

# FORM NO. 10AC

(See rule 17A/11AA/2C)

Order for provisional approval

|    |  |  |
|----|--|--|
| 1  | PAN  | AACTM1118K   |
| 2  | Name   | MASOOM   |
| 2a | Address  |  |
|    | Flat/Door/Building   | B-402 EMGEE GREENS   |
|    | Name of premises/Building/Village  |  |
|    | Road/Street/Post Office  | "S M ROAD, WADALA EAST"  |
|    | Area/Locality  | MUMBAI   |
|    | Town/City/District   | MUMBAI   |
|    | State  | MAHARASHTRA  |
|    | Country  | INDIA  |
|    | Pin Code/Zip Code  | 400037   |
| 3  | Document Identification Number   | AACTM1118KF2021401   |
| 4  | Application Number   | 346666641300421  |
| 5  | Provisional Approval Number  | AACTM1118KF20214   |
| 6  | Section/sub-section/clause/sub-clause/proviso in which provisional approval is being granted   | 11-Clause (i) of first proviso to sub-section (5) of section 80G |
| 7  | Date of provisional approval   | 28-05-2021   |
| 8  | Assessment year or years for which the trust or institution is provisionally approved  | From AY 2022-23 to AY 2026-27                                    |
| 9  | Order for provisional approval:  |  |
|    | a. After considering the application of the applicant and the material available on record, the applicant is hereby granted provisional approval with effect from the assessment year mentioned at serial no 8 above subject to the conditions mentioned in row number 10.   |  |
|    | b. The taxability, or otherwise, of the income of the applicant would be separately considered as per the provisions of the Income Tax Act, 1961.  |  |
|    | c. This order is liable to be withdrawn by the prescribed authority if it is subsequently found that the activities of the applicant are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it is granted, if it is found that the applicant has obtained the provisional approval by fraud or misrepresentation of facts or it is found that the assessee has violated any condition prescribed in the Income Tax Act, 1961. |  |
| 10 | Conditions subject to which provisional approval is being granted  |  |
|    | The provisional approval is granted subject to the following conditions:-  |  |

|   |   |
|---|---|
| <p>a. No change in the deed of the applicant trust/society/non profit company or any of its bye-laws shall be affected without the due procedure of law and the approval of the Competent Authority as per provisions of law and its intimation shall be given immediately to Office of the Jurisdictional Commissioner of Income Tax and to the Assessing Officer.</p>   |   |
| <p>b. Any change in the trustees or address of the applicant trust/society/non-profit company shall be intimated forthwith to Office of the Jurisdictional Commissioner of Income Tax and to the Assessing Officer.</p>   |   |
| <p>c. The applicant trust/society/non profit company shall maintain its accounts regularly and also get them audited as per the provisions of section 80G(5)(iv) read with section 12A(1)(b)/10(23C) of the Income Tax Act,1961.</p>  |   |
| <p>d. Certificate of donation shall be issued to the donor in form no 10BE, as per the provisions of rule 18AB.</p>   |   |
| <p>e. No cess or fee or any other consideration shall be received in violation of section 2(15) of the Income Tax Act, 1961.</p>  |   |
| <p>f. The trust/society/non profit company shall file the return of income of its trust/society/non profit company as per the provisions of section 139(1)/(4A)/(4C) of the Income Tax Act, 1961.</p>   |   |
| <p>g. The approval granted through this order shall apply to the donations received only if the applicant trust/society/non profit company, established in India for charitable purpose, fulfills the conditions laid down in section 80G(5) of the Income Tax Act, 1961 and the religious expenditure does not exceed the limit specified in section 80G(5B) of the said Act.</p>  |   |
| <p>h. If the applicant trust/ society/ non-profit company derives any income, being profits and gains of business, it shall maintain separate books of account in respect of such business as provided in section 80G(5)(i) of the Income Tax Act,1961. Further, any donation received by the applicant shall not be used, directly or indirectly, for the purposes of such business and a certificate shall be issued to every person making a donation to the effect that the applicant maintains separate books of account in respect of the business and the donation received by it will not be used, directly or indirectly, for the purpose of the business.</p> |   |
| <p>i. The applicant shall comply with the provisions of the Income Tax Act, 1961 read with the Income Tax Rules, 1962.</p>  |   |
| <p>j. The approval and the Unique registration number has been instantly granted and if, at any point of time, it is noticed that form for approval has not been duly filled in by not providing, fully or partly, or by providing false or incorrect information or documents required to be provided under sub-rule (1) or (2) of rule 11AA or by not complying with the requirements of sub- rule (3) or (4) of the said rule, the approval and Unique Registration Number (URN), shall be cancelled and the approval and URN shall be deemed to have never been issued or granted.</p>  |   |
| <p>Name and Designation of the Approving Authority</p>  | <p>Principal Commissioner of Income Tax/ Commissioner of Income Tax<br/><br/>(Digitally signed)</p> |

Signature valid  
Digitally signed by S DIT (CPC)  
1  
Date: 2021.05.28 17:03:46 IST

**OFFICE OF THE DIRECTOR OF INCOME-TAX (EXEMPTION),**  
6th FLOOR, PIRAMAL CHAMBERS, PAREL, MUMBAI-400 012.

ORDER NO.DIT(E)/MC/80G/1126/2008/2008-09

Name & Address of the Trust/  
Institution/Association : **MASOOM**  
B-402, EMGEE GREENS, INDIA STEEL GATE,  
S.M. ROAD, WADALA (E),  
MUMBAI - 400 037.

PAN : AAC TM 1118 K

12-A Registration No. : TR/41986 dated 24.09.2008

Date of application : 03.10.2008

Date of Order : 06.01.2009

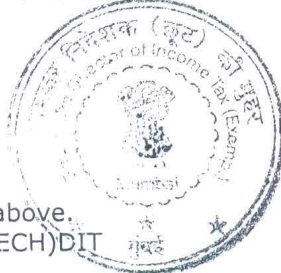
**UNDER SECTION 80-G OF THE I. T. ACT**  
**(INITIAL/RENEWAL)**

On verification of the facts stated before me/hearing before me I have come to the conclusion that this organisation has satisfied the conditions u/s.80-G of the I.T. Act, 1961. It shall henceforth satisfy the conditions u/s.80-G(5) as laid down below:

1. The Donee Institution shall forfeit this benefit provided under the law if any one of the conditions stated herein is not applied with/flouted/abused/whifled down or in any way violated.
2. This exemption is valid for the period from **03.10.2008 to 31.03.2011** and subject to the following conditions:

**CONDITIONS :**

- i. You shall mainain your Accounts regularly and also get them audited to comply with section 80-G(5)(iv) read with section 12A(b) of the I. T. Act.
- ii. Every receipt issued to a donor shall bear the number and date of this order and shall state the date upto which this certificate is valid i.e. Assessment Year **2011-2012**.
- iii. No change in the Deed of the Trust/Association shall be effected without due procedure of law i.e. by the order of the jurisdictional High Court and its intimation shall be given immediately to this office.
- iv. Under the provisions to section 80-G if you are registered u/s.12A, u/s.12AA(1)(b) or approved u/s.10(23), 10(23C)(vi)/(via), etc., shall have to maintain separate books of accounts in respect of any business activity carried on u/s.80-G(5)(i)(a) and shall intimate it within one month of commencement of such activity to this office.
- v. Under the provisions of section 80-G any donation received shall not be utilised for the purpose of any such business carried on whether directly/indirectly.
- vi. While issuing the certificate to the Donor the commitment made above should be honoured and it shall not be abused/used in any other purpose.
- vii. The institution shall ensure that no Non-Charitable purpose shall be served or sought to be served by the Trust/Society/Non-Profit Company as is informed in terms of Yogiraj Trust reported in 107 ITR 777 (SC).
- viii. It shall be ensured that at no time you shall utilised the institution or its funds for the benefits of any particular Religious community or caste prohibited u/s.80G(5)(iii).
- ix. This office and the Assessing Officer shall also be informed about the Managing Trustee/Manager of your Trust/Society/Non Profit Company and the place where the activities of the Trust/Institution are undertaken/likely to be undertaken to satisfy the claimed objects.
- x. In case Renewal is not sought from this office the manner in which the Assets shall be used/the purposed for which they shall be used shall be immediately informed to this office.
- xi. Religious expenditure should not exceed more than 5% of its total income.
- xii. The certificate u/s.80G of the I.T. Act 1961 does not automatically exempt the income of the Trust/Institution.



sd/-  
**( R. K. SINHA )**  
Director of Income Tax (Exemption),  
Mumbai.

Copy to :

1. The applicant as above.
2. Guard File, ITO(Tech)DIT

sd/-  
**( MANULAL BAITHA )**

## Approval u/s. 80G once granted shall continue to be valid in perpetuity unless a show cause notice issued by CIT showing intention to withdraw such approval

- Thursday, December 29, 2011, 16:23
- [Income Tax Case Laws](#)
- [Judiciary](#)
- 452 views

**Lions Club of Calcutta Hastings Vs DIT (Exemption)- (ITAT Kolkata)-** *In the present case no show cause notice has been issued to the assessee. Therefore, we do not see any merit in this contention of the Id. Commissioner of Income Tax to withdraw approval. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the Id. Commissioner of Income Tax was not justified in withdrawing approval once granted because the Legislature in all its wisdom has sought to omit this proviso to section 80G(5)(vi) of the Act and after omission of the said proviso, the approval once granted shall continue to be valid in perpetuity unless and until a show cause notice is issued by the concerned CIT showing his intention to withdraw already granted such approval. However, in the instance case, the CIT without issuing any such notice has withdrawn approval. We, therefore, set aside the impugned order of the Id. Commissioner of Income Tax and accordingly approval u/s. 80G(5) of the Act already granted to the assessee shall continue unless and until the concerned authority takes appropriate action in accordance with law.*

**INCOME TAX APPELLATE TRIBUNAL, KOLKATA**  
**I.T.A No. 2019/Kol/2010- Assessment Year : 2011-2012**

Lions Club of Calcutta Hastings, Kolkata  
**Vs**

Director of Income Tax (Exemption),  
**Date of Pronouncement : 12.12.2011**

### **ORDER**

**Per Shri Mahavir Singh, Judicial Member**

This appeal by assessee is arising out of the order of Id. Director of Income-Tax (Exemption), Kolkata vide order No.DIT(E)/8E/247/03-04/2621-23 dated 24.09.2010, vide which he rejected the renewal application filed in Form No. 10G for claiming deduction under section 80G(5)(vi) of the Income Tax Act, 1961 (hereinafter to be referred to as "The Act").

2. We have heard the rival contentions and gone through the facts and circumstances of the case. The brief facts are that the assessee is a charitable Institution registered under section 12AA of the Act by DIT(Exemption), Kolkata vide order dated 30.06.2004. According to assessee, the Institution has been carrying on charitable activities like organizing eye operation camps and providing eye glasses and other connected services with the treatment of eyes in rural areas. According to assessee, the Institution has also been conducting mass community marriages in rural areas and also giving financial help to poor for marriages. The assessee stated the fact that certificate of exempt deduction under section 80G(5)(vi) dated 30.06.2004 was issued by DIT(Exemption), Kolkata for a period from 03.12.2003 to 31.03.2005. The certificate of exemption was renewed further by order dated 19.10.2005 of DIT(Exemption), Kolkata for a further period from 01.04.2006 to 31.03.2010. The assessee filed application dated 15.03.2010 for further renewal in Form No. 10G under section 80G(5)(vi) of the Act and DIT (Exemption) without a speaking order and even though there was change in renewal provision that the exemption is to be granted in perpetuity, rejected the application. We find that section 80G(5)(vi) of the Act contained a proviso which reads as "Provided that any approval shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval". Further, considering the hardship of the said proviso, legislature omitted this proviso by the Finance (No.2) Act, 2009 w.e.f. 01.10.2009, but in this case, approval was granted upto 31.03.2010. Therefore, in view of the aforesaid omission of the said proviso, the exemption granted to assessee upto 31.03.2010 continued to be valid thereafter. This position has been explained by the [CBDT Circular No. 5](#) explaining the provisions of Finance (No. 2) Act, 2009 in para 29.7 of the Circular, which reads as under :-

*"This amendment has been made applicable with effect from 1<sup>st</sup> October, 2009. Accordingly, existing approvals expiring on or after 1<sup>st</sup> October, 2009 will be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1st October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn".*

3. We find that a similar issue was decided on 28.02.2011 by Lucknow Bench 'A' of ITAT in ITA No. 674/Luc./2010 in the case of M/s. Association for Advocacy and Legal Initiatives, Lucknow –vs.- CIT-I, Lucknow, wherein in paras 10, 11, 12 & 13 Tribunal has observed as under :

*"10. We have considered the submissions of both the parties and carefully gone through the material available on record. In the instant case, it is not in dispute that the assessee-trust is registered with the Sub-Registrar, Lucknow, having registration u/s. 12AA of the Act also which has been granted by the Id. Commissioner of Income Tax, Lucknow vide order dated 10.2.2010. The assessee was also granted approval u/s. 80G(5)(vi) of the Act w.e.f. 10.3.2000 which was valid till 31.3.2003 and later on renewal of the approval under the said section was granted vide order dated 9.9.2003 from 1.4.2003 to 31.3.2006, again vide order dated 7.12.2006 from 1.4.2006 to 31.3.2008 and finally vide order dated 16.9.2008 from 1.4.2008 to 31 .3.2010 by the Id. Commissioner of Income Tax-I, Lucknow. The copies of the said orders are placed at pages 41, 40 and 39 respectively of the assessee's paper book. Earlier as per provisions contained in clause (vi) to sub-section (5) of section 80G, the approval was to be granted by he Id. Commissioner of Income Tax in accordance with Rules prescribed in Rule 12AA of the Income-tax Rule, 1962 and as per the proviso to section 80G(5)(vi) of the Act, the approval was to be renewed from time to time. However, considering the hardship, the Legislature in all its wisdom has sought to omit this proviso on 1.10.2009 vide its Finance (No.2) Act, 2009. Therefore now approval once granted shall continue to be valid in perpetuity. In the instant case, the approval was granted to the assessee upto 31.3.2010, therefore, in view of the aforesaid omission of the proviso to section 80G(5)(vi) of the Act vide Finance (No.2) Act, 2009, the approval once granted shall continue to be valid in perpetuity. The memo explaining the provisions in Finance (No.2) Bill, 2009 as reported in 314 ITR 193 (St.) at page 194 reads as under:*

*"This amendment will take effect from 1st day of April, 2009 and shall accordingly, apply in relation to assessment year 2009-70 only. Further as per clause (vi) of sub-section (5) of section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rules, 1962 The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval Due to this limitation imposed on the validity of such approvals, the approved*

*institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bona fide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner. Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetuity. Further, the Commissioner will also have the power to withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund.*

*This amendment will take effect from 1st day of October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been "extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1st October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn".*

*11. From the above it is crystal clear that the approval once granted u/s. 80G(5)(vi) of the Act shall continue in perpetuity. It is also noticed that the CBDT issued its circular No.5 being "Explanatory circular for Finance (No.2) Act, 2009" and para 29.7 of the said Circular reads as under: "29.7. Applicability – This amendment has been made applicable w.e.f. 1st October 2009. Accordingly, existing approvals expiring on or after 1st October 2009 will be deemed to have been extended in perpetuity unless specially withdrawn. However, in case of approvals expiring before 1st October 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn."*

*12. The aforesaid Circular is in favour of the assessee and even if the assessee by ignorance or inadvertently filed an application for renewal, the CIT was required to decide the same in accordance with the amended provisions. As regards the contention of the Id. D.R. that the provisions contained in 293C of the Act enables the CIT to withdraw approval is concerned, it is noticed that the said section has been inserted by the Finance (No.2) Act, 2009 w.e.f. 1.10.2009 i.e. from the date on which provisions of section 80G(5)(vi) has been withdrawn, the provisions contained in 293C read as under:*

*293C. Where the Central Government or the Board or an income-tax authority, who has been conferred upon the power under any provision of this Act to grant any approval to any assessee, the Central Government or the Board or such authority may, notwithstanding that a provision to withdraw such approval has not been specifically provided for in such provision, withdraw such approval at any time. Provided that the Central Government or Board or income-tax authority shall, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the assessee concerned, at anytime, withdraw the approval after recording the reasons for doing so.]"*

*13. From the proviso attached to the section 293C of the Act, it is crystal clear that even if any Income-tax Authority wants to withdraw approval, he shall issue a show cause notice against the proposed withdrawal to the assessee concerned and after giving a reasonable opportunity of being heard shall withdraw approval after recording reasons for doing so. The use of the word "shall" in the aforesaid proviso makes it mandatory for Commissioner of Income-tax to issue a show cause notice to the assessee against the proposed withdrawal of approval granted u/s. 80G(5) of the Act. However, in the present case no such show cause notice has been issued to the assessee. Therefore, we do not see any merit in this contention of the Id. Commissioner of Income Tax to withdraw approval. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the Id. Commissioner of Income Tax was not justified in withdrawing approval once granted because the Legislature in all its wisdom has sought to omit this proviso to section 80G(5)(vi) of the Act and after omission of the said proviso, the **approval once granted shall continue to be valid in perpetuity unless and until a show cause notice is issued by the concerned CIT showing his intention to withdraw already granted such approval.** However, in the instance case, the CIT without issuing any such notice has withdrawn approval. We, therefore, set aside the impugned order of the Id. Commissioner of Income Tax and accordingly approval u/s. 80G(5) of the Act already granted to the assessee shall continue unless and until the concerned authority takes appropriate action in accordance with law".*

*4. In view of the above and the decision of ITAT, Lucknow Bench in the case of M/s. Association for Advocacy and Legal Initiatives (supra), since the assessee was having valid exemption upto 31.03.2010, because of ignorance of the A/R of assessee, a mistaken application for renewal of exemption was filed, the same should not have been rejected for violation of the provisions of section 11(1)(a). In case, there is a violation of the provisions of section 11(1)(a), the relevant additions could have been made by the Assessing Officer in the hands of the Trust disallowing the exemption to the assessee accordingly. But in any case, renewal of exemption under section 80G(5)(vi) cannot be denied. Accordingly, we direct the DIT(Exemption), Kolkata to allow the exemption and this issue of appeal of the assessee is allowed.*

*5. In the result, the appeal filed by the assessee is allowed.*

Read more: [Approval u/s. 80G once granted shall continue to be valid in perpetuity unless a show cause notice issued by CIT showing intention to withdraw such approval http://taxguru.in/income-tax-case-laws/approval-80g-granted-continue-valid-perpetuity-show-notice-issued-cit-showing-intention-withdraw-approval.html#ixzz1iqCwevMg](http://taxguru.in/income-tax-case-laws/approval-80g-granted-continue-valid-perpetuity-show-notice-issued-cit-showing-intention-withdraw-approval.html#ixzz1iqCwevMg)

This matter regarding not requiring renewal of recognition u/s 80G in view of circular no.7/2010 dated 27.10.2010 has been thrashed by the Alld. High Court in the case of Banu Har Govind

Dayal Trust vs. ITAT (2011)199 Taxman 138. Please go through the same.

**CIRCULAR NO. 05 /2010**

F.No.142/13/2010-SO (TPL)  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Direct Taxes)  
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Dated, the 3<sup>rd</sup> June, 2010

# EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE (NO.2) ACT, 2009

Explanatory Circular for Finance (No.2) Act, 2009

**27.3** The limit for severe disability has been amended to Rs.1 lakh. However, the limit for ordinary disability has been retained at the existing level of Rs.50,000.

1 **Applicability**-The above amendment has been made applicable with effect from 1<sup>st</sup> April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

2 **Deduction in respect of interest on loan taken for higher education**

**28.1** Section 80E of the Income-tax Act provides for a deduction to an assessee, being an individual, on account of any amount paid by him in the previous year by way of interest on loan taken from any financial institution or any approved charitable institution for the purpose of pursuing higher education in specified fields of study.

**28.2** Under the existing provisions, the deduction was available only for pursuing full time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics.

**28.3** With the objective of fostering human capital formation in the country, the provisions of section 80E of the Income Tax Act have been amended by substituting clause (c) of sub-section (3) so as to extend its scope to cover all fields

of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so. Further, clause (e) has also been substituted to widen the scope of the term “relative” so as to include a student for whom an individual assessee is the legal guardian.

1 **Applicability-** This amendment has been made applicable with effect from  
1<sup>st</sup> April, 2010 and will accordingly apply in relation to assessment year 2010-11  
and subsequent years.

2 **Donations to Certain Funds, Charitable Institutions, etc.**

**29.1** Section 80G of the Income-tax Act, 1961 provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to, inter alia, the condition that such institutions and trusts are established for ‘charitable purpose’. Consequent to the amendment of sub-section (15) of section 2 by the Finance Act 2008 a number of organizations have ceased to be charitable for the purposes of the Income-tax Act. However, such institutions and trusts continued to collect donation during the financial

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Explanatory Circular for Finance (No.2) Act, 2009

year 2008-2009 for funding relief work for floods in Bihar and other public purposes. The donors made these donations under a bonafide belief that they would be entitled to benefit under section 80G.

**29.2** With a view to mitigate hardship to the donors, a one-time relaxation has been given and sub-section (5) of section 80G of the Income-tax Act has been amended so as to provide that where an institution or fund has been approved under clause (vi) of subsection 5 of section 80G for the previous year beginning on 1<sup>st</sup> April, 2007 and ending on 31<sup>st</sup> March, 2008, such institution or fund shall, notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,-

- (a) established for charitable purposes for the previous year beginning on 1<sup>st</sup> April, 2008 and ending on 31<sup>st</sup> March, 2009;
- (b) approved under the said clause (vi) for the previous year beginning on



1<sup>st</sup> April, 2008 and ending on 31<sup>st</sup> March, 2009.

**29.3 Applicability** - This amendment has been made applicable with effect from 1<sup>st</sup> April, 2009 and will accordingly apply in relation to assessment year 2009-10 only.

**29.4** Further, as per clause (vi) of sub-section (5) of section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rule, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval. Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bonafide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

**29.5** Therefore, the proviso to clause (vi) of sub-section (5) of section 80G has been omitted to provide that the approval once granted shall continue to be valid in perpetuity.

**29.6** Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund.

**29.7 Applicability** - This amendment has been made applicable with effect from 1<sup>st</sup> October, 2009. Accordingly, existing approvals expiring on or after 1<sup>st</sup> October, 2009 will be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1<sup>st</sup> October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

Exemption certificate issued under section 80G would be deemed to have been extended in perpetuity unless specifically withdrawn.

IT : Exemption certificate issued u/s 80G would be deemed to have been extended in perpetuity unless specifically withdrawn

IT : Since proviso to Clause (vi) of subsection (5) of section 80G has been omitted, there remains no requirement to seek renewal in every assessment year. [Section 80G of the Incometax Act, 1961 Deductions – Donation to certain funds, charitable institutions]

1 Once the exemption granted stands extended in perpetuity by operation of law, merely moving an application by the assessee would not divest it of the aforesaid right

[2011] 10 taxmann.com 241 (All.)

HIGH COURT OF ALLAHABAD

Babu Hargovind Dayal Trust

v.

ITAT PRADEEP KANT AND VEDPAL, JJ. WRIT PETITION NO. 556(MB) OF 2011

FEBRUARY 7, 2011

## JUDGMENT

Pradeep Kant, & Vedpal,. JJ. Heard learned counsel for the petitioner Sri. J.N. Mathur, learned Senior Advocate and Sri D.D. Chopra for the respondents.

Counter affidavit has been filed on behalf respondents 2 and 3, but the petitioner has not chosen to file any rejoinder affidavit, as according to him it is not needed.

In short, the petitioner felt aggrieved by the order dated 30.12.2010 passed by the Incometax Appellate Tribunal, Lucknow Bench, "B", Lucknow, by means of which, the Tribunal has remanded the matter regarding the renewal of the exemption certificate issued under section 80G of the Incometax Act, 1961 for being decided afresh after setting aside the order passed by the Commissioner, IncometaxI, Lucknow, by means of which, the application for renewal was rejected.

The petitioner though initially made an effort to point out the illegality in the order passed by the Incometax Appellate Tribunal in remanding the matter and saying that the Tribunal ought to have decided the issue itself, but later on, during the course of arguments, in view of the Circular dated 3.6.2010 issued by the Central Board of Direct Taxes, submitted that the recognition under section 80G (exemption) having been already granted on 8.6.09, which was valid upto 30.3.2010, therefore, no renewal was required in terms of the aforesaid Circular, as the said exemption (recognition) under section 80G would continue in perpetuity unless withdrawn.

Sri. D.D. Chopra, appearing for respondents 2 and 3, does agree with the aforesaid factual and legal position.

We have gone through the record and we find that the petitioner was granted

exemption under section 80G on 8.6.09 and the same was valid upto 31.3.2010, but in the meantime, in view of the Circular aforesaid, the amendment was made providing therein that such exemption would continue in perpetuity unless withdrawn.

The aforesaid Circular, in Para 28.4 itself says that the amendment aforesaid has been made applicable w.e.f. 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

In Clause 29.5, the Circular says as under:

"Therefore, the proviso to clause (vi) of subsection (5) of section 80G has been omitted to provide that the approval once granted shall continue to be valid in perpetuity."

Clause 29.7 of the Circular aforesaid, reads as under:

"Applicability This amendment has been made applicable with effect from 1st October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 will be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1st October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn."

Since proviso to Clause (vi) of subsection (5) of section 80G has been omitted, there remains no requirement to seek renewal in every assessment year. This stands clarified in Clause 29.7 of the Circular aforesaid.

It being admitted that the exemption was expiring in the instant case after 1.10.09, the deeming provision of perpetuity clause stood attracted. That being so, the exemption granted under section 80G would remain operative unless withdrawn.

It appears that the petitioner since has moved an application for renewal of the exemption on 31.3.2010, the Commissioner of Incometax without taking cognizance of the said Circular/amendment, rejected the application as well as renewal, as the petitioner did not turn up after notice being issued.

Sri. D.D. Chopra says that since the petitioner moved the application on 31.3.2010 i.e. before the Circular was issued on 3.6.2010, therefore, the Commissioner proceeded with the application ignoring the said Circular.

The Appellate Tribunal also did not take into account the effect of the Circular aforesaid and remanded the matter for affording opportunity to the petitioner and passing fresh orders by the Commissioner of Incometax, in accordance with law.

May be that at the time of moving the application, Circular aforesaid was not in vogue and in the absence of any such Circular having been issued, the application would have been decided in the manner as required under the Act. But once a Circular was issued, even during the pendency of the application for renewing the exemption already granted which was in force in perpetuity as a consequence of amending the proviso to clause (vi) of subsection (5) of section 80G, even on remand, the Commissioner of Incometax has no authority to refuse renewal but to declare the exemption in force till it is actually withdrawn.

Even otherwise, clause 29.7 of the Circular makes it very clear that the amendment in question has been made applicable w.e.f. 1.10.09 and accordingly

existing approvals, which were to expire on or after 1.10.09 will be deemed to have been extended in perpetuity unless specifically withdrawn. This itself means that the petitioner's approval/exemption granted under section 80G, which was to expire on 31.3.2010, would be deemed to have been extended in perpetuity unless specifically withdrawn.

Once the exemption granted stands extended in perpetuity by operation of law, merely moving an application by the petitioner would not divest it of the aforesaid right, which has accrued to it, in view of the Circular aforesaid and the amendment made in the Act.

In these circumstances, there is no requirement of maintaining the direction issued by the Tribunal to the Commissioner, Incometax for deciding the application for renewal afresh, in accordance with law, as by virtue of operation of law, the exemption shall be deemed to be continued in perpetuity and it will continue, so long it is not withdrawn, as per the provisions of the Act.

The writ petition is disposed of accordingly.