

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' NEW DELHI**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No. 4819/Del/2009
Assessment Year: --**

Tri Netra Sewa Sanstha,
B-1/21, Yamuna Vihar,
New Delhi.

(Appellant)

vs DIT(E),
Plot No.15, 3rd Floor,
Aayakar Bhawan, Laxmi Nagar,
District Centre, New Delhi-110092
(Respondent)

Appellant by: Shri Sameer Kapoor
Respondent by: Dr. B.R.R. Kumar, Sr.DR

ORDER

PER CHANDRAMOHAN GARG, JUDICIAL MEMBER

This appeal has been filed by the assessee against the order of the Director of Income Tax(Exemption), Delhi dated 23.10.2009 passed u/s 80G(5) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') read with Rule 11AA of Income Tax Rules, 1962(hereinafter referred to as 'the Rules').

2. The grounds submitted with the appeal were descriptive and argumentative in nature, therefore, as per our order dated 29.9.2010, the

assessee was instructed to summarise grounds of appeal which read as under:-

“1. The Learned Director of Income Tax - (Exemption) has passed the order of Rejection of Application of Renewal of Exemption u/s 80G (5) (vi) of the Income Tax Act, arbitrarily on erroneous facts and superfluous reasons without bringing out the relevant material facts.

2. Authorities never provided reasonable time and opportunity of being heard, as laid down in Rule 11AA(5), before rejecting the application U/S 80G(5)(vi)

3. The Learned Director of Income Tax - (Exemption) has raised following irrelevant objections.

a. The total expenses shown on charitable activities amount to only 15.50% of donation received.

The Assessee has duly complied all requirements U/S 80G(5) (i) to 80G(5) (vi) and Rule 11AA(1),(2),(3). The assessee has taken unutilized charitable receipts (i.e. 84.5%) in computation of taxable income and accumulated same for the accomplishment of various charitable activities in near future.

Tax will be levied if utilization of charitable receipts (for charitable purposes) falls below 85%, but it is nowhere prescribed that non utilization of 85% of charitable receipts would result in disapproval u/s 80G.

b. Cash Memo are Fake & Bogus on the basis that Cash memo do not bear Shop name or Bill No., are in same handwriting, and no shops in Indian markets sell vegetables, rice, flour, refined oil under one roof

Cash memo not bearing shop name is generally found in common parlance. Further the relevant Shopkeepers of the village (Dilshad Ext. Bhopura) are not literate enough. Assessee has purchased a food items from same

grocery Shopkeeper thereby bearing the same handwriting and signature.

c. The statement of distribution of foods is absolutely neat and clean, without even a speck of dirt, thereby rendering the document ineligible as contemporaneous (of that period) record.

If only those documents are admissible as evidence which show speck of dirt then one can easily convert a document in that situation.

d. No explanations have been offered as to how much expense have been incurred on gas/kerosene, salt chillies, masala etc, and hiring of cook.

The authorities has neither asked the explanations from us nor given us the proper opportunity and reasonable time to present clarifications. Further the expenses related to gas/ kerosene, salt, chillies, masala etc, and many other related items have been provided by the volunteers at no cost basis.

e. It is absurd to even think that all these items totaling to around 397 Kgs(in the bill dated 08. 11.2008) are prepared in 31 Kgs. of refined oil and have been consumed by only 19 people.

Assessee has distributed food and most of people were also given food for their entire family members

f. No evidence at all has been submitted showing that the books of value Rs. 6.780/- were purchased.

The authorities have never insisted to submit the bills evidencing the purchase of books of Rs. 6,780/-The same is in the possession of the assessee and the same can be produced before the officer, if asked for.

g. The clause (i) to (vi) of 80 G (5) of the act, nowhere prescribe the Director to scrutinize the relevant vouchers, supportings etc. Here the Assessee is seeking an exemption u/s 80G and not complying of notice issued u/s 143(2) of the Act for Scrutiny assessment u/s 143(3)

4. Therefore 'your honour' it is requested to accept my argument and clarification on exceptional basis and allow the renewal of Exemption U/s 80 G of the Income Tax Act

5. The assessee retain the right to add/delete/modify any of the above grounds of appeal at any stage.”

3. Briefly stated, the facts of the case giving rise to this appeal are that the assessee filed an application in Form No.10G seeking exemption u/s 80G of the Act before DIT(E) Delhi. In reply to letter dated 14.9.2009 of DIT(E), the assessee submitted a letter dated 23.09.2009 giving description of charitable activities held during financial year 2006-07, 2008-08 and 2008-09. The DIT(E) observed that the charitable activities shown by the assessee were bogus because no such activity of feeding poor people was actually done. He further noted that regarding the claim of charity by donating books of poor children/students, neither any bills of purchase of books nor any other evidence was submitted to show that the books of Rs.678 were purchased and donated to the economically challenged students. With these observations, the DIT(E) rejected the application of the

assessee for exemption u/s 80G of the Act. Hence, this appeal before this Tribunal.

Ground No. 1 & 2

4. We have heard rival arguments of both the parties and carefully considered the documents and evidence placed before us on record. The assessee's representative submitted that the assessee duly complied with the provisions of clauses (i), (ii) & (v) of Section 80G(5) of the Act and the DIT(E) raised irrelevant objections and rejected the application of the assessee ignoring the fact that the assessee used its resources towards main objects and charitable activities. He also submitted that the DIT(E) started the proceedings with a letter to the assessee dated 14.09.2009 and the assessee promptly replied to letter dated 23.09.2009 showing charitable activities of the assessee institution and submitted required details. The AR vehemently submitted that on bare reading of the impugned order, it can be easily said that DIT(E) mentioned about reply of the assessee but he did not give an opportunity of being heard to the assessee institution as required by the proviso to Section 11AA(5) of the Act.

5. The Id. DR replying to the above contentions submitted that it is the duty of the Trust or institution to elaborate its objects and to establish that the resources of the Trust and institution have been used for charitable

purposes. He further submitted that when charitable trust or institution filed an application seeking exemption u/s 80G of the Act, then it is obligatory on its part to fulfill requirement of Rule 11AA for approval u/s 80G of the Act.

6. As the assessee appellant has raised a ground that he was not given an opportunity of being heard by the DIT(E) as per Rule 11AA(5) of the Rules, therefore, we find it appropriate to reproduce the relevant provisions. Thus, Rule 11AA(5) and its provisions read as under:-

4[Requirements for approval of an institution or fund under section 80G. 11AA.

(1) xxxxxxx

(2) xxxxxxx

(3) xxxxxxx

(4) xxxxxxx

(5) Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :

Provided that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard.

(6) xxxxxxxxxx”

7. From the impugned order, we observe that the DIT(E) issued a letter to the assessee and the assessee filed its reply on 23.09.2009. The DIT(E) considered the reply of the assessee and evidence enclosed with it and proceeded to decide the application of the assessee for exemption u/s 80G of the Act and after noting some observations, he arrived to a conclusion that in the absence of genuine evidence of charitable activities of the assessee, the

assessee failed to establish that applicant assessee continues to satisfy the conditions laid down u/s 80G(5) of the Act and accordingly, the Commissioner of Income Tax(A) rejected the application for exemption.

8. As per proviso attached to the sub-rule (5) of Rule 11AA of the Rules, it is a statutory requirement that no order of rejection of application u/s 80G(5) of the Act shall be passed without giving the institution, trust or fund an opportunity of being heard. In the case in hand, the DIT(E) issued a letter on 14.09.2009 to the assessee to submit documents and explanation and the assessee's representative submitted a reply along with relevant evidence on the fixed date of hearing i.e. 23.09.2009. From the impugned order, we observe that the reply and evidence with it was considered by the DIT(E) but he proceeded to decide the application and rejected the same without giving an opportunity of being heard to the assessee, enabling him to explain his submissions and relevant evidence showing charitable activities to establish its claim for exemption u/s 80G of the Act. Accordingly, we are inclined to conclude with the observation that the assessee charitable institution was not given an opportunity of being heard by the DIT(E). Therefore, it would be just and proper to restore the matter to the file of DIT(E) with a direction that he would decide the matter afresh de novo giving an opportunity of being heard to the assessee as required by the proviso to sub-rule (5) of Rule

11AA of the Rules. The assessee is also under obligation to attend the hearing and support the proceedings.

Grounds no. 3, 4 and 5

9. As the main issue raised in grounds no. 1 and 2 have been restored to the file of the DIT(E), therefore, grounds no. 3, 4 and 5 require no adjudication and are dismissed.

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

Order pronounced in the open court on 5.9.2012.

Sd-/
(J.S. REDDY)
ACCOUNTANT MEMBER

Sd-/
(CHANDRAMOHAN GARG)
JUDICIAL MEMBER

DT. 5th SEPTEMBER 2012
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT 5. DR

By Order

Deputy Registrar