

OD-24

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/77/2024
IA No: GA/2/2024
COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA
VS.
WEST BENGAL WELFARE SOCIETY, KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26th April, 2024

Appearance :
Ms. Smita Das De, Adv.
...for appellant

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Arvind Agarwal, Adv.
Mr. Giridhare Dhebia, Adv.
Mr. Kausheyo Roy, Adv.
Ms. Alisha Das, Adv.
Mr. Suman Bhowmick, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 13th September, 2023 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata in I.T.A No. 730 & 731/Kol/2023 for the assessment year 2023-24.

The revenue has raised the following substantial questions of law for consideration :

- i) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to observe that the application for approval under Section 80G(5)(iii) of the said Act in Form 10AB was within the time limit despite the fact the said application is required to be filed within six months from the commencement of activities or six months prior to the expiry of the period of provisional approval whichever is earlier ?
- ii) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to observe that the application was filed within the limit despite the fact that the application was filed after expiry of six months from the commencement of the activities i.e., the same was filed on 03.12.2022 wherein the activities commenced in the assessment year 2020-21 ?
- iii) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the fact that there is strict time line for filing application under Section 80G(5)(iii) and the CIT(E) has no power to condone the delay in filing Form 10AB for making application under Section 80G(5)(iii) of the said Act ?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant and Mr. Abhratosh Majumder, learned senior Counsel for the respondent/assessee.

The short question which falls for consideration is whether the Tribunal was justified in allowing the assessee's appeal and directing registration to be granted under Section 80G(5) of the Act and thereby setting aside the order passed by the Commissioner of Income tax (Customs), Kolkata, [C.I.T (Customs)] dated 27th June, 2023.

Before we examine the other issues, it needs to be pointed out that in the impugned order the Tribunal has restored the matter to the C.I.T (Customs) for a decision afresh on merits of the application filed for filing registration under Section 12A of the Act. On such remand being made to the authority, now the respondent assessee has been granted 12-year registration. Therefore, in our view, the present issue has virtually become academic. That apart, we also take note of the recent Circular issued by the Central Board of Direct Tax being Circular No.7 of 2024, dated 25.4.2024, extending the due date for filing Form 10A and 10AB of the Act. In Clause 4.1 of the said Circular, it has been stated, in case 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 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.

That apart, on facts the learned Tribunal has found that assessee was granted provisional approval on 30th November, 2022; the assessee applied for

final registration under clause (iii) of first proviso to Section 80G(5) of the Act. Therefore, the Tribunal held that the proviso is to be read 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 this activity or within six months prior to the expiry of the period of provisional approval, whichever is earlier. The learned Tribunal rightly noted that in any case the assessee is eligible to apply for final registration only after grant of provisional approval.

Thus, considering the factual position, the learned Tribunal rightly granted the relief in favour of the respondent/assessee. Thus, we find no questions of law, much less substantial questions of law, arising for consideration.

The appeal is thus dismissed.

The stay application IA No: GA/2/2024 also stands dismissed.

(T.S. SIVAGNAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)