

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2243/Del/2015
Assessment Years: -----

KALAMKAR FOUNDATION,
RT-222, ROYALE TOWER,
SHIPRA SUN CITY,
INDIRAPURAM,
DISTT. GHAZIABAD (UP)
(PAN: AACTK1003B)
(APPELLANT)

VS. CIT(EXEMPTIONS)
5, ASHOK MARG,
LUCKNOW - 226007
UTTAR PADESH

(RESPONDENT)

Assessee by : SH. S.K. BANSAL, CA
Department by : SH. SANJAY GOYAL, CIT(DR)

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the Assessee against the order dated 03.3.2015 of the Ld. CIT(E) passed u/s. 80G(5)(vi) of the Act. The grounds raised read as under:-

1. That the Ld. CIT(E), Lucknow has wrongly denied the approval u/s. 80G of the Act to the applicant Trust which is duly registered u/s. 12A/12AA of the Act.
2. That the Ld. CIT(E), has wrongly declined the approval u/s. 80G on the basis of –

- i) one of the objects extends the charitable activities beyond the territory of India.
- ii) Trust may accept the donations etc. from foreign institutes.
- iii) Income and expenditure account as on 31.3.2014 shows substantial expenditure incurred on holding of seminars which is arbitrary, illegal and contrary to the requirement of provisions of section 80G(5) of the Act.

3. That the order is bad in law and on facts.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. Ld. Counsel of the assessee stated that assessee has filed all the necessary evidences for substantiating its claim of exemption u/s. 80G of the Act, but the same has not been considered by the Ld. CIT(E) in the impugned order. However, he filed the Paper Book containing pages 1-37 & Annexure-I viz. Registration Certificate u/s. 12AA; application for 80G registration in Form 10G; impugned order; questionnaire dated 18.2.2015 fixing hearing for 2.3.2015; reply dated 2.3.2015; rely dated 3.3.2015; trust deed and

supplementary trust deed; ledger accounts for 2012-13 and 2013-14 submitted alongwith reply dated 3.3.2015 and stated the said documents were not properly consider by the Id. CIT(E) while passing the non-speaking order u/s. 80G of the Act. Hence, he requested that the issues in dispute may be set aside to the file of the Ld. CIT(E) to decide the same afresh and direct him to pass a speaking order, after hearing the assessee.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have heard both the parties and perused the records. It was the contention of the assessee's counsel that Ld. CIT(E) has passed the non-speaking order. For the sake of clarity, we are reproducing the relevant finding of the Ld. CIT(E)'s order dated 03.3.2015 passed u/s. 80G(5)(vi) of the Act as under:-

"ORDER u/s 80G (5) (vi) OF THE INCOME TAX ACT

In this case, the applicant trust Kalmkar Foundation, RT-122, Royale Tower, Shipra Sun City, Indirapuram, District Ghaziabad (Uttar Pradesh)201014 filed an application on 4.9.2014 in Form No. 10G seeking grant of approval u/s. 80G(5)(vi) of the Income Tax Act, 1961 before the Commissioner of Income Tax, Ghaziabad.

2. *Due to change of jurisdiction w.e.f. 15.11.2014, a notice of hearing was issued to the applicant on 18.2.2015 fixing the date of hearing on 02.3.2015. Shri MK Gupta, CA attended on behalf of the applicant and filed reply. The case is discussed.*

3. *I have gone through the details filed with the application. On perusal of the Trust Deed, it is found that there are 14 objects. One of the objects extends the charitable activities beyond the territory of India. It is also mentioned in the Trust Deed that the Trust may accept the donations etc. from the foreign institutes. Further from the perusal of the income and expenditure account as on 31.3.2014, it is noticed that the applicant has incurred substantial expenditure holding the Seminars. But, the applicant has not filed full particulars in this regard. Thus, I am not satisfied for granting approval to the applicant.*

4. *In the above discussion, I am of the considered view that this is not a fit case for*

granting of approval. Therefore, the application filed in Form No. 1-G is rejected."

5.1 After hearing both the parties and after perusing the aforesaid finding of the Ld. CIT(E) as well as Paper Book filed by the Assessee, we find that Assessee's counsel has stated that assessee has filed all the necessary evidences for substantiating its claim of exemption u/s. 80G of the Act, but the same has not been considered by the Ld. CIT(E) in the impugned order and Ld. CIT(E) has passed a non-speaking order. However, the Ld. CIT(E) in his order vide para no. has stated that *"from the perusal of the Income and Expenditure Account as on 31.3.2014, it is noticed that the applicant has incurred substantial expenditure holding the Seminars. But the applicant has not filed full particulars in this regard. Thus he was not satisfied for granting approval to the applicant."* Hence, there is clear contradiction between the statement made by the Ld. Counsel for the assessee before us as well in the impugned order. Therefore, in the interest of justice, we set aside the orders of the Ld. CIT(E) and remitted back the issues to the file of the Ld. CIT(E) to decide the issues in dispute afresh, in accordance with law, after giving adequate opportunity of being heard to the assessee and after considering the aforesaid Paper Book and any other evidences filed by the assessee and then pass a well reasoned and speaking order.

6. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 07/03/2019.

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

Dated:07/03/2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

ASSISTANT REGISTRAR