

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES “A” :: PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1310/PUN/2023
निर्धारण वर्ष / Assessment Year : N.A.

Kolhapur Jilha Bramhan Purohit Sangh, 1764 A/3A, Flat No.21, Brahmeshwar Residency Karvir, Mangalwar Peth, Kolhapur – 416012 PAN: AACTK7378M	V s	The CIT(Exemption), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri Keyur Patel – DR(CIT)
Date of hearing	25/01/2024
Date of pronouncement	25/01/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of ld.Commissioner of Income Tax(Exemption), Pune dated 03.10.2023. The grounds of appeal raised by the assessee are as under :

“1. Under the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax Exemption has erred in rejecting the Application filed under Clause (ii) of first proviso to

sub-section (5) of section 80G of the Income Tax Act without appreciating the fact that 15 days adjournment was sought by the assessee.

2. Under the facts and circumstances of the case and in law, the order passed by Hon'ble Commissioner of Income Tax Exemption deserves to be set-aside on the footing that request for adjournment was on record but was not considered.

3. Under the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax Exemption has erred in rejecting the Application filed under Clause (ii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, without granting proper opportunity of being heard. The Appellant be granted just and proper relief in this respect.

4. Under the facts and circumstances of the case and in law, assessee is eligible for registration under Clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act. Hence, registration be granted to assessee.

5. The Appellant craves the permission to add, amend, modify, revise, substitute, delete or alter any/all of the above grounds of appeal if deemed necessary at the time of hearing of the appeal.”

1.1 We have heard Id.Departmental Representative for the Revenue & perused the records.

Findings and analysis:

2. In this case, the Id.Commissioner of Income Tax(Exemption) has rejected the application of the assessee

dated 11/04/2023 filed in Form 10AB for approval u/s 80G of the Act, only on one ground that the application is not maintainable as the assessee failed to file copy of Regular Approval under section 80G of the Act earlier issued to the assessee. However, assessee had filed copy of Provisional Approval under section 80G(5)(vi) of the Act. The relevant paragraph 4.1 of the Id.CIT(E)'s order is reproduced here as under :

“4.1 The assessee was specifically requested vide the initial notice to furnish the copy of order of regular approval under section 80G(5)(vi) of the Income Tax Act, 1961. Such copy is actually required to be furnished along with the application itself under the provisions of Rule 11AA(2)(e) of the Income Tax Rules, 1962. However, the assessee has neither submitted the same along with the application nor in response to the notice issued in this regard. Thus the assessee failed to furnish the same. The copy of order submitted by the assessee along with the present applicant is a copy of provisional approval under section 80G(5)(vi) read with clause (iv) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 and not a copy of regular approval under section 80G(5)(vi) read with clause (i) or clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961. The non-submission of copy of order of regular approval under section 80G(5)(v) of the Income Tax Act, 1961 establishes the fact that the prerequisite for application under clause (ii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 is not fulfilled

in this case. Therefore, prima-facie it appears that the application is not maintainable.

5. In view of the above, the application filed by the assessee is treated as non-maintainable and hence, 'rejected' for statistical purpose without going into the merits of the case and no adverse inference is drawn against the assessee."

3. The Commissioner of Income Tax (Exemption) has not discussed the merits of the case. He held that the application is not maintainable. It is an admitted position that assessee had filed copy of trust deed and copy of three years financials. However, ld.CIT(E) has not discussed the objects of the assessee and has also not considered the financials filed by assessee to understand the activities of the assessee. It has been claimed by assessee that assessee had filed adjournment application before the ld.CIT(E), but ld.CIT(E) without considering the adjournment application adjudicated. Thus, it seems that assessee intended to file all the details called for. Be it as it may be, the ld.CIT(E) needs to adjudicate on the issue whether the objects of the trust are charitable in nature and whether activities carried out by the assessee fulfill the requirements of Section 80G(5) of the Act. The ld.CIT(E) failed to adjudicate on these issues.

4. In these facts and circumstances of the case, we set-aside the order of Id.CIT(E) for denovo adjudication. The assessee shall be provided opportunity of hearing. The assessee shall file all the necessary documents as called for by Id.CIT(E). Accordingly, appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open Court on 25th January, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th January, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच, पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.