E) taking note of the past activity of the assessee has granted a provisional registration. The assessee did not carry out any activity after the grant of provisional registration on 26/05/2022. The assessee for the first time started its activity after grant of provisional registration on

15/09/2022, on which date the trust received donation. The assessee made donation and the assessee trust thereafter applied for final registration on 30/12/2022 which was well within the period of six months from the commencement of its charitable activity after the date of provisional registration. If the view of the Id. CIT(E), under such circumstances, is considered to be correct then, any trust which is or has been already into charitable activities and has been granted provisional registration, the same will never be entitled for grant of final registration. Such an interpretation of the provisions of Section 80G(5) of the Act will defeat its purpose. Therefore, taking the reasonable construction of the said provision, the assessee is well within the prescribed limitation period to apply for the final approval u/s 80G(5) of the Act. The decision of the Co-ordinate Bench of the Tribunal in the case of *West Bengal Welfare Society (supra)* is fairly applicable in the present case. Therefore, the impugned order of the Id. CIT(E) is set aside and the Id. CIT(E) is directed to grant final approval to the assessee u/s 80G(5)(iii) of the Act, if the assessee is otherwise found eligible, irrespective of the date of application as discussed above.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 10th January, 2024 at Kolkata.

Sd/-

(Girish Agrawal)
Accountant Member

Kolkata, Dated 10/01/2024

SC S.P.

Sd/-

(Sanjay Garg)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata