

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.555/SRT/2023 (A.Y.2023-24)

(Hearing in Physical Court)

Gujarat Hira Bourse 4 th Floor, Administrative Build.ing, Gems & Jewellery Park, Opp. Ichhapore Bus Stand-2, Hazira Road, Ichhapore, Surat-394510 PAN : AACCG 0717 B	Vs	Commissioner of Income Tax (Exemption), Ahmedabad Room No.609, Floor 6, Aayakar Bhawan (Vejalpur), Sachin Tower, 100 Foot Road, Anandnagar- Prahladnagar Road, Ahmedabad-380015
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent
आ..अ.सं./ITA No. No.556/SRT/2023 (AY 2023-24)		
GHB Green Foundation 4 th Floor, Administrative Build.ing, G & J Park, Ichhapore, Hazira, Surat-394510 PAN No. AAJCG 2541 G	Vs	Commissioner of Income Tax (Exemption), Ahmedabad Room No.609, Floor 6, Aaykar Bhawan (Vejalpur), Sachin Tower, 100 Foot Road, Anandnagar- Prahladnagar Road, Ahmedabad-380015
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent
आ..अ.सं./ITA No. No.577/SRT/2023 (AY 2023-24)		
The Man Made Textiles Research Association, Near Market Telephone Exchange, Ring Road, Surat-395002 PAN No. AAATT 4304 L	Vs	Commissioner of Income Tax (Exemption), Ahmedabad Room No.609, Floor 6, Aaykar Bhawan (Vejalpur), Sachin Tower, 100 Foot Road, Anandnagar- Prahladnagar Road, Ahmedabad-380015
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent
आ..अ.सं./ITA No. No.578/SRT/2023 (AY 2023-24)		
Pal Gram Hindu Sarvajanik Trust AT & Post: Pal, Tal Choryasi, Dist. Surat-395005 PAN No. AAATP 2544 G	Vs	Commissioner of Income Tax (Exemption), Ahmedabad Room No.609, Floor 6, Aaykar Bhawan (Vejalpur), Sachin Tower, 100 Foot Road, Anandnagar- Prahladnagar Road, Ahmedabad-380015
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

आ.अ.सं./ITA No. No.688/SRT/2023 (AY 2023-24)		
Shrimati Shantaben Haribhai Gajera Foundation, Surat Plot No.146, SY, Opp. Ramjikrupa Raw House, Katargam, Surat-395004 PAN No. ABGCS 1536 H	Vs	Commissioner of Income Tax (Exemption), Ahmedabad Room No.609, Floor 6, Aaykar Bhawan (Vejalpur), Sachin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent
आ.अ.सं./ITA No. No.852/SRT/2023 (AY 2023-24)		
SDA Aarogya Trust, Gujarat 103, Swati Society B/h. CNG Pump Chikuwadi, Nana Varachha, Surat-395006 PAN No. ABCTS 5754 L	Vs	Commissioner of Income Tax (Exemption), Ahmedabad Room No.609, Floor 6, Aaykar Bhawan (Vejalpur), Sachin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad-380015
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren R. Vepari, CA
राजस्व की ओर से /Revenue by	Shri Ravinder Sindhu, CIT-DR
सुनवाई की तारीख/Date of hearing	09.01.2024
उद्घोषणा की तारीख/Date of pronouncement	16.01.2024

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This bunch of six appeals by different assessees are directed against the separate orders of Ld. Commissioner of Income Tax-[Exemptions], Ahmedabad [for short to as 'Ld.CIT(E)'] dated 21.07.2023, 24.07.2023 & 17.10.2023 in rejecting the application for approval of funds under section 80G(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Certain fact in all the appeals are common, the parties have raised common grounds of appeal. Therefore, all the appeals were clubbed, heard together and are decided by consolidated order to avoid conflicting decisions.

2. The Learned Authorized Representative (Ld.AR) for the assessee submits that all the appeals may be grouped in three categories, out of which facts in ITA Nos.555 577 & 578/Srt/2023 are common and in second group in ITA No. 556 & 688/Srt/2023 are common and in remaining appeal in ITA No. 852/Srt/2023, the facts are unique, though common grounds of appeal is raised. With the consent of both the parties, the appeal in ITA No.555/SRT/2023 in the case of “Gujarat Hira Bourse” is treated as “**lead**” case. The assessee in its appeal has raised the following grounds of appeal:-

- “(1) The learned CIT(Exemption) was not justified in rejecting application for final approval u/s 80G of the Act.*
- (2) The learned CIT(Exemption) was not justified in rejecting the 80G application on technical grounds.*
- (3) The appellant craves leave to add, alter or vary any of the ground(s) of appeal.”*

3. Brief facts *qua* the issue are that assessee was incorporated / set-p on 14.12.2000 and started its activities. After amendment in the Income Tax Act, 1961 by Finance Act, 2021, the assessee applied for provisional approval under section 80G(5), which was allowed to the assessee on 01.12.2022 and is valid up to assessment year (AY) 2025-26. The assessee applied for regular approval under Section 80G(5) on 19.01.2023. The assessee furnished details of activities in furtherance of its Memorandum of Association, to prove object of trust and its activities. The Ld.CIT(E) on receipt of application issued show cause notice to the assessee for seeking certain details. The assessee vide reply dated 01.05.2023 furnished required details. The Ld.CIT(E) on considering the details and by referring the Central Board of Direct Taxes (CBDT in short) Circular No.6 of 2023 [F.No.370133/06/2023-TPL] dated 24-05-2023, held. that in case of assessee the commencement of its activities is from 14.12.2000 and the assessee was required to obtain

approval in Form-10AB on or before 30.09.2022, the application has not been filed within time and the same was rejected by taking view that application for approval is “not maintainable”. Aggrieved by the order of Ld.CIT(E) the assessee has filed present appeal before the Tribunal.

4. We have heard the submission of learned authorised representative (Ld. AR) of the assessee and learned Commissioner of Income-tax-Departmental Representative (Id. CIT-DR) for the Revenue. The Ld. AR for the assessee submits that the assessee is old. institute and never applied for approval under section 80G, prior to amendment for amendment in procedure of registration under section 12AB as well as 80G. The Id. AR for the assessee submits that after amendment in registration procedure there could. be four different possible situation; (i) new institution established after 01.04.2021 and does not undertake any activities during the tenure of provisional approval and apply for regular under clause (iii), in second situation trust is setup after 01.04.2021 and commence activities during the provisional registration and apply for regular registration, in third situation started activities prior to 01.04.2021 and have no approval under section 80G and makes an application for provisional approval before 30.09.2022 and makes application for regular approval, and by strictly going through clause (iii) of proviso, will never get registration because its activities were started much prior and not six months from the expiry of the date of provisional registration. As per harmonious interpretation of first proviso to sub-section (5) of section 80G as the assessee-trust is an old institute and it did not hold. registration under section 80G prior to the amendment and it wanted to get registered under section 80G(5), so such benefits to the donors cannot be denied. The Ld. AR

of the assessee relied on the case law in the case of Bhamashah Sundarlal Daga Charitable Trust vs. CIT(E), Jaipur in ITA No.278/Jodh/2023 dated 10.11.2023 and in the case of Kavita Jasjit Singh vs. CIT(A) in ITA No.1981/Mum/2023 dated 14.09.2023. The Id. AR for the assessee with the permission of bench also filed short written submissions on various submissions.

5. On the other hand, Ld.CIT-DR for the Revenue supported the order of Ld.CIT(E). The Ld.CIT-DR submits that as per CBDT's Circular, the assessee was required to apply for approval either within the extended prescribed period in CBDT's Circular No.8/2022 [F.No.197/59/2022-ITA-I] dated 31.03.2022, wherein time limit for filing application was extended up to 30.09.2022 or within six months from starting of activities, which is earlier. Thus, application filed by the assessee on 09.01.2023 for approval under section 80G(5), which is clearly time barred.
6. We have considered the submissions of both the parties and perused the order of Id. CIT(E) and our record carefully. We find that there is no much dispute on the facts of the case. Admittedly, the assessee is an old. charitable institution which has been enjoying registration under Section 12A. Admittedly, the assessee has for the first time obtained the provisional approval under Section 80G(5) of the Act by order dated 01/12/2022. The assessee immediately on obtaining provisional approval and applied for regular approval on 09/01/2023. We find that the Id. CIT(E) rejected the application on the ground that the application is not filed within time limit prescribed under clause (iii) of third proviso of section 80G(5). We find that on similar set of facts, the

Coordinate Bench of Jodhpur Tribunal in the case of Bhamashah Sundarlal Daga Charitable Trust Vs CIT(E) (supra) passed the following order:

- “6. *The new provision for Registration was introduced by Finance Act 2020. There was amendment in the registration procedure by Finance Act 2020. For the first time the Finance Act 2020 introduced the concept of “Provisional Approval”. Also due to the amendment, all the existing Trust/Institutions which were already having registration u/s12AA or 80G(5) were asked to re-apply for registration as per the amendment brought in 2020 and a date was specified before which all those Trust/Institutions already having Registration was required to make a fresh application as per the amendment procedure.*
7. *In this background we have to interpret the relevant provisions. To interpret the provisions, we shall refer to the Budget Speech of the Hon’ble Finance Minister.*
- 7.1 *The Hon’ble Supreme Court in the case of K P Varghese Vs. ITO [1981] 131 ITR 597 (SC) has observed as under regarding use of Speech of a Minister as a tool in interpretation:*
- “ Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is an accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should. be admissible. In fact there are at least three decisions of this Court, one in Sole Trustee, Loka Shikshana Trust v. CIT [1975] 101 ITR 234, the other in Indian Chamber of Commerce v. CIT [1975] 101 ITR 796 and the third in Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1/[1980] 2 Taxman 501, where the speech made by the Finance Minister, while introducing the exclusionary clause in section 2(15) of the Act, was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause.”*
- 7.2 *The Hon’ble Supreme Court has approved use of Hon’ble Minister’s speech as tool of interpretation to understand the intent of the Statute.*
- Extract of relevant part of Speech of Hon’ble Finance Minister:*

8. *The Hon'ble Finance Minister in Budget Speech 2020 has said as under "In order to simplify the compliance for the new and existing charity institutions, I propose to make the process of registration completely electronic under which a unique registration number (URN) shall be issued to all new and existing charity institutions. Further, to facilitate the registration of the new charity institution which is yet to start their charitable activities, I propose to allow them provisional registration for three years. " Unquote.*

Finance Bill 2020 : "(vi) an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier"

9. *Thus these amendments were introduced to simplify the procedure of registration of Charitable Trusts/Institutions. The amendment made to simplify a procedure cannot be interpreted in a way that it causes prejudice to the Trust/institutions.*
10. *Thus, when we read the Budget Speech of the Hon'ble Finance Minister 2020 and the Memorandum of Finance Bill, 2020 together, it becomes clear that the concept of Provisional registration was mainly to facilitate the registration of newly formed Trust/Institutions which have not yet begun the activities. The parliament in its wisdom has decided to differentiate between the Trust which were newly formed and the trust which were already doing charitable activities. In the second category of cases, there are again two possibilities, one trust was already doing charitable activities and was already having Registration u/s 12AA or 80G(5) of the Act, such trust were directed to re-apply for registration under new procedure on or before 30th August, 2020 but due to Covid-19 this date was subsequently extended. There is Second category of trust/institutions which were already doing Charitable Activities but had never applied for registration u/s.80G(5) of the Act. It is not mandatory that every charitable trust/institution has to apply for registration u/s.80G(5) of the Act. However, there is no bar in the Act that such trust or institutions*

cannot apply for registration u/s80G in the new procedure. In these kinds of cases, the Trust/Institute though doing charitable activity may apply first for the 'Provisional Registration 'under the Act. After getting the Provisional Registration the Trust/Institution have to apply for Regular registration. These kind of Trust/Institutes will fall under sub clause (iii) of the Proviso to Section 80G(5) of the Act, since they have obtained Provisional registration.

10.1 *In this background, we need to read the sub-clause (iii) of the Proviso to Section 80G(5) of the Act. For ready reference it is again reproduced here under :*

“ 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”

10.2 *The sub-clause says that the Institution which have provisional registration have to apply at-least six months prior to expiry of the provisional registration or within Six months of commencement of activities, whichever is earlier.*

10.3 *In continuation of this when we read the 'sub clause iii of Proviso' of section 80G(5), which we have already reproduced above, it is clear that the intention of parliament in putting the word “**or within six months of commencement of its activities, whichever is earlier**” is in the context of the newly formed Trust/institutions. For the existing Trust/Institution, the time limit for applying for Regular Registration is within six months of expiry of Provisional registration if they are applying under sub clause (iii) of the Proviso to Section 80G(5) of the Act. This will be the harmonious interpretation.*

11. *If we agree with the interpretation of the Id.CIT(E), then say a trust which was formed in the year 2000, performed charitable activities since 2000, but did not applied for registration u/s.80G, the said trust will never be able to apply for registration now. This in our opinion is not the intention of the legislation. This interpretation leads to absurd situation.*

11.1 *In this context, we will like to refer to observations of the Hon'ble Supreme Court in the case of K P Varghese (supra), where in Hon'ble SC observed as under :*

“It is a well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the

construction suggested on behalf of the revenue would. lead to a wholly unreasonable result which could. never have been intended by the Legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement - the market price shoots up with the result that the market price prevailing on the date of the sale exceeds the agreed price at which the property is sold. by more than 15 per cent of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would find in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold. under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no understatement of consideration in respect of the transfer and the transaction is perfectly honest and bona fide and, in fact, in fulfilment of a contractual obligation, the assessee who has sold. The property should. be liable to pay tax on capital gains which have not accrued or arisen to him. It would. indeed be most harsh and inequitable to tax the assessee on income which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the Legislature should. have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carries out such contractual obligation. It would indeed be strange if obedience to the law should. attract the levy of tax on income which has neither arisen to the assessee nor has been received by him. If we may take another illustration, let us consider a case where A sells his property to B with a stipulation that after sometime, which may be a couple of years or more, he shall resell the property to A for the same price Could it be contended in such a case that when B transfers the property to A for the same price at which he originally purchased it, he should. be liable to pay tax on the basis as if he has received the market value of the property as on the date of resale, if, in the mean-while, the market price has shot up and exceeds the agreed price by more than 15 per cent. Many other similar situations can be contemplated where it would. be absurd and unreasonable to apply section 52(2) according to its strict literal construction. We must, therefore, eschew literalness in the interpretation of section 52(2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where

the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even 'do some violence' to it, so as to achieve the obvious intention of the Legislature and produce a rational construction".

11.2 Thus, as observed by Hon'ble Supreme Court, that the statutory provision shall be interpreted in such a way to avoid absurdity. In this case to avoid the absurdity as discussed by us in earlier paragraph, we are of the opinion that the words, "within six months of commencement of its activities" has to be interpreted that it applies for those trusts/institutions which have not started charitable activities at the time of obtaining Provisional registration, and not for those trust/institutions which have already started charitable activities before obtaining Provisional Registration. We derive the strength from the Speech of Hon'ble Finance Minister and the Memorandum of Finance Bill 2020.

11.3 Therefore, in these facts and circumstances of the case, we hold. that the Assessee Trust had applied for registration within the time allowed under the Act. Hence, the application of the assessee is valid and maintainable.

12. Even otherwise, the Provisional Approval is upto A.Y.2025-26, and it can be cancelled by the Id.CIT(E) only on the specific violations by the assessee. However, in this case the Id.CIT(E) has not mentioned about any violation by the Assessee. Therefore, even on this ground the rejection is not sustainable.

13. However, the Id.CIT(E) has not discussed whether the Assessee fulfils all other conditions mentioned in the section as he rejected it on technical ground. Therefore, in these facts and circumstances we hold. that the Assessee had made the application in form 10AB within the prescribed time limit and hence it is valid application. Therefore, we direct the Id.CIT(E) to treat the application as filed within statutory time and verify assessee's eligibility as per the Act. The Id.CIT(E) shall grant opportunity to the assessee. Assessee shall be at liberty to file all the necessary documents before the Id.CIT(E).

14. Accordingly, the appeal of the assessee is allowed for statistical purpose. Since we have set aside to Ld.CIT(E), we do not intend to adjudicate each ground separately."

7. In view of the aforesaid factual and legal discussions and respectfully following the decision of Coordinate Bench of Jodhpur, we restore the matter

back to the file of Id. CIT(E) to reconsider the application afresh by following the decision of Jodhpur Bench in Bhamashah Sundarlal Daga Charitable Trust Vs CIT(E) (supra) and to pass order afresh in accordance with law. Needless to order that before passing order, the Id. CIT(E) shall grant reasonable opportunity of hearing. The assessee is also given liberty to file additional submission before Id. CIT(E) before passing such order. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

ITA No. 577/Srt/2023 & ITA No. 578/Srt/2023

9. As noted above, the facts in both appeals are similar with ITA No. 555/Srt/2023, both the appellant-trust were old. and never applied for obtained approval under section 80G, both the appellant-trust for the first time obtained provisional approval on 01.12.2022 and on 19.01.2022 and immediately applied for regular approval. Application of both the appellant-trust were rejected by holding time barred. Considering the facts that on similar set of facts, we have restored the appeal of assessee in ITA No. 555/Srt/2023, therefore, following the principal of consistency these two appeals are also restored with similar directions.

10. In the result, both the appeals in ITA No. 577 & 578/Srt/2023 are allowed for statistical purpose.

ITA No. 556/Srt/2023, (GHB Green Foundation)

11. The assessee in the present case was incorporated on 09.09.2021 and started its activities. The assessee applied for provisional approval under section 80G(5) on 09.01.2023 and was granted provisional approval on 19.01.2023, which is valid up to AY 2025-26. The assessee applied for regular approval

under section 80G(5) vide application dated 31.01.2023 in Form-10AB. The application of the assessee was rejected vide order dated 21.07.2023 by taking view that commencement of activities of the assessee is 09.09.2021 and the assessee was required to apply for regular approval under section 80G(5) on or before 30.09.2022, which the assessee failed, as per clause (iii) of proviso of section 80G(5).

12. The Id. AR for the assessee submits that the activities of the assessee are not disputed and the assessee also satisfy the condition of clause (ii) of second proviso to section 80G(5). The only dispute is with regard to time limit within which the assessee ought to have applied for regular registration. The Id. AR for the assessee submits that he adopts the similar submissions as made in earlier appeals and also relied on the same case laws. In addition to, in alternative submissions, the Id. AR for the assessee submits that the delay in filing / applying for regular approval of 123 days i.e. from 30.09.2023 till 31.01.2023 may be condoned as the assessee was under bonafide belief that the assessee has applied for approval well within time. The assessee acted in a bonafide manner and applied for regular approval immediately on receipt of provisional approval. The assessee, otherwise fulfil all the requisite conditions.
13. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. CIT(E) and would submit that order impugned in the present appeal is as per statutory provisions and should. not be questioned by taking pleas of harmonious interpretation etc.
14. We have considered the rival submissions of both the parties and gone through the order of Id. CIT(E) carefully. We find that there is no much dispute on the facts regarding the starting of the activities of the assessee and for the

date of application for regular application for approval under section 80G(5). The only dispute is if the application is within time as per provisions of clause (iii) of proviso to section 80G(5) or if delay can it be condoned or not. We find that combination of this bench in Vananchal Kelawani Trust Vs CIT(E) in ITA No. 728/Srt/2023, while considering the similar plea of that assessee condoned the delay in filing application under section 80G(5) by following the decisions of Hon'ble Delhi High Court in DCIT(E) vs. Vishwa Jagriti Mission [2013] 30 taxmann.com 41(Delhi). On careful reading of decision of Delhi High Court, we find that main question in DCIT(E) vs. Vishwa Jagriti Mission (supra) was whether the Tribunal was justified in condoning the delay in the filing of the application for registration under section 12A of the Act and whether the view taken by the Tribunal is perverse. The High Court held. that order of Tribunal in condoning the delay cannot be branded as perverse or unreasonable or irrational. While upholding the order of Delhi Tribunal, Delhi High Court referred decisions of Hon'ble Apex Court in Ram Nath Sao Vs Gobardhan Sao [2002] 3 SCC 195 and in Land Acquisition Collector Vs Mst Katji (167 ITR 471 SC). Thus, following the same ratio of our decision, the delay in filing application for regular approval under section 80G(5) of 123 days are condoned. Considering the facts that we have condoned the delay in filing application for regular approval, therefore, the appeal is restored back to the file of Id. CIT(E) to reconsider it afresh and pass order in accordance with law. Needless to direct that before passing the order Id. CIT(E) shall grant opportunity to the assessee to filed additional submissions, if so desired.

15. In the result, this appeal is also allowed for statistical purpose

ITA No. 688/Srt/2023 (Shreemati Shantaben Haribhai Gajera Foundation)

16. We find that facts of the present appeal is similar with the facts in ITA No. 556/Srt/2023, wherein we have condoned the delay in filing application for regular approval. Thus, following the principal of consistency similar delay of 182 days in filing application is also condoned in the present appeal. Further considering the facts that we have condoned the delay of 182 days in filing application for regular approval, hence, this appeal is also restored back to the file of Id. CIT(E) to reconder the facts of present appeal and pass order afresh in accordance with law. Needless to direct that before passing the order Id. CIT(E) shall grant opportunity to the assessee to filed additional submissions, if so desired.

17. In the result, this appeal is also allowed for statistical purpose.

ITA No. 852/Srt/2023 (SDA Aarogya Trust)

18. The assessee in the present case was incorporated on 01.09.2021 and claimed to have started its activities from 23.12.22. The assessee applied for provisional approval under section 80G(5) on 30.10.2021 and was granted provisional approval on 06.11.2021, which is valid up to AY 2024-25. The assessee applied for regular approval under section 80G(5) vide application dated 26.04.2023 in Form-10AB. The application of the assessee was rejected vide order dated 17.10.2023 by taking view that commencement of activities of the assessee is 28.07.2022 and the assessee was required for regular approval under section 80G(5) on or before 28.01.2023, which the assessee failed, as per clause (iii) of proviso of section 80G(5).

19. The Id. AR for the assessee submits that limited dispute in this particular appeal is, on which date the activities of assessee commenced. The assessee received certain donation on 28.07.2022, which was considered as

commencement of activities by Id. CIT(E), which is not correct. The assessee was allocated land by Surat Municipal Corporation (SMC) only on 28.12.2022 for starting of its project. The assessee applied for regular approval on 26.04.2023, which is well within time as per the language of section 80G(5) read with its clause (iii) of proviso attached thereto. The Id. AR for the assessee submits that mere receipt of donation is not charitable activities, unless the real beneficiary availed the benefits of activities in furtherance of object of the assessee. At the worst the date of allotment from SMC may be considered for considering for counting the period of six month jugglery in clause (iii) of section 80G(5) and as such the application of assessee is well within time. The Id. AR for the assessee submits that Id. CIT(E) has not disputed any other facts, thus, the assessee is eligible for regular approval. The Id. CIT(E) cancelled provisional approval without giving show cause notice, which is against the principal of natural justice.

20. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. CIT(E) and would submit that the real commencement of activities of assessee was rightly find out from the annual accounts of assessee, which is which is 28.07.2022 and the application was not filed well within six months as per statutory provisions of law.
21. We have considered the rival submissions of the parties and have gone through the order of Id. CIT(E) as well as material placed before us. We find that on facts of the present appeal, there is no dispute. The only issue for our consideration is if the receipt of donation can be considered as commencement of its activities. We find that the assessee was allotted land from SMC vide allotment letter dated 23.12.2022 only. The assessee applied

for regular approval on 23.04.2023. We find merit in the submissions of the assessee that the activities of assessee-trust in real sense starts from the day when the beneficiary is actually got benefits of the activities carried out by institution in furtherance of its objects and that mere receipt of donation is not a commencement of charitable activities. We also accept the contention of Id. AR for the assessee that in his case for the purpose of counting six months at the worst the date of allotment from SMC, which is 23.12.2022. Considering the peculiar facts of the present case, this appeal is restore back to the file of Id. CIT(E) to verify limited facts that if the assessee fulfil all other requisite conditions and to allow them approval under section 80G(5) in accordance with law. In the result, the grounds of appeal in the present appeal is allowed.

22. In the result, this appeal is allowed.

Order pronounced in the open court on 16/01/2024

Sd/-
(Dr ARJUN LAL SAINI)
[ACCOUNTANT MEMBR]

Sd/-
(PAWAN SINGH)
[JUDICIAL MEMBER]

Surat, Dated: 16/01/2024
Dkp. Out Sourcing Sr.P.S
Copy to:
1. Appellant
2. Respondent/ CIT(E)
3. DR
4. Guard File

// True Copy //

By order

Sr.P.S./Assistant Registrar, ITAT, Surat