

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member**

I.T.A. No. 205/KOL/2024

***Income Tax Bar Association Calcutta,.....Appellant
P-13, Aayakar Bhawan Annexe,
1st Floor, Chowringhee Square,
Post Office Esplanade,
Kolkata-700069, West Bengal
[PAN: AAAAI3921M]***

-Vs.-

***Commissioner of Income Tax (Exemption). Respondent
Kolkata,
10B, Middleton Row (6th Floor),
Kolkata-700071***

Appearances by:

*Shri S.K. Tulsian, Advocate and Shri P.K. Roy, Advocate,
appeared on behalf of the assesseees*

*Shri Subhendu Datta, CIT (D.R.), appeared on behalf of
the Revenue*

Date of concluding the hearing: April 16, 2024

Date of pronouncing the order: June 11, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Exemption), Kolkata dated 21st December, 2023, vide which application for grant of

registration under section 80G(5)(iii) of the Income Tax Act was rejected by the ld. CIT(Exemption).

2. Brief facts of the case are that the assessee is a Registered Society under the Registrar of Firms, Societies & Non-Trading Corporations, West Bengal vide Registration No. S/2L/60578 of 2016-17 dated 2nd September, 2016. It is also affiliated under West Bengal Bar Council. It was established in the year 1924 before the Enactment of the Income Tax Act, 1961. The Society has been enjoying registration under section 12A of the Income Tax Act. It was also granted certificate for exemption under section 80G(5)(vi) of the Income Tax Act. The copy of the certificate is available on the record. It was issued on 13th September, 2019. With effect from 1st April, 2021 vide Taxation and Others Law (Relaxation and Amendment of Certain Provisions) Act, 2020, certain changes have been effected for grant of registration under section 12A as well as certification under section 80G(5) of the Income Tax Act. The assessee has filed an application for grant of registration under section 80G(5)(iv) of the Income Tax Act in Form No. 10AC. Such application was allowed vide order dated 23rd September, 2021 for a period from 23rd September, 2021 to A.Y. 2024-25. Thereafter the assessee filed the present application in Form No. 10AB under Rule 17A of the Income Tax Rules, 1962 for grant of regular registration under section 80G(5)(iii) of the Income Tax Act. This application of the assessee has been rejected by the ld. Commissioner. He is of the view that the time limit for grant of registration under section 80G(5)(iii), an application ought to have been moved in Form 10AB of the Income Tax Act, at least six

months prior to the expiry of the period of the provisional approval or within six month of the commencement of its activities, whichever is earlier. In the present case, initially provisional registration was granted to the assessee. But the ld. CIT(Exemption) observed that since the assessee has commenced its activities and application for regular registration has been moved beyond six months of the commencement of activities, therefore, this application is not maintainable. He accordingly rejected the application of the assessee and denied the regular registration under section 80G(5)(iii) of the Income Tax Act. He further cancelled the provisional registration granted to the assessee.

3. Dissatisfied with the decision of the ld. CIT(Exemption), the assessee is in appeal. The President of the Bar Association Shri S.K. Tulsian has filed a detailed written submission and also argued on behalf of the assessee. We deem it appropriate to take note of this submission, which reads as under:-

“The present appeal is directed against the order passed by the Ld. CIT (Exemption), Kolkata dated 21.12.2023. In this case, the appellant was duly registered u/s 12AA and also was enjoying exemption u/s 80G(5) of the Income-tax Act, 1961 (the Act) from 2019, as shall be evident from pages 01 & 02 of the paper book.

2. *The law relating to registration of charitable institution had undergone substantial change w.e.f. 1st April, 2021 and sub-clause (i) of clause (ac) of sec.12A(1) of the Act reads as under :*

“(ac) notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,-

(i)Where the trust or institution is registered under section 12A[as it stood immediately before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) or under section 12AA [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020), within three months from the first day of April, 2021;”

3.That the appellant made application for registration and provisional registration was granted for three years upto A.Y. 2024-25 (pages 34 & 35). Likewise amendment was brought in section 80G of the Act also and proviso was added below sec. 80G(5) which is as below :

“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 of 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.”

3. The appellant-institution being an existing institution is duly approved u/s 12AA of the Act and its donation enjoyed exemption u/s 80G of the Act. Due to insertion of section 12AB(l)(a) of the Act by the Taxation and Others Law (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01.04.2021, the appellant-institution was entitled to be registered for a period of five years upto A.Y. 2025-26. Likewise due to the insertion as per proviso 1 to sec. 80G(5) of the Act, the appellant had applied for exemption u/s 80G of the Act and was granted exemption from 1st April, 2021 till 31st March, 2024 being the A.Ys 2021-22 to 2024-25 (pages 9 & 10)

4. Now as per the requirement of sec. 80G(5) provisos (i) to (iii), i.e. six months before the date of expiry of the approval, the appellant was to make an application to the CIT seeking renewal of permanent exemption which was duly done, as shall be evident from the enclosed application in Form 10AD, which was well within time.

5. Thus, there was no delay on the part of the appellant in making the impugned application. The application should have been made within six months of the provisional registration which being mandatory. The C.I.T., however, opined that as activities of the institution had started in 2019, the concession cannot be given and hence application was rejected. Hence this appeal has been filed.

6. As shall be evident from the facts of the case that the appellant is an existing institution and its activities are part of the record before the Income-tax Department having been registered u/s 12AA much prior to the amendment w.e.f. 01.04.2021 and was enjoying registration u/s 12AA of the Act (pages 34 & 35 of the P/B) as well as exemption u/s 80G(5) of the Act (pages 01 & 02). Only due to the amendment effected by the Finance Act, 2020 w.e.f. 2021, the law u/s 12A(l)(ac) requires for fresh registration and also the proviso to sec. 80G(5) required fresh certificate to be obtained. The appellant made application within the due date which was acknowledged by the C.I.T. (Exemption) and provisional registration u/s 12AB and certificate u/s 80G(5) of the Act was duly granted to the appellant institution.

7. Now, since the activities of the institution were not new and there was no requirement of filing any application within 6 months from the commencement of the activities, the application was filed well within the time. i.e. 6 months prior to expiry of provisional certificate and, therefore, the institution should have been granted exemption u/s 80G(5) of the Act. That having not been done, the order passed by the C.I.T. (Exemption) is against the law and, therefore, should be quashed and he should be directed to grant exemption to the appellant institution u/s 80G(5) of the Act

8. In this case, this institution was already registered u/s 12AA of the LT. Act and made application for grant of registration within the time permitted for registration. As mandated by law, such a registration should not have been provisional but it should be duly registered from April, 2021 for

a period of five years. This shall be evident from sec. 12AB(l)(a), which reads as under :

“12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall, -

(a) Where the application is made under sub-clause(i) of the said clause, pass an order in writing registering the trust or institution for a period of five years.”

Thus, there is no scope for making any provisional registration in this case. Therefore, the CIT (Exemption) has granted provisional registration mistakenly of the law and he should be directed to allow the registration for a period of five years from 2021.

9. *Now coming to sec. 80G of the Act, the proviso introduced in sec. 80G(5), clause (i) reads as under:*

“(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.”:

Within 3 months registration was to be granted from 01.04.2021 since it was an institution falling under sec. 12AB(l)(a) of the Act. In any case, a certificate of provisional approval was granted in this case by the PCIT. In spite of that fact that the impugned institution was already functioning and carrying on its activities duly recognized under the old regime by grant of registration u/s 12AA and certificate u/s 80G of the Act, the period of six months of the commencement of the activities has no application to the facts of this case and, therefore, the observation of the C.I.T. of delay in submitting the application is absolutely wrong and it should be quashed.

10. *The other fact which may be brought to the notice of the Hon’ble Bench that as per sec. 12AB(l)(a) of the Act in case of an application which was made under sub-clause (i) of sec. 12A(l)(ac), the registration for 5 years u/s 12AB of the Act was to be granted. As per proviso to sec. 80G(5), such institution referred to in clause (vi) of sec. 80G(5) was also to be granted approval within 3 months from 1st April,, 2021. Such certificate shall not to be provisional. Therefore, the entitlement of the appellant was to get a certificate which is normal and not provisional. Therefore, the requirement as envisaged under sub-clause (iii) of proviso to sec. 80G(5) of the Act of filing a*

request for approval within six months from the commencement of its activities or six months prior to the expiry of the provisional approval was not applicable at all and therefore for this reason also, denial of certificate u/s 80G(5) of the Act to the appellant-institution is completely bad in law”.

4. On the other hand, ld. D.R. was unable to controvert the submissions of the assessee because he pointed out that CBDT has extended the time limit in filing the application in Form No. 10A/10AB from time to time since the inception of the new Scheme of grant of registration under section 12A/80G of the Act. He drew our attention towards Circular Nos. 12, 16 & 8 mentioned by the ld. CIT(Exemption) in its order. He thereafter submitted that these time limits have further been extended by the CBDT vide Circular No. 7 of 2024 and thereon. At present, this time limit is upto the end of June. Thus, according to him also, ld. CIT(Exemption) failed to comprehend the true procedure required to be followed. It was debated before us by both the ld. Representatives that unnecessary huge litigation has been generated on account of failure of the authorities to comprehend the new Scheme.

5. The ld. Counsel for the assessee has drawn our attention towards the various decisions of this Bench on these issues.

6. We have heard the rival submissions and gone through the record. Before proceeding further, it will be relevant to reproduce here the relevant provisions of section 80G(5) of the Act:

“80G(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:-

(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;]

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;*
- (iv) in any other case, at least one month prior to commencement of the previous year relevant to the assessment year from which the said approval is sought:*

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) 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”

Provided also that the approval granted under the second proviso shall apply to an institution or fund, where the application is made under—

(a) clause (i) of the first proviso, from the assessment year from which approval was earlier granted to such institution or fund;

(b) clause (iii) of the first proviso, from the first of the assessment years for which such institution or fund was provisionally approved;

(c) in any other case, from the assessment year immediately following the financial year in which such application is made.

7. A perusal of the above provisions would reveal that the institutions which stood already approved u/s 80G(5)(vi) on the date of Amendment brought to section 80G of the Act by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 have to re-apply for fresh registration under Clause (i) to the First Proviso to section 80G(5) of the Act and those institutions have to be granted provisional registration for five years by the Id. CIT(Exemption) without any enquiry. The prescribed date for final application for approval under Clause (i) to the First Proviso to section 80G(5) of the Act was stipulated as three months from 1st Day of April 2022. However, the CBDT from time to time extended the date for filing of the said application under Clause (i) to the First Proviso to section 80G(5) of the Act and finally vide Circular No.6 of 2023 dated 24.05.2023, the said date was extended upto 30.09.2023. Further, the institutions which had to apply for the

first time or the institutions which did not stand approved on the date of Amendment i.e. 01.04.2021 brought by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, they could apply under Clause (iv) of the First Proviso to section 80G(5) of the Act. In that case, the ld. CIT(Exemption) is supposed to make necessary enquiries and if found satisfied regarding the genuineness of the activities of such an institution would grant provisional approval for five years. In both the cases i.e. institutions which have been granted approval under Clause (i) or the institutions which have been granted approval under Clause (iv) to First Proviso to section 80G(5) of the Act have to apply for final registration under Clause (iii) of First Proviso to section 80G(5). Such institutions are required to apply for final registration at least six months prior to expiry of the period of provisional approval or within six months of commencement of its activities, whichever is earlier.

8. In the present case, at the first instance, the assessee has filed an application for grant of registration under section 80G(5)(iii). At that very time, the ld. Commissioner should have granted the regular registration instead of granting provisional. Even if the provisional registration was granted, assessee has applied for grant of regular registration, then, ld. CIT ought to have appreciated that the time limit for making such application has also been extended time to time by the CBDT. Without going into much controversy, as envisaged in the impugned order, we are of the view that time limit to make an application for grant of regular registration under section 80G(5)(iii) in Form No. 10AB is still

available to the assessee upto the end of June, 2024. The assessee has already been granted registration under the old regime as noticed by us. The copy of such certificate is available on record. It is a Bar Association existing since 1924, though it has applied for grant of registration under section 12A and 80G quite late but its activities have been gone into by the authority and those activities were found to be charitable in nature. There is no change in those activities, therefore, there cannot be any doubt about the activities of the assessee for grant of regular registration under section 80G(5)(iii). The ld. CIT(Exemption) has misconstrued the provision as well as the facts. In paragraph no. 10 of the submissions filed by the ld. Counsel for the assessee, it has specifically been pleaded that its original application should have been granted under section 80G(5)(iii) and not under section 80G(5)(iv). In other words, the procedure adopted by the ld. CIT(Exemption) was incorrect to grant provisional certificate to the assessee at the first stage and then, for denying the regular certificate under section 80G(5)(iii) of the Income Tax Act. The application moved by the assessee under Form No. 10AB, Rule 17A was not time barred because the time limit considered by the ld. CIT(Exemption) in paragraph no. 11 of the impugned order as 30th September, 2022 is concerned, it has been extended from time to time. Therefore, this application is deemed to be well in time by keeping in mind the latest Circular issued by the Board. As observed earlier, the activities of the Society are similar. There is no change on such activities. Registration under section 80G(5)(vi) was granted in perpetuate vide order dated 13th March, 2019. This registration was cancelled because of change of law by the

Parliament. Otherwise, there is no change in the activity of the Bar Association. Taking into consideration the past history and the complete material available before us, we deem it appropriate to allow this application and direct the Id. CIT(Exemption) to grant registration to the assessee under section 80G(5)(iii) of the Income Tax Act. The necessary certificate be issued in due course.

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

Order pronounced in the open Court on 11/06/2024.

Sd/-

(Sanjay Awasthi)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 11th day of June, 2024

*Copies to :(1) Income Tax Bar Association Calcutta,
P-13, Aayakar Bhawan Annexe,
1st Floor, Chowringhee Square,
Post Office Esplanade,
Kolkata-700069, West Bengal*

*(2) Commissioner of Income Tax
(Exemption), Kolkata,
10B, Middleton Row (6th Floor),
Kolkata-700071*

(3) CIT ,

(4) The Departmental Representative

(5) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.