

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

**ITA No.1522/Mum/2024
(A.Y. 2022-23)**

New Horizon Education Society, Anand Nagar Kavesar, Ghodbunder Road, Thane, West, Thane – 400615	Vs.	The CIT(Exemption) Room No.601, 6 th Floor, Cumbala Hill, MTNL Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumbala Hill Mumbai – 400026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABTN2615F		
Appellant	..	Respondent

Appellant by :	Manoj G. Moryani
Respondent by :	S. Srinivasu

Date of Hearing	19.06.2024
Date of Pronouncement	27.06.2024

आदेश / ORDER

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order of Id. CIT(Exemption) of the Income Tax Act, 1961 for A.Y. 2022-23. The assessee has raised the following grounds before us:

- “1. *The Ex-parte order passed for rejection of approval U/s 80G is illegal, invalid and bad in law;*
2. *On the facts and circumstances of the case, the learned Commissioner of Income (Exemption), Mumbai has issued notice on email id, the mail ID belongs to ex-employee Shri Vijay Nerulkar who was retired and notice was not properly served to the assessee trust, therefore rejection of approval and passing of ex-parte order is unjustified, unwarranted and excessive;*
3. *On the facts and circumstances of the case, the learned Commissioner of Income (Exemption), Mumbai has made all the correspondence as well*

as issued notices on mail ID of ex-employee Shri Vijay Nerulkar email, and no notice has been received, therefore rejection of approval and passing of ex-parte order is unjustified, unwarranted and excessive and against the principle of nature justice;

4. *On the facts and circumstances of the case, the learned Commissioner of Income (Exemption), Mumbai failed to consider that the trustee of the trust has not received any correspondence as well as notices dated 24/01/2023 & 15/02/2023 were not properly served to the assessee, therefore assessee trust has not filed proper reply and not submitted supporting evidence, therefore Ex-parte order passed for rejection of approval is illegal, invalid and bad in law;*
5. *On the facts and circumstances of the case, the learned Commissioner of Income (Exemption), Mumbai erred in not granting proper opportunity to file reply and submit supporting documents required for approval under section 80G, therefor ex-parte order passed is unjustified, unwarranted and excessive.*
6. *The assessee craves leave to amend, add or take a new ground or grounds at the time of hearing;”*

2. There was delay of 324 days in filing the appeal the assessee has filed application for condonation of delay along with affidavit dated 03.04.2024.

3. Heard both the sides and perused the material on record. The assessee reported in the AFFIDAVIT dated 03.04.2024 filed before us that ex-parte order dated 13.03.2023 passed by the ld. CIT(Exemption) for rejecting approval u/s 80G of the Income Tax Act 1961 was not received by the assessee since the communication addressed on the email id of the ex-employee of the assessee could not be accessed because of retirement of the employee. However, later on assessee has noticed the ex-parte order on the portal of the Income Tax Department and filed the appeal on 30.03.2024 which resulted in delay by 324 days. The assessee requested for condonation of delay because of not receiving the ex-parte order passed by the Commissioner of Income Tax in rejecting the approval u/s 80G of the Income Tax for the reason as discussed. In view of the above facts and circumstances it appear that there is reasonable cause for delay in filing the appeal by 324 days because ex-parte order passed by the ld. CIT(Exemption) was not

received by the assessee as all the communication was made on the email ID of the employee of the assessee who retired on 31.05.2022 and he had not brought the same to the notice of the assessee trust. We have also perused the decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji (1987 AIR 1353) (SC) on the proposition that the sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttles a decision on merit.

In the light of the above facts and finding we condone the 324 days delay in filing the appeal.

4. The fact of the case is that the assessee has filed application in the form of Sec. 10AB seeking approval u/s 80G of the Act. On verification of the Form no. 10AB filed by the assessee trust the ld. CIT(Exemption) found that application in Form No.10AB filed by the assessee was incomplete as all the document required to be accompanying the application were not furnished. Therefore, the ld. CIT(Exemption) has issued notice dated 24.01.023 and reminder dated 24.09.2023 requesting the assessee to furnish the complete set of documents. However, the assessee has not made any compliance to the notices as referred above. Therefore, the ld. CIT(Exemption) expressed his dissatisfaction on the genuineness of the activities of the assessee trust and rejected the application for grant of approval u/s 80G of the Act.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above at the outset the ld. Counsel submitted that assessee has not received the notices referred by the ld. CIT(Exemption) since the notices were set on the email id of the ex-employee of the assessee company Shri Vijay Nerrulkar who retired on 31.05.2022 and he has not brought all these notices and

communication to the notice of the assessee trust. We consider that there appear to be a reasonable cause for not making compliance before the commissioner of Income Tax (Exemption) for the reasons as discussed supra therefore we restore this case to the file of the Id. CIT(Exemption) for adjudicating the application filed by the assessee in Form No.10AB on merit after providing more opportunities to the assessee. The assessee is also directed to update their email id and make due compliance without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.06.2024

Sd/-

(Raj Kumar Chauhan)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 27.06.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.