

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 2334/Del/2017
Asstt. Year -

M/s. Pradeep Education Society Vill. Deshalpur, P.O. Nuna Majra, Tehsil-Bahadurgarh Distt. Jhajjar, Haryana	Vs.	CIT(Exemptions) C.R. Building, Fifth Floor, Sector-17E Chandigarh 160017 PAN AABAP1199F
(Appellant)		(Respondent)

Assessee by:	Shri R.P. Basra, CA
Department by :	Smt. Sushma Singh, CIT(DR)
Date of Hearing	28/05/2020
Date of pronouncement	09/06/2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal has been preferred by the assessee against order dated 28.2.2017 passed by the Ld. Commissioner of Income Tax (Exemptions), Chandigarh {CIT (E)} wherein, vide the impugned order, the Ld. CIT(E) has rejected the assessee's

application for approval u/s 80G(5) of the Income Tax Act, 1961 (hereinafter called 'the Act').

2.0 The brief facts of the case are that the assessee society is running a school and a B.Ed. college at Village Deshalpur, PO Nuna Majra, Bahadurgarh, Haryana. The school is affiliated to Central Board of Secondary Education and the B.Ed. college is affiliated to National Council for Teacher Education and MD University at Rohtak.

2.1 The assessee's society was given approval u/s 12AA of the Act vide order dated 29.7.2016. Immediately after the grant of registration u/s 12AA of the Act, the assessee society made an application before the Ld. CIT (E) for grant of approval u/s 80G (5) of the Act. The stated aims and objectives of the society are to open and operate Engineering Colleges, technical institutions, study centres for professional studies and competitive entrance examinations etc. and to establish educational systems for adult-education besides other objectives. The Ld. CIT (E), while considering the assessee's application for approval u/s 80G, observed that the assessee society was running educational institutions and the aggregate annual receipts have been increasing year after year. It was also observed by the Ld. CIT (E)

that the quantum of the surplus, cash balance, fixed assets etc. had also been increasing and further that all these increases were relatable to the fee receipts from the institutes being run by the society. The Ld. CIT (E) went on to infer that the main emphasis of the assessee society had been on assets' creation and the only expenditure incurred towards the objects of education was towards salaries. The Ld. CIT (E) also observed that even the provisions relating to deduction of tax at source were not being followed. Apart from this, the Ld. CIT (E) also observed that the assessee had been receiving interest from FDRs and had been collecting huge fees for each and every facility being provided to the students. It was also observed that there was no history of any donation ever having been received by the assessee so far but the assessee has been in the practice of advancing funds to various concerns on a regular basis. The Ld. CIT (E) further observed that the assessee society has sufficient funds which were required for the propagation of its objects and also for financing future expansion. It was also stated by the Ld. CIT (E) that the assessee society has failed to elaborate on the target group of persons from whom the donation was to be sought and that there was no list of people who have shown the

inclination to donate to the society. The Ld. CIT (E) also observed that since there were investible surpluses available with the assessee society, there was no rationale for seeking donations. With these observations, the Ld. CIT (E) rejected the assessee's application for approval u/s 80G of the Act.

2.1 Aggrieved with this order, the assessee is now before the ITAT and has challenged the rejection of the assessee's application. The following grounds have been raised by the assessee in this regard:-

1. *That the Ld. CIT (E) had failed to appreciate that the Appellant Trust had applied for exemption under section 80G of the Income Tax Act, 1961 in the prescribed format, Form 10G, alongwith all the requisite documents.*
2. *That the CIT (E) has wrongly dismissed the application for registration under section 80G of the Income Tax Act, 1961 without giving appropriate opportunity and ignoring all merits of the case.*
3. *Further, the Ld. CIT (E) has also wrongly concluded that the trust has accumulated large funds in the form of FDR and cash and they are not willing to utilize for expansion.*
4. *That the Ld. CIT (E) had wrongly concluded that the target group from whom the donation would be sought had not been elaborated. In fact there is no such requirement under relevant section.*
5. *That the Ld. CIT (E) has further rejected the application on the insignificant ground that there is no history of donation till now. It is not necessary to first have the history of donation then apply for approval u/s 80G.*

6. *That Ld. CIT (E) Chandigarh had further not appreciated that the expansion of education is not required to the corroborated by its emphasis of assets creation.*
7. *That the Ld. CIT (E) had wrongly ignored the fact that the appellatant trust exists solely for educational and charitable purpose and not for the purpose of profit as evident from its aims and objects.*
8. *The Ld. CIT (E) has passed the order in haste and is against the facts, law and provisions of the Income Tax Act, 1961 and rules made there under.*

3.0 Ld. AR submitted that the Ld. CIT (E) has made irrelevant observations and has given an entirely wrong reasoning for the rejection of assessee's application. It was submitted that while giving approval u/s 80G of the Act, there is no requirement for elaborating the target group for raising the donations and that the history of donations received also irrelevant. It was further submitted that the observation of the Ld. CIT (E) that the assessee had huge amount of FDRs was incorrect as much as the assessee had to keep the FDRs mandatorily for the purpose of affiliation by the National Council of Education Research and Training and was a part of the minimum reserve fund requirement. It was also submitted that the surplus is only incidental to the running of the educational institution and that during the course of the running of such institution, a surplus or deficit might arise depending on the circumstances in each year.

The Ld. AR submitted that any way the surplus was being utilised for the furtherance of the objects of the society and no part of the surplus was to be diverted for the personal benefit of any member of the society. It was also submitted that the assessee society was catering to the population in the rural area where there were no regular banking services and, therefore, the cash collected against fees etc was kept in the premises only and was deposited only after a suitable security escort was arranged for taking the cash for deposit in the bank and, therefore, keeping huge cash balance was due to a genuine difficulty and the same cannot be the ground for rejection of assessee's application. It was also submitted that the genuineness of the objects of the society cannot be doubted as the department had given approval for registration u/s 12AA of the Act. The Ld. AR also placed reliance on a number of judicial precedents of the Jurisdictional High Court of Punjab & Haryana High support of the contention that the assessee's application had been wrongly rejected.

4.0 In response, the Ld. CIT (DR) vehemently supported the order of the Ld. CIT (E) and submitted that out of the 33 objects mentioned in the objects clause, only 13 objects related to

furtherance of education and that the rest of the objects were of general public utility and therefore the Ld. CIT (E) was right in doubting the genuineness of the activities. It was also submitted that while considering the assessee's application for grant of approval u/s 80G of the Act, the Ld. CIT (E) has the power to call for any document or clarification and, therefore, he cannot be faulted for requiring the assessee to submit a list of the proposed donors as well as the past history of donations receipts. The Ld. CIT (DR) also submitted that the assessee had himself stated on a query from Ld. CIT (E) regarding the target group for receiving the donations that the assessee society had no intention to raise donations and, therefore, if donations were not to be received, there was no requirement for approval u/s 80G (5) of the Act. The Ld. CIT (DR) also submitted that the quantum of surplus has been regularly increasing year by year and, therefore, it was evident that the motive behind the activities was earning profits. The Ld. CIT (DR) also, per contra, placed reliance on numerous judicial precedents to support her contention that the application had been rightly rejected.

5.0 At this point, the Bench raised a specific query to both the parties as to whether they were satisfied with the virtual

hearing and whether the hearing should be closed. In response to the query, both the parties submitted that they were satisfied with the virtual hearing and that the case may be taken as heard.

6.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the impugned order carefully and a bare reading of the said order makes it very much apparent that the Ld. CIT (E) has entirely misdirected himself by relying on superfluous reasoning for the purpose of rejecting assessee's application u/s 80G of the Act. It is undisputed that the assessee society has been granted registration u/s 12AA of the Act by the department and, therefore, it remains undisputed that the department had found the activities of the assessee society genuine and, therefore, the genuineness of the activities cannot be doubted within a short span of six months. The Ld. CIT (E) has himself stated that the assessee society has been running educational institutions and, thus, it is an accepted fact by the department that the society is carrying on educational activities. Further, the Ld. CIT (E) has drawn adverse inference from the fact of the assessee earning interest from FDRs and from the fact of maintaining FDRs. It is an accepted practice and a well known fact that educational

institutions are directed to maintain some sort of reserve funds in the form of FDRs by the bodies granting affiliation and, therefore, the assessee cannot be put to a disadvantage for following the mandatory requirement by the affiliation bodies and boards. We also note that the Ld. CIT (E) has misdirected himself by requiring the assessee society to submit a list of proposed donors and a plan for raising donations. In our considered opinion this is entirely irrelevant at the time of considering the assessee's application for approval u/s 80G. That the assessee had no history of receiving donations in the past also cannot be a ground for rejecting assessee's application u/s 80G.

6.1 The Hon'ble High Court of Punjab & Haryana, which is the Jurisdictional High Court for the assessee society, in the case of Sonipat Hindu Educational & Charitable Society vs. CIT & Anr. reported in (2005) 278 ITR 262, while deciding assessee's appeal against rejection of assessee's application for recognition u/s 80G (5) of the Act, held that while dealing with the application u/s 80G (5), the scope of inquiry by the CIT (E) extends to eligibility to exemption under various provisions referred to in that subsection but not to actual computation of income under the Act. The Hon'ble High Court went to hold that the registration of an

institution u/s 12A by itself is a sufficient proof that the institution is created or established for a charitable or religious purpose. The Hon'ble High Court further observed that it is well settled that for the purpose of construing the purpose of a trust it is not necessary that one remains confined to the objects of the society or a trust as set out in the memorandum of association or the trust deed and that what is required to be found is the real purpose of establishment of the trust. The Hon'ble High Court went on to observe that what is required to be found is the real purpose of the establishment of the trust and while there can be no quarrel with the proposition of the CIT that he is fully competent to find out the real purpose, as distinguished from the ostensible purpose of the same, the approval should not be denied on mere technicalities. The Hon'ble High Court also observed that as a matter of fact that the power to grant or negative the claim for approval is coupled with a duty.

6.2 The Hon'ble Punjab & Haryana High Court in another case of CIT vs. Rajmala Educational Society reported in (2012) 65 DTR 0307 held that merely because there was some surplus with the assessee trust, the same could not be the ground to deny registration u/s 80G (5) of the Act. In this case also the Hon'ble

Punjab & Haryana High Court held that once the exemption has been granted u/s 12AA, the Ld. CIT (E) was not justified in denying the approval u/s 80G of the Act.

6.3 Therefore, in the light of the above judicial precedents from the Jurisdictional High Court for the assessee, it is our considered opinion that the Ld. CIT (E) was not justified in rejecting the assessee's application for grant of approval u/s 80G (5) of the Act on frivolous grounds. We direct the Ld. CIT (E) to grant the approval u/s 80G (5) of the Act accordingly.

7.0 In the final result the appeal of the assessee stands allowed.

Order pronounced on 9th June,2020.

sd/-
(G.S. PANNU)
VICE PRESIDENT

sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated:09/06/2020

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi