

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH 'B', PUNE

BEFORE SHRI INTURI RAMA RAO, JUDICIAL MEMBER
AND
SHRI VINAY BHAMORE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.896/PUN/2024

Shree Vyagreshwar Kulswami Pariwar,
Flat No.4, C/o. D.S. Ranade,
105/2, Narayan Peth, Pune 411 030
Maharashtra

PAN : AAITS1697K

.....अपीलार्थी / Appellant

बनाम / V/s.

The CIT(Exemption),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Ajay Kumar Keshari

सुनवाई की तारीख / Date of Hearing : 25.07.2024
घोषणा की तारीख / Date of Pronouncement : 29.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee trust directed against the order of Id. Commissioner of Income Tax (Exemptions), Pune dated 02.03.2024 denying grant of approval u/s.80G(5) of the Income Tax Act, 1961 (hereinafter also called 'the Act').

2. The appellant is a trust registered u/s.12A of the Act. It had applied for approval under clause (iii) of the first proviso to sub-section (5) of section 80G. The trust was granted provisional approval vide order dated 04.04.2022 valid upto the A.Y. 2024-25. Subsequently, the appellant trust filed application in Form No. 10AB under clause (iii) of first provision to sub-section (5) of section 80G of the Act on

29.09.2023. The said application came to be rejected vide impugned order dated 02.03.2024 on the ground that the appellant trust had not filed the application within the prescribed time limit under clause (iii) of first provision to sub-section (5) of section 80G of the Act. According to the Id. CIT(Exemptions), the appellant trust was required to file the application in Form No.10AB for regular approval within six months from the date of provisional approval, i.e. on or before 03.10.2022, or as extended upto 30.09.2022 as per the CBDT Circular No.08/2022 dated 31.03.2022 whichever is earlier. Since the activities of the trust was already commenced as on the date of provisional approval, i.e. on 26.02.1981. The present application in Form No.10AB was filed by the appellant trust only on 29.09.2023. Therefore, the Id. CIT(Exemptions) denied the grant of approval on the grounds of delay. Further, the Id. CIT(Exemptions) observed that in the absence of compliance with the notices issued through ITBA portal on 24.11.2023, he could not reach a conclusion about the genuineness of the activities of the trust and the fulfilment of the conditions laid down in clause (i) to (v) of section 80G of the Act.

3. Being aggrieved, the appellant trust is in appeal before us in the present appeal.

4. When the matter was called on, none represented the case of the assessee despite due service of notice of hearing. We, therefore, proceed to dispose of the appeal after hearing the Id. Departmental Representative.

5. The Id. Sr. DR supporting the order of CIT(Exemptions) submits that no interference by this Tribunal is called for.

6. We heard the Id. Departmental Representative and perused the material on record. In the present case, admittedly, the appellant trust has commenced the activities on 26.02.1981 even as on the date of grant

of provisional approval on 04.04.2022. In this connection, for better appreciation relevant provisions of *proviso* to section 80G are extracted below :

“Provided that the institution or fund referred to in clause (vi) shall make an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for grant of approval,—

(i)

(ii)

(iii) *where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is earlier;*

The literal interpretation of clause (iii) of proviso means that in case the institution has been provisionally approved, application in the prescribed form for grant of the requisite approval u/s.80G(5) is required to be made six months prior to expiry of the provisional approval or within six months of commencement of the activities whichever is earlier.

7. There can be two categories of institutions; (1) the institutions which had commenced the activity subsequent to the grant of provisional approval (2) the institutions which had commenced the activity much before the date of grant of provisional approval (2). No doubt, in the case of former category the literal interpretation of clause (iii) of proviso to section 80G(5) does not lead to any hardship, absurdity or injustice. It is only in the case of later category the literal interpretation leads to hardship, absurdity or injustice as it is impossible to comply with the time limits prescribed under the proviso which had commenced the activities six months prior to the date of grant of provisional approval. Thus, the provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature. In such a situation, it is now a settled rule of construction that the courts may modify the language used by the Legislature or even “do some violence” to it, so as

to achieve the obvious intention of the Legislature and produce a rational construction vide *Luke V. IRC (1996) 54 ITR 692*. The court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.

8. In our considered opinion, in the light of the above discussion, a fair and reasonable construction clause (iii) of proviso to section 80G(5) would be to read into it a condition that in the place of word ‘*earlier*’ word “*later*” be substituted and can be read as under :

“(iii) where the institution or fund has been provisionally approved, at least six months prior to expiry of the period of the provisional approval or within six months of commencement of its activities, whichever is later;

9. We are also fortified in adopting the above construction by the decision of *Hon’ble Supreme Court in the case of K.P. Varghese Vs. ITO 131 ITR 597 (SC)*.

10. Adverting to the facts of the present case, undisputedly, the appellant trust commenced its actual activities on 26.02.1981 and in view of the above construction of clause (iii) of proviso to section 80G(5) the appellant trust is entitled to file the application for regular approval prior to six months of expiry of the provisional approval, i.e., on or before 03.10.2022. Therefore, it cannot be said that the application filed by the appellant trust for grant of regular approval is barred by limitation prescribed under the proviso to section 80G(5). Therefore, the Id. CIT(Exemptions) is not justified in denying the grant of approval u/s.80G(5) to the appellant trust on the ground of delay in submission of Form No.10AB.

11. As regards the compliance to the notices by the Id. CIT(Exemptions), we find that in the instant case the hearing notices were sent through ITBA portal by the CIT(A). In our considered

opinion, it is not a valid method and manner of service of notice as specified under the provisions of section 282(1) of the Act. Therefore, it is crystal clear that the notices were not served upon the appellant. To fortify our view, we would like to make a reference to a decision rendered by the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of 282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

.....

8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the

purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.”

12. In view of the above legal position, we are of the considered opinion that the notice(s) of hearing were not served properly to the appellant. Therefore, in the interest of justice, we restore the matter back to the file of CIT(Exemptions) for *denovo* disposal on merits in accordance with law.

13. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 29th July, 2024.

Sd/-
VINAY BHAMORE
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th July, 2024

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT concerned
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune