

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA
BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.994/Kol/2023
Assessment Year:

Sarda Mission Sevasram Viveknagar, Chaitanyapur, Haldia, Purba Medinipur, West Bengal-721 645. (PAN: AATS7297M)	Vs.	Commissioner of Income Tax (Exemptions), Kolkata
(Appellant)		(Respondent)

Represented by:

Appellant by : Shri Miraj D. Shah, Advocate
Respondent by : Shri S. Datta, CIT, DR

Date of Hearing : 24.01.2024
Date of Pronouncement : 31.01.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal has been filed by assessee against the order of Ld. CIT(E), Kolkata dated 29.08.2023 passed u/s. 80G(5)(vi) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") whereby the application of the assessee for registration u/s. 80G of the Act has been rejected.

2. The assessee in this appeal has taken the following grounds of appeal:

"1) For that on the facts and circumstances of the case, Ld. CIT (Exemption) was grossly erred in rejecting the application filed for approval U/s 80G(5)(iii) of the Act.

2) For that on the facts and circumstances of the case, the order of Ld. CIT (Exemption) rejecting the application filed for approval U/s 80G(5)(iii) is highly arbitrary, unjustified and unwarranted to the facts of the case.

3) For that on the facts and circumstances of the case, rejection of application U/s 80G(5)(iii) by CIT (Exemption) as not maintainable for not applying within

30/09/2022 is wrong in as much as the appellant trust initially applied for approval on 27/09/2022 which was withdrawn on the instruction/suggestion of the department and further reapplication dated 13/02/2023 was in effect continuance and removal of defects of said application dated 27/09/2022 in as much as the re-application could have been done only on withdrawal of said application dated 27/09/2022.

4) For that on the facts and circumstances of the case, Ld. CIT (Exemption) be directed to consider the application U/s 80G(5) afresh treating the application for approval dated 13/02/2023 as continuance and/or amendment of timely filed application dated 27/09/2022 for approval U/s 80G of the Act.

5) We may add, alter, amend or withdraw any grounds of appeal on or before the date of hearing.”

3. The Brief facts of the case are that the assessee Society has been registered as charitable institution u/s 12A of the Act since 1999. The assessee was also granted approval/registration u/s 80G of the Act since 17.12.2009. However, thereafter an amendment was brought into the relevant provisions of Section 12A & 80G of the Act vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.04.2021 whereby, an institution, which has already been approved before the aforesaid amendment, was required to re-apply for grant of approval u/s 80G of the Act within three months from the 1st day of April, 2021. The assessee accordingly re-applied for registration u/s 12A of the Act as charitable institution and the assessee was granted approval/registration u/s 12A of the Act vide order dated 04.11.2021 by ld. CIT (Exemption).

3.1. The assessee also applied afresh for grant of approval u/s 80G of the Act. The assessee was also granted provisional approval u/s 80G(5)(iv) of the Act in Form 10AC vide order dated 08.11.2021 for a period from 08.11.2021 to AY 2024-25. The assessee thereafter applied for final approval u/s 80G of the Act. However, the assessee inadvertently submitted its application for final approval in Form 10AB and mentioned the ‘clause-ii’ of the first proviso to sub-Section 5 of Section 80G of the Act, instead of ‘Clause-iii’ and was accordingly advised by ld. CIT (Exemption) to withdraw the said application and make a fresh application mentioning the correct Clause. The assessee accordingly withdrew its application for final registration vide letter dated 07.02.2023. Thereafter, the assessee submitted another application dated

13.02.2023 for final registration under 'Clause-iii' of the first proviso to sub-Section 5 of Section 80G of the Act, whereupon, the necessary details were called upon by ld. CIT (Exemption), which were duly supplied by the assessee. However, ld. CIT (Exemption) rejected the application of the assessee observing that the time limit prescribed for making an application for final approval u/s 80G of the Act was at least six months prior to the expiry of the period of the provisional approval or within six months of the commencement of its activities, whichever is earlier. He observed that the assessee had already commenced its activities since long and since the time period for making application mentioning 'Clause 80G(5)(iii)' had already expired, therefore, the assessee could not be granted final registration u/s 80G(5)(iii) of the Act. He also observed that vide CBDT Circular No. 8/2022 the date for submitting the application for final approval was extended up to 30.09.2022. However, the fresh application by the assessee was filed on 13.02.2023. He, therefore, rejected the application of the assessee for final approval u/s 80G of the Act.

4. We have heard the rival contentions and gone through the record. In this case, the application of the assessee for final approval u/s 80G of the Act has been rejected because of technical reasons for which the assessee cannot be faulted with. All the facts were before ld. CIT (Exemption) when the assessee for the first time applied for the final approval u/s 80G of the Act. Merely, because the assessee out of inadvertence had mentioned another Clause, the same was not an illegality but rather the same was a rectifiable mistake. The facts were on the record that the assessee before the amendment was already approved as a charitable institution u/s 12A as well as 80G of the Act. The assessee duly applied for provisional registration in view of the amended provisions. The same was also granted to the assessee. The next course for the assessee was to apply for the final registration u/s 80G of the Act which was also duly complied by the assessee within the time limit prescribed for the same. However, due to the mistake in mentioning the proper Clause, the assessee was told to withdraw the application and file a fresh application. The assessee filed the fresh application without any delay. However, ld. CIT (Exemption) completely

ignored the events which occurred from the date of filing of the application for final approval and leading to the filing of the fresh application because of the technical mistakes. In fact, instead of getting the application withdrawn, ld. CIT (Exemption) was supposed to give opportunity to the assessee to rectify the mistake i.e. the mentioning of the appropriate Clause. Ld. CIT (Exemption) even could have *suo-moto* passed an order treating the said application under the relevant 'Clause-iii' of Section 80G(5) of the Act.

5. Considering the overall facts and circumstances, the delay in filing the fresh application is, hereby, condoned. It is directed that the application of the assessee for final registration may be treated as filed within the time limit prescribed and the time consumed by the assessee in filing the revised application will not be taken into consideration. The matter is accordingly restored to the file of ld. CIT (Exemption) with a direction that ld. CIT (Exemption) will pass an order on merits irrespective of the delay occurred in filing the fresh application for final approval u/s 80G(5) of the Act.

6. So far as the observation of the ld. CIT(E) that the assessee had already commenced its activities since long 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 and therefore, the application of the assessee for final registration was time-barred, is concerned, we note that the issue has already been discussed and adjudicated by the Coordinate Bench of the Tribunal in the case of West Bengal Welfare Society vs. CIT (Exemption), Kolkata in ITA No. 730 & 731/Kol/2023 vide order dated 13.09.2023, wherein, it has been held that the assessee, who has been granted provisional registration, is eligible to apply for final registration irrespective of the fact that the assessee had already commenced its activity even prior to the date of grant of provisional approval. The relevant part of the order of the Coordinate Bench is reproduced as under:

6. We note that the ld. 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.

6.1. In view of the above observations, the matter is restored the file of the CIT(E) for decision afresh in the light of the observations made above.

7. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order is pronounced in the open court on 31st January, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31st January, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. AO, Ward-1(3), exempt, Kolkata
 4. Addl./Joint.C.I.T, Range-1, Exemption, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata