

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "C" KOLKATA**

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.2782 & 2784/Kol/2013

Anjali Bhattacharjee Technical Institute Khaja Anwar Berth, P.O. Sripally, Dist Burdwan, Pin-713 103 [PAN No. AACAAA 4559 R]	V/s.	The Commissioner of Income Tax, Aayakar Bhawan, Annexe, Court Compound, Burdwan, P.O. Burdwan
PAN No.		
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Partha Sarathi Gupta, AR
राजस्व की ओर से/By Revenue	Shri Sachcidanda Srivattava, CIT-DR
सुनवाई की तारीख/Date of Hearing	04-07-2016
घोषणा की तारीख/Date of Pronouncement	20-07-2016

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

Both appeals by the assessee are directed against the order of Commissioner of Income Tax, Burdwan vide No.T 18/03/CIT/BWN/13-14/1782 u/s 12A and 80G(5)(vi) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.09.2013.

Shri Partha Sarathi Gupta, Ld. Authorized Representative appeared on behalf of assessee and Shri Sachcidananda Srivattava, Ld. Departmental Representative appeared on behalf of Revenue.

2. Since common grounds are involved in both the appeals therefore we heard them together and deem it appropriate to dispose of them by way of this common order. Grounds raised by assessee per its separate appeals in ITA 2782/Kol/2013 and 2784/Kol/2013 reproduced below:-

Grounds in ITA 2782/Kol/2013

“1) For that on the facts and in the circumstances of the case the order u/s.12A of the IT Act, 1961 was not fair and proper and on the other hand the same was made contrary to law, sound and adequate principles.

2) For that on the facts and in the circumstances of the case the Ld. Commissioner of Income Tax, Burdwan was not at all unjustified in rejecting the application for Registration u/s.12A of the IT Act, 1961 of the appellant.

3) For that on the facts and in the circumstances of the case the reasons and the grounds adduced by the Ld. Commissioner of Income Tax in support of rejecting the application for Registration u/s 12A of the IT Act, 1961 of the appellant are not proper and convincing as he has not considered the documents given in the paper book filed on the date of hearing.

4) For that on the facts and in the circumstances of the case the Ld. CIT did not issue any notice to the appellant to produce the requisite documents during the course of hearing of the Registration case and he asked for the Income & Expenditure account for the FY 2012-13 only on 30/09/2013.

5) For that on the facts and in the circumstances of the case the appellant duly executed one Deed of Amendment of the Memorandum of Association of the Society wherein the dissolution clause of the Regulation of Association and the safeguard against the Fund of the Society have been duly incorporated, but the Ld. CIT failed to consider the same and apply his mind in the context of Deed of Amendment during the course of hearing.

6) For that the Ld. Commissioner of Income Tax ought to have given reasonable time and opportunity to the appellant to produce the necessary relevant documents which he asked to produce on the last date of hearing of the case on 30/09/2013.

7) For that the Ld. Commissioner of Income Tax, Burdwan erred both in points of law and on facts.

8) For that the humble appellant craves leave to take additional grounds and amend grounds at the time of hearing.”

Grounds in ITA 2784/Kol/2013

- 1) For that on the facts and in the circumstances of the case the order u/s. 80C(5)(vi) of the IT Act, 1961 was not fair and proper and on the other hand the same was made contrary to law, sound and adequate principles.
- 2) For that on the facts and in the circumstances of the case the Ld. Commissioner of Income Tax, Burdwan was not at all justified in rejecting the application for grant of approval to institution u/s 80G(vi) of the IT Act, 1961 of the appellant.
- 3) For that on the facts and in the circumstances of the case the reasons and the grounds adduced by the Ld. Commissioner of Income Tax in support of rejecting the application for grant of approval to institution u/s. 80G(5)(vi) of the IT Act, 1961 of the appellant are not proper and convincing as he has not considered the documents given in the paper book filed on the date of hearing.
- 4) For that on the facts and in the circumstances of the case the Ld. CIT did not issue any notice to the appellant to produce the requisite documents during the course of hearing of the case u/s. 80G(5)(vi) of the Act, and he asked for the Income & expenditure account for the F.Y 2012-13 only on 30/09/2013, which could have been asked to produce on the previous occasion.
- 5) For that on the facts and in the circumstances of the case the appellant duly executed one Deed of Amendment of the Memorandum of Association of the Society wherein the dissolution clause of the Regulation of Association and the safe guard against the Fund of the Society have been duly incorporated, but the Ld. CIT failed to consider the same and apply his mind in the context of Deed of Amendment during the course of hearing.
- 6) For that the Ld. Commissioner of Income Tax ought to have given reasonable time and opportunity to the appellant to produce the necessary relevant documents which he asked to produce on the last date of hearing of the case on 30/09/2013.
- 7) For that the Ld. Commissioner of Income Tax, Burdwan erred both in points of law and on facts.
- 8) For that the humble appellant craves leave to take additional grounds and amend grounds at the time of hearing.”

3. Since all these grounds in both the appeals are interlinked, therefore these are being taken up together for adjudication.

4. Inter-connected issue is that Ld. CIT erred in rejecting the application for registration u/s. 12A and 80G of the Act. The facts in brief are that assessee is a society and engaged in the activities of providing different types of vocational courses. During the financial year 2012-13 assessee applied for registration u/s. 12A and 80G of the Act on 03.04.2013. The assessee is providing different types of vocational courses and its major source of income is fees collected from the students for providing different types of vocational course. Ld CIT during registration proceedings observed that the activities of the society are charitable and covered under **“any other object of general public utilities”** but subject to the conditions as specified under section 2(15) of the Act. As per section 2(15) of the Act an organization will be treated as charitable under the category of **“any other object of general public utilities”** if its aggregate value of receipts is less than 25 lacs per annum for the said purpose. Accordingly Ld CIT requested the assessee to produce the income and expenditure accounts for the financial year 2012-13 along with other requisites documents / evidences in support of its claim. However, assessee failed to produce the same before Ld. CIT. Besides the above the Ld. CIT also observed that the dissolution clause of the assessee-society is not properly made in so far it does not provide any safe guard against the fund of the society. Considering the facts and circumstances, the Id. CIT rejected the registration application u/s. 12A and 80G(5)(vi) of the Act.

Being aggrieved by this order of Ld CIT assessee came in appeal before us.

5. We have heard the rival contentions and perused the materials available on record. Before us Ld. AR submitted that the requisites details were not furnished before Ld. CIT due to some unavoidable circumstances and for this reason, he requested the Bench to restore the matter back to the

file of Ld. CIT for one more opportunity. On the contrary, Ld. DR raised no objection, if the matter is restored back to the file of Ld. CIT.

6. In this view of the matter and in the interest of justice and fair play, we are inclined to give one more opportunity to assessee and therefore, the matter is restored back to the file of Ld. CIT for fresh adjudication after giving reasonable opportunity of being heard to assessee. It is needless to mention that assessee should cooperate in the registration proceedings. Hence, the ground of assessee's both appeals are allowed for statistical purpose.

7. In the result, both appeals of assessee are allowed for statistical purposes.

Order pronounced in the open court 20/07/2016

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,
*Dkp

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 20/07/2016 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Anjali Bhattacharjee Technical Institute, Khaja Anowar Berh, P.O. Sripally, Dist. Burdwan, Pin 713 103
2. राजस्व / Respondent-CIT, Aayakar Bhawan, Annexe, Court, Court Compound, Burdwan
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।