

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1774/PUN/2024

Help For Children In Need Foundation, Flat No.5, 2nd Floor, Tirupati Apt. 370/1, Bhawani Peth, Pune- 411040. PAN : AADCH8450K	Vs.	CIT, Exemption, Pune.
Appellant		Respondent

Assessee by : Shri Nikhil S. Pathak
Revenue by : Shri Amol Khairnar

Date of hearing : 21.11.2024
Date of pronouncement : 09.12.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 06.08.2024 passed by Ld. CIT, Exemption, Pune rejecting the application for approval u/s 80G of the IT Act.

2. The appellant has raised the following grounds of appeal :-

"1] The learned CIT(E) erred in rejecting the application filed by the assessee trust for approval u/s 80G on the ground that the assessee had selected the wrong code while filing the application and hence, the application filed by the assessee was not maintainable.

2] The learned CIT(E) erred in not appreciating that simply because the assessee had selected the wrong code for filing the application for approval u/s 80G did not mean that the application of

the assessee was not maintainable and he ought to have disposed off the application by considering the correct clause of section 80G(5).

3] The assessee submits that the learned CIT(E) should be directed to reconsider the application filed by the assessee by considering the correct clause applicable to the assessee trust and accordingly, grant registration u/s 80G to the assessee trust.

4] The learned CIT(E) erred in not following the CBDT Circular No. 7 of 2024 while dismissing the application filed by the assessee trust without appreciating that the case of the assessee was covered by the said circular and accordingly, the learned CIT(E) may be directed to grant approval u/s 80G to the assessee trust.

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

3. Facts of the case, in brief, are that the assessee is a non-profit company with an object to help children in every possible manner for their survival, protection and participation in matters concerning themselves and to create awareness about need for eradicating child labour, child abuse and to provide education, preventive health care, legal aid, skill training and income earning capabilities, medical assistance of every kind specially for children from the economically and socially poor sections of the society. The assessee company has filed application in Form No.10AB under sub-clause (B) of (iv) of first proviso to sub-section (5) of section 80G of the IT Act on 12.02.2024. With a view to verify the genuineness of activities of the assessee and fulfilment of conditions laid down in clause (i) to (v) of section 80G(5) of the IT

Act, a notice was issued by Ld. CIT, Exemption, Pune through ITBA portal on 29.04.2024 requesting the assessee to upload certain information/clarification as mentioned in the notice.

4. The assessee in response to above notice furnished desired details. After verifying these details, Ld. CIT, Exemption, Pune found certain discrepancies and asked for their clarification. It was specifically asked by the Ld. CIT, Exemption, Pune that your application is filed u/s 80G(5)(iv)(B) of the IT Act but the same is not applicable to your case and, therefore, your present application is liable to be rejected. The assessee again responded to the above said notice and furnished reply by saying that the application was required to be filed under clause (iii) of first proviso to sub-section (5) of section 80G instead of under sub-clause (B) of (iv) of first proviso to sub-section (5) of section 80G of the IT Act. It was also clarified before Ld. CIT, Exemption, Pune that the above error was unintentional and was simply a typographically error but Ld. CIT, Exemption, Pune held that the defect in the application is not curable. Hence, the application for registration u/s 80G(5) was rejected. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR appearing from the side of the assessee company submitted before us that the application for registration u/s 80G(5) was rejected merely on a technical ground of mentioning wrong section code and nothing adverse was found by Ld. CIT, Exemption, Pune against the assessee on merits of the case. It was submitted by Ld. Counsel of the assessee that the mistake was a typographical error and inadvertently wrong code was mentioned in the application and there was no deliberate/wilful intention to submit the application under wrong code before Ld. CIT, Exemption, Pune. It was submitted by Ld. Counsel of the assessee that when specific request was made, Ld. CIT, Exemption, Pune ought to have accepted the application as filed under clause (iii) of first provision to sub-section (5) of section 80G instead of under code 14 sub-clause (B) of (iv) of first proviso to sub-section (5) of section 80G of the IT Act. In support of above contentions, Ld. AR relied on the order passed by Co-ordinate Bench of this Tribunal in the case of Nitdaa Foundation vs. CIT, 167 taxmann.com 111 (Kolkata – Trib.) wherein under identical situation the Co-ordinate Bench of this Tribunal allowed the appeal of the assessee and directed Ld. CIT, Exemption, Pune to consider

the application as filed under desired section of the IT Act and consequently directed to consider the same for grant of approval u/s 80G(5) to the assessee trust in accordance with law. It was also submitted by the counsel of the assessee that in a recent Circular No.7/2024 issued by CBDT on 25.04.2024 in para 4.1 it has been provided that if the application was furnished under the wrong section code than it may furnish a fresh application in Form No.10AB within the extended time provided in the circular. Accordingly, Ld. AR requested before the Bench to set-aside the order passed by Ld. CIT, Exemption, Pune and further requested to direct him to treat the original application as filed under code 14 clause (iii) of first proviso to sub-section (5) of section 80G of the IT Act.

6. Ld. DR appearing from the side of the Revenue supported the orders passed by the sub-ordinate authorities and requested to confirm the same.

7. We have heard Ld. Counsels from both the sides and perused the material available on record. We find that due to a typographical and inadvertent error occurred in the application for registration u/s 80G(5) of the IT Act and when pointed out by Ld.

CIT, Exemption, Pune, the assessee accepted the mistake and requested to treat the application as filed under code 14 clause (iii) of first proviso to sub-section (5) of section 80G of the IT Act. But Ld. CIT, Exemption, Pune refused to accept the request and consequently rejected the application merely on the basis of technical ground by observing as under :-

“8. In view of the above, the assessee has accepted the mistake that the inadvertently selected the wrong Code in the time of filing form. Therefore, the application filed by the assessee is treated as non-maintainable.

9. Accordingly, the application u/s 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 for statistical purposes and no adverse inference is drawn against the assessee.”

8. From a perusal of above order, we find that the application filed by the assessee was rejected on account of a typographical error of wrong mentioning of particular code and no other adverse findings has been given on merit by Ld. CIT, Exemption, Pune. Ld. Counsel relied on the order passed by the Co-ordinate Bench of this Tribunal in the case of Nitdaa Foundation (supra) wherein under identical situation the appeal of the assessee was allowed by observing as under :-

“12. Thus, the whole controversy arose due to incorrect mention of the clause under which the application was required to be filed, which

was mentioned as clause (iv) of the first proviso to sub-section (5) of section 80G in column 6 of Form No. 10AC whereas the same should have been mentioned as clause (i) of the first proviso to sub-section (5) of section 80G and the Ld. AR also admitted this fact in the course of the hearing. Since, Form No. 10AC was filed in time, the error on the part of the assessee for mentioning the wrong clause is deemed to be a curable defect and the application on Form No. 10AC is deemed to be filed under clause (i) of the first proviso to sub-section (5) of section 80G. The order of the Ld. CIT(Exemption) is hereby set aside and he is required to consider the application as filed under clause (i) of the first proviso to section 80G(5) of the Act and consider the same for grant of approval under section 80G(5) to the trust in accordance with law within a period of 2 months from the date of receipt of this order. The assessee shall file all necessary evidence before him.”

9. Respectfully following the above decision and in the light of the circular no 7/2024 issued by CBDT on 25-04-2024, i.e. after the filing of application by the assessee wherein the issue of mentioning wrong section code has been addressed / considered as a common & frequent error and also observing the fact that in the instant case Ld. CIT, Exemption, Pune has not given any adverse finding on merits of the case, against the assessee, we deem it fit to set-aside the order passed by Ld. CIT, Exemption, Pune and remand the matter back to him with the direction to treat the application of the assessee as filed under code 14 clause (iii) of first proviso to sub-section (5) of section 80G (or under the desired section code) and consider the same for grant of approval u/s 80G(5) of the IT Act in accordance with law after providing

reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to comply with the notices issued by Ld. CIT, Exemption, Pune in this regard and produce requisite information/documents in support of registration u/s 80G of the IT Act, otherwise Ld. CIT, Exemption, Pune shall be at liberty to pass appropriate order as per law. Thus, the grounds of appeal raised by the assessee in this appeal are partly allowed.

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

Order pronounced on this 09th day of December, 2024.

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

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th December, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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