

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.637(Asr)/2016

Assessment Year:

M/s Atam Pargas Social Vs. CIT(Exemptions),
Welfare Council, Chandigarh
99, Preet Vihar, Pakhowal
Road, VPO-DAAD,
Ludhiana (Punjab)-142002

PAN:AABAA4437B

(Appellant)

(Respondent)

Appellant by: Sh. Saurav Sood (Ld. Adv.)
Respondent by: Sh. Pawan K. Kumar (Ld. DR)

Date of hearing: 20.03.2018
Date of pronouncement:28.03.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 26.08.2016 passed by the Ld. CIT(Exemption), Chandigarh, u/s 80G(5)(vi) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The following grounds of appeal raised by the assessee.

"1. That on facts and circumstances of the case, the order u/s 80G(5)(vi) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the Ld. Commissioner of Income Tax

(Exemptions), Chandigarh flagrantly violates the principals of natural justice and is bad in law.

2. That the Ld CIT(Exemptions) failed to appreciate the settled law that once registration under section 12AA of Act has been granted to an assessee, it cannot be denied approval under section 80(G)(5)(vi) of the Act unless there is non-fulfillment of conditions specified in section 80G(5).

2.1 That the Ld CIT (Exemptions) erred in facts and in law by denying registration u/s 80G of the Act on the ground that at the time of granting registration it is to be ensured that the institution is 'established in India for charitable purpose' irrespective of the fact that the institution is already registered under section 12AA of the Act.

2.2 That the Ld CIT (Exemptions) erred in facts and in law by denying registration under section 80G of the Act by considering conditions other than those mentioned in section 80G(5) of the Act.

2.3 That the Ld CIT(Exemptions) erred in facts and in law by denying registration under section 80G of the Act on the ground that the receipts of the Appellant society are predominantly from sale of books and that such sale cannot be covered under 'charitable activities' as defined under section 2(15) of the Act.

3. That the Ld. CIT(Exemptions) erred in facts and in law by denying registration u/s 80G of the Act on the ground that the Appellant society is not carrying on 'charitable activities' as provided in section 2(15) of the Act.

3.1. That the Ld CIT(Exemption) failed to appreciate the fact that where the predominant object of the Applicant society was to carry out a charitable activity, the society would not lose its charitable status merely on the ground that the society has made some profits from carrying out these activities.

3.2. That the Ld CIT(Exemption) has erred in facts and in law by failing to appreciate the fact that while granting registration u/s 80G of the Act, the Applicant society had to be deemed to be carrying on charitable activities by virtue of its registration u/s 12AA of the Act.

The Appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing."

3. In the instant case an application for registration u/s. 80G was filed by the appellant herein, vide application dated 10.02.2016, which was rejected by the Ld. CIT(E) on various grounds, which includes non filing of revised/amended objects of the society, therefore, feeling aggrieved against the said order impugned herein, the assessee preferred the instant appeal.

4. At the outset, there is a delay of 50 days in filing of appeal. The Ld. AR in order to explain the delay submitted that the appellant had bonafide belief that revised/amended objects had already been filed before the Ld. CIT(E) along with reply dated 24th August, 2016, therefore, in order to confirm the same the appellant vide letter dated 21st Sep., 2016 (submitted on 23rd September, 2016) prayed for an opportunity to inspect the case file, to ascertain the revised/amended objects on record, however, no opportunity was offered by the Ld. CIT(E), thereafter, appellant again filed an application on 18th November, 2016, however, despite the repeated request, yielded no result, therefore, the delay of 50 days have been occurred in filing the instant appeal.

5. On the other hand, Ld. DR submitted that it was incumbent upon the appellant to file the appeal if so aggrieved against the order impugned herein, within the limitation time as prescribed by law, thereafter, the appeal of the assessee can be entertained until and unless there must be specific reasons for not doing so. We have considered the submissions of the parties

and realized that in the instant case, the order under challenge has been passed on 26th August, 2016, which was admittedly received by the appellant dated 31th August, 2016, thus, the appellant was supposed to file the instant appeal within 60 days i.e., up to 29th of October, 2016, however, the same was filed only on 19th December, 2016. The delay of 50 days have been occurred, which has been explained by the Ld. AR. In our considered view, genuine litigation, cannot be thrown out merely on the technicalities, therefore, we consider the reasoning of Ld. AR quite logical and reasonable and hence, delay of 50 days stands condoned.

Let us to go to the merit of the case in the instant case, although it was extensively argued by the Ld. AR that the Ld. CIT(E) is supposed to pass an order u/s 80G of the Act on the para meters set out in the Sec.80G(5) of the Act. The Ld. AR also emphasized that the appellant has already been submitted the original/ revised Memorandum of Association of Society and copy of which, also placed in the Paper Book. Alternatively, it was argued by the Ld. AR, even otherwise the revised of Memorandum of Association have not been filed before the Ld. CIT(E), but still in the application for registration u/s 80G itself the objective of the institution have been shown as revised objectives, therefore, it cannot be said that the Ld. CIT(E) was not in the knowledge of the revised objectives. Further, the Ld. AR also submitted that even otherwise the assessment order relevant to the Aast. Year:2011-12 was passed by the Ld. ITO-

Ward-6(i) Ludhiana by taking into consideration the amended objects of the appellant trust. The Ld. AR also submitted that by publishing and selling the book for the students, the appellant is carrying out the charitable activities, which is in sync with the object of the society and cannot be termed as commercial and intends to be profitable. The Ld. AR also submitted that Ld. CIT(E) is required to consider parameters of Sec.80G(5) while granting exemption u/s 80G.

6. On the other hand, the Ld. DR submitted that the assessee nowhere has shown to have been submitted the amended/revised objects before the Ld. CIT(E) and even otherwise the original Memorandum of Association and amended Memorandum of Association filed before this Court does not specify any date from which, the objects have been revised and specifically in the Memorandum of Association and the amended Memorandum of Association, on which the assessee focused the attention in fact does not bear any date of incorporation and registration in the office of Registrar of the societies and even amended word have been written by using pen whereas memorandum of association have been typed by the Typewriter which goes to show that this is not a reliable document.

7. We have gone through with the facts and circumstances of the case, documents on record and rival submissions of the parties. As the Ld. CIT(E) while declining exemption u/s. 80G of

the Act observed that the first pre requisite for processing an application u/s. 80G(5) as per Rule-11A is the satisfaction of Sec.12AA (i)(b) of the Act and the registration on basis of which the application has been made becomes relevant. It is an admitted fact that for the grant of registration u/s.80G, the registration u/s 12AA of the Act is necessary and in the instant case, the appellatant society vide order dated 19.01.2011 got the registration on the basis of original memorandum of association and/or original objects of the society. The copy of the order u/s 12AA of the Act is reproduced herein below.

Order Under Section 12AA (1)(b)(i) of the Act, 1961

M/s. Atam Pargas Social Welfare Council, which is a registered society with Registrar of Firms and Societies, Punjab, has made an application for registration of charitable or religious trust or institution under clause (aa) of Sub-section (1) of Section 12A of the I.T. Act on 16/7/2010. The aims and objects of the society are found to be both charitable and religious in nature. The item No. (iii) of the aims and objects is "To encourage the culture of reading, listening and singing Gurbani and to make arrangements to impart training for the purpose by establishing units in academic institutions, towns and villages or by organizing seminars, workshops, training camps, competitions and other functions." This object is religious in nature.

2. The Society is granted registration u/s 12AA(1)(b)(i) of the I.T. Act, 1961 w.e.f., Assessment Year 2011-12. The application has been entered at Sr. No.254 in the register of application u/s 12A(aa) of the I.T. Act.

*Sd/-
K.K. Sinha
Commissioner of Income Tax-III,
Ludhiana*

The aims and objectives as enshrined in original Memorandum of Association revised by the appellatant by

amendment of Memorandum of Association and the revised aims and objects are reproduced herein below.

“i) To educate and inculcate moral values among the students in particular and public in general. The benefits of the council shall be open to all irrespective of caste, creed or religion.

ii) To develop library and reference catalogue of religious historical, social and cultural publications/productions.

iii) To encourage the culture of reading, listening and singing Gurbani of Shri Guru Granth Sahib and to make arrangements to impart training for the purpose by establishing units in academic institution, towns and villages or by organizing seminars, workshops, training camps, competitions and other functions.

iv) To establish educational institutions.

v) To provide health service by establishing hospitals/dispensaries etc.”

It appears from the impugned order, that the fact of amendment in the society's objects was confronted to the appellant and specific query was raised with respect to evidence of the same being filed with the CIT(E) i.e., prescribed authority for granting registration and approval u/s 12AA and 80G respectively. Admittedly the same was not done by the appellant, however, it was claimed that the same has been furnished before the Ld. AO and revised objects have been mentioned by the AO in his assessment order. We realized that even otherwise, in the assessment order dated 19th September, 2013 relevant to the Asst. Year 2011-12, it does not reflect that the main objects of the trust have been shown as per the amended memorandum of association. We are in agreement with the Ld. CIT(E) that the AO and the assessment order cannot replace the prescribed authority as according to Sec.12AA/80G it

mandates that where a trust or an institution has been granted registration u/s 12A of the Act then subsequently the prescribed authority can cancel the registration on the ground that the activities of the trust or institution are not genuine or are not being carried out in accordance with objects of the trust or institution as the case may be.

It reflects from the record that in the instant case, the appellant did not file revised objects either before the prescribed authority who granted registration u/s 12AA of the Act or before the Ld. CIT(E) during the consideration of application u/s 80G of the Act. Simply by mentioning the new objects in the application for grant of registration u/s 80G does not serve any purpose until and unless the same averment has to be specific with filing of amended Memorandum of Association that the objects which were mentioned in the application are revised/amended having been approved by the authority, who granted the registration u/s 12A of the Act. We wonder as to how and what prevented the appellant to file the amended/revised objects/Memorandum of Association before the Ld. CIT(E) even after confrontation of the same. We find force in the contention of the Ld. DR that even the original Memorandum of Association and amended Memorandum of Association as filed before us does not specify its registration and even no date is reflecting from the aforesaid Memorandum of Association of the appellant. In law, there is specified procedure for amendment of the objects, which

required to be notified to the prescribed authority under the Income Tax and which the appellant herein failed to do. However, considering the peculiar facts and circumstances of the case in hand, at this juncture we are not going into merit of the impugned order and feel it appropriate to remand the case to the file of the Ld. CIT(E) for deciding afresh after taking registered amended objects/memorandum of association of the appellant society, while considering the parameters prescribed in Section 80G(v) of the Act. The assessee shall co-operate with the proceeding and file the appropriate documents which are essential and required by the Id. CIT(E) for proper adjudication of the case in hand.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28 .03.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:28.03.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) M/s. Atam Pargas Social Welfare Council, Ludhiana
- (2) The CIT(E), Chandigarh
- (3) The CIT(E), Chandigarh
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order