

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1091/Ahd/2023  
(Assessment Years: N.A.)

Shree Bipin Biharidas Charitable Foundation, 829, Sector, 8, Gandhinagar, Gujarat-382008	Vs.	Commissioner of Income Tax (Exemption), Ahmedabad
<b>[PAN No. AAXTS7943K]</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Parin Shah, A.R.
<b>Respondent by :</b>	Dr. Darsi Suman Ratnam, CIT DR
<b>Date of Hearing</b>	21.03.2024
<b>Date of Pronouncement</b>	21.03.2024

**ORDER**

**PER MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 07.11.2023 passed by the Ld. Commissioner of Income Tax (Exemption), Ahmedabad under Section 80G(5) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. The assessee has raised the following grounds of appeal:-

- “1. The order passed by CIT (Exemption) is bad in law and required to be quashed.
2. Ld. CIT (Exemption) erred in rejecting application for registration by observing that trust was provisionally registered under clause (iv) of first proviso to section 80G(5) and accordingly, impugned application was required to be made under clause (iii) of first proviso instead of clause (ii) of first proviso.
3. Ld. CIT (Exemption) ought to have considered the fact that filing an application under wrong clause of proviso does not alter the objects or activities of trust and its procedural error or technical error and accordingly he ought to have granted registration.

- 2 -

4. *Ld. CIT(Exemption) ought to have considered the fact that procedural or technical error does not take away fundamental rights which are otherwise available to the applicant.”*

3. The assessee before us has challenged the order passed by the Ld. CIT(Exemption) whereby and whereunder the application for grant of approval under sub-Section (5) of Section 80G of the Act was rejected only on the plea that such application for the year under consideration was though required to be filed under Section 80G(5)(iii) the same was filed under Section 80G(5)(ii) of the Act by the appellant before us. It is relevant to mention that the appellant has also been granted provisional approval under Clause (iv) of First Proviso to sub-Section (5) of Section 80G of the Act for the period from A.Y. 2021-22 to A.Y. 2024-25.

4. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that as the assessee is eligible for final registration. Merely because of the application being made under a different Clause (ii) of First Proviso of Section 80G(5) by mistake the same could have been treated by the Ld. CIT(E) under Clause (iii) of First Proviso of Section 80G(5). This procedural mistake could have been condoned /ignored by the Ld. CIT(E) having regard to the eligibility of the assessee for such grant. In fact, that is the sole reason the Ld. A.R. is praying for remitting the issue to the file of the Ld. CIT(E) with a direction upon him to treat the said application under Section 80G(5)(iii) instead of 80G(5)(ii) and to pass orders accordingly. The Ld. A.R. further relied upon a judgment passed by the Calcutta Bench in ITA No. 994/Kol/2023. Such submission made by the Ld. A.R. has not been controverted by the Ld. D.R. with all his fairness.

- 3 -

5. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record.

6. Considering the fact we have further perused the judgment by the Kolkata Benches. We find while dealing with this issue the Ld. Bench was pleased to observe as follows:-

*“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 1<sup>st</sup> 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 timebarred, 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 1<sup>st</sup> 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 1<sup>st</sup> 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.*

- 4 -

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

7. After careful reading of the order passed by the authority below we find merit in the case of the assessee. Procedure is the handmade of justice. Therefore, rejection of grant under Section 80G merely on procedural lapse by making application under Section 80G(5)(ii) inadvertently instead of under Section 80G(5)(iii) on the part of the assessee is not acceptable. Further that having regard to the identical facts and circumstances of the matter in the case relied upon by the Ld. A.R. we set-aside the issue to the file of the Ld. CIT(E) with a direction upon him to treat the said application under Section 80G(5)(iii) of the Act and to pass orders strictly in accordance with law.

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

<b>This Order pronounced in Open Court on</b>	<b>21/03/2024</b>
---	-------------------

Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 21/03/2024  
TANMAY, Sr. PS

Sd/-  
(Ms. MADHUMITA ROY)  
**JUDICIAL MEMBER**

**TRUE COPY**

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad