

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 368/JP/2022
निर्धारण वर्ष / Assessment Years : 2022-23

Shree Agrawal Choudhary Panchayat Trust, Choudhary Panchayat Fatehpur, Sikar.	बनाम Vs.	CIT(E), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYTS 0919 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Jamesh Kurian (CIT)

सुनवाई की तारीख / Date of Hearing : 29/11/2022
उदघोषणा की तारीख / Date of Pronouncement : 24/01/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Exemption), Jaipur [hereinafter referred to as CIT(E)] dated 20.09.2022 for the AY 2022-23.

2. The assessee has raised the following grounds:-

"1. The Ld. CIT(E) has erred on facts and in law in rejecting the application of assessee trust seeking approval u/s 80G(5) of Income Tax Act, 1961 without providing adequate opportunity of hearing and without considering the documents filed with Form No. 10AB.

2. The appellant crave to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee.”

3. Brief facts of the case are that the assessee trust was constituted vide trust deed dated 11.03.2019 with the objectives given in its supplementary deed dated 28.01.2020. It was granted registration u/s 12AA vide order dated 07.02.2020 and registration u/s 12A(1)(ac) vide order dated 23.09.202. The Finance Act, 2020 w.e.f. 01.06.2020 inserted proviso to section 80G(5) whereby every fund or institution who is approved by PCIT under sub-clause (vi) is required to make a fresh application in prescribed form to the PCIT for grant of approval within 3 months from 01.04.2021. Accordingly, assessee filed a fresh application and was granted provisional approval in Form No.10AC u/s 80G(5) vide order dated 09.07.2021. Sub-clause (iii) of the said proviso further provided that where trust has been provisionally approved, an application is to be made atleast 6 months prior to the expiry of period of provisional approval or within 6 months of the commencement of its activities, whichever is earlier. Accordingly, assessee trust filed an application in Form No.10AB on 19.03.2022 for final approval. However, the Ld. PCIT refused the registration for the reason that assessee has not produced any evidence in support of charitable activities carried out by it in spite of opportunity provided vide letter dated 23.08.2022 and 31.08.2022 on the ground that it seems that the trust has not yet started any significant charitable activity.

4. The Id. CIT(E) findings which is reproduced as under:-

“The applicant filed application on 19.03.2022 in Form No. 10AB for seeking approval U/s 80G (5) of the Income Tax Act, 1961. The applicant was issued a letter/notice No. ITBA/EXM/F/EXM43/2022-23/1044859232(1) dated 23.08.2022 requesting it to furnish certain documents/explanations by 29.08.2022. But no compliance was made by the applicant. However, one more opportunity was provided vide letter No. dated 31/08/2022 as final opportunity through which date of hearing was fixed as 06.09.2022 but this time also on given date neither anybody was present nor any reply was filed by the applicant. Since it is a limitation matter, therefore, the case is decided on the basis of material available on record.

2. The material on record was examined in view of the provisions of section 80G (5) of the I.T. Act, 1961 and Rule 11AA of the I.T. Rules, 1962. The section 80G (5) lays emphasis on activities of the charitable organization as well as the application of the income towards the objects of the organization. Section 80G (5) (iv) requires the applicant to maintain regular accounts of receipts and expenditure. Rule 11AA of Income Tax Rule 1962, which governs the procedure for approval u/s 80G also specifies certain requirements. As per sub rule-2 of Rule 11AA the applicant is required to file the documents evidencing the creation or establishment of the trust/institution, certified copies of annual accounts of the applicant relating to years where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made and note on activities of the applicant.

2. On perusal of record, it noticed that applicant has not produced any evidences in support of charitable activities carried out by the trust. It needs special attention that one of the basic conditions is the

genuineness of the activities. The nature and extent of activities are generally reflected by the evidences of such activities.

4. As discussed above sufficient opportunity has already been provided but no evidences have been filed by the applicant trust in support of charitable activities carried out. It seems that the trust has not yet started any significant charitable activities. Hence, keeping in view the above facts the trust/institution is not found eligible for granting approval for exemption u/s 80G of the Income-tax Act, 1961.

5. Therefore, the application in form No. 10AB seeking approval u/s 80G is rejected.”

5. Before us aggrieved by the order of ld. CIT(E).

6. The ld. AR for the assessee submitted detailed written submissions which are as under:-

“1. At the outset it is submitted that the notice dt.23.08.2022 and 31.08.2022 was not received on the e-mail address on the profile of assessee. It appears that the said notices were given at the e-mail address of earlier CA whose e-mail address was given in the application and he has not communicated the receipt of notice to the assessee. In any case along with the application assessee has filed the audited accounts of previous 3 years from which carrying out of the charitable activity in form of relief to poor, education help and medical relief is evident (PB 52 & 58).

2.The Ld. CIT(E) has not given the approval on the ground that assessee has not yet started any significant charitable activity ignoring that from the audited accounts the charitable activities carried out by the assessee is evident. Further for the year ending 31.03.2021 it received donation of Rs.37,13,100/- (PB 58) which is used in construction of Dharamshala at Fatehpur (PB 56-57). Thus, the

activities in the trust have started. The assessee is already granted final registration u/s 12A(1)(ac) of the Act (PB 31-33). Therefore, the Ld. PCIT is not correct in refusing the final approval u/s 80G(5) of the Act.

In view of above, the Ld. PCIT be directed to grant final approval u/s 80G(5) of the Act.”

7. On the other hand, the ld. CIT-DR relied on the order of ld. CIT(E) and stated that ld. CIT(E) has passed exhaustive order explaining the provisions of the Act.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The ld. AR for the assessee submitted that the notices dated 23.08.2022 and 31.08.2022 was not received by e-mail address on the profile of the assessee. Perusing the affidavit filed by the assessee and relevant document where the said notices were given at the e-mail address of the earlier CA whose e-mail address was given in the application and further we observed that the same has not been communicated the receipt of notice to the assessee based on the affidavit and reasons for the non compliance of the notice due to wrong e-mail ID. In this situation, we restore the appeal of the assessee to the file of the ld. CIT(E) for afresh hearing but by providing adequate opportunity of hearing to the assessee. Thus the appeal of the assessee is allowed for statistical purpose as per the directions mentioned hereinabove.

In the result, the appeal of the assessee is allowed for statistical purpose

Order pronounced in the open Court on 24 /01/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 24/01/2023.

Sd/-

(एस.सीतालक्ष्मी)
(Dr. S. Seethalkashmi)
न्यायिक सदस्य / Judicial Member

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shree Agrawal Choudhary Panchayat Trust, Jaipur.
2. प्रत्यर्थी / The Respondent- CIT(E), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 368/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar