

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.796/PUN/2023
निर्धारण वर्ष / Assessment Year: 2021-22

Dnyanganga Prasarak Mandal, Wander Bholji, Nandura, Dist. Buldhana- 443404. PAN : AABAD9000H	Shikshan Bahuuddeshiya	Vs.	CIT, Exemption, Pune.
Appellant			Respondent

Assessee by : None
Revenue by : Shri Keyur Patel
Date of hearing : 18.04.2024
Date of pronouncement : 07.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 18.05.2023 passed by LD CIT, Exemption, Pune for the assessment year 2021-22.

2. The appellant has raised the following grounds of appeal :-

"1] On the facts and circumstances of the case learned C.I.T. Exemption, Pune erred in rejecting Assessee's Application dt. 05.11.2022 in Form 10AB under section 80G(5) of the Income Tax Act, 1961 vide order dt. 18.05.2023.

2] Assessee-Trust was granted 80G(5) certificate by order of CIT Exemption Pune vide order dt. 17.10.2017 w.e.f. 10.11.2016 and

thereafter the Assessee was granted 80G(5) Certificate by Principal Comm. of I.T. Exemption, Pune vide provisional order dt. 09.07.2021 in Form 10AC after examining the genuineness of the Trust and it's activities and it's eligibility u/s. 80G(5). Thus on the same facts learned C.I.T. Exemption Pune was not justified in rejecting the Assessee's application referred to above.

3] Learned C.I.T. Exemption Pune had wrongly and illegality rejected Assessee's application for grant of 12A registration by his order dt. 28.04.2023 which is under challenge before ITAT vide appeal filed on 28.06.2023 and hence he equally erred in relying on the said illegal order for rejecting the present application u/s 80G(5) of I.T. Act, 1961.

4] Learned C.I.T. Exemption, Pune erred in observing that the Assessee failed to file provisional approval is not correct. The Assessee had filed all relevant document including Provisional Registration in Form 10AC u/s 80G(5) on 13.03.2023 in pursuance of notice dt. 04.03.2023.

5. Assessee craves leave to file additional grounds at the time of hearing as may be necessary."

3. When the case of the appellant assessee was called for hearing, NONE appeared on behalf of the assessee. On earlier two occasions also when the appeal was fixed for hearing neither anybody appeared nor any application for adjournment was filed. Therefore, we proceed to decide the appeal on the basis of the material available on record and after hearing the ld. DR.

4. Briefly, the facts of the case are that the appellant assessee is a trust & its application dated 05-11-2022 in Form 10AB for registration u/s 80G(5) of the IT Act was rejected vide order dated 18-05-2023 by LD CIT(E), Pune by observing as under :-

“3.1 In the instant case it is noticed that the assessee is neither registered u/s 12AB read with section 12A(1)(ac)(i) / 12A(1)(ac)(iii) nor approved u/s 10(23C) read with clause (i) / (iii) of first proviso to the said section and the case is not covered under the exclusions provided vide proviso to clause (i) of section 80G(5) of the Act. The assessee is also not a Regimental Fund or Non-Public Fund established by the amend forces of the Union for the welfare of the past and present members of such forces or their dependents. In fact, the application of the assessee in form No.10AB for registration u/s 12AB filed under the provisions of section 12A(1)(ac)(iii) of the Act has been rejected vide order dated 28/04/2023. Therefore, the condition (i) of section 80G(5) of the Income Tax Act, 1961 is not fulfilled in this case.

4. Further, the provisions of clause (iii) of first proviso to section 80G(5) of the Act are applicable to a trust/ institution which is provisionally approved under section 80G(5)(vi) of the Act. As per the provisions of Rule 11AA(2)(e) of the Income Tax Rules, 1962, the copy of existing order of approval was required to be submitted along with the application itself. The assessee was also requested vide the notice dated 04/03/2023 to furnish such copy. However the assessee, neither submitted the copy of provisions approval along with the present application nor in response to the notice issued. Thus, the assessee has failed to comply despite giving ample opportunity. The non-submission of copy of order of provisional approval under section 80G(5) of the Income Tax Act, 1961 establishes the fact that the prerequisite for application under clause (iii) of first proviso to section 80G(5) of the Act for approval under section 80G(5)(vi) of the Income Tax Act, 1961 is not fulfilled in this case.

5. In view of the above, the application filed by the assessee is hereby rejected without going into the merits of the case.”

5. Considering the above facts as well as after hearing ld. DR, at length, we are of the considered opinion that the right of filing the appeal is granted by the Statute to the assessee-taxpayers and in this case, the assessee wanted to invoke the said right and paid the appeal fees in this regard conveying his seriousness of pursuing the appeal. However, the appellant chose not to appear before this

Tribunal despite notices of hearing. Therefore, after considering the grounds of appeal & the order passed by LD CIT, Exemption, Pune, we are of the considered opinion that ld. CIT, Exemption rightly rejected the assessee's application. Thus, the order of ld. CIT, Exemption is fair and reasonable and does not require any interference. Accordingly, the grounds raised by the assessee are dismissed.

6. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the Open Court on 07th May, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07th May, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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