

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष)Before श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं/and श्री वसीम अहमद, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A. Nos. 780 & 781/Kol/2017
Assessment Years: -----

Village Foundation for Social Services (PAN: AAFCV5824K)	Vs.	Commissioner of Income-tax (Exemption), Kolkata.
Appellant		Respondent

Date of Hearing	01.08.2017
Date of Pronouncement	20.09.2017
For the Appellant	Shri Sunil Surana, FCA
For the Assessee/Cross Objector	Shri G. Hangshing, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

Both these appeals preferred by the assessee are against the separate orders of Ld. CIT(E), Kolkata dated 08.02.2017 and since both these appeals have been heard together, they are being disposed of by this common order.

2. Brief facts of the case are that the assessee is a Trust formed with the objects to carry out, undertake, promote, encourage, support, assist and aid for promoting education, enhancing vocational skills and livelihood projects, preventive healthcare and sanitation, reducing inequalities faced by socially and economically backward groups, sustainable development, relief and rehabilitation, clean India, sports etc. It came into existence through a Certificate of Incorporation pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of Companies (Incorporation) Rules, 2014 dated 23.08.2016. The Trust filed an application in Form 10A for registration u/s. 12A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and Form 10G for granting approval u/s. 80G of the Act on 02.12.2016 before the Ld. CIT (Exemptions), Kolkata. However, Ld. CIT(E) rejected the application for registration vide order dated 08-02-2017 on the reason that since no activities of the Trust were started according to him, there is no means to verify the

genuineness of the activities of the Trust, so he declined to grant registration u/s 12A of the Act. Aggrieved by the said rejection of registration, the assessee filed appeals before the Tribunal on the following effective grounds:-

“1.For that the order of the Ld. CIT(E) erred in refusing to grant registration u/s. 12AA on the ground that the appellant has not carried out any charitable activities In spite of the fact that the appellant is a new trust.

2. For that on the facts and circumstances of the case the Ld. CIT(E) may be directed to grant registration u/s. 12AA of the I. T. Act, 1961.”

Similarly, approval under section 80G(5)(vi) was also denied on the same day as a consequence of rejection of the application in Form No. 10A. Aggrieved by the rejection of the approval sought under section 80G, the assessee carried the matter in appeal before us on the following effective grounds:-

“1.For that the order of the Ld. CIT(E) erred in refusing to grant registration u/s. 50G(5)(vi) on the ground that the appellant has not carried out any charitable activities In spite of the fact that the appellant is a new trust.

2. For that on the facts and circumstances of the case the Ld. CIT(E) may be directed to grant registration u/s. 80G(5)(vi) of the I. T. Act, 1961.”

3. Before us, Ld. Counsel for the assessee stated that while granting the registration to the assessee, which is at the commencement stage, the powers of Id. CIT(E) with whom the application is filed, are limited to the aspect of examining as to whether or not the objects of trust are charitable in nature and since the Trust was formed on 23.08.2016 and the application for registration was made on 02.12.2016, though the activities commenced to some extent, which was less nevertheless according to Id AR it is not open for the Id. CIT(E) to go into the quantitative aspect of the activities of the Trust while considering the application for registration u/s 12A.

4. The Ld. AR urged before us that the Charitable objects of the trust were not disputed by the Learned CIT(E) in the impugned order. Further, it was submitted by the Ld. AR that so long as there is no dispute as to the objects of the trust, what is to be seen at the time of granting registration by the learned CIT(E) is only whether the objects of the trust are charitable and

activities carried out are genuine in nature. Reliance was placed on the decisions in Asansol Durgapur Development Authority Vs CIT ITA 756/Kol/2010, dated 24.6.2016 and M/s Broadway Charitable Trust Vs Cit ITA No 647/Kol/2013 dated 29.4.2016. In a decision rendered by a Coordinate Bench of Delhi Tribunal in the case of Dharma Sansthapak Sangh (Nivas) –vs.- CIT (2008) 118 TTJ (Del.) 823, it was held as follows:

“10. The law is now well-settled that while granting the registration to the charitable institution or trust, if it is at the commencement stage, the powers of CIT, with whom the application is filed by such trust/institution, are limited to the aspect of examining that whether or not the objects of trust are charitable in nature and this well established law is supported by the decisions relied upon the learned Authorised Representative and referred to in the earlier part of the order. It has already been observed that objects of trust, which are religious, are charitable in nature. Thus, assessee also fulfils such condition. The carrying of charitable activity at the stage of commencement of institution is not relevant to decide that whether such trust/ institution is entitled for registration. So long the objects of the trust are charitable in nature, registration cannot be refused, if the trust is genuine. Therefore, we find no material on record to justify the action of the CIT vide which the assessee trust has been refused for grant of registration. We direct CIT to grant registration to the CIT (sic-assessee-trust). The appeal filed by the assessee is allowed.”[Emphasis supplied] While deciding the appeal in the above case, the Tribunal took into consideration the decisions of Tribunal in the cases of [Acharya Sewa Niyas Uttaranchal vs. CIT](#) [(2006) 105 TTJ (Del) 761] and [Modern Defence Shikshan Sansthan vs. C.I.T.](#) [(2007) 108 TTJ (Jd) 732].”

Ld. AR for the assessee also submitted that the issue is covered in favour of the assessee by the coordinate bench decision in the case of Badu Rural Welfare Society Vs. CIT in ITA Nos. 95 & 95/Kol/2016 dated 30.09.2016, wherein the Tribunal vide para 6 has held as under:

“6. In the decisions rendered by Coordinate Benches in the case of Vivekananda Welfare Trust –vs.- DIT(E) in ITA Nos. 2095/KOL/2008 and 27/KOL/2009, order dated 23.01.2009, M/s Ginia Devi Todi Charitable Trust, Kolkata Vs Director of Income Tax ITA 738/Kol/2010, dated 1.6.2011, Bani Mitra Charitable Trust, Kolkata Vs. Director of Income Tax ITA 1154&1155/Kol/2009, dated 25.8.2009 the same conclusion was reached by following the earlier decision of ITAT, Delhi in the case of Dharma Sansthapak Sangh (Nivas) (supra). The facts of this case are squarely covered by the decision cited above. Respectfully following the judicial reasoning, we direct the ld. CIT(E) to grant registration to the assessee-Trust under section 12AA of the Act and also to grant exemption certified under section 80G of the Act.

On the other hand, the Ld. DR vehemently relied on the order of the Ld. CIT(E) and does not want us to interfere with the impugned order.

5. We have heard rival submissions and gone through facts and circumstances of the case. The law is now well-settled that while granting the registration to the charitable institution or trust, if it is at the commencement stage, the powers of CIT, with whom the application is filed by such trust/institution, are limited to the aspect of examining that whether or not the objects of trust are charitable in nature. A perusal of the objectives sought to be achieved by the assessee Trust is undisputedly carrying of charitable activity. It should be kept in mind that at the stage of commencement of institution/ assessee Trust, it is not relevant to decide whether the Trust has actually carried out the charitable activities because in this case it is in the nascent state only ie, within four months of its incorporation the relevant applications were moved by the appellant. So long the objects of the trust are charitable in nature; registration cannot be refused, if the trust is genuine. Therefore, per-se we find no material on record to justify the action of the CIT vide which the assessee trust has been refused grant of registration. We find that the facts of this case are squarely covered by the decision cited supra and the assessee's case needs to be granted registration as prayed for. However, we are not inclined to direct Ld. CIT(E) to grant registration which power he enjoys, so we direct Ld. CIT(E) to consider afresh granting registration to the assessee trust u/s. 12AA of the Act and also to consider granting exemption certificate u/s. 80G of the Act taking into consideration the aforesaid binding decisions of the Tribunal and pass a speaking order within three months of receipt of this order.

6. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 20.09.2017

Sd/-

(Waseem Ahmed)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 20th September, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Village Foundation for Social Services, Village Tower, F-15, Geetanjali Park, Ariadaha, 18A, Kumud Ghosal Road, Kolkata-700 057
- 2 Respondent – CIT(E), Kolkata
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary