



# Tax Flash News



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## Discrimination in extending the time limit to apply for registration by the new charitable institutions vis-à-vis the existing ones without a valid reason is unconstitutional

### Executive summary



The CBDT<sup>1</sup> extended the time limit to apply for registration/approval by a charitable institution. This benefit was granted to certain categories of applications but was not applicable to one category. No reason was provided for this exclusion.

The Madras High Court<sup>2</sup> held that such discrimination without giving any valid reason is illegitimate, arbitrary, and *ultra vires* the Constitution of India.

The High Court directed the Revenue to grant the benefit of an extended time limit to all categories of applications and consider the applications on the merits.

<sup>1</sup> Central Board of Direct Taxes

<sup>2</sup> *Shri Nrisimha Priya Charitable Trust v. CBDT* (W.P. No. 27030 of 2024) (Madras High Court).  
Source: Taxsutra



The income of an eligible charitable institution is exempt from tax subject to the fulfilment of certain conditions including obtaining the registration and approval from the relevant authorities under the provision of the Income-tax Act, 1961 (the Act) - sections 10(23C), 12A or 80G, whichever is applicable.

The Finance Act, 2020 overhauled the registration procedure. Under the new regime, the existing registered institutions were required to apply for a fresh registration, within the specified time limit, to migrate from the old regime to the new regime.

The new charitable institutions were required to apply for the provisional registration. The provisionally registered institution again needs to apply for a regular registration at least six months prior to the expiry of the period of provisional registration or within six months of the commencement of activities, whichever is earlier. The new regime requires charitable institutions to file applications electronically.

Considering the difficulties faced by the charitable institutions in filing the application electronically, the CBDT<sup>3</sup> extended the time limit to apply for registration for all categories of applications (first extension).

Subsequently, the CBDT issued another circular<sup>4</sup> to further extend the time limit to file the registration applications by both existing as well as new charitable institutions (second extension). However, in the case of new charitable institutions (who were applying for regular registration), this extension was restricted to applications under sections 10(23C) and 12A, and the extension was not granted to the registration for the purposes of section 80G.

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<sup>3</sup> Circular No. 8 of 2022, dated 31 March 2022

<sup>4</sup> Circular No. 6 of 2023, dated 24 May 2023

## Facts of the case



In the facts of the instant Writ Petition, the petitioner (a charitable trust) applied for provisional registration under section 80G which was granted by the tax officer. The petitioner commenced its activities and was required to apply for regular registration within six months from the date of commencement of activities.

The petitioner filed the registration application after the expiry of the first extension. However, as the second extension was not available to the new charitable institution applying for regular registration under section 80G, the petitioner's application was considered as time-barred and rejected.

The petitioner challenged the relevant provision of the Circular as arbitrary and discriminatory as no valid reasons were provided in the Circular for not extending the time limit for regular registration under section 80G.

The Revenue argued that the petitioner should have filed its application within the first extension. If it fails to do so, it does not get any vested right to claim for an extension of time. The decision of not extending the time limit with respect to section 80G cannot be questioned.

## High Court's decision



The High Court held that the relevant provision of the Circular was illegitimate, arbitrary, and *ultra vires* the Constitution of India based on the following grounds:

- Even though the CBDT has the power to extend the time limit and to make any classification among the charitable institutions, no material or reasons were provided to exclude a specific category from the extension.
- The time limit was extended to the existing charitable institution considering the hardship in filing the application. However, no evidence was provided to show that the new charitable institution did not face such hardship, that too, relating to the application for a regular registration under section 80G only.
- This differential treatment was artificial and did not relate to the objective sought to be achieved by the Circular.

The High Court directed the Revenue to consider the application of the petitioner as being filed within the prescribed time and pass the order on the merits.

## Our comments



This decision will help the new charitable institutions where the extension of the time limit for filing the registration application under section 80G(5) was not granted.



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