



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. MAHAVIR SINGH, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No.733/LKW/2019
Assessment Year: N.A.

Fidai Millat Progressive and Educational Society Mohalla Bar Zia Ul Haw Deoband, Saharanpur TAN/PAN:AAAAF3466A (Appellant)	v.	The CIT (Exemption) Lucknow (Respondent)
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Appellant by:	None
Respondent by:	Shri S. H. Usmani, CIT (DR)
Date of hearing:	28 11 2022
Date of pronouncement:	29 11 2022

ORDER

PER BENCH:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Exemption), Lucknow, dated 25.10.2019, rejecting the application for approval under section 80G(5) of the Income Tax Act, 1961 (hereinafter, 'the Act'), dated 9.4.2019.

2. The only issue in this appeal of the assessee relates to denial of approval under section 80G(5) of the I.T. Act by the CIT (Exemption), despite the fact that the assessee-society is duly registered under section 12A of the I.T. Act.

3. None is present from the assessee's side, but going through the appeal folder, it is noticed that the order passed by the CIT (Exemption) is cryptic and non-speaking on the relevant issue. It is also noticed that it is not clear from the order itself

that the assessee has been allowed reasonable opportunity of being heard or not. On behalf of the Revenue, the CIT (DR), Shri S. H. Usmani, CIT (DR) was present.

4. We have heard the CIT (DR) and gone through the facts and circumstances of the case. We noted that the assessee-trust is registered under section 12A of the I.T. Act and now the assessee wants approval under section 80G(5) of the I.T. Act. The CIT (Exemption) denied approval under section 80G(5) of the I.T. Act for the reason that the assessee could not provide details as regards to the number of students admitted on concessional basis under the Right to Education Act, 2009. The CIT (Exemption) has discussed the provisions of section 80G(5) read with Rule 11AA of the Rules as well as the provisions of the Right to Education Act, 2009. But, finally the CIT (Exemption) rejected the application for the reason that the assessee has not provided the copies of accounts for the last three years and rejected the claim of the assessee vide paras 4 & 5 of his order, as under:

“4. As per provisions of Rule 11A(2)(iii), the applicant was required to provide copies of accounts for the last three years. The society was registered on 27.03.2008. Thus, accounts for F.Y. 2015-16, 2016-17 and 2017-18 were required to be filed. However, it is noticed from the written submission that the applicant has filed Audit Report in Form no. 10B under Rule 17B for F.Y. 2017-18 only. Audit report has not been filed for any earlier years. As the applicant is a registered trust, it was required to file audit report under Rule 17B u/s 12A (b), for F.Y. 2015-16, F.Y. 2016-17 also, which prima facie has not been done. Therefore, the requirements of Rule 11AA (2)(iii) have not been fulfilled, and to that extent the application u/s 80G is deficient.

5. In view of the discussion in paras above, it is clear that the applicant society is not entitled for approval u/s 80G of

the I.T. Act, 1961. Accordingly the application in Form no. 10G seeking approval u/s 80G is hereby rejected.”

5. We noted that the assessee was never asked to produce the copies of accounts or the audit report in form No.10B for granting of approval under section 80G(5) of the I.T. Act. Even otherwise, it is apparent from the order of the CIT (Exemption) that only one opportunity was provided, i.e., on 10.10.2019 and finally the order was passed, rejecting the application for approval under section 80G(5) of the I.T. Act, on 25.10.2019. According to us, the CIT (Exemption) has violated the principles of natural justice and has not provided sufficient opportunity to the assessee before rejecting the application. Hence, we set aside the order of the CIT (Exemption) and restore this issue back to his file for fresh adjudication. Needless to say, the CIT (Exemption) will provide reasonable opportunity of being heard to the assessee and the assessee will also file complete details as and when required by the concerned Officer.

6. In terms of the above, the assessee's appeal is allowed for statistical purposes.

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

Order pronounced in the open Court on 29/11/2022.

Sd/-
[GIRISH AGRAWAL]
ACCOUNTANT MEMBER

Sd/-
[MAHAVIR SINGH]
VICE PRESIDENT

DATED:29/11/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar