आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.1220/PUN/2023
निर्धारण वर्ष / Assessment Year :-

T B Lulla Charitable Foundation, Atit Bungalow South Shivaji Nagar, Behind Mali Chitr Mandir, Sangli - 416416. PAN: AAECT9113E	V s	The CIT Exemption, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Smt. Deepa Khare – AR
Revenue by	Shri Rakesh Jha – CIT(DR)
Date of hearing	19/12/2023
Date of pronouncement	05/01/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of ld.Commissioner of Income Tax(Exemption), Pune dated 11.10.2023. The grounds of appeal raised by the assessee are as under :

"1. The ld CIT Exemption erred in law and on facts in treating the application under Clause (iii) of first proviso to sub-section (5) of Section 80G as non- maintainable on the ground of being filed beyond the statutory period as provided in Clause (iii) of first

proviso to Section 80G(5) and thereby rejecting the same without going into the merits.

2. The ld CIT Exemption erred in law and on facts in cancelling the provisional registration granted on 09/07/2021 without following the due process of law and without affording opportunity of hearing to the appellant.

3. The ld CIT Exemption erred in law and on facts in cancelling the provisional registration granted on 09/07/2021 in absence of any dissatisfaction about genuineness of the activities of the appellant and in absence of any violation of conditions prescribed in clause (i) to (v) of Section 80G(5).

4. The appellant craves leave to add, alter, modify or substitute any ground of appeal at the time of hearing."

1.1 We have heard both the parties & perused the records.

Findings and analysis:

2. In this case, the ld.Commissioner of Income Tax(Exemption) has rejected the application of the assessee dated 08/04/2023 filed in Form 10AB for approval u/s 80G of the Act, only on one ground that the application has been filed beyond six months of commencement of activities and hence held it as time barred. The ld.CIT(E) held as under :

"8. Considering the above facts, the present application filed in Form No.10AB under clause (iii) of first proviso to section 80G(5) of the Act is liable to be rejected without going into the merits since

the assessee has not filed the present application within the time limit allowed under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961.

9. In view of the above, the application filed by the assessee is hereby rejected without going into the merits of the case and the provisional approval granted on 09/07/2021 under clause (iv) for first proviso to section 80G(5) of the Income Tax Act, 1961 is hereby cancelled."

2.1 The Commissioner of Income tax (Exemption) has not discussed the merits of the case. He held that the application is not maintainable.

3. In this case the Assessee had received the Provisional Approval u/s 80G(5) of the Act vide orders dated 09/07/2021 for period from A.Y.2021-22 to A.Y.2023-24 and dated 22/09/2022for period from A.Y.2023-24 to A.Y.2025-26. The assessee has approval u/s.12A(1)(ac) of the Act dated 30.01.2019.(copy filed by assessee in the paper book).

4. Thus, the only limited question before us is whether the application of the assessee was time barred or not?

To decide this question, we have to first understand the relevant statutory provisions of the Income Tax Act.

4.1 The relevant part of Section 80G(5) of the Income tax Act is reproduced here as under :

80G. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

(*i*) …

(*ii*) …..

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(*a*) ……..

(*b*) ……..

(*c*) ……

(*d*)…….

(4) …….

(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 fulfils the following conditions, namely :—

(*i*) where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (*23AA*) or clause (*23C*) of section 10 :
Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if—

(*a*) the institution or fund maintains separate books of account in respect of such business;

(*b*) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(*c*) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;

(*ii*) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(*iii*) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(*iv*) the institution or fund maintains regular accounts of its receipts and expenditure;

(*v*) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25[71] of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any University established by law, or is an institution financed wholly or in part by the Government or a local authority;

(*vi*) in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Principal Commissioner or Commissioner; (emphasis supplied)

(*vii*)……

(*viii*) …….

(*ix*)……..

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; (emphasis supplied)

[72]**[***(*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*) **[***or sub-clause (*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 sub-clause (*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*) …….*

5. The Commissioner of Income Tax (Exemption),Pune in the case of the Assessee held that the Activities of the Assessee had commenced in 18/01/2014, hence the assessee was liable to make application for Approval u/s 80G of the Act to file the present application within six months from the date of provisional approval i.e. on or before 08.01.2022 whereas the present application filed by the assessee on 08.04.2023 i.e.beyond the time limit allowed under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961, the ld.CIT(E) held it to be time barred.

New Procedure for registration:

6. The new provision for Registration was introduced by Finance Act, 2020. There was amendment in the registration procedure

by Finance Act, 2020. For the first time the Finance Act, 2020 introduced the concept of "Provisional Approval". Also due to the amendment, all the existing Trust/Institutions which were already having registration u/s12AA or 80G(5) were asked to re-apply for registration as per the amendment brought in 2020 and a date was specified before which all those Trust/Institutions already having Registration was required to make a fresh application as per the amendment procedure.

7. In this background we have to interpret the relevant provisions. To interpret the provisions, we shall refer to the Budget Speech of the Hon'ble Finance Minister.

7.1 The Hon'ble Supreme Court in the case of K P Varghese Vs. ITO [1981] 131 ITR 597 (SC) has observed as under regarding use of Speech of a Minister as a tool in interpretation:

> Quote , " *Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted.*

This is an accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234, the other in Indian Chamber of Commerce v. CIT [1975] 101 ITR 796 and the third in Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR l/[1980] 2 Taxman 501, where the speech made by the Finance Minister, while introducing the exclusionary clause in section 2(15) of the Act, was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause."

7.2 The Hon'ble Supreme Court has approved use of the Hon'ble Minister's speech as tool of interpretation to understand the intent of the Statute.

Extract of relevant part of Speech of Hon'ble Finance Minister:

8. The Hon'ble Finance Minister in Budget Speech 2020 has said as under :

Quote "*In order to simplify the compliance for the new and existing charity institutions, I propose to make the process of registration completely electronic under which a unique registration number (URN) shall be issued to all new and existing charity institutions. Further, to facilitate the registration of the new charity institution which is yet to*

start their charitable activities, I propose to allow them provisional registration for three years. " Unquote.

Finance Bill 2020 :

"(vi) an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier"

9. Thus, these amendments were introduced to simply the procedure of registration of Charitable Trusts/Institutions. The amendment made to simplify a procedure cannot be interpreted in a way that it causes prejudice to the Trust/institutions.

10. Thus, when we read the Budget Speech of the Hon'ble Finance Minister 2020 and the Memorandum of Finance Bill, 2020 together, it becomes clear that the concept of Provisional registration was mainly to facilitate the registration of newly formed Trust/Institutions which have not yet begun the activities. The parliament in its wisdom has decided to differentiate between the Trust which were newly formed and the trust which

were already doing charitable activities. In the second category of cases, there are again two possibilities, one trust was already doing charitable activities and was already having Registration u/s 12AA or 80G(5) of the Act, such trust were directed to re-apply for registration under new procedure on or before 30th August, 2020 but due to Covid-19 this date was subsequently extended. There is Second category of trust/institutions which were already doing Charitable Activities but had never applied for registration u/s.80G(5) of the Act. It is not mandatory that every charitable trust/institution has to apply for registration u/s.80G(5) of the Act. However, there is no bar in the Act that such trust or institutions cannot apply for registration u/s.80G in the new procedure. In these kinds of cases, the Trust/Institute though doing charitable activity may apply first for the 'Provisional Registration 'under the Act. After getting the Provisional Registration the Trust/Institution have to apply for Regular Registration. These kind of Trust/Institutes will fall under sub clause (iii) of the Proviso to Section 80G(5) of the Act, since they have obtained Provisional registration.

10.1 In this background, we need to read the sub-clause (iii) of the Proviso to Section 80G(5) of the Act. For ready reference it is again reproduced here 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"*

10.2 The sub-clause says that the Institution which have provisional registration have to apply at-least six months prior to expiry of the provisional registration or within Six months of commencement of activities, whichever is earlier.

10.3 In continuation of this when we read the 'sub clause iii of Proviso' of section 80G(5), which we have already reproduced above, 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 the Proviso to Section 80G(5) of the Act. This will be the harmonious interpretation.

11. If we agree with the interpretation of the ld.CIT(E), then say a trust which was formed in the year 2000, performed charitable activities since 2000, but did not applied for registration u/s.80G, the said trust will never be able to apply for registration now. This in our opinion is not the intention of the legislation. This interpretation leads to absurd situation.

11.1 In this context, we will like to refer to observations of the Hon'ble Supreme Court in the case of K P Varghase(supra), where in Hon'ble Supreme Court observed as under :

> Quote, "*It is a well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the revenue would lead to a wholly unreasonable result which could never have been intended by the Legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement - the market price shoots up with the result that the market price prevailing on the date of the sale exceeds the agreed price at which the property is sold by more than 15 per cent of such agreed price. This is not at all an*

uncommon case in an economy of rising prices and in fact we would find in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no understatement of consideration in respect of the transfer and the transaction is perfectly honest and bona fide and, in fact, in fulfilment of a contractual obligation, the asses-see who has sold the property should be liable to pay tax on capital gains which have not accrued or arisen to him. It would indeed be most harsh and inequitable to tax the assessee on income which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the Legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carries out such contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income which has neither arisen to the assessee nor has been received by him. If we may take another illustration, let us consider a case where A sells his property to B with a stipulation that after sometime, which may be a couple of years or more, he shall resell the property to A for the same price. Could it be contended in such a case that when B transfers the property to A for the same price at

which he originally purchased it, he should be liable to pay tax on the basis as if he has received the market value of the property as on the date of resale, if, in the mean-while, the market price has shot up and exceeds the agreed price by more than 15 per cent. Many other similar situations can be contemplated where it would be absurd and unreasonable to apply section 52(2) according to its strict literal construction. We must, therefore, eschew literalness in the interpretation of section 52(2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even 'do some violence" to it, so as to achieve the obvious intention of the Legislature and produce a rational construction -" Unquote.

11.2 Thus, as observed by the Hon'ble Supreme Court, that the statutory provision shall be interpreted in such a way to avoid absurdity. In this case to avoid the absurdity as discussed by us in earlier paragraph, we are of the opinion that the words, "within six months of commencement of its activities" has to be interpreted that it applies for those trusts/institutions which have

not started charitable activities at the time of obtaining Provisional registration, and not for those trust/institutions which have already started charitable activities before obtaining Provisional Registration. We derive the strength from the Speech of the Hon'ble Finance Minister and the Memorandum of Finance Bill, 2020.

11.3 Therefore, in these facts and circumstances of the case, we hold that the Assessee Trust had applied for registration within the time allowed under the Act. Hence, the application of the assessee is valid and maintainable.

12. Even otherwise, the Provisional Approval is uptoA.Y.2025-26, and it can be cancelled by the ld.CIT(E) only on the specific violations by the assessee. However, in this case the ld.CIT(E) has not mentioned about any violation by the Assessee.Therefore, even on this ground the rejection is not sustainable.

13. However, the ld.CIT(E) has not discussed whether the Assessee fulfils all other conditions mentioned in the section as he rejected it on technical ground. Therefore, in these facts and

circumstances we hold that the Assessee had made the application in form 10AB within the prescribed time limit and hence it is valid application. Therefore, we direct the ld.CIT(E) to treat the application has filed within statutory time and verify assessee's eligibility as per the Act. The ld.CIT(E) shall grant opportunity to the assessee. Assessee shall be at liberty to file all the necessary documents before the ld.CIT(E).

14. Accordingly, the appeal of the assessee is allowed for statistical purpose. Since we have set aside to Ld.CIT(E), we do not intend to adjudicate each ground separately.

15. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 5th Jan, 2024.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 5th January, 2023/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.