

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.148/Nag./2024
(Assessment Year : N.A.)

Hislop College Alumni Association
C/o Prakash Opticals, West High Court Road
Dharampeth, Nagpur 440 010
PAN – AAAAH8931J

..... Appellant

v/s

Commissioner of Income Tax
(Exemption), Pune

..... Respondent

Assessee by : Shri J.M. Ranade
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 15/05/2024

Date of Order – 15/05/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 16/01/2024, passed by the learned Commissioner of Income Tax (Exemption), Pune, [*learned CIT(E)*].

2. In its appeal, the assessee has raised following grounds:-

"1. On the facts and In the circumstances of the case and in law, Ld. CIT (Exemption), Pune, erred in passing order dated 16/01/2024, rejecting the application filed by assessee trust for getting permanent registration u/s 80G of the I.T. Act, 1961, without serving proper notice either on its registered Email ID or by hand to assessee trust and thus no reasonable opportunity of being heard is given to assessee trust before disposing of the said application.

2. Any other ground of appeal that may be raised at the time of hearing of the appeal."

3. Facts in brief:- The assessee filed application in Form no.10AB under clause (ii) of the first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 ("the Act") before the learned CIT(E) on 12/09/2023. However, the learned CIT(E), without going into the merit of the application, passed ex-parte order rejecting the said application of the assessee for statistical purposes without drawing any adverse inferences by observing as under:-

"2. The application was carefully perused and considered along with its annexures. With a view to verify the genuineness of activities of the assessee and fulfilment of conditions laid down in clauses (i) to (v) of Section 80G(5) of the Act, a notice was issued through ITBA portal on 06/11/2023 requesting it to upload certain other information / clarification viz. self-certified copy of order of regular approval under section 80G(5) in form No.10AC, date of such approval, date of expiry of such approval, proof of identity of main trustees / directors, year-wise list of donations received, note on activities carried out along with supporting credible evidence, details of religious objectives, details of expenses on religious objectives, details of income from profits and gains of business, details of provisions of trust deed / MoA for transfer or application of income for any purpose other than charitable purposes etc.. The information / details were called for under the provisions of sub-clause (a) of clause (ii) of second proviso to section 80G(5) of the Income Tax Act, 1961. These are the basic details required to ascertain the overall nature of the activities of the trust.

2.1 The assessee was requested to submit its compliance by 21/11/2023. The assessee was specifically informed that in the event of failure to comply by the due date, the application shall be liable to be rejected and the registration / approval shall also be liable to be cancelled. The assessee was also given an opportunity of being heard vide the said notice. The notice was duly served on the assessee through e-portal and email. The assessee has not complied to the said notice till date.

3. However, on verification of the details / documents submitted by the assessee along with the application, it is seen that the assessee has not furnished the copy of REGULAR APPROVAL in form No. 10AC 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 but submitted 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.

4. The present application is filed by the assessee under clause (ii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961. The provisions of clause (ii) of first proviso to sub-section (5) of section 80G are related to application for renewal of regular approval of a trust or institution

which is already having regular approval under section 80G(5)(vi) of the Act and the period of said registration is about to expire.

4.1 No 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 application 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.

4.2 The non-submission of copy of order of regular approval under section 80G(5)(vi) 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 purposes without going into the merits of the case and no adverse inference is drawn against the assessee."

The assessee being aggrieved is in appeal before the Tribunal.

4. During the course of hearing, the learned Counsel for the assessee submitted that the assessee had neither received any notice through e-mail in its registered mail I.D. nor through postal department and hence, none appeared on behalf of the assessee which resulted in rejection of said application by passing the ex-parte order though not on merit. He further submitted that since the assessee did not get any opportunity to present its matter before the learned CIT(E), hence, he prayed to grant one more opportunity to enable the assessee to pursue its case on merit.

5. On the other hand, the learned D.R. submitted that the learned CIT(E) has given sufficient opportunities in spite of that the assessee has not

appeared before the learned CIT(E) and not filed relevant details. He strongly supported the orders passed by the learned CIT(E).

6. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. It is evident that the learned CIT(E) has passed the order ex-parte due to the non-appearance by anyone on behalf of the assessee. The learned Counsel for the assessee before us, submitted that due to some technical glitches on the ITBA portal, notices of hearing were neither received by the assessee in its registered e-mail I.D. nor was there any real time alert and, therefore, the hearing before the learned CIT(E) could not be attended. Further, now in appeal before us, the assessee is duly represented by the learned Counsel for the assessee and wishes to pursue the process of appeal before the learned CIT(E). We also find that the learned CIT(E) has not rendered any finding on the merits and has not specifically arrived any adverse inference. Therefore, in view of the above, we deem it fit and appropriate to restore the appeal to the file of the learned CIT(E) for denovo adjudication. We direct the assessee to furnish all the details in support of its claim before the learned CIT(E) and thereafter notice of hearing be issued by the learned CIT(A). Needless to mention that no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(E) on all the dates of hearing as may be fixed without any default. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 15/05/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 15/05/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur