

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

आयकर अपील सं. ITA No.423/Chny/2024

The Earth Trust 13/19A6. Hema Cottage Bharati Nagar, Ketty Post The Nilgiris (TN) – 643 215	बनम/ Vs.	CIT (Exemptions) Chennai – 600 034
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No. AABTT-2225-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Shyam Sundar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	29-04-2024
घोषणा की तारीख / Date of Pronouncement	:	01-05-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by rejection of an application filed in Form No.10AB on 02.06.2023 for seeking approval under clause (iii) of first proviso to sub-section (5) of Sec.80G vide impugned order dated 27.12.2023, the assessee is in further appeal before us.
2. From the record, it emerges that the assessee trust filed an application in Form No.10AB on 02.06.2023 seeking registration under clause (iii) of first proviso to sub-section (5) of Sec.80G. It transpired

that the assessee trust was incorporated on 30.12.2004 and it commenced its activities on 01.01.2005. The assessee was granted provisional approval in Form No.10AC u/s 80G(5)(iv) for the period commencing from 08.12.2022 to AY 2024-25. The first proviso to Sec. 80G (5), provided timeline for an application to be filed under clause (iii) of first proviso to sub-section (5) of Sec.80G. As per sub-clause (iii) of this proviso, the assessee was required to file this application at least before 6 months prior to expiry of provisional approval or within 6 months from the date of commencement of its activities, whichever is earlier. The said timeline was mandatory in nature. As against this, the assessee filed application on 02.06.2023 which was much after expiry of 6 months from commencement of its activities. Accordingly, it was held by Ld. CIT(E) that the application was time barred and liable to be rejected.

3. The Ld. CIT(E) also noted that under the new regime, CBDT, on multiple occasions, extended time limit for filing the application in Form No.10A and / or 10AB. The latest Circular No.08 of 2022 dated 31.03.2022 extended the time limit to 30.09.2022 beyond which there was no further extension. This was evident from subsequent CBDT Circular No.22/2022 dated 01.11.2022 through which CBDT extended time limit for filing application in Form No.10A under various Sections, up-to 25.11.2022. However no further extension was granted for filing of Form No.10AB. Also, CBDT issued another Circular No.6/2023 on 24.05.2023 extending due date for filing application in Form No.10AB from 30.09.2022 to 30.09.2023 only in respect of trusts / institutions

registered u/s 10(23C) and 12AB. The said Circular did not mention any such extension of due date for filing Form No.10AB to get approval u/s 80G. Therefore, the application was treated as time barred and rejected as non-maintainable. Aggrieved, the assessee is in further appeal before us.

4. It is admitted fact that the assessee is a new trust having commenced its activities on 01.01.2005. It could further be noted that the assessee has already received provisional approval u/s 80G(5)(iv) for a period commencing from 08.12.2022 to AY 2024-25. It sought approval u/s 80G(5)(iii) by filing Form No.10AB on 02.06.2023 which has been rejected by Ld. CIT(E) on the ground that the assessee had violated the mandatory time lines as statutorily provided. However, we find that this issue has been decided favorably by co-ordinate bench in bunch of appeals titled as **M/s CIT-1982 Charitable Trust & Ors, ITA No.827/Chny/2023 order dated 08.03.2024**. In this decision, the bench held that the extended time limit of 30.09.2023 as per CBDT Circular would apply to Form No.10AB as well. The bench also takes note of the latest decision of Hon'ble High Court of Madras in the case of **Sri Nrisimha Priya Charitable Trust** in WP Nos.27030 & ors. of 2024 order dated 02.04.2024 wherein Hon'ble Court has held that clause 5(ii) of Circular No.6 of 2023 dated 24.05.2023 is illegitimate, arbitrary and ultra vires the constitution of India. It has been held as under: -

7. In the result, these Writ Petitions are allowed on the following terms: -

(i) The clause 5(ii) of Circular No.6 of 2023 bearing F.No.370133/06/2023-TPL, dated 24.05.2023 of the first respondent is declared as illegitimate, arbitrary, and ultra vires the Constitution of India;

(ii) The respondents are directed to consider the applications submitted by the petitioners as to the recognition/approval in respect of clause (i) of the first proviso to sub-section (5) of section 80G of the Act as within time and consider the same and pass orders thereon on merits, in accordance with law within six months from the date of receipt of a copy of this order;

5. The bench also takes note of recent Circular No.07/24 issued by CBDT on 25.04.2024 extending time limit for all such applications to 30.06.2024. Therefore, there remain no grounds for rejection of application by raising the issue of timeline.

6. Considering the facts and circumstances of the case, we set aside the impugned order and direct Ld. CIT(E) to consider the application on merits without raising the issue of timeline.

7. The appeal stand allowed for statistical purposes in terms of our above order.

Order pronounced on 1st May, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :01-05-2024

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आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF