

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA Nos. 4037 & 4038/Mum/2023

(Assessment Year: 2024-25)

Child Education and Vision
foundation
b-202, Gokul Residency, Gokul
Township,
Agashi Road, Bolinj, Bolinj B.O.
Thane, Mumbai-401303

(Appellant)

CIT (Exemption)
2nd Floor, Rani mansion,
New SBI Kalyan main Branch,
Kalyan Burbad Road,
Kalyan West,
Thane-421301

Vs.

(Respondent)

PAN No. AABTC5521F

Assessee by : Shri Mohit Balani &
Ms. Priyanshi Desai, AR
Revenue by : Shri Hemant kumar Chimanlal
Leuva, CIT DR

Date of hearing: 13.03.2024

Date of pronouncement : 04.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are two appeals filed by Child education and vision foundation, Mumbai (assessee/appellant).
02. Below are Grounds in ITA No. 4038/Mum/2023 against order passed by CIT – exemption, Pune in application number CIT/exemption/ Pune /2023 – 24/12 AA/10980 dated 25/9/2023 wherein the application of the assessee for registration under section 12 A (1) (ac) of The Income Tax Act, 1961 was rejected and provisional registration is cancelled on 25/9/2023.

"1. The learned CIT (Exemption) has erred in law and on the facts of the case in rejecting the provisional registration under Section 12AB of the Act."

03. Below are Grounds in ITA No. 4037/Mum/2023 against order passed by The Commissioner Of Income Tax, Exemption, Pune [The Ld CIT] in application number CIT exemption, Pune/2023 – 24/12AA/10594 rejecting the application in form number 10 AB for recognition under section 80 G (5) of The Income Tax Act, 1961 by order dated 26/7/2023:-

"1. CIT (Exemption) has erred in law and on facts of the case in rejecting provisional approval under section 80G of the Income-tax Act, 1961 (the Act)."

04. Assessee is a charitable trust with object of education. It stated that it is providing scholarship, prizes and promote students for getting higher education. It is also working for the benefit of humanity, conducting aid and help support conference, seminar, classes on campus etc. It is helping to poor students and rendering them financial assistant for purchase of books, stationery and school uniform etc.
05. Assessee filed an application in form number 10 AB under section 12 A (1) (ac) (iii) of the Income Tax Act on 20/3/2023. The learned CIT with a view to verify the genuineness of the activities of the assessee issued a notice on 7/6/2023 asking for certain details by 22/6/2023. Assessee furnished certain details based on

which a show cause notice was issued on 7/9/2023 raising following three points:-

- i. Assessee has failed to submit the note on activities in terms of the provisions of rule 17 A (2) (K) of The Income Tax Rules 1962
 - ii. Assessee failed to submit credible evidence in respect of activities undertaken for verification of genuineness of the activities and its accordance with the objects of the trust in terms of provisions of section 12 AB (1) (B) (i) of the act
 - iii. To show the details of the expenditure on educational object in the financial statement of assessee along with receipts/bills/invoices of the expenditure
06. Assessee submitted its reply on 21/9/2023 by furnishing a general note on activities such as it provides scholarship, prizes and promotion for getting higher education etc and it also helps the poor students by providing financial assistance for purchase of books, stationery, school uniform etc. For showing the activities certain photographs were uploaded.
07. Based on these evidences, the learned CIT reached at a conclusion that assessee did not furnish note on activities giving details of activities actually carried out by assessee, the details are general note without activity wise details. With respect to the documentary evidence, he held that photographs do not support the assessee's contention and



no documentary evidences furnished to prove that the trust is engaged in providing scholarship, prizes and promote for getting higher education etc. The photograph submitted are only for distributing allocation of material and for students but these photographs do not prove that the activities are carried out by the trust itself. No other supporting evidences such as name of school, number of students to who helped was provided, confirmation/communication from the schools or headmasters or bills or invoices of expenditure incurred were submitted.

08. Thus the CIT was of the view that he is not satisfied about the genuineness of the activities of the assessee in absence of proper evidence and he rejected application of the assessee for granting registration and the provisional registration granted to the trust on 31/3/2022 under section 12 AB read with section 12 A (1) (ac) (vi) of the act was cancelled. Thus, this appeal.
09. The learned authorized representative submitted that the assessee has submitted all the three details required by the learned CIT – A by letter dated 21/9/2023 which is placed at page number 46 of the paper book. He referred to that letter and submitted that the assessee has submitted that it is carrying on educational activity providing scholarship and prizes and promoting the students for getting higher education. With respect to the supporting evidences, he referred to paragraph number 2 of that letter stating that copies of photographs are

attached for the activities carried on by the trust. He specifically referred to photographs at page number 54 of the paper book where the name of the assessee trust is mentioned. With respect to the expenses, he referred to the last paragraph of that letter stated that regarding financial statements, the assessee has submitted the trust audit report for last three years. Therefore, according to him, all details required by the CIT were furnished. Therefore, there is no reason to reject application and cancel provisional registration already granted.

010. The learned departmental representative vehemently supported the order of the learned CIT and submitted that when the required details are not furnished by the assessee in the manner in which it is required, without verifying the genuineness of the activities of the trust, the registration application deserves to be rejected and provisional registration also required to be cancelled.
011. We have carefully considered the rival contention and perused the order of the learned CIT rejecting the application of the assessee for granting registration under section 12 AB of the act and cancelling the provisional registration granted under that section. We find that the learned CIT asked the assessee to submit what are the object and purpose of the trust, the activities carried on by the trust in conformity with the object of the trust and further to produce the bills and vouchers of expenses incurred by the assessee on the object of the trust. However, assessee submitted certain details as per letter



dated 21/9/2023 by showing activities and further submitting certain photographs. With respect to the bills and vouchers of the expenses, assessee merely submitted the audited accounts of the trust for last three years. With respect to the objects of the trust and the activities carried on by the trust, assessee has given some details in the above stated later. Some of the photographs also shows the name of the trust. However, with respect to the expenditure incurred by the assessee, nothing was provided except audited annual accounts. In the audited annual accounts for the year ended on 31/3/2019 assessee did not incur any expenditure, for the year ended on 31/3/2020 assessee has incurred expenditure on the object of the trust of ₹ 41,000 , for the year ended on 31/3/2021 assessee has incurred expenditure on the object of the trust of ₹ 12,425, and for the year ended on 31/3/2022 assessee has incurred expenditure on object of the trust of ₹ 10,000. Except this no details of such expenditure are available before the approving authority. Therefore, there was no verification about the activities of the trust and expenditure incurred on such activities. However, the assessee has provided certain details about the activities of the trust supported with some photographs, but CIT was not satisfied with this. If this be the case, the assessee should have been issued one more letter asking for other comprehensive details as desired by the CIT. This opportunity was not provided to the assessee. Further, assessee also failed to provide the details of the expenditure by producing bills/vouchers and

supportings of the expenditure incurred on the object of the trust. In view of this, in the interest of Justice, we restore the matter back to the file of the learned CIT with a direction to the assessee to substantiate the objects with activities carried on and necessary supportings of expenditure incurred shown as spent on the object of the trust. The learned CIT may consider those details and after giving an opportunity of hearing to the assessee dispose of the application afresh in accordance with the law. In the result, the solitary ground of appeal is allowed with above direction.

012. In the result, ITA number 4038/M/2023 is allowed for statistical purposes.
013. ITA number 4037/M/2023 is against rejecting the provisional approval under section 80 G of the income tax act 1961.
014. This appeal is delayed by 46 days. The assessee has filed an application for condonation of delays filing an affidavit. The reason of the delay was that the impugned order of CIT (exemption) was handed over to the concerned person of filing appeal before the tribunal. However as the concerned person was preoccupied, he forgot to file the appeal. On enquiry by the advocate, he informed that the appeal has not been filed. On 4/10/2023 the order was given to the concerned person for filing of the appeal and consequently on 6/10/2023 the grounds were prepared and soon thereafter the appeal was filed. The learned authorized representative submitted that the delay is

inadvertent, without any malafide but due to oversight. The learned departmental representative submitted that the delay is not for sufficient reason.

015. We have carefully considered the contentions for condoning the delay of 46 days in filing the appeal, we find that by filing an appeal late, the litigant does not derive any benefit but contrary to that, it hampers his legal right. In the present case, the delay is due to oversight, without any mala fide, therefore same is condoned.

016. Assessee preferred an application for recognition under section 80 G (5) of the act which is rejected by CIT exemption, Pune vide order dated 26/7/2023 for the reason that as per letter dated 12/7/2023 the assessee was intimated the discrepancies that (1) it did not contain the same certified copy of the trust deed to show the nature of objects whether they are eligible for recognition under section 80 G and are in line with the objects of the trust, (2) application is not accompanied with notes on activities giving details of activities actually carried out, (3) application is not accompanied by certified copies of annual accounts relating to earlier three years which were not supplied by the assessee incompleteness along with the annexures and schedules to the accounts. The notice was served to the assessee through e-portal and email however no explanation was furnished. Therefore, the application for recognition under section 80 G (5) of the act was rejected. In the order, the learned CIT also

expressed that it is not clear from which date the assessee has commenced the activities of the trust.

017. As the assessee is aggrieved with the above order, preferred this appeal. The learned authorized representative vehemently stated that assessee was already granted provisional approval earlier. He further stated that his application is in time relying on the order of the coordinate bench in ITA number 728/S RT/2023 and 732/SRT/2023 dated 9/1/2024. He referred to paragraph number 13-16 of that decision. He submits that the assessee has filed an application on 15/2/2023 and the show cause notice was issued on 20/05/2023 granting time up to 5/6/2023. This was replied by the assessee on 23/5/2023. Therefore assessee complied with the same and further show cause notice was not noticed by the assessee.

018. The learned departmental representative vehemently supported the order of the learned CIT in rejecting the application under section 80 G (5).

019. We have carefully considered the rival contention and perused the order of the learned CIT exemption. We find that when the learned CIT has already cancelled the registration provisionally granted to the assessee and rejected the application of the assessee for registration under section 12 AB of the act on 26/7/2023, against which assessee has filed appeal, which has been restored by us back to the file of the learned CIT with direction to the assessee, naturally the recognition under section 80 G



(5) also depends on the registration granted to the assessee pursuant to that process. Therefore, in the interest of justice, we restore this appeal also back to the file of the learned CIT to consider it a fresh after granting the assessee reasonable opportunity of hearing. In the result, solitary ground of appeal is restored to the file of the learned CIT.

020. In the result ITA number 4037/M/2023 is allowed for statistical purposes

Order pronounced in the open court on 04.04.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 04.04.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai