



IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA No. 347/Nag./2023
(Assessment Year : 2023-24)

Chinmaya Seva Trust,
280, Chinmaya Sadan, Ram Nagar
Nagpur.
PAN – AABTC0202B

..... Appellant

v/s

Commissioner of Income Tax
(Exemption) Pune.

..... Respondent

Assessee by : Shri Naresh Jakhotia, CA
Revenue by : Shri Rajeev Benjwal, CIT.Dr.

Date of Hearing – 08/07/2024

Date of Order – 08/07/2024

ORDER

PER K.M.ROY, A.M.

The present appeal has been preferred by the assessee challenging the impugned order dated 01/09/2023, passed under section 80G of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Exemption), Pune, ["*learned CIT*"], for the assessment year 2023-24.

2. The assessee has raised following grounds of appeal:–

“1. On the facts and circumstances of the case and in law, whether CIT(E) is right in holding that the activities of the trust is “Religious in nature”?

2. On the facts and circumstances of the case and in law, whether CIT(E) is right in drawing the conclusion that the funds of the trust has been kept idle & not applied for its objects?

3. On the facts and circumstances of the case and in law, whether CIT(E) is right in holding that keeping the funds in Bank FDR is inconsistent with the fundamental spirit and intention behind the establishment of the trust?

4. On the facts and circumstances of the case and in law, whether CIT(E) is right in observing that application or permanent registration which was done on 30.03.2023 should have been done by 30.09.2022 only?

5. On the facts and circumstances of the case and in law, whether CIT(E) is right in holding that there is no provision or power to condone the delay in filing application for registration u/s 80G?

6. Appellant pray to kind allow to add, amend, modify alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

3. The order passed by the CIT (Exemption) Pune on the application filed by the assessee, reads as under;

“1.The assessee has filed application No.CIT EXEMPTION, PUNE/2023-24/12AA/11315 in Form No.10AB under clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 on 30/03/2023.

2. The application was carefully perused and considered along with its annexures. Thereafter, certain information / clarification was called for under the provisions of sub-clause (a) of clause (ii) of second proviso to section 80G(5) of the Income Tax Act, 1961 to verify the genuineness of activities of the assessee and fulfilment of conditions laid down in clauses (i) to (v) of Section 80G(5) of the Act viz. date of commencement of activity, date of expiry of provisional approval, details of any other Law applicable for achievement of objectives and the proof of compliance of said Law, proof of identity of main trustees / directors, year-wise list of donations received, copies of annual accounts for the last 3 years or since inception whichever is later, note on activities carried out along with supporting credible evidence etc.. The assessee was requested to submit his compliance by 24/07/2023. The notice was duly served on the assessee through e-portal, email and speed post.

2.1 The information / details were called for under the provisions of sub-clause (a) of clause (ii) of second proviso to section 80G(5) of the Income Tax Act, 1961. These are the basic details required to ascertain the overall nature of the activities of the assessee and are directly relevant to the present proceedings.

2.2 The assessee's reply, and the documents submitted by the assessee along with the application were verified wherein various discrepancies were noticed. Another notice was then issued to the assessee on 08/08/2023 and the discrepancies were duly communicated to it as reproduced below:

"(i) A point wise reply to the notice has not be furnished. More specifically, the date of commencement of activities, the details of religious objectives, details of business undertaking, if any etc. are not furnished. Thus, you have failed to comply with the provisions of sub- clause (a) of clause (ii) of second proviso to section 80G(5) of the Income Tax Act, 1961

(ii) As per the provisions of Rule 11AA(2)(h) of the Income Tax Rules, 1962, the application in Form No.10AB shall be accompanied by note on activities giving details of activities actually carried out. However, it is seen that you have not furnished such note giving the details of actual activities carried out by the trust / institution. Thus, you have failed to comply with the provisions of Rule 11AA(2)(h) of the Income Tax Rules, 1962.

(iii) As noticed from the financial statements, the entire expenditure of the trust is made on 'religious' objects whereas the trust has been mentioned as 'charitable' trust.

(iv) As per the balance sheets for the last three years major part of your funds are invested in FDRs / bank accounts without its utilization on objectives and these funds are lying idle year-to-year whereas various objects have duly been provided in the trust deed for application of income. In view of the decision of the Hon'ble ITAT Chandigarh in the case of I.K. Gujral University Vs. CIT(Exemptions) in appeal ITA No.910/Chd/2017, keeping of funds in bank accounts / FDRs cannot be considered to be any application towards the charitable objects. Please explain with evidence as to why the said decision of the Hon'ble ITAT (supra), should not be applied in your case.

(v) In the trust deed, the word 'religion' has been struck off. It is, however, not clarified if the said modification in the deed has been approved by the Ch. Commissioner.

3. The assessee was requested to show cause as to why the application should not be rejected and why the approval granted under section 80G(5) of the Income Tax Act, 1961 should not be cancelled. The assessee was also given opportunity of being heard vide the said notice. The assessee was specifically informed that in the event of failure to comply by the due date, the application shall be liable to be rejected and the provisional registration / approval shall also be liable to be

cancelled. The compliance to the said notice was due on 14/08/2023. The notice was duly served on the assessee through e-portal and email.

4.1. The assessee complied to the said notice. It contended that the activities carried out by the trust were of charitable nature. However, as per the activity note, the activities mentioned at Sr.no. 4,5,6,12,14,15,16,17,23,26,28 are religious in nature. Also, the expenditure allocated to these religious activities has consistently exceeded 5% over the past three years. In light of this observation, it is evident that the trust does not meet the conditions outlined in clause (ii) of section 80G(5) when read in conjunction with Explanation 3 to section 80G of the Income Tax Act, 1961. Furthermore, the trust does not fall within the exceptions provided under section 80G(5B) of the Income Tax Act, 1961.

4.2 Further, on the issue of investments in Fixed Deposit Receipts (FDRs) and bank accounts without their utilization for the stated objectives, the assessee has contended that these investments were made using funds from previous years and have not been claimed as part of the application. However, it is crucial to note that the query was not simply related to the timing of these investments but focused on the fact that substantial funds have been allowed to accumulate without being actively applied towards the trust's stated objectives. These funds have essentially been "lying idle year-to-year," despite the existence of various objectives for which they could have been utilized. This accumulation of funds without their active application appears to be inconsistent with the fundamental spirit and intention behind the establishment of the trust. Therefore, the contention presented by the assessee on this issue is not found to be acceptable. It is imperative to ensure that funds are actively utilized for the trust's intended purposes, in accordance with the principles underlying the formation of the trust.

5. Without prejudice to the above, as per the provisions of clause (iii) of first proviso to section 80G(5) of the Act, where a trust or institution has been provisionally approved under section 80G(5) (vi) of the Act, the application for regular approval under section 80G(5)(vi) is required to be filed, at least six months prior to expiry of period of the provisional approval or within six months from the date of commencement of activities, whichever is earlier. As per the copy of form No.10AC, the date of provisional approval under section 80G(5) (vi) in this case is 18/10/2021.

5.1 Considering the above provisions, the assessee was specifically requested vide the initial notice itself to inform the date of expiry of provisional approval as well as the date of commencement of activities. The assessee has not informed the date of commencement of activities. However, it is seen that the date of incorporation of the trust / institution as per registration certified issued by Charity Commissioner is 22/07/1990 and it is also seen from the financial statements that the assessee has shown expenditure on objects right from the F.Y. 2019-20. Therefore, it is seen that the activities of the assessee were commenced at least from F.Y. 2019-20 i.e. before obtaining provisional approval. However,

if the actual date of commencement of activity in this case is considered for computation of limitation period for filing application under clause (iii) of first proviso to section 80G(5) of the Act, the assessee would never be eligible to file any such application.

5.2 For the sake of argument, take a hypothetical case of an assessee whose activities were commenced on 01/05/2022 but makes an application under clause (iv) of first proviso to section 80G(5) for provisional approval under section 80G(5) (vi) of the Act on 01/12/2022 i.e. after commencement of activities and gets such provisional approval on 15/12/2022. Such assessee would be required to file an application under clause (iii) of first proviso to section 80G(5) for regular approval under section 80G(5)(vi) of the Act on or before 30/11/2022 i.e. within six months from the date of commencement of activities. In such a case the assessee would be required to file an application for regular approval before making an application for provisional approval under section 80G(5)(vi) of the Act. However, the Statute does not permit for making application directly for regular approval. The assessee has to mandatorily get provisionally approved first, for being eligible for making any application for regular approval. The only remedy for such assessee would be to file an application for provisional approval before commencement of activities and then only the assessee can observe the further timeline of clause (iii) of first proviso to section 80G(5) of the Act. In such a situation any assessee who misses the bus or an assessee who has commenced its activities before the implementation of newly inserted provisions of Law in this regard, will not get any approval under section 80G(5) (vi) of the Act. This definitely is not the purpose of bringing-in the new provisions for registration / approval of a charitable institution in the Statute. Considering the above, it is but natural that in case of an assessee who has already commenced its activities and intends to get approved under section 80G(5)(vi) of the Act, has to first get provisionally approved under section 80G(5)(vi) by making an application under clause (iv) of first proviso to section 80G(5) of the Act and then has to apply under clause (iii) of first proviso to section 80G(5) of the Act, for regular approval under section 80G(5)(vi), within 6 months from the date of provisional approval. In such a case, the date of commencement of activity would naturally be the date of provisional approval for computation of limitation period of six months for making an application under clause (iii) of first proviso to section 80G(5) of the Act. In view of the above, in the instant case, the limitation period for making application under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961 is required to be computed from the date of provisional approval.

5.3 Considering the above facts, it is seen that the assessee had commenced its activities before the date of provisional approval. Since, the activities of the assessee were already commenced before the date of provisional approval, the assessee was required to file the present application within 6 months from the date of provisional approval i.e. on or before 17/04/2022. The extended due date for filing of such application was 30/09/2022 as per CBDT, Circular No.8/2022, dated 31/03/2022. Whereas the present application filed by the assessee is on

30/03/2023, i.e. beyond the time limit allowed under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961.

6. The assessee was therefore requested vide the notice dated 08/08/2023 to show cause as to why the application should not be rejected and as to why the approval should not be cancelled. However the assessee has not furnished any explanation in this regard. In absence of any explanation from the assessee, it is presumed that the assessee has nothing to say in the matter.

7. From the provisions of clause (iii) of first proviso to section 80G(5) of the Act, it is evident that the time limits prescribed therein are mandatory and the Commissioner of Income Tax has no power to condone the delay in filing application in Form No.10AB. The said legal position further gets fortified by the fact that the CBDT on multiple occasions had extended the time limit in filing the application in Form No. 10A and / or Form No. 10AB as under:

(a) The CBDT vide Circular No.12 of 2021 dated 25/06/2021 in exercise of its power under section 119 of the Act, provided relaxation for various compliances, including making application under section 10(23C), 80G(5)(vi), 35(1)(ii)/(ia)/(iii) and 80G of the Act in Form No.10A /Form No.10AB, for approval / provisional approval / intimation / approval / provisional approval of Trusts / Institutions / Research Associations etc., which were required to be made on or before 30th June 2021 was allowed to be made / filed on or before 31st August 2021.

(b) Thereafter, the CBDT vide Circular No.16 of 2021 dated 29/08/2021, further extended the date of filing of Form No.10A under section 10(23C), 12A, 35(1)(ii) / (ia) / (iii) or 80G, which was required to be filed on or before 30th June 2021 upto 31st March 2022 and similarly for application for approval or approval under section 10(23C), 12A or 80G of the Act in Form No. 10AB, for which the last date for filing falls on or before 28th February, 2022 up to 31st March, 2022.

(c) Thereafter, once again the CBDT vide Circular No.8/2022 dated 31/03/2022 on consideration of difficulties in electronic filing of Form No.10AB as stipulated in Rule 2C or 11AA or 17A of the Income Tax Rules, 1962, stipulated that "The application for approval or approval under section 10(23C), 12A or 80G of the Act, in Form No.10AB, for which the last date for filing falls on or before 29th September, may be filed on or before 30th September, 2022.

(d) Thereafter, once again the CBDT vide Circular No.6/2023 dated 24/05/2023, further extended the date of filing of 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 of the

Act, till 30/09/2023 where the due date for making such application has expired prior to such date; and

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) section 12A of the Act, till 30/09/2023 where the due date for making such application has expired prior to such date.

7.1 It is evident from the above that the time limit prescribed under clause (iii) of first proviso to section 80G(5) of the Act for filing Form No.10A and Form No. 10AB, as the case may be, is mandatory and therefore, after considering the hardship to the assessee the CBDT extended the said time limit on multiple occasions, for filing Form No.10A and Form No. 10AB, under section 119 of the Act, vide above referred Circulars. As per above referred CBDT Circular No.8/2022, the applicant / assessee, whose last date for filing Form No. 10AB for approval / approval under section 10(23C) or 12A or 80G(5) was falling on or before 29th September, 2022, was extended upto 30th September, 2022. Thereafter, there was no further extension for delay in filing Form No. 10AB was granted by the CBDT, till a new Circular dated 24/05/2023 is issued, and the same was evident from CBDT Circular No.22 of 2022 dated 01/11/2022, through which the CBDT extended the time limit for filing application in Form No.10A under various sections made therein, upto 25/11/2022, and in said Circular No.22 of 2022, no further extension of time was granted for filing Form No. 10AB.

7.2 It is also evident from the Circular No.6/2023, through which the CBDT has extended the time limit for filing of application in form No.10A under various section, upto 30/09/2023 and also extended the time limit for filing of application in form No.10AB, only in case of application under clause (iii) of first proviso to clause (23C) of section 10 and under sub-clause (iii) of clause (ac) of sub-section (1) of section 12A of the Act, up to 30/09/2023. Thus, no further extension of time has been granted for application under clause (iii) of first proviso to sub-section (5) of section 80G of the Act vide the said Circular dated 24/05/2023.

8. From the above, it is evident that the present application filed in Form No.10AB under clause (iii) of first proviso to section 80G(5) of the Act, has not been filed within the time limit prescribed therein and therefore the same is liable to be rejected, without going into the merits. Reliance is also placed on the decision of the Hon'ble Kolkata Tribunal in the case of Bishnupur Public Education Institute, reported in 139 taxmann.com 121, wherein the Hon'ble Tribunal while adjudicating the issue of similar provisions of due date under section 10(23C) of the Act, after placing reliance on various decisions of the Hon'ble Supreme Court and that of Hon'ble High Court has held as under:

"5. The Hon'ble Madras High Court in the case of All Angels Educational Society (supra) while considering the issue whether the Id. CIT (Exemption) has power to condone the delay in filing application for grant of approval under section 10(23C) or not, has considered the judgments of Hon'ble

Supreme Court in the case of State of U.P v. Harish Chandra AIR 1996 SC 2173 as well as Union of India v. Kirloskar Pneumatic Co. Ltd. 1996 taxmann.com 575 (SC) and held that where there is no provision to empower the statutory authority to condone the delay, than the authority cannot condoned. The finding of the Hon'ble Court in Paragraphs no. 15 & 16 worth to note, which read as under:-

"15. However, considering the legal position that there is no power to condone the delay in filing an application under section 10(23C) of the Act, this Court is not inclined to exercise its extraordinary jurisdiction to condone the delay. However, this Court is inclined to give appropriate direction to the respondent to consider the petitioner's application as an application for the subsequent assessment year, namely, 2013-2014 in accordance with law. Such direction is issued considering the peculiar facts and circumstances of the case and that the petitioner could not have made an application for the subsequent assessment year 2013-2014, since their application for assessment year 2012-2013 was still pending consideration and the impugned order came to be passed only on 13-11-2013. The respondent is at liberty to consider the amended objectives of the petitioner Trust.

16. Accordingly, the writ petition is partly allowed and the finding rendered by the respondent that the petitioner's application cannot be considered as the same is time barred is affirmed and the finding with regard to objectives of the Society by respondent holding that the Society cannot be said to be solely for education purpose is set aside. Consequently, the matter is remanded back to the respondent for fresh consideration and the petitioner's application is directed to be considered for the assessment year 2013-2014 in accordance with law and while doing so, may consider the amendments made to the objectives of the petitioner Trust. No Costs. M.P. No.1 of 2014 is closed.

6. Similar is the view of Hon'ble Andhra Pradesh High Court propounded in Aurora Educational Society case (supra). The Hon'ble Orissa High Court has also considered this aspect in the case of Roland Educational & Charitable Trust (supra). The concluding paragraph of the judgment is worth to note in this aspect, which read as under:-

"Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in presenting the application under section 10(23C)(vi), the Chief Commissioner of Income-tax can exercise any such power"

7. The adjudicating authorities under the Income-tax Act are quasi-judicial authorities. They can grant approval with retrospective effect if such mechanism is provided in the Act. There is no such provision nor there any power to condone the delay after considering the reasonable reasons. A

reasonable cause can be taken into cognizance for condoning the delay, if such provision is provided in the Act while considering any issue for adjudication. Therefore, considering the above proposition, we are of the view that Id. CIT (Exemption) has rightly rejected the application of the assessee for grant of approval under section 10(23C)(vi) of the Income-tax Act. All these three appeals are rejected.

8. In the result, all the appeals of the assessee are dismissed."

9. In view of the discussion made at Para 4.1 to 8, 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 since the assessee has failed to prove the charitable nature and the genuineness of activities of the trust and fulfilment of conditions laid down in clauses (i) to (v) of Section 80G(5) of the Act. Hence, the application filed by the assessee is hereby rejected and the provisional approval granted on 18/10/2021 under section 80G(5)(vi) read with clause (iv) of first proviso to section 80G(5) of the Income Tax Act, 1961 is hereby cancelled."

4. The Ld. AR submitted that the rejection of approval u/s 80G was primarily on account of the delayed submission. He desires that the same may be condoned and the matter may be set aside to CIT (Exemption) to take a fresh look in this regard. On the other hand, Ld. CIT DR submitted that the rejection has been correctly done by the CIT (Exemption) and the order need not be interfered with.

5. 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 (i) 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.

6. A perusal of the above provision would reveal that the institution 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 inquiry. 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 24-5-2023, the said date was extended upto 30-9-2023. 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. 1-4-2021 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 Id. 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. In the case in hand, it appears that the assessee-institution instead of applying for renewal of registration under clause (i) to First Proviso to section 80G(5) of the Act has applied for fresh provisional registration under clause (iv) to First Proviso to section 80G(5) of the Act and incidentally, the said fresh registration has also been granted to the assessee-institution from 10-3-2023 to A.Y 2025-26. If the assessee-institution would have applied for renewal of the registration under clause (i), then its approval u/s 80G(5) would have continued without any break. The last date for making such an application was upto 30-9-2023 as per the extended date from time to time vide Circular No. 6 of 2023. However, since the assessee-trust has applied for fresh approval under clause (iv) to First Proviso to section 80G(5) of the Act, therefore, the assessee-trust was entitled to apply for final registration and there was no bar to the institution for making such application. This issue

has already been adjudicated upon by the Coordinate Bench of the Tribunal in the case of "Vivekananda Mission Asram v. CIT" in [IT Appeal No. 995 (Kol.) of 2023, dated 8-12-2023 while deliberating upon the provisions of section 80G(5) of the Act, has held as under:

"6. So far as the observation of the Id. 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 vide order dated 13.09.23 one of us i.e. the Judicial Member herein, being the author of the said order, 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 Id. 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 3-12-2022, 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.

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. It is to be further noted here that the Id. CIT(Exemption) firstly misconstrued about the CBDT Circulars regarding the exemption of date for final applications for approval. The said Circular/time limits are applicable only for the institutions who stood already registered on the date of Amendment and have made application for renewal of the registration without any time break. However, the said last date which has been extended to 30.09.23 by CBDT Circular No. 6 of 2023 is not applicable for the institutions who have filed application for fresh provisional registration under clause (iv) to First Proviso to section 80G(5) of the Act and thereafter for making application under clause (iii) to First Proviso to section 80G(5) of the Act. Such date has been further extended upto 30-06-2024 subsequently by CBDT.

7.1 We deem it appropriate to mention here that CBDT has extended the date upto 30-6-2024 for making application under clause (i) to First Proviso to section 80G(5) of the Act, which means that the institutions, which were already registered prior to the amendment brought to section 80G(5) by

Amendment Act of 2020 w.e.f. 1-4-2021, if an institution for some reasons could not make an application for renewal/continuance of registration under clause (i) to First Proviso to section 80G(5) of the Act within the stipulated period of three months, it could still apply under clause (i) upto 30-9-2023. However, once an institution has applied under clause (i) to First Proviso to section 80G(5) of the Act on or before 30-9-2023, it will be further governed by the statutory provisions of clause (iii) of First proviso to section 80G(5) of the Act and not by the CBDT Circular for the purpose of limitation. CBDT Circular is for extension of date to help the institutions which could not apply under clause (i) within stipulated period of three months, and not for curtailing limitation or barring institutions for final registration under clause (iii) to First Proviso to section 80G(5) of the Act.

7.2 As observed above, for making application for final registration under clause (iii) to First Proviso to section 80G(5) of the Act, the institution must have been provisionally registered either under clause (i) or clause (iv) to First Proviso to section 80G(5) of the Act.

7.3 In our humble understanding, if the view of the Id. CIT(Exemption) is accepted to be correct, then no institution which has already been into charitable activities before seeking provisional approval under clause (iv) to First Proviso to section 80G(5) of the Act would ever be entitled to grant of final registration under clause (iii) to First Proviso to section 80G(5) of the Act even after grant of provisional approval, which would make the relevant provisions of section 80G(5) otiose and defeat the object and purpose of these statutory provisions.

8. In view of the above discussion, it is held that after grant of provisional approval, the application cannot be rejected on the ground that the institution had already commenced its activities even prior to provisional registration. Under such circumstances, the date of commencement of activity will be counted when an activity is undertaken after grant of provisional registration either under clause (i) or clause (iv) to First Proviso to section 80G(5) of the Act.

9. In the case in hand, the assessee admittedly has applied for final registration after grant of provisional registration under clause (iv) to First Proviso to section 80G(5) of the Act and therefore, the application filed by the assessee is within limitation period. The issue is otherwise squarely covered by the decision of the Coordinate Bench of the Tribunal in the case of **Vivekananda Mission Asram (supra)** and in the case of "**West Bengal Welfare Society v. CIT (Exemption)**" [IT Appeal Nos. 730 & 731 (Kol.) of 2023, dated 13-9-2023] and further by the decision in the case of "**Sri Aurobindo Bhawan Trust v. CIT (Exemption)**" [IT Appeal No. 1058 (Kol.) of 2023, dated 20-2-2024]. Therefore, the impugned order of the CIT(Exemption) is set aside and the Id. CIT(Exemption) is directed to grant provisional approval to the assessee under clause (iii) to First Proviso to section 80G(5) of the Act, if the assessee is otherwise found eligible. The Id. CIT(A) will decide the application for final registration within three months of the receipt of copy of this order.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 08/07/2024.

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

**Sd/-
K.M. ROY
ACCOUNTANT MEMBER**

NAGPUR, DATED: 08/07/2024.

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

True Copy

By Order

*Rajesh V. Jalit
Private Secretary*

Sr. Private Secretary
ITAT, Nagpur