

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G': NEW DELHI

BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 3759/Del /2012
Assessment Year:

S.J.A Alumni Association
St. Joseph's Academy
Rajpur Road, Dehradun

Vs.

The CIT
Dehradun

PAN : AAFAS 4863 D

[Appellant]

[Respondent]

Date of Hearing : 12.01.2016
Date of Pronouncement: 01.02.2016

Appellant by : Ms. Anima Bernwal, Sr. DR
Respondent by : Shri Rakesh Gupta, Adv
Shri Sonil Agarwal, Adv
Shri Tarun Kumar, Adv

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of the CIT(A), Dehradun denying approval u/s 80G(5)(vi) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act.']

2. The assessee has taken the following two grounds of appeal:

“1. That the ld. CIT has erred on facts and in law in his finding about the appellant society not being engaged in any charitable activities to deny it the approval u/s 80G(5)(vi) of the Act.

2. That the impugned order of the ld. CIT passed on 31.05.2012 rejecting the appellant’s application made on 13.06.2011 is barred by limitation.”

3. Briefly stated, the facts of the case are that the assessee submitted an application dated 23.04.2011 on 13.06.2011 and the impugned order was passed on 31.5.2012 beyond the prescribed limit of six months as mandated by Rule 11AA sub-rule (6) of Income-tax Rules, 1962 [for short, ‘the Rules’] hence the order of rejection is barred by limitation and not sustainable in law. The ld. Counsel vehemently contended the impugned order may be set aside and the Revenue authorities may be directed to give approval u/s 80G of the Act. He also placed reliance on the proposition laid down by ITAT ‘E’ Bench New Delhi in the case of Mayo College Old Boys Association ITA No. 2010/Del/2010 vide order dated 19.11.2010 and order of ITAT Amritsar Bench in the case of S. Lakha Singh Bahra ITA No. 282/Asr/2010 order dated

15.6.2011 and order of ITAT Lucknow 'A' Bench in the case of Indra Gramin Swayamsevi Aspatal Samiti Trust Vs. CIT dated 7.8.2013 and submitted that the CIT failed to adjudicate the application of the assessee for grant of approval u/s 80G(5)(vi) of the Act and failed to take appropriate action within prescribed time limit u/s 11AA within the prescribed time limit u/s 11A(6) of the Rules then the order has to be held as time barred and not sustainable. He further contended that in this situation, the assessee is legitimately entitled for approval u/s 80G of the Act, as applied by the assessee.

4. The ld. DR pointed out that the proviso to section 80G(6)(vi) of the Act mandates to grant benefit and set off of time taken or consumed by the assessee during the proceedings hence, this fact maybe taken into consideration while deciding the issue of time barring order.

5. On careful consideration of the facts and circumstances of the present case admittedly and undisputedly by the application dated 23.4.2011 was filed on 30.6.2011 and the impugned order rejecting the approval was passed on 31.5.2012 i.e. after 11

months of filing the application by the assessee which is clearly time barred as per sub-rule (6) to Rule 11AA of the Rules. The ld. DR could not assist us about the time taken by the assessee during the proceedings and in the impugned order also this fact has not been noted and appreciated to take shelter of proviso to sub-rule (6) of Rule 11AA of the Act. Hence we are inclined to hold that the assessee did not consume or waste any time during the proceedings which concluded beyond the prescribed time limit. Furthermore, at this juncture, it would be appropriate and necessary to consider the preposition laid down by the ITAT Amritsar Bench in the case of S. Lakha Singh [supra] wherein it was held as under:

“We have carefully perused the facts of the case, rival submissions and material available on records, including the case law relied upon by the assessee. It is evident from the perusal of the order of the CIT dated 30th April,2010 that the application was made on 15.10.2009 and the Ld. CIT passed an order on 30th April,2010 thereon. However, as per time limit, contemplated under Rule 11AA (6), the impugned order should have been passed within six months from the date on which such application was made. The relevant rule is reproduced hereunder:

Rule 11AA(6): "The time limit within which the Commissioner shall pass an order either granting the approval or rejecting the application shall not exceed six months from the date on which such application was made.

Provided that in computing the period of six months, any time taken by the applicant in not complying with the directions of the Commissioner under sub-rule (3) shall be excluded."

5.1. *Further, a bare perusal of the order passed by the Ld. CIT, reveals that there is no delay in complying with the direction of the Commissioner under sub-rule 3 of Rule 11AA of the I.T. Rules, 1962, as contemplated under proviso to sub-clause (6) of the said Rule. In view of this, the Ld. CIT, in terms of Rule 11AA (6), should have passed an order on 15.04.2010. However, the date mentioned on the face of the order passed by the CIT, is 30th April, 2010. Thus, there is violation of Rule 11AA(6) of the Income-tax Rules, 1962. However, the delay in passing the order is of 15 days only. The Ld. CIT, has rejected the application for approval under section 80G(s) of the Act, vide order dated 30th April, 2010. However, as discussed earlier, the order was not passed within prescribed time limit.*

