

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

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

ITA no284/Nag./2024
(Assessment Year : N.A.)

Deesha Medical And Education Foundation
H.No.464, Deesha Villa
Shri Gajanan Township No.2
Kathora Road, Amravati 444 601
PAN – AAICD3858N

..... Appellant

v/s

Commissioner of Income Tax (Exemp.)
Pune

..... Respondent

Assessee by : Shri Swapnil Gawande
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 26/06/2024

Date of Order – 26/06/2024

ORDER

PER K.M. ROY, A.M.

The instant appeal has been filed by the assessee challenging the impugned order dated 27/03/2024, passed by the learned Commissioner of Income Tax (Exemptions), Pune, [*learned CIT(E)*].

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

"1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Exemption) has erred in rejecting the application filed by the Appellant Company on the ground that the application filed in Form 10AB has not filed within time limit prescribed and therefore it is non- maintainable. The Ld. CIT(E) failed to understand that the timeline prescribed under clause (iii) to first proviso to section 80G of the Act should be reckoned as directory and not mandatory.

2. On the facts and circumstances of the case and in law, the Id. CIT(E) has failed look over the Circular no. 6 of 2023 dated 24th May 2023. The circular, in point no. 5(ii) regarding Form No. 10AB, extends the deadline till 30.09.2023 for applications under certain provisions of the Income Tax Act, where the due date had expired before this circular's issuance. It emphasizes that pending applications in Form No. 10AB should be considered valid if not rejected prior to the circular's issuance. Additionally, it allows company whose applications were rejected solely due to late submission to file fresh applications within the extended deadline. The writ petition of Sri Nrisimha Priya Charitable Trust vs Central Board of Direct Taxes & Commissioner of Income Tax (Exemptions) highlights this extension and questions the omission or typographical error in the second circular regarding the provisos to section 80G of the Act.

3. On the facts and circumstances of the case and in law, the Id. CIT(E) failed to appreciate that the appellent company received provisional registration approval was received on 28-05-2021 u/s 80G5(vi) for period of three years from AY 2022-23 to AY 2024-25. It was after this approval that the appellent company has commenced its activities.

4. On the facts and circumstances of the case and in law, the Id. CIT(E) has erred in rejecting the application filed u/s 80G(5)(iii) of the Act stating that the delay in filing of application cannot be condoned by Ld. CIT (Exemptions). The Ld. CIT(E) has failed to appreciate that there is no delay in provisional application filed in Form 10AB u/s 80G(5) of the Act dated 28-05-2021 which was before the commencement of activities and final registration was applied on 26-09-2023 for which necessary directions may please be given to Ld. CIT(Exe.) for granting approval u/s 80G(5)(iii) considering merits of the case. The same please be held accordingly.

5. On the facts and circumstances of the case and in law, the Id. CIT(E) has failed to appreciate that all the required details mandated vide the notices issued dated 24.11.2023, 18.12.2024 and 24.01.2024 were duly submitted via email to pune.cit.exmp@incometax.gov.in on 04.12.2023 since there was some technical glitch on the website in the faceless assessment and via online submission on 21.11.2023 and 31.01.2024.

6. On the facts and circumstances of the case and in law, the id. CIT(E) erred in invoking the provisions section 80G and considering the case on merits but rejected the application without giving an opportunity of being heard against the principles of natural justice. The order passed by the learned Commissioner of Income Tax (Exemption) is bad in law and contrary to the provisions of law.

7. On the facts and circumstances of the case and in law, Ld. CIT(E) may consider the new information brought on record that CBDT has issued Circular No. 07/2024 dated 25.04.2024 further extending the due date for filing Form 10A/ Form 10AB upto 30th June, 2024, in respect of certain provisions of section 10(23C)/ section 12A/ section 80G/ and section 35 of the Act with a view to avoid genuine hardships to taxpayers."

3. In this case, the assessee filed The assessee has filed application No.CIT EXEMPTION, PUNE/2023- 24/12AA/12727 in Form no.10AB under clause (ii) of first proviso to sub- section (5) of section 80G of the Income Tax Act, 1961 on 26/09/2023.

4. The Learned CIT(E) noted stated in his order that the application was carefully perused and considered along with its annexures. However, while rejecting the application filed by the assessee, the learned CIT(E) held as under:–

"Be that as it may, we are here concerned whether in the absence of any statutory provision to condone the delay in presenting the application under section 10(23C)(vi), the Chief Commissioner of Income-tax can exercise any such power".

7. The adjudicating authorities under the Income- tax Act are quasi judicial authorities. They can grant approval with retrospective effect if such mechanism is provided in the Act. There is no such provision nor there is any power to condone the delay after considering the reasonable reasons. A reasonable cause can be taken into cognizance for condoning the delay, if such provision is provided in the Act while considering any issue for adjudication. Therefore, considering the above proposition, we are of the view that Id. CIT (Exemption) has rightly rejected the application of the assessee for grant of approval under section 10(23C)(vi) of the Income-tax Act. All these three appeals are rejected.

In the result, all the appeals of the assessee are dismissed."

5.9 In view of the above, the present application filed in Form No.10AB under clause (iii) of first proviso to section 80G(5) of the Act is liable to be rejected without going into the merits since the assessee has not filed the present application within the time limit allowed under clause (iii) of first proviso to section 80G(5) of the Income Tax Act, 1961.

6. In view of the above, the application filed by the assessee is hereby rejected and the provisional approval granted on 28/05/2021 under clause (iv) for first proviso to section 80G(5) of the Income Tax Act, 1961 is hereby cancelled.

5. We have heard the rival arguments, perused the material available on record and gone through the order of the authority below. The learned CIT(A)

has rejected assessee's application for the reason that the assessee had not filed the application within the time limit allowed under clause (iii) of the first provision to section 80G(5) of the Act that too without going onto the merits of the application. The learned Counsel for the assessee vehemently prayed for restoring the entire matter to the file of the learned CIT(E) for fresh adjudication on merit to enable him to file all the relevant documents and adduce corroborative evidences available with the assessee and substantiate his case before the learned CIT(E). Therefore, we are of the opinion that by following the principles of natural justice, one more opportunity should be given to the assessee to substantiate his case before the learned CIT(A). In view of the above, the order passed by the learned CIT(A) is set aside and remit the matter to the file of the learned CIT(A) and direct him to adjudicate the matter afresh after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes. Accordingly, all the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 26/06/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 26/06/2024

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