

(2024) 05 ITAT CK 0033

Income Tax Appellate Tribunal (Delhi A Bench)

Case No: Income Tax Appeal No. 2836/DEL/2023

Adarsh Paramedical Welfare
Association

APPELLANT

Vs

CIT(Exemptions)

RESPONDENT

Date of Decision: May 28, 2024

Acts Referred:

- Income Tax Rules, 1962 - Rule 10AB
- Income Tax Act, 1961 - Section 12A, 80G, 80G(5), 80G(5)(iv)(A), 80G(5)(iii)

Hon'ble Judges: Madhumita Roy, J; Avdhesh Kumar Mishra, (AM)

Bench: Division Bench

Advocate: Deepam Jain, Kanv Bali

Final Decision: Allowed

Judgement

1. This appeal preferred by the assessee is against the order dated 10.08.2023 of the Commissioner of Income Tax (Exemptions), Chandigarh [in short the 'CIT(E)'] rejecting the request for regular approval under section 80G of the Income Tax Act, 1961 [in short the 'Act'].

2. The relevant facts giving rise to this appeal are that the appellant/assessee is a registered society incorporated on 19th May, 2004. The appellant/assessee was granted registration under section 12A of the Act from the assessment year 2017-18. The appellant/assessee applied for the provisional registration under section 80G(5)(iv)(A) of the Act which was granted on 19.01.2023. Thereafter, it applied for regular approval under section 80G(5)(iii) of the Act in the prescribed Form No. 10AB of the Income Tax Rules on 06.02.2023. The CIT(E) rejected the said application as non-maintainable on the reasoning that the said application was filed after 6 months

from the commencement of activities since 2006.

3. Aggrieved, the appellant/assessee challenged, vide this appeal, the issue of rejection of approval under section 80G(5)(iii) of the Act.

4. The Ld. AR argued that there is anomaly in the provisions relating to approval under section 80G(5)(iii) of the Act. The provisions relating to approval under section 80G(5)(iii) of the Act are prejudice to the trusts and societies engaged in charitable activities since long. Firstly, they have to seek approval for provisional registration under section 80G(5)(iii) of the Act and thereafter for regular registration. How a trust and or society, engaged in charitable activities over the years can apply for regular registration under section 80G(5)(iii) of the Act after 6 months from the commencement of the charitable activities when they have to seek first the provisional registration under section 80G(5)(iii) of the Act and thereafter the regular registration under section 80G(5)(iii) of the Act. He further, submitted that how the appellant/assessee, doing charitable activities since 2006, could apply in 2006-07 as per the new provisions of the section 80G(5)(iii) of the Act.

4. 1 In support of his arguments, the Ld. AR placed reliance on the decision of the Hon'ble Supreme Court in the case of K. P. Varghese 131 ITR 597 where the Hon'ble Supreme Court has observed that the statutory provisions shall be interpreted in such a way to avoid absurdity. Therefore, he prayed to treat the application filed under Form No. 10AB of the Income Tax Rules within the prescribed time limit. Further, it was argued that strict interpretation of new provisions of the section 80G(5)(iii) of the Act would lead to absurdity as expecting the appellant/ assessee to file regular approval under section 80G(5)(iii) of the Act within 6 months from the commencement of the activities in 2006 is bad interpretation of the law as filing of the application under Form No. 10AB of the Income Tax Rules within 6 months from the commencement of activity is not technically possible as mandated in the law in 2021. According to the Ld. AR, the true interpretation of the amendment brought into the statute in 2021 is that the Trust and Institutions incorporated and commenced their activities earlier/in past have to apply first for provisional registration/approval and thereafter for regular registration/approval within the six months of the provisional registration/approval.

4.2 The Ld. AR placed emphasis on the memorandum to Finance Act, 2023 and reliance on the decisions of the ITAT, Pune Bench in the cases of M/s. Shri Kailash Math Trust vs. CIT(E), ITA No. 1177/Pun/2023 and M/s. T B Lulla Charitable Foundation vs. CIT(E), Pune ITA No. 1220/Pun/2023.

4.3 The Ld. AR drew our attention to the Circular No. 7/2024 dated 25th April, 2024, by which the CBDT has extended the due date for filing from 10A and 10AB under the Act till 30.06.2024. Alternatively, it was argued that the filing of fresh application under the Form No.10AB of the Income Tax Rules, as per the CBDT circular No.7/2024, may also

address the grievance of the appellant/assessee.

5. The Ld. Sr. DR, emphasizing on the order of the Ld. CIT(E), prayed dismissal of the appeal.

6. We have heard both the parties and perused the material available on the record. We find force in the argument of the Ld. AR that harmonious interpretation of the section 80G(5) of the Act in this case which is engaged in the charitable activities since long cannot be done in the above mentioned facts and circumstances. We are of the considered view that the CBDT has come out with Circulars from the time to time to ease out difficulties/hardships of trusts/societies and to overcome anomalies of the section 80G(5) of the Act. The CBDT, vide Circular No. 7/2024 dated 25th April, 2024, has extended the due date for filing from 10A and 10AB under the Act till 30.06.2024. The relevant portion of this circular is extracted as under:-

“Circular No. 7 /2024

Sub: Extension of due date for filing of Form No. 10A/10AB under the Income-tax Act, 1961- reg.

On consideration of difficulties reported by the taxpayers and other stakeholders in the electronic filing of Form No. 10A/10AB, the Central Board of Direct Taxes (the Board) in exercise of its powers under section 119 of the Income-tax Act, 1961 (the Act) extended the due date for filing Form No. 10A to 31.08.2021 by Circular No. 12/2021 dated 25.06.2021, to 31.03.2022 by Circular No. 16/2021 dated 29.08.2021, to 25.11.2022 by Circular No. 22/2022 dated 01.11.2022 and further to 30.09.2023 by Circular No. 6/2023 dated 24.05.2023, and extended the due date for filing Form No. 10AB to 30.09.2022 by Circular No. 8/2022 dated 31.03.2022 and further to 30.09.2023 by Circular No. 6/2023 dated 24.05.2023.

2. Representations have been received in the Board with a request to condone the delay in filing Form No. 10A/10AB, as the same could not be filed in such cases within the last extended date, i.e., 30.09.2023.

3. On consideration of the matter, with a view to avoid and mitigate genuine hardship in such cases, the Board, in exercise of the powers conferred under section 119 of the Act, hereby extends the due date of making an application/intimation electronically 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 or in case of an intimation under fifth proviso of subsection (1) of section 35 of the Act, till 30.06.2024;

(ii) (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 (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30.06.2024.

4. It may be also noted that extension of due date as mentioned in paragraph 3(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 (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, as the case may be. Hence, in cases where any trust, institution or fund has already made an application in Form No.10AB under the said provisions on or before the issuance of this Circular, 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.

4.1 Further, in cases where any trust, institution or fund has 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 or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 3(ii) i.e. 30.06.2024.”

7. In view of the above and decisions in cases of Shri Kailash Math Trust and T B Lulla Charitable Foundation (supra), we are of the view that the CIT(E) has not dealt the issue keeping in view the facts in entirety and the objective of the section 80G of the Act being welfare legislations rather than penal in nature. Therefore, considering the larger interest of justice, objectives of the provisions of section 80G of the Act and intent of the CBDT Circular No.7/2024, we are of considered opinion that the application filed under Form No. 10AB of the Income Tax Rules in this case has to be treated to have been filed within the prescribed time. Thus, we are remitting the matter back to the CIT(E) for de novo consideration treating this application as a valid application filed in time and decide the issue of approval under section 80G of the Act on merit.

8. In the result the appeal is allowed for statistical purposes.