

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2236/PUN/2024

The Sultankhan Educational Trust Asmita House, Naya Nagar, Mira Road (E), Miraroad – 401107, Maharashtra	Vs.	CIT(Exemption), Pune
PAN: AAATT2876R		
(Appellant)		(Respondent)

Assessee by : Shri Rahul Sarda (virtual)
Department by : Shri Ajay Kumar Keshari, CIT
Date of hearing : 20-03-2025
Date of pronouncement : 21-03-2025

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 31.08.2024 of the Ld. CIT(Exemption), Pune rejecting the application for approval u/s 80G of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Facts of the case in brief, are that the assessee filed an application in Form No.10AB on 16.02.2024 for approval under sub clause (B) of (iv) of first proviso to sub section (5) of section 80G of the Act. With a view to verify the genuineness of the activities of the assessee and fulfillment of conditions laid down in clause (i) to (v) of section 80G(5) of the Act, a notice was issued through ITBA portal on 01.05.2024 requesting the assessee to upload certain information / clarification. In response to the same, the assessee filed certain details. On verification of the

details submitted by the assessee, the Ld. CIT(E) noted various discrepancies for which another notice was issued to the assessee asking the assessee to explain on account of those discrepancies. The assessee responded to the said notice. However, the Ld. CIT(E) noticed that the assessee failed to submit the required documents such as intent letter to prove the genuineness of the corpus donation. Further, the assessee did not file any document to justify and prove the genuineness of huge work-in-progress shown in his books of account but only submitted a copy of completion certificate issued by Mira Bhayendar Municipal Corporation for partial completion of the school. The Ld. CIT(E) therefore, issued another notice to the assessee to submit a detailed explanation on “Advance fees—UAHM & UAB” of Rs.1.90 crores shown in the books of account. The assessee in response to the same filed certain details stating that it has been received from the students for academic year 2023-14. Since no supporting documents to justify its claim were filed, the Ld. CIT(E) issued another notice to the assessee. Despite reasonable opportunity of being heard was provided by the Ld. CIT(E), the assessee failed to furnish the requisite details to his satisfaction for which he rejected the approval u/s 80G by observing as under:

“6. Since, the assessee didn't furnish sought details, in the absence of such documents/details, the justification of impugned activity could not be derived. Reasonable opportunities have already been provided, to the assessee to submit the relevant documents in its support. Thus, the assessee has failed to justify the genuineness of the claimed activities.

7. In respect to the above discrepancies, the undersigned is unable to draw any satisfactory conclusion about the genuineness of activities of the assessee and fulfilment of conditions laid down in clause (i) to (v) of section 80G(5) of the Act.

8. Without prejudice to the above, The assessee has stated that it has claimed deduction u/s. 11 on the basis of registration under section 12A of the Act. The contention of the assessee is duly considered. However, the same is not acceptable for the following reasons:

8.1 The assessee has filed the present application under clause (B) of (iv) first proviso to sub-section (5) of section 80G of the Income-tax Act, 1961. The extract of the said provision is reproduced herewith for ready reference:

"80G(5)(iv)(B): in any other case, where activities of the trust or institution have-

(A)....

(B) commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or subclause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities,"

8.2 It can be thus seen that the provisions of said section applies to a case where activities of the trust or institution have 'commenced and no income or part thereof of the said trust or institution has been excluded from the total income on account of applicability of sub-clause (iv) or subclause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, or section 11 or section 12, for any previous year ending on or before the date of such application, at any time after the commencement of such activities.' However, in the assessee's case, its income pertaining to previous year 2020-21, 2021-22 and 2022-23 has been excluded from the total income on account of applicability of section 11 as under:

		FY 2020-21	FY 2021-22	FY 2022-23
(i)	Amount applied to charitable purposes u/s 11	Rs.16.69 Crs	Rs. 13.69 Crs	Rs.21.32 Crs

9. Considering the above, and since the assessee's activities were already commenced at the time of filing the present application and it has claimed deduction under section 11 for previous year before the date of the present application, the assessee trust is not eligible to file application under clause (B) of (iv) first proviso to sub-section (5) of section 80G of the Income-tax Act, 1961.

10. In view of the above, the application under sub clause (B) of (iv) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 filed by the assessee is hereby rejected."

3. Aggrieved with such order of Ld. CIT(E), the assessee is in appeal before the Tribunal by raising the following grounds:

1. Rejection of Registration u/s 80G(5) of Income Tax Act

- 1.1. *The assessee, a trust was incorporated for carrying out charitable activities, and registered under the charitable trust act and Income tax Act.*
- 1.2. *It was granted provisional approval u/s 80G(5)(vi) of Income Tax act, 1961 by the Commissioner of Income Tax (Exemption) vide order dated 18.03.2022.*
- 1.3. *The assessee filed an application in Form 10AB under Sub Clause B, clause (iv) of first proviso to sub-section (5) of section 80G of the Income Tax Act, 1961 on 16/02/2024,*
- 1.4. *The assessee was requested vide the notice dated 24/08/2024 to show cause as to why the application should not be rejected and as to why the approval should not be cancelled and passed a cancellation order on the 31 August 2024 since the application was getting time barred by limitation on such date without making any further inquiries.*
- 1.5. *The learned Commissioner of Income Tax (Exemption) erred in law and on facts in passing an order without giving sufficient time to the assessee to file his replies and make further inquiries if the learned CIT had any doubts regarding the documents and details provided by the assessee which is against the principles of natural justice.*
2. *The appellant prays that the order passed by the learned Commissioner of Income Tax (Exemption) be set aside.*
3. *The appellant craves leave to add, amend, alter, vary and/or withdraw any or all of the above grounds of appeal.*

4. The Ld. Counsel for the assessee submitted that the assessee has filed the requisite details before the Ld. CIT(E) to substantiate its case for approval u/s 80G of the Act. However, the Ld. CIT(E) was not satisfied with the submissions made by the assessee for which he issued another notice for clarification of those details. However, unfortunately, the last notice issued by the Ld. CIT(E) could not be

complied with. He accordingly submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case by filing the requisite details before the Ld. CIT(E).

5. The Ld. DR on the other hand strongly opposed the submissions made by the Ld. Counsel for the assessee.

6. We have heard the rival arguments made by both the sides, perused the order of the Ld. CIT(E) and the paper book filed on behalf of the assessee. It is an admitted fact that on the basis of submissions made by the assessee the Ld. CIT(E) noticed certain discrepancies for which he issued notices to the assessee on various dates. Although the assessee has clarified certain issues, however, the last notice issued by the Ld. CIT(E) was not properly complied with and the documents were not submitted to the satisfaction of the Ld. CIT(E) for which he rejected the application filed for approval of deduction u/s 80G. It is the submission of the Ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate its case by filing the requisite details. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Ld. CIT(E) with a direction to grant one more opportunity to the assessee to substantiate its case by filing the requisite details to his satisfaction and decide the issue as per fact and law. The assessee is also hereby directed to submit the details as called for by the Ld. CIT(E) on the appointed date without seeking

any adjournment under any pretext, failing which the Ld. CIT(E) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 21st March, 2025.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 21st March, 2025
GCVSR

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	20.03.2025		Sr. PS/PS
2	Draft placed before author	21.03.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			