

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Ms. Kavitha Rajagopal, Judicial Member

ITA No. 962/Coch/2022
(Assessment Year: 2022-23)

Jethro Rehabilitation Trust Maniyakkara House Vadakarapathy Vill, Devarayan Kottai, Menonpara Post Palakkad 678556	vs.	Commissioner of Income Tax (Exemption), Kochi [PAN:AACTJ6468M]
(Appellant)		(Respondent)

Appellant by:	Shri Sherry S. Oommen, Advocate
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	07.03.2024
Date of Pronouncement:	30.05.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the denial of approval under section 80G(5) of the Income Tax Act, 1961 ('the Act') thereto by the Principal Commissioner of Income Tax, Kochi (Pr. CIT), vide his Order dated 21.09.2022.

2. At the outset, it was, taking us through the impugned order, explained by Shri Oommen, the learned counsel for the assessee, that the same is premised on the notion of the approval being sought as being u/s. 12AA of the Act, which the assessee had in fact already obtained on 24/9/2021, observing the two-step process introduced under the statute (by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020) w.e.f. 01.04.2021. Elaborating on the same, he continued, that in view thereof, the assessee, Jethro Rehabilitation Trust, a trust set up by a bereaved father, in the loving memory of his son, sought provisional approval

u/s. 80G(5)(iv), which was confirmed for a two-year period on 17/3/2022. The only manner whereby an approval u/s. 80G(5) can be denied to an applicant is on the ground of non-satisfaction of the conditions set out in s. 80G(5)(vi) of the Act, even as clarified in Rule 11AA of the Income Tax Rules, 1962 (the Rules), as indeed per several decisions in the matter. At the instance of the Bench, he would take us through the relevant provisions of the Act. Shri Das, the CIT-DR, could not rebut any of the contentions made, on the basis of material on record, by Shri Oommen.

3. We have heard the parties, and perused the material on record.

3.1 The impugned order reads as under: (by way of Annexure to Form 10D):

M/s. Jethro Rehabilitation Trust hereinafter 'the Applicant Assessee' has applied for Registration/Approval u/s 12AB in Form 10AB on 31/03/2022.

2. In response to the Hearing Notice vide DIN No. ITBA/EXM/F/ EXM43/2022-23/1044632881(1) dated 12.08.2022, the applicant appeared for hearing on 01.09.2022.

3. On verification of the documents submitted by the applicant it is seen that the mandatory clauses are not included in the Trust Deed/MOA and it needs to be amended.

4. In view of the facts and circumstances as above, this application in Form 10AB submitted by you is rejected.

3.2 The same is clearly is a cryptic order. *Apart from the fact that it refers to s. 12AB of the Act*, reference to s. 80G or the rules there-under in conspicuous by its absence. There is no reference therein to the provisional approval u/s. 80G(5)(iv) on 17/3/2022. It is only a perusal of the application dated 31/3/2022 (copy on record), that one discovers that the same is *qua* an application for approval u/s. 80G(5) r/w r. 11AA of the Rules. It is perhaps for the reason that both the provisions provided for application in the same format that led to it being construed by the competent authority as for another. Whatever may be the cause, it is indeed very unfortunate that an application by a charitable institution is treated in such a careless and cavalier manner, which in fact deserves imposition of cost. There is, resultantly, no question of the assessee's application being decided on merits, i.e., *qua* the said grant or

otherwise of the approval under s. 80G(5)(iv), which an order granting approval or, as the case may be, denying it, is to specify in clear terms along with reasons therefor.

4. We, accordingly, have no hesitation in, setting aside the impugned order, direct (re)adjudication by the competent authority on merits, per a speaking order, and in accordance with law, allowing the assessee a reasonable opportunity of being heard. Shri Oommen would, on the Bench so observing, pray for being heard personally, explaining that the process of hearing has since been centralised. We do not wish to be seen as interfering in the manner prescribed in this regard, i.e., representation, in view of the introduction of the faceless scheme. So, however, in case there is a provision thereunder for the same, it be extended to the assessee following the protocol in its respect, if any, i.e., for personal hearing per physical mode, providing the assessee such opportunity. Needless to add, such a course would have prevented the complete non-consideration on merits of the assessee's instant application and the consequent hardship. We decide accordingly.

6. In the result, the assessee's appeal is allowed.

Order pronounced on May 30, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: May 30, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT- DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin