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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 14637/2023

MALASHREE FOUNDATION ..... Petitioner

Through: Mr. Mani Bhadra Jain, Adv.

versus

INCOME TAX DEPARTMENT & ORS. ..... Respondents

Through: Mr.Shlok Chandra, Sr.SC with Ms.Madhavi Shukla, Jr.SC, Ms.Priya Sarkar, Jr.SC and Mr.Ujjwal Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>O R D E R</u>

% **20.03.2024**

1. The sole relief which is claimed in the instant writ petition is for a direction being framed calling upon the respondents to accept the Form 10AB by enabling the petitioner to submit the aforesaid statutory form afresh.

2. The record would reflect that the earlier filing of Form 10AB came to be refused on account of certain technical issues. However, pursuant to our order, the respondents have provided instructions to learned counsels and have observed as follows:-

> " **<u>After perusal of the provisions of the Act and facts of the case in this regard, the details are submitted as under:</u>**
>
> Deduction in respect of donations to certain funds, charitable institutions ete can be claimed u/s 80G of IT Act. However, the institution or fund, established in India for charitable purpose

should be approved by the Principal Commissioner or Commissioner alongwith other conditions mentioned in section 80G(5) of IT Act.

The charitable fund or Institution has to make an application in the prescribed form 10A for provisional registration and in Form 10AB for regular registration. Provisional registration is issued by CPC, Bengaluru in Form 10AC on filing of form 10A by the assessee. For regular registration, the funds and institutions can make an application by electronically filing Form 10AB.

The conditions for filing the form 10AB are as under:

> *(i)* where the institution or fund is approved under clause (vi) of section 80G(5) [as it stood immediately before its amendment by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020], the form 10AB has to be filed within three months from the 1st day of April, 2021;
> *(ii)* where the institution or fund is approved and the period of such approval is due to expire, at least six months prior to expiry of the said period;
> *(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,
> *(iv)* in any other case, where activities of the institution or fund have not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought,

The Principal Commissioner or Commissioner, on receipt of an application made by the assessee, shall,-

> (i) where the application is made under clause (i) of the said proviso, pass an order in writing granting it approval for a period of five years:
>
> (ii) where the application is made under clause (ii) or clause (iii) [or sub-clause (B) of clause (iv)] of the said proviso,-
>
> > (a) call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about-
> >
> > (A) the genuineness of activities of such institution or

fund; and

(B) the fulfilment of all the conditions laid down in clauses (1) to (v);

(b) after satisfying himself about the genuineness of activities under item (4), and the fulfilment of all the conditions under item (B), of sub-clause (a),-

(A) pass an order in writing granting it approval for a period of five years; or

[(B) *if he is not so satisfied, pass an order in writing.-*

(I) *in a case referred to in clause (ii) or clause (iii) of the first proviso, rejecting such application and cancelling its approval; or*

(II) *in a case referred to in sub-clause (B) of clause (iv) of the first proviso, rejecting such application,*

after affording it a reasonable opportunity of being heard;

[(iii) *where the application is made under sub-clause (A) of clause (iv) of the said proviso or the application is made under clause (iv) of the said proviso as it stood immediately before its amendment vide the Finance Act, 2023, pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the approval is sought.*]

and send a copy of such order to the institution of fund:

Facts of the Instant Case:

The factual position in this case was verified with the details available in the data base. After perusal it is found that provisional registration was issued in this case in Form 10AC on 23.09.2021. After that the assessee filed Form 10AB requesting for regular registration under section code 14 under clause (iii) of first proviso to section 80G(5) on 23.09.2022, but the application was rejected by CIT(Exemption) vide order dated 27.03.2023 in Form 10AD.

It has come to notice that certain applications submitted in Form 10AB are rejected due to technical reasons. As per the current functionality and provisions of section 80G(5), filing of Form 10AB under section code 14 is allowed only once. In the instant case, there is already one submission happened for the section code 14 (Clause (iii) of first proviso to sub-section (5) of section 80G), but the application was rejected by the CIT(exemption). It appears that the taxpayer tried to file the form again with the same section code after the rejection of its original application in Form10AB, but as the validation is allowed for only one submission, hence the system is not allowing the Tax Payer to file the form again. There are no technical glitches in the system.

However, in order to deal with such scenarios, functionality to rectify such orders are being developed in which rectification application can be filed by the taxpayer against the said rejected orders. Efforts are made to make the rectification facility functional from April 2024 onwards."

3. As per the instructions which have been perused by us, according to the respondents filing of Form 10AB is allowed only once. In view of the aforesaid and since a filing had been made and which came to be rejected, the Income Tax Business Application [**"ITBA"**] Portal does not appear have the requisite functionality to enable the petitioner to move afresh.

5. It is in the aforesaid backdrop that the respondents apprise us that efforts are being made to adopt rectification facilities and which is likely to become functional with effect from April 2024 onwards.

6. In view of the aforesaid, we dispose of this writ petition by leaving it open to the petitioner to approach the Commissioner of Income Tax (Exemptions) which may assist it in the submission of a manual filing and to thereafter process the same once appropriate functionality measures are introduced in the ITBA Portal.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 20, 2024/MJ