

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1247/Del/2018
(ASSESSMENT YEAR)**

Gurjar Kalyan Parishad c/o. M/s Bhati Wadhwa & co. CAs, 5N/1A, 1 st Floor, Near MCF Mayor Camp Office, B. K. Chowk NIT, Faridabad, Faridabad PAN: AACAG0126C (Appellant)	Vs.	CIT(Exemption) C. R. Building, 5 th Floor, Sector-17E, Chandigarh, Chandigarh (Respondent)
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Appellant by	None
Respondent by	Mr. Waseem Arshad, CIT(Ld. DR)

Date of Hearing	05/09/2023
Date of Pronouncement	13/09/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Exemptions)-Chandigarh [“Ld. CIT(E)”, for short], dated 28/12/2017 for Assessment Year .

2. The Grounds taken in this appeal are as under:

1. *The applicant denies the non approval u/s 80G on the facts assessed by the Ld. CIT that the applicant is not in need of funds”.*

2) *That having regard to the facts and circumstances of the case, Ld. CIT has erred in law & the facts that it is not carrying its objects as specified in the memorandum of association.*

3) *That having regard to the facts and circumstances of the case, Ld.CIT has erred in law and on facts in making the conclusion that the construction was to be undertaken by the government of Haryana till the building was handed over to the society.”*

3. Brief facts of the case are that, the assessee had been given with registration u/s 12AA of the IT Act, 1961 ('Act' for short) and the assessee filed an application in Form No. F10G on 28/06/2017 for approval u/s 80G of the Act. The application filed by the assessee has been rejected by the CIT(E) A.O. vide order dated 28/12/2017. Aggrieved by the order dated 28/12/2017, the

assessee preferred the present Appeal on the Grounds mentioned above.

4. None appeared for the assessee. Though the notices has been served to the assessee and vakalat is also filed on behalf of the assessee, the assessee or his representative failed to appear before us, in view of the same, we are constrained to decide the appeal after hearing the Ld. Departmental Representative and on perusal of the material available on record.

5. As per the Grounds of Appeal it is the case of the appellant that the ld. CIT(E) committed error on making conclusion that 'the construction was to be under taken by the Government of Haryana till the building was handed over to the Society' and the CIT(E) also erred in not approving the application filed u/s 80IG of the Act.

6. The Ld. Departmental Representative relying on the order impugned of CIT(E), Chandigarh submitted that the appellant had failed in its pursuit for approval u/s 80G of the Act and the real purpose of the appellant is to construct a building with no emphasis whatsoever on the objects on the basis of 12AA

Registrations was accorded. Further submitted that the applicant generated huge resources in the name of building construction even the said building construction was to be financed by/from MPLADS and constructed by Government of Haryana, the appellant had not evidenced whether the money generated was handed over to the Government of Haryana which was to construct the building and handed over to the society. Therefore, submitted that the Grounds of Appeal are devoid of merit and the Appeal of the Appellant is deserves to be dismissed.

7. We have heard the Ld. Departmental Representative and perused the material available on record. The Ld. CIT(E) while rejecting the application filed by the appellant u/s 80G of the Act held as under:-

“6. On the fixed date, the applicant provided receipts-payments accounts for the last three financial years and a copy of resolution dated 20.06.2011 passed by Gram Panchayat, Kuslipur, Tehsil Palwal regarding proposal of donating land to the applicant society. However, it is not clear whether the Gram Panchayat is the competent authority to give the land to society by passing a mere resolution. It is also pertinent to mention that an

agreement existed between the Government of Haryana and applicant society vide which it is mandated that Government of Haryana shall undertake the construction of Patel Gurjar Bhawan on the recommendation of the Member of Parliament as per the guidelines on Member of Parliament Local Area Development Scheme (MPLADS) and same was to be handed over to the applicant society after completion of the construction. The terms of agreement are reproduced as under-

"The first Party (Govt. of Haryana) shall undertake the construction of Patel Gurjar Bhawan, on recommendation of the Member of Parliament as per the Guidelines on Members of Parliament Local Area Development Scheme as amended from time to time for implementation of the work under the aforesaid MPLADS".

"A work at village, Kuslipur No.2 Distt. Palwal regarding the construction of Patel Gurajr Bahwan costing the value mutually agreed upon by the parties and that has been duly recommended by concerned MP under the MPLAD scheme, shall be undertake by the first party, to be handed over to the second party (Applicant Society) after completion of the construction."

From the above it is quite clear that the expenditure for the building was to be financed from the MPLAD Scheme (evidence of reimbursements from the Dy. Commissioner is detailed later on) and the construction was to be undertaken by the Government of Haryana till the building was handed over to the society. To that extent, it is meaningless to collect fund from public with specific direction for construction of Gurjar Bhawan. Further perusal of bank accounts corroborates that Grant from the Government has been received by applicant from time to time. It is revealed that Rs. 36 lakhs and Rs. 21 lakhs has been credited in society's account from account of Deputy Commissioner during FY 2015-16 and F.Y 2016-17 respectively. Although, the purpose of the legislature to include this section in the Act is to promote and encourage people for making donations to societies/trust which otherwise-lack funds for performing charitable activities and not those who are already supported by the Government and the people's representative. Not only does the applicant not lack in resources there is no activity at all in respect of the stated objects. Further, the applicant has not also elaborated on the exact contours of the expansion they wish to undertake and the quantum of finances that would be necessary for pursuing objects other than construction of Gurjar Bhawan.

7. The perusal of income & expenditure accounts also revealed that applicant did not incur any expenditure towards the stated objects. It is also seen that the real purpose of the society undeniably seems to be construction of Gurjar Bhawan. This activity/object is never an expressed object as per the MoA & Article of Association. It is further pertinent to mention that the main source of income of the applicant is only donations and that too only corpus donation with the specific direction for construction of Gurjar Bhawan which in present case as has been demonstrated in the preceding para is to be constructed by the Haryana Government under the Member of Parliament Local Area Development Scheme (MPLADS). Considering the above fact it is safe to conclude that donations have been generated without any overt specific purpose. Perusal of balance sheets reveals that the applicant society has accumulated large funds to Rs. 2.09 Crores through corpus donation and increased the fixed assets to Rs. 1.96 Crores and has not incurred any expenses towards stated objects. It has been given the colour of corpus donations and in the bargain precluding expenditure on the objects that could measure to the requirements of charitable purpose.

Further perusal of Income-Expenditure accounts, revealed that applicant is not in receipt of any donations in the preceding years. Though, the balance sheet reveals addition in the capital fund by accumulating corpus donations which were shown in the Receipt and Payment accounts and applicant is continuously reducing its corpus fund by deducting its Deficit i.e Excess of Expenditure over income. Given the fact that the corpus fund is a fund which could be disturbed only in event of extreme exigency, the applicant eating into the corpus is not permissible.

9. Keeping in view all of above it is safe to conclude the applicant has failed in its pursuit for approval u/s 80G. The real purpose, it emerges clearly, is to construct a building with no emphasis whatsoever on the objects on the basis of 12AA registration was accorded. It is further pertinent to mention that the applicant has generate huge resources in the name of building construction even though it was to be financed by/from the MPLADS and constructed by the Government of Haryana. The applicant has further not evidenced whether the money generated was handed over to the Government of Haryana which was to construct the building and hand it over to the society. In the light of the above, I have no option but to

proceed on merits and deny the approval to the applicant u/s 80G of Income Tax Act, 1961.”

8. It is observed that the Ld. CIT(E) while deciding the application for approval u/s 80G of the Act found that as per the agreement between applicant and Government of Haryana, the Government of appellant society, Government shall undertake the construction of Patel Gurjar Bhawan. On the recommendation of the Member of Parliament as per the guide lines of Member of Parliament Local Area Development Scheme(MPLADS), the constructed building has to be handed over to the appellant society.

The terms of the said agreement reads as under:-

“The first Party (Govt. of Haryana) shall undertake the construction of Patel Gurjar Bhawan, on recommendation of the Member of Parliament as per the Guidelines on Members of Parliament Local Area Development Scheme as amended from time to time for implementation of the work under the aforesaid MPLADS”.

"A work at village, Kuslipur No.2 Distt. Palwal regarding the construction of Patel Gurajr Bahwan costing the value mutually agreed upon by the parties and that has been

duly recommended by concerned MP under the MPLAD scheme, shall be undertaken by the first party, to be handed over to the second party (Applicant Society) after completion of the construction."

9. By examining the above Clauses of the Agreement, the Ld. PCIT found that the expenditure for the building was to be financed from MPLAD Scheme and construction was to be undertaken by the Government of Haryana till the building was handed over to the Society. Though the assessee has specifically urged a ground against the observation and the conclusion of the CIT(A) that the 'construction has to be undertaken by the Government of Haryana till the building was handed over to the society' but the assessee has not produced any evidence/document in support of the said contention of the assessee to controvert the findings of the CIT(A). The action of the CIT(E) in relying on the agreement entered into between Government of Haryana and the appellant society and concluding that the construction was to be undertaken by the Government of Haryana till the building was handed over to the society in accordance with law and we find no error in the said observation. Thus, we find no error or infirmity in the order of the

CIT(E) in rejecting the approval u/s 80G of the Act, accordingly,
Grounds of Appeal of the assessee are dismissed.

10. In the result, the Appeal of the assessee is dismissed.

Order pronounced in open Court on 13th SEPTEMBER, 2023

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 13/09/2023

R.N, Sr. ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI