

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.2503/Chny/2024

Pondicherry Utkal Samaj,
No.2, Thiruvika Street,
Ashok Nagar,
Puducherry

Vs. The Commissioner of Income Tax
Exemptions,
Chennai.

[PAN: AAJAP 7787P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri V. Meenakshi Sundar, C.A.,
: Ms. D. Komali Krishna, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 16.12.2024

घोषणा की तारीख /Date of Pronouncement : 18.12.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal filed by the assessee is arising out of the order of the Ld. Commissioner of Income Tax (Exemption) Chennai (in short "the Ld. CIT (E)") dated 1.08.2024

2. The assessee has filed an application on 29.02.2024 in form No.10AB under clause (iv) B of first proviso to Section 80G(5) of the Income Tax Act, 1961 (in short "the Act") seeking approval u/s.80G of the Act. As per the Id. CIT(E) Section 80G(5) (iv) (B) of the Act applicable for those trust who have commenced their

activities and no income or part thereof has been excluded from the total income u/s.10(23C)(iv) (v)(vi), (via) or u/s.11 or 12 for any previous year ending on or before the date of such application at any time after the commencement of such activities. The assessee trust had filed ITR 7 for the financial years 2021-33 and 2022-23 and claimed application of income in respect of above financial years hence assessee is not eligible to file application u/s.80G (5)(iv)(B) of the Act and the application filed by the assessee was rejected by the Id. CIT(E). Aggrieved, assessee preferred an appeal before the Tribunal.

3. The Id. counsel argued the same points what is narrated in the grounds of appeal. He further submitted the assessee instead of filing form in 10AB under clause (iii) has filed in clause (iv). This is only a technical error and the Id. CIT(A) ought not have rejected the application, otherwise assessee is eligible for grant of approval under Section 80G of the Act. Per contra, the Id.DR relied upon the order of the Id.CIT(E).

4. We heard the rival contentions and perused the material available on record. We find that in similar circumstances the co-ordinate bench of the Tribunal in the case of Chinnasamy Nagalingam Institute of Medical Science Research Foundation Vs CIT(E) ITA No.906/Chny/2024 dated 03.07.2024 has directed Ld. CIT(E) to grant an opportunity to the assessee to rectify the mistake. The said direction is as under:-

1. Aggrieved by rejection of an application filed in Form No.10AB seeking registration under Clause (ii) of first proviso to Sec. 80G(5) vide impugned order dated 09.02.2024, the assessee is in further appeal before us. At the time of hearing, none appeared for assessee. Upon perusal of impugned order, it could be seen that the application has been rejected in view of the

fact that the assessee was having provisional registration and it had filed application under clause (ii) of first proviso to Sec. 80G(5) whereas it ought to have applied under clause (iii) of first proviso to 80G(5) which is applicable for provisionally registered entity.

Aggrieved, the assessee is in further appeal before us.

2. We are of the considered opinion that the application ought not to be rejected on mere technical grounds. The wrong selection of clause may be due to an inadvertent error and the same may be in view of the fact that new regime of registration of trust was brought in place very recently. The applicant ought to have been granted an opportunity to rectify the error. Therefore, we direct Ld. CIT(E) to grant an opportunity to the assessee to rectify the mistake and thereafter, proceed for disposal of application on merits after affording reasonable opportunity of hearing to the assessee.

3. The appeal stand allowed for statistical purposes.

Order pronounced on 3rd July, 2024

5. In this case, the Id. Authorized Representative submitted that the assessee instead of filing Form 10AB under clause (iii) has filed in clause (iv). The Id. Authorized Representative further contended that the Id.CIT(E) erred in not entertaining the application on hyper technical ground.

6. We find that the Id.CIT(E) ought to have given proper opportunity to rectify the mistake. Even otherwise, the Id.CIT(E) is supposed to see whether objects as submitted by the assessee in the application for registration are as per law or not. Hence, summary dismissal of the application for approval on hyper technical ground is not justified. We also find that the Tribunal order in the case of Chinnasamy Nagalingam Institute of Medical Science Research Foundation Vs CIT(E) ITA No.906/Chny/2024 dated 03.07.2024 was candidly referred by the assessee but that the same was not considered by the Id.CIT(E). Therefore, respectfully following the co-ordinate bench order referred supra, we set aside the impugned order passed by the Id.CIT(E) and direct Ld. CIT(E) to grant an opportunity to the

assessee to rectify the mistake and thereafter, proceed for disposal of application on merits after affording reasonable opportunity of hearing to the assessee.

7. In result, appeal of the assessee is allowed for the statistical purpose.

Order pronounced in the open court on 18th day of December, 2024

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 18-12-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF