

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.31 & 32/Nag./2023
(Assessment Year : 2023-24)

Yuva Foundation
Plot no.88B, Manewada Road
Nagpur 440 027
PAN – AAATY5501A

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)
Pune

..... Respondent

Assessee by : None
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 06/06/2024

Date of Order – 06/06/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been preferred by the assessee challenging the impugned order dated 31/10/2022, passed by the learned Commissioner of Income Tax (Exemp.), Pune, [*learned CIT(E)*].

2. During the course of hearing, the Registry has pointed out that both the appeals are barred by limitation and are delayed by 63 days in filing the appeals before the Tribunal. In the event of such delay in filing the appeals, the assessee has filed an application for condonation of delay supported by an Affidavit. The contents of the Affidavit are reproduced below:–

"Affidavit

I, Kunal Padole, President/Managing Trustee of Yuva Foundation PAN AAATY5501A hereby declare that the information given below is true and fair to the best of my knowledge:

Appeal including second appeal shall be filed within sixty days from the date of communication of the order appealed against.

There is a delay of 63 days in filing appeal. We were in shock on receiving the rejection order due to delay of just one day in submitting the documents. When we approached our consultants they also took time to process this information as they were busy in Audit Season and other work and then jointly when they analyzed and found out that only solution to get relief from the unjust action taken against them is to file an appeal with the appellate authority. This entire process invested time and hence resulted in delay of 63 days.

Considering the above-mentioned reason for delay and on humanitarian grounds I request Hon'ble Members of the Tribunal to kindly condone the delay in filing this appeal & allow me to keep my grounds For of appeal to proceed with the appeal.

*Yuva Foundation
Sd/-
Kunal Padole
President"*

3. On a perusal of the above, we are of the opinion that the assessee is prevented by filing the present appeals belatedly and the delay of 63 days in filing the present appeals before the Tribunal is hereby condoned. We now proceed to dispose off the appeals on merit.

4. The issue involved in both the appeals relate to rejection of final approval under section 12A(1)(c) and under section 80G of the Income Tax Act, 1961 ("the Act") vide order dated 29/09/2022. The said order is reproduced below, a copy of which is placed in ITA no.31/Nag./2023:-

"The assessee has filed application No.CIT EXEMPTION, PUNE/2022-23/12AA/11631 in Form No.10AB under clause (iii) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 on 31/03/2022.

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), a notice was issued through ITBA portal on 03/08/2022 requesting him to upload certain other information / clarification by 18/08/2022. Another opportunity was given to the assessee vide notice dated 18/09/2022

requesting him to submit his compliance by 23/09/2022. The assessee was specifically informed that in the event of failure to comply by the due date, the matter will be decided based on material available on record. Both these notices were duly served on the assessee through e-portal / email.

3. It is seen that the assessee has not submitted any satisfactory material including a note on activities before the undersigned. Only a few copies of photographs and paper cuttings have been submitted. Some of the photos have caption of Yuva Rojgar Melava but the assessee has not submitted any further details about the beneficiaries and what actual activity was carried out by the assessee since names of other institutions have also been mentioned in the caption. Whereas the assessee was specifically requested to submit a note on activities along with supporting credible evidence. However, the assessee has failed to comply. An opportunity of being heard was also given to the assessee vide notice 18/09/2022 but the assessee did not attend.

3.1 As per the provisions of Rule 11AA(2)(h) of the Income Tax Rules, 1962, the application in Form No. 10AB shall be accompanied by note on activities giving details of activities of the assessee. However, the assessee has failed to furnish the same. It is also seen from the data available on ITBA portal that the assessee has not uploaded these details despite giving ample opportunities as detailed above. In absence of any such tangible material in respect of details and proof of activities being carried out, it is not possible to ascertain as to whether the activities are in line with the objects of the trust / institution. Hence, the undersigned is unable to draw any satisfactory conclusion about genuineness of activities of the assessee and fulfilment of conditions laid down in clause (i) to (v) of section 80G(5) of the Act.

4. In view of the above, the application filed by the assessee is hereby rejected.

5. The assessee has also placed on record Form no.10AC, granting provisional registration from 02/10/2021, from the assessment year 2022-23 to 2024-25. It is surprising that such provisional registration is not yet cancelled. Whereas, the application for final registration has been rejected. We failed to understand the diametric opposite stand taken by the Revenue on the same issue. The assessee has also filed physical copies of the documents in the paper book and uploaded in the portal. It appears to us that the learned CIT(A) has glossed over the entire particulars and post the order in the perfunctory manner. In the interest of natural justice and fair play, we restore both the appeals being ITA no.31 & 32/Nag./2023 to the file of the

learned CIT(E) to decide the matter afresh. Needless to mention, the appellant must be given reasonable opportunity of being heard.

6. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 06/06/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/06/2024

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