5.2. *The Ld. Counsel for the assessee placed reliance on the decision of Hon'ble Allahabad High Court, in the case of Society For the Promotion of Education Adventure Sport & Conservation of Environment Vs. Commissioner of Income Tax & Ors. 2008) 5 DTR*

(All) 329, which was rendered in the context of registration under section 12A of the Act. A bare perusal of the true ratio relied upon by the assessee reveals that in the event of non-adherence to prescribed time limit under section 12AA(2) of the Act, the deemed registration deserves to be granted. The Hon'ble Allahabad High Court, placed interpretation that non-consideration of the registration application within the time fixed by section 12AA(2) of the Act, would result in deemed registration, as the contrary view would render the assessee vulnerable and leave them at the mercy of the Income-tax authority. The relevant ratio of the decision is reproduced hereunder:

"Effect of non-consideration of the application for registration under section 12A within the time fixed by section 12AA(2) would be a deemed grant of registration."

5.3. *It is pertinent to reproduce relevant provisions of section 80G(s)(vi) of the Act, hereunder:*

Section 80G(s)(vi) "in relation to donations made after the 31st day of March, 1992, the institution or fund is for the time being approved by the Commissioner in accordance with the rules made in this behalf:

Provided that any approval shall have effect for such assessment year or years, not exceeding [five] assessment years, as may be specified in the approval."

5.4. *The proviso to the above mentioned section was omitted by the Finance (No.2) 2009 w.e.f. 1.10.2009. Thus, there is no provision for withdrawal of renewal of approval granted by the CIT under section 80G(s) of the Act. In this context, the corresponding provision as provided under section 12AA(3) reads as under:*

"12AA(3): Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing canceling the registration of such trust or institution.

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard."

There is a provision for canceling of registration granted under section 12AA of the Act.

5.5. *The assessee made the impugned application for renewal under section 80G(s)(vi) of the Act. However, the competent authority, the Ld. CIT, failed to take appropriate action in the matter within prescribed time limit under Rule 11AA(6) of the Income-tax Rules, 1962. There is no specific provision prescribing consequences for non-passing of such order. The assessee has done what was expected of it under the law. The department should*

have acted vigilantly to pass an appropriate order in the matter. Having not done so, the competent authority has placed the assessee in a jeopardy and helpless situation. Thus, negligence on the part of the revenue authority cannot be conferred judicial benediction. The assessee- appellant, cannot be kept at the mercy of the revenue authority, having complied with his part in the matter, as it would subvert the soul of rule of law. The case of the assessee, is also supported by the decision of ITAT, Bangalore Bench, in the case of Karnataka Golf Association Vs. Director of Income-Tax (Exemption) (2005) 272 ITR (A.T.) 123.

5.6. *In view of the above legal and factual discussions and following the decision cited by the assessee (supra), the assessee is legitimately entitled for approval of renewal, as applied for. However, the revenue is free, if so advised, to take appropriate action in the matter in terms of relevant provisions of the Act. Hence, the appeal of the assessee is allowed. 5.7. In the result, the appeal filed by the assessee stands allowed.”*

6. In the light of the above dicta given by the co-ordinate bench of the Tribunal we clearly observe that the where the competent authority, the ITO or CIT failed to take appropriate action in the mater within the prescribed limit u/r 11AA(6) of the Rules, then the order passed beyond the prescribed period is not sustainable and the same has to be held as barred by limitation

under the Rules. However, there is no specific provision prescribing the consequence for non passing such order within prescribed limit but in this situation the eligibility of the assessee for applied approval will be evaluated independently and if the answer is affirmative then the assessee would be held eligible for approval u/s 80G of the Act.

7. At this juncture, we find it appropriate to consider the proposition laid down by the ITAT 'É' Bench, New Delhi in the case of Mayo College Old Boys Association Vs. DIT(E) [supra] wherein it was held thus:

3. *After narrating the facts, it was submitted by the Id. AR that the main object of t society is to encourage education in a broader sense. Reference was made to the decision of Hon'ble Delhi High Court in the case of ICAI Accounting Research Foundation vs. Director General of Income-tax (Exemption) 321 ITR 73 and reference was made to the following observations:-*

"Both the above mentioned Contributions/Receipts received by the association are of incidental activity carried out. After enactment of proviso to Section (15) it is held in the case of ICAI by the honourable High Court of Delhi 321 ITR 73 (Delhi) that "It is hardly possible for a charitable trust to work with no source of income - as long as the user of that money

is charitable, then the exemption has to be granted merely because some remuneration was taken by the petitioner foundation for undertaking these projects would not alter the character of these projects. The amended definitions of charitable purpose would not alter these positions."

4. *He contended that the activity carried on by the assessee fall within the definition of Section 2 (15) and he also relied upon the Circular No.395 dated 24th September, 1984 to contend that the object of general public utility also falls within the ambit of charitable purpose and, therefore, the associations or institutions engaged in the promotion of sports and games and claim exemption u/s 11 of the Act, even if it is not approved u/s 10 (23) relating to exemption from tax of sports associations and institutions having their object as,— the promotion, control and regulation and engagement of specified sports and games. In the alternative, it was pleaded by Ld. AR that grant of renewal of exemption u/s 80G, during the subsistence of 12AA cannot be denied on the ground that the assessee does not carry on any charitable activity. For this purpose, he has placed reliance on the following decisions:-*

"NN Desai Charitable Trust vs. CIT 246 ITR 452 (Guj) : authority examining the question whether a fund or institute is eligible to be certified for the purpose of Section 80G is not to act as an A.O.; once the applicant was registered u/s 12A and was granted approval u/s 80G (5) and also a renewal thereafter,

CIT was not justified in refusing further renewal of approval on the ground that the income of the applicant trust was likely to be included in the taxable income for not complying with the requirement of Section 11.

Sonepat Hindu Educational Charitable Trust vs. CIT 278 ITR 262 (P & H): It was held that while dealing with the application u/s 80G(5), the scope of enquiry by CIT extends to eligibility of the applicant to exemption under various provisions referred to in that subsection but not to actual computation under the Act, registration of an institution u/s 12AA by itself is a sufficient proof that the institution is created or established for charitable/religious purposes.

Gaur Brahman Vidya Pracharini Sabha vs. CIT (2010) 129 TTJ (Delhi) 627: It was held that when the assessee trust was granted registration u/s 12AA, it is testimony to the fact that the trust is established for charitable purposes. Assessee society formed for the purpose of establishing educational institution, not for any particular community or cost, having been granted registration under section 12 AA and all the conditions laid down in clauses (i) to (v) of subsection 5 of section 80G having been fulfilled assessee's society is eligible for registration u/s 80G(5)(vi) notwithstanding the fact that it is charging the fee for education.

It was also held that scope of enquiry under section 80G extends to eligibility of income and not to actual computation of income under the Act."

5. *He also contended that even otherwise the assessee has made donation of Rs 3,50,000/- which clearly falls within the main objects of the assessee and the donation is given for the purpose of education only. He contended that the said donation of Rs. 3,50,000/- was advanced to the following parties and vide letter dated 9th February, 2010 it was informed to Ld. DIT (E) and copy of such letter is placed at page 11 and 12 of the paper book.*

<i>"Sl.No.</i>	<i>Beneficiary</i>	<i>Chq.No.</i>	<i>Amount (in Rs)</i>
1.	<i>Mayo College Ajmer-305008</i>	<i>434287</i>	<i>1,00,000</i>
2.	<i>Sisters of the People, Lajpat Bhawan, Lajpat Nagar New Delhi - 110 024.</i>	<i>434280 434284</i>	<i>1,00,000 1,00,000</i>
3.	<i>Chaudhari Trust, 29, Hanuman Road, N Delhi.</i>	<i>434286</i>	<i>50,000</i>
<i>Total</i>			<i>3,50,000"</i>

6. *Thus, he pleaded that the claim of the assessee has wrongly been rejected by DIT (E).*

7. *On the other hand, Ld. DR relied upon the order passed by DIT (Exemption). He submitted that the assessee did not carry out any charitable activity, hence, his claim for renewal u/s 80G was rightly rejected by the DIT (E).*

8. *We have carefully considered the rival submissions in the light of the material placed before us. The certificate granted to the assessee u/s 12A treating it as charitable institution is subsisting and has not been shown to have been withdrawn till date. If it is so, then, in our considered opinion, renewal of exemption u/s 80G(5) could not be denied to the assessee and the case relied upon by Ld. AR and reproduced in the above part of this order fully supports such conclusion. Therefore, we find no justification in rejection of the claim of the assessee unless it is shown that the charitable status granted to the assessee by the certificate issued u/s 12A has been withdrawn. Therefore, we direct Ld. DIT (E) to grant the renewal to the assessee u/2 80G”.*

8. In the light of the above dicta when we analyse the facts of the present case, we note that the registration granted to the assessee u/s 12A of ht Act as charitable association is existing and has not been shown to have withdrawn or cancelled till date. It is the situation in our considered opinion the grant of approval u/s 80G of the Act cannot be denied or rejected. The preposition laid down by the ITAT Amritsar and New Delhi, as cited by the assessee and discussed above also strongly support the grant of approval u/s 80G of the Act. Thus we are inclined to hold that there is no good cause or reason before the competent authority and we are unable to see any justification in the rejection of the

claim of the assessee by charitable status granted to the assessee by certificate issued u/s 12AA of the Act is cancelled or withdrawn by following prescribed procedure u/s 12A(3) of the Act. In the present case after getting registration u/s 12A of the Act the assessee has done what was expected from it under the relevant provisions of the Act and the Rules made thereunder. The competent authority should have acted vigilantly to pass an appropriate order in the matter within the prescribed time as per sub-rule (6) of the Rule 11AA of the Rules and having not done so, the competent authority has put the assessee in a helpless and embarrassing situation which caused jeopardy against the assessee for no reason or good cause. In the light of above legal dicta and factual discussions and following the decision relied by the assessee, we are inclined to hold that the assessee is entitled for approval u/s 80G of the Act and the competent authority is directed to grant the same. Accordingly, both the grounds of the assessee are allowed.

9. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 01.02.2016.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 01st February, 2016.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi