

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 744/JP/2024

Shanti Devi Foundation 197 K Agra Road, Mansar Khedi, Jaipur	बनाम Vs.	CIT Exemption, Jaipur,
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAXTS 4835 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Suhani Maharwal, CA  
राजस्व की ओर से / Revenue by : Sh. Ajay Malik (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 16/07/2024  
उदघोषणा की तारीख / Date of Pronouncement: 18/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee arises out of the order of the Commissioner of Income Tax (Exemption), Jaipur, passed on 09/05/2024 [here in after referred to as Ld. CIT(E) ], whereby application u/s 80G(5) of the Income Tax Act, 1961, filed by the assessee stands rejected. While doing so, Ld. CIT(E) has observed that since the activities of the assessee are not genuine approval u/s 80G was not being granted.

2. Aggrieved by the abovesaid order of Id. CIT(E), the assessee has preferred present appeal on the following grounds.

“1 On the facts and in the circumstances of the case as well as law Id. CIT(E) erred in rejecting application filed u/s 80 G (5) for want of genuineness of activity without affording proper opportunity of being heard which is based on very short notice and also without considering material and reply already filed which is unjustified and liable to be set aside.

2. On the facts and in the circumstances of the case as well as law Ld. CIT(E) erred in withdrawing approval granted under sub-cause(A) of clause(iv) of first provision to return 80G (5) without mentioned separate order and DIN, without affording opportunity of being heard which is illegal and liable to be quashed.

3. Assessee deserves right to amend, alter, delete and modify any ground of appeal on or before the date of hearing.”

3. Brief facts, as emerge from the record, are that the assessee filed online application in Form No. 10AB seeking approval u/s 80G of the Income Tax Act, 1961 on 23.11.2023. The Id. CIT(E) noted that in this case, an application was earlier rejected as having been withdrawn on 27.08.2023.

A letter dated 03.03.2024 was issued at the e mail address provided in the application requiring the applicant – assessee to submit certain documents / explanation by 18.03.2024. The assessee filed reply wherein Id. CIT(E) found certain discrepancies. Therefore, a show cause notice/letter 01.05.2024 was issued and matter was fixed for 07.05.2024. But, no compliance was made by the applicant upto 9.5.2025 till date of

passing order by Id. CIT(E). Considering said aspect, the application was rejected by observing as under :

“In response, the applicant submitted its reply on 20.03.2024 and submit few details but not submit details as asked in show cause notice dated 16.03.2024. Hence, it is clear that the activities of applicant trust are not genuine and conclusion drawn from above is under:-

- Not furnish any bill vouchers/payment details of expenses like Blanket distribution exp., Education & teaching exp., Food distribution exp., Environment education exp., Social welfare exp. Thus, genuineness of activities not proved.
- No proper details of activities, its beneficiaries, its bills/vouchers submitted. Thus, activities remain unverified.
- On perusal of I/E account for the F.Y. 2023-24, you have claimed huge amount to various expenses but these payments are seems in cash. In absence of such details possibility of siphoning of funds.
- As per bank statements you have made payments to various persons but in absence of details documents of these payments not clear that for what purpose such payments was made.
- Not furnish donation details as asked in show cause notice dated 01.05.2024.
- No details of payments to 13(3) persons.

Hence, it is clear that the applicant not furnish completed details asked in various notices. Thus, activities are not verifiable and it could not be determined whether the applicant is genuinely carrying out charitable activity. Therefore, the applicant claim of approval u/s 80G is also liable to be rejected on ground of not proving its genuineness of activity.

03. In view of above discussion applicant's application for approval u/s 80G is liable to be rejected and thus being rejected on following grounds: -

• Non Genuineness of Activities

04. Further 2nd proviso to 80G(5) also state that if CIT is not satisfied has to pass order rejecting such application and also cancelling its earlier approval. Thus, it is clarified that applicant provisional approval under clause (iv) of first proviso to subsection (5) of section 80G of the Income Tax Act, 1961 dated 31.10.2023 is also being cancelled. Further assessee has failed to give proper justification for regularization of provisional approval, thus with this order provisional approval is also lapsed and cancelled.”

4. The Id. AR for the assessee argued before us that show cause notice was issued on 01.05.2024 fixing the application for hearing on 07.05.2024 and that the impugned order came to be passed two days thereafter i.e. on 09.05.2024; that the applicant partly complied with the notices; that remaining information could not be furnished.

Based on said submission, Id. AR of the assessee has prayed that factum of establishing genuineness of the activities of the applicant, which is being disputed, is to be determined only after giving proper opportunity of hearing to the assessee, and as such, in the interest of justice, one more opportunity may be granted to the assessee to establish its case on merits.

5. Per contra, the Id. DR objected to the prayer of the assessee on the ground that there is clear non-compliance by the assessee of the show cause notice issued by the Id. CIT(E). The Id. DR has also relied upon the order of Id. CIT(E).

6. We have heard rival contentions and perused the material placed on record. As is evident from record, show cause notice in the case seeking clarification from the assessee was issued on 01.05.2024, and compliance was sought by 07.05.2024. While rejecting the application of the assessee,

the Id. CIT(E) noted that details asked for in the show cause notice dated 16.03.2024 were not submitted, and as such, he was of the view that the activities of applicant trust were not genuine, and as such an adverse inference was drawn.

7. We may observe that in case the assessee is given proper opportunity of being heard, the defects observed in the impugned order are curable in nature. Since the assessee could not get sufficient opportunity, we deem it to be fit case to remand the matter to the files of the Id. CIT(E) to decide the matter afresh, after giving the opportunity of being heard to the assessee. Based on these observations, we set aside the order under challenge, and remand the matter to the files of Id. CIT(E).

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

Order pronounced in the open court on 18/07/2024.

Sd/-  
(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(राठौड़ कमलेश जयन्तभाई)  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/07/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Shanti Devi Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- CIT Exemption, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 744/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar