

**IN THE INCOME TAX APPELLATE TRIBUNAL, CUTTACK BENCH,
CUTTACK****BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER AND SHRI ABY T.
VARKEY, JUDICIAL MEMBER****ITA No. 277/CTK/2015**

SPARSH, At: J.K. Paper Mills, Jaykapur, Rayagada.	Vs.	CIT (Exemptions), Hyderabad
PAN/GIR No. AAGAS 3016 H		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M.Pattnaik, AR
Revenue by : Shri Asit Kumar Mohapatra, CIT DR

Date of Hearing : 16 /02/ 2017**Date of Pronouncement : 28 /02/ 2017****ORDER****Per Bench**

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Exemptions), dated 24.3.2015.

2. The sole issue involved in this appeal is that the Id Commissioner of Income Tax (Exemptions) was not justified in refusing the approval u/s.80G of the Act.

3. The facts of the case are that the Commissioner of Income Tax (Exemptions) observed from the Income & Expenditure a/c of the assessee

society for the accounting year 2012-13 and for the accounting year 2013-14 that under 'Income side', it has shown receipts from grants from different authorities and interest received from bank aggregating to Rs.4,24,158/- and Rs.7,09,690/- for both the years respectively. Under the expenditure side after debiting expenditure under different heads aggregating to Rs.72,69,954/- for the year 2012-13 and aggregating to Rs.1,05,19,622/- for the year 2013-14, it has deducted Rs.68,72,844/- and Rs.98,61,142/-, respectively from both the years mentioning as "reimbursement received from J.K.Paper Ltd., against expenditure and thereafter has shown excess of income over expenditure ' of Rs.29,048/- and Rs.51,210/- , respectively for the accounting years. He observed that in the face of such statement of account, showing first expenses incurred by the assessee society when there was no supporting prior income for meeting expenses to that extent during such period, on a query to the AR of the assessee during the course of hearing to explain as to why the assessee society has met such expenditure at the first instance, it was submitted that the same were met out of monies received from J.K.Paper Ltd. From such submission, it shows that the assessee has received funds constituting its income, first during that period from that company, from which it has met such expenditure for different charitable purposes during such years. The CIT(Exemptions) further observed that as per the income and expenditure account furnished by the assessee with the application in Form 10G, it shows the assessee, after incurring such expenditure for different purposes, later, has reimbursed such amounts by that company.

Since that income and expenditure account (audited income and expenditure account) furnished by the assessee showing receipt of funds by way of reimbursement from that company later, contradicts the submissions made by the AR during the proceedings before him regarding receipt of money in advance from that company, it shows that the assessee was not correctly maintaining regular accounts of its actual receipts and expenditure during such period. He further observed that even on verifying the balance sheet of the assessee for the said period, it is noticed that for the year 2012-13 under liability side, the assessee has shown advance received from J.K.Paper Ltd., against expenditure of Rs.4,06,655/- only. Under 'Expenditure side', It shows that the assessee is not maintaining regular accounts of its actual receipts and expenditure and thereby as it does not fulfill the condition stipulated in clause (iv) to sub-section (5) of Section 80G of the Act, having regard to the provisions contained in sub-rule (5) to Rule 12AA of the income Tax Rules, 1962, the assessee society, in his view, cannot be granted approval u/s.80G (5)(vi) of the Act.

4. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the assessee is a charitable society registered under section 12AA of the I.T.Act,1961 vide order dated 25.9.2010 passed by the Commissioner of Income Tax (Exemptions), Hyderabad and its objects are for charitable purpose. The assessee vide its application dated 22.9.2014 made an application for grant of approval u/s.80G of the Act. Vide the impugned order, the Commissioner of Income Tax (Exemptions),

Hyderabad refused to grant approval u/s.80G of the Act against which the assessee is in appeal before us.

5. The sole reason given by the CIT(Exemptions) for his action of rejecting the application of the assessee for approval u/s.80G of the Act was that, he on perusal of audited income and expenditure account and balance sheet of the assessee for the assessment years 2012-13 and 2013-14, was of the opinion that the assessee was not correctly maintaining regular accounts for its actual receipts and expenditure during such period. The CIT(Exemptions) written the above finding merely on the basis of perusal of audited income and expenditure account and balance sheet of the assessee. The CIT(Exemptions) observed that the assessee has on his expenditure side shown the gross amount of expenditure and thereafter deducted therefrom an amount as reimbursement of expenditure received from J.K.Paper Ltd.,

6. Further, the CIT(Exemptions) observed that the assessee had shown Rs.4,06,655/- as its liability in the balance sheet as on 31.3.2013 under the head " advance receipt against expenditure".

7. We find that no specific error in the regularity of books of account maintained by the assessee could be pointed out. The CIT(A) could not point out any receipt or expenditure of the assessee society, which was not recorded in the regularly maintained books of account. The CIT(Exemptions) has brought no material on record to show that the

amount which was shown as liability in the balance sheet was not the actual liability or obligation of the assessee of that date.

8. Further, the assessee explained that the assessee received advance from J.K.Paper Ltd., Thereafter, the assessee incurred certain expenses and said J.K.Paper Ltd., reimbursed part of those expenditures by way of adjusting the advance amount with reimbursable amount. We do not find any contradiction in the explanation of the assessee. The CIT(Exemptions) has brought no material on record to show that the assessee could not explain the source of any specific expenditure or the amount claimed as reimbursement was incorrect or false. In absence of any such material being brought on record, we find the inference drawn by the CIT(Exemptions) merely on perusal of audited statement about the regularity of accounts of the assessee is incorrect and arbitrary.

9. The CIT(Exemptions) referred to the provisions of clause (iv) of sub-section (5) of Section 80G, which reads as under:

80G – In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section.:

“ (5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2) only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely:

(i)....

(ii)....

(iii)....

(iv) the institution or fund maintains regular accounts of its receipts and expenditure.”

10. We find that no error in any specific receipt or expenditure of the assessee could be pointed out by the CIT(Exemptions). Thus, no error in compliance of the above provisions is found. Further, the CIT(Exemptions) has also referred to sub-rule (5) to Rule 12AA of the Income tax Rules, 1962. We have not been able to find any such Rule in the Income tax Rules. Thus, we find that no sustainable reason could be stated by the CIT(Exemptions) in rejecting the application of the assessee for grant of approval u/s.80G of the Act. We, therefore, set aside the order of the CIT(Exemptions) and direct him to allow approval u/s.80G to the assessee society and allow the ground of appeal of the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 28 /02/2017.

Sd/-

(Aby T. Varkey)
JUDICIAL MEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 28 /02/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : SPARSH, At: J.K. Paper Mills, Jaykapur, Rayagada
2. The respondent: CIT (Exemptions), Hyderabad
3. The CIT(A)
4. Pr.CIT,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack