

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 731/Ahd/2023
Assessment Year N.A.**

Best Buds Pet Care, 17 Avbhishri Residency Part Shivalik Bunglow, Bopal S.O. Shela, Ahmedabad-380058 PAN: AAETB3784G (Appellant)	Vs	The CIT(Exemption), Ahmedabad (Respondent)
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**Assessee by: Shri Sulabh Padshah, A.R.
Revenue by: Shri Akhilendra Pratap Yadav, CIT-D.R.**

Date of hearing : 28-11-2023
Date of pronouncement : 30-11-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the assessee against rejection of registration under section 80G of the Income Tax Act, 1961 (hereinafter referred to as the "Act") vide order dated 14-08-2023 passed by Commissioner of Income Tax (Exemption)[CIT(E)] Ahmedabad.

2. The brief facts of the case, the assessee is a trust which was created on 29-04-2021 with objects of animal welfare (JIBIVA) and help to poor and needy people. The assessee trust was granted Final Registration u/s. 12AB(i) of the Act by the CIT(E) vide order dated 17-09-2022. The assessee trust also granted provisional registration u/s. 80G(5) of the Act vide order dated 01-10-2021. However, the assessee filed Form 10AB for final registration u/s. 80G(5) of the Act, which was rejected by the CIT(E) on the ground that the application was filed beyond the limitation period prescribed under the Act and extended period of limitation granted by the CBDT by way of various Circulars issued from time to time and thus also rejecting the provisional registration granted under 80G(5) of the Act.

3. Aggrieved against the above rejection order, the assessee is in appeal before us raising the following grounds of appeal:-

“1. The learned Commissioner of Income Tax (Exemption) has erred in rejecting the application filed by the Appellant Trust on the ground that the application filed in Form 10AB has not filed within time limit prescribed and therefore it is non-maintainable. On facts and circumstances of the case, the action of Ld. CIT(Exemption) of rejecting the application filed u/s 80G(5) of the Act is incorrect and unlawful and the approval u/s. 80G(5) of the Act ought to have been granted to the Appellant Trust. The same please be held now.

2. The learned Commissioner of Income Tax (Exemption) has erred in rejecting the application filed u/s 80G(5)(iii) of the Act stating that the delay in filing of application cannot be condoned by him. It is submitted that the delay in filing of Application u/s 80G(5)(iii) is only because of bonafide reasons

and circumstances prevailing beyond the control of the Appellant Trust at that time. On facts and circumstances of the case, it is prayed before your honours that delay in application filed in Form 10AB u/s 80G(5)(iii) of the Act dated 28-2-2023 may please be condoned and necessary directions may please be given to Ld. CIT(Exe.) for granting approval u/s 80G(5)(iii) considering merits of the case. The same please be held accordingly.

3. The order passed by the learned Commissioner of Income Tax (Exemption) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.

4. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing.”

4. The ld. counsel for the assessee, Shri Sulabh Padshah, appearing for the assessee submitted before us an affidavit filed by the Trustee explaining that provisional registration u/s. 80G(5) granted by CIT(E) vide order dated 01-10-2021. The Accountant of the trust Shri Prerna Shah who resigned his job and then after the trust has appointed one Shri Rakesh Kaladas Parmar as a new Accountant, who was not aware of the amended income tax provisions and validity of registration granted u/s. 80G(5) of the Act. He did not understand the difference between the Provisional and Final registration u/s. 80G(5) of the Act which are being the new provisions of law. The assessee being a newly formed Trust, when their Chartered Accountant indicated the mistake in not filing Final approval u/s. 80G(5) of the Act. It is thereafter the assessee trust immediately filed an application in Form 10AB for final registration on 28-02-2023 with a prayer to condone the bonafide mistake made by the assessee trust. The assessee Trust also filed

supporting affidavit of the new Accountant namely Rakesh Kaladas Parmar explaining that he did not understand the difference between the Provisional and Final registration under 80G(5) of the Act. Thus, ld. counsel for the assessee pleaded that the assessee trust got registration under 12AB(i) of the Act for the assessment years 2022-23 to 2027-28 by the CIT(E) vide order dated 17-09-2022. Even Provisional registration under 80G(5) vide order dated 01-10-2010 and thereby pleaded to condone the delay in filing the application in Form 10AB for final registration. In this connection, the ld. counsel relied upon the Delhi High Court judgment in the case of Director of Income Tax (Exemption) vs. Vishwa Jagriti Mission in ITA No. 754/2010 dated 21-12-2012 and the decision of Coordinate Bench, Ahmedabad in the case of Indian Red Cross vs. CIT(E) dated 11-10-2023 and in ITA 359 and 360/Ahd/2020 in the case of Shri Saraswati Trust vs. CIT(A) dated 26-07-2023 thus pleaded to condone the delay in filing Form 10AB of the Act

5. Per contra, CIT-D.R., Shri Akhilendra Pratap, appearing for the Revenue strongly opposed the plea of the assessee Trust and submitted that under the new provisions of the Act, strict time limit of six months period before expiry period of provisional registration or within six months of commencement of the activities of the Trust, whichever is earlier is prescribed under the Act. The above period was further extended upto 30-09-2022 by CBDT circular from 31st August, 2021. In the present assessee's case Provisional Registration was granted on 01-10-2021 u/s. 80G(5)(iv) for a period of three years from A.Ys. 2022-23 to 2024-25. However, the

assessee filed its application only on 28-02-2023 which is beyond the time limit prescribed under the Act and extended by the Board by way of various circulars. Thus, ld. CIT(E) is correct in denying Final registration u/s. 80G(5) of the Act which is beyond the period of limitation prescribed under the Act. The above rejection order does not require any interference and therefore the assessee's appeal is liable to be rejected. The ld. Departmental Representative further submitted that if delay is condoned that will be an opening for such kind of litigations before this appellate forum and therefore requested to dismiss the appeal filed by the assessee.

6. We have given our thoughtful consideration and perused the material available on record. It is undisputed fact that the Trust was created on 29-04-2021 and Final registration u/s. 12A(i) of the Act was granted to the Assessee Trust vide order dated 17-09-2022 for the assessment years 2022-23 to 2024-25. Similarly, Provisional registration u/s. 80G was granted on 01-10-2021. However, the assessee failed to file final registration under 80G(5) within six months period. It is further seen from the affidavits filed by the Trustee and the Accountant, that they were in the bonafide wrong impression that the Provisional Registration granted u/s. 80G(5) on 01-10-2021 is the sufficient registration and not aware of the Final Registration which is required to be applied within six months of the provisional registration or six months of the commencement of the activities of the Trust. It is only when the assessee trust approached their Chartered Accountant, the assessee trust realized the mistake and filed the

same in Form 10AB for final registration u/s. 80G(5) of the Act on 28-02-2023.

6.1 For better understanding, section 80G(5)(3) of the Act reads as follows:-

"(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;"

6.2 Reading of the above sub-section makes it clear that there is no provision to condone the delay in Registration of the Trust. However, the CBDT has extended the above time limits by invoking section 119 of the Act by issuing circular No. 8 of 2022, dated 31-03-2022 extending the time limit upto 30th September, 2022. It is thereafter by circular No. 6 of 2023 dated 24-05-2023 clarified as follows:-

"7. It may be also noted that the extension of due date as mentioned in paragraph 5(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 of the Act, as the case may be. Hence, in cases where the trust has already made an application in Form Ho. 10AB under the said provisions but such application has been furnished after 30.09.2022 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. Further, in cases where the trust had 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, the trust may furnish a fresh application in Form No. 10AB within the extended time provided in paragraph 5(ii) i.e. 30.09.2023.”

However, this clause (7) was not referred by the CIT(E) in his order while rejecting the registration u/s. 80G of the Act to the assessee on the sole ground that he has no power to condone the delay of belated filing of Form no. 10AB u/s. 80G(5) of the Act.

6.3 Reading of the above circular makes it clear that the time is extended up till 30-09-2023, whereas the assessee filed belated application on 28-02-2023. The above circular also clarified that even in case, where the application in Form No. 10AB was rejected by the CIT(E) on or before issuance of this circular dated 24-05-2023, the assessee trust can make fresh application in Form 10AB on or before 30-09-2023. Thus, the Id. CIT(E) has not considered the clause 7 of the Circular no. 6 of 2023 thereby rejected the application which is in our considered view is against the circular issued by the CBDT. Therefore, we hereby set aside the impugned order passed by CIT(E) with a direction to reconsider the Form No.10AB for final registration u/s. 80G of the Act by giving proper opportunity of being heard to the assessee trust. Needless to say the assessee trust should co-operate by furnishing all the required details as mandated under the law for granting final registration u/s. 80G of the Act.

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

Order pronounced in the open court on 30-11-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 30/11/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद