

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**ITA No.1716/Hyd/2017
Assessment Year: N/A**

Sri Vidya Saraswathi vs. The Commissioner of
Prasada Vitharana Society, Income Tax (Exemptions)
Wargal, Medak District. Hyderabad.

PAN- AAGAS9224B

(Appellant)

(Respondent)

Assessee by : Shri K.K. Gupta
Revenue by : Shri K. Srinivas Reddy

Date of hearing : 03-04-2018
Date of pronouncement : 06-04-2018

ORDER

PER SHRI B. RAMAKOTAIAH, AM:

The issue in this appeal is with reference to the granting of registration u/s 80G of the IT Act. Assessee is a charitable society with following activities of the society.

"1. All the devotees attended the Sri Vidya Saraswathi Sri Shani Temples, wargal have been provided with 'Free Food', no discrimination of caste, creed, religion or faith is shown while issuing free meals coupons, in line with objectives of the society.

2. Free Food packets are distributed on last Sunday of every month at Amperpet Village, Wargal-Mandal, to all the patients attending the free Homoe Medical camp and more than 300 patients from nearby villages attend these camps.

3. All the members of the society render free voluntary service to the devotees who attend in thousands during the festive occasions by taking care of Old, Handicapped, Ladies and Children and ensure no untoward incidents occur.

4. *Poor feeding is done on several occasions of congregation of public from nearby villages when medical camps, eye camps, pulse polio camps etc.*

5. *In line with the objectives of the society it is going to extend similar services to the Old Age Homes and adjacent villages and mandals when it financially grows stronger in the ensuing years.}*

Assessee was granted registration u/s 12A of the IT Act vide the order dated 25.09.2013 by the DIT(E), Hyderabad. However, the application for registration u/s 80G of the IT Act was rejected by the CIT(E) vide the order dated 31.07.2017.

“The above Society filed application in Form No.10G on 31.01.2017 seeking approval u/s. 80G of the IT Act. Thus, a notice was issued vide letter dated 12.04.2017, fixing the case for hearing on 23.05.2017, requesting the applicant to produce its original Memorandum of Association (MOA) for verification and to furnish detailed reply on specific points. In response, the A.R of the applicant society Sri Surya Bhagawan, Advocate appeared for hearing from time to time. During the course of hearing on 19.07.2017, the A.R was asked to furnish P&L accounts for the A.Y. 2016-17 and A.Y 2017-18. However, the same not furnished by the A.R till date. Further, no audited accounts filed for the A.Y. 2016-17 and A.Y 2017-18.

2. *In view of the above, I am of the view that the society is not fit for grant of approval u/s. 80G(5)(vi) of the Act. Hence, the application in Form No. 10G filed by the above Society is hereby rejected.”*

2. It was the contention that the Assessee satisfied the condition u/s 80G(5) of the IT Act and CIT(E) cannot refuse/reject solely on the reason that profit and loss account of the two years are not filed. Referring to the show cause letter dated 12.04.2007 issued by Ld. CIT(E), it was submitted that all the relevant information was filed and in the course of hearing Ld. CIT(E) asked for profit and

loss account of A.Y 2016-17 and A.Y 2017-18. It was submitted that return of A.Y 2016-17 was filed on 01.10.2016 and return for A.Y 2017-18 could be filed only on 14.10.2017, for which time was available and that can not be a reason for rejection, as Assessee fulfilled conditions u/s 80G(5) of the IT Act and CIT(E) has not stated any violation of any condition. Ld. Counsel relied on the principle laid down in the following cases:

1. *Shri Krishna Kirpa Gaushala Samiti Pehowa Vs. The CIT(Exemptions), Chandigarh. (ITA No. 103/Chd/2015).*
2. *Sai Love, Hyderabad Vs CIT(E), Hyderabad. (ITA No.566/Hyd/2016).*

3. After considering the rival contentions, we are of the opinion that the Assessee deserves registration u/s 80G of the IT Act. In the case of Shri Krishna Kirpa Gaushala Samiti Pehowa (supra) is held as under:

“For granting recognition under s. 80G(5) or continuation thereof, it is only to be seen whether the conditions laid down under cls. (i) to s. 80G(5) are fulfilled or not. Further, r. 11AA also does not indicate that nature or type of donation received by the fund or institution would be relevant for granting recognition under s. 80G(5) or continuation thereof. Rule 11AA provides power to CIT to carry out enquiries as he considers necessary and call for documents or information from the institution/fund for satisfying himself about the genuineness of its activities. Further, cl. (5) r. 11AA authorized CIT to refuse recognition or continuation thereof only when the conditions laid down in cls. (i) to (v) of sub-s. (5) of s. 80G are not fulfilled. Thus neither in the main sub-s. (5) of rules made thereunder, there is any provision of refuse recognition or continuation thereof only or the ground that the particulars of donors are not provided by institution or fund. Non-availability of particulars may empower the A.O to invoke s. 115BBC r/w s. 13(7) which are effective from 1st April, 2007 while making the assessment

of the society but so far as recognition under s. 80G(5) is concerned, they have no role to play.”

3.1 Likewise in the case of Sai love (supra) it was held as under:

5. *Having regard to the rival contentions and the material on record, we find that the following are the grounds on which the CIT (E) has denied the exemption u/s 80G:*

- (i) Expenses debited towards charitable activities are low;*
- (ii) Details of the activities are carried out are not mentioned in the reply;*
- (iii) The applicant did not give reply to the queries as per Question No.5 and 8 of the notice dated 29.12.15.*

6. *We find that all the three grounds on which the CIT (E) have denied registration are unsustainable as it is very clear from the documents filed by the assessee that the assessee has mentioned the activities carried out and has also given its reply to the queries No.5 & 8 of the notice dated 29.12.2015 though may not be to the satisfaction of the CIT (E), but the CIT (E)'s observation that the assessee has not replied is not correct. As regards the details of the activities carried out, the assessee had stated that it had distributed free medicines amounting to Rs.13,500/-. The only other ground left out is that the expenses towards charitable activities are too low and are not supported by any evidence. As regards this issue, it is seen that for granting of registration u/s 80G of the Act, the assessee is only required to fulfill the conditions laid down u/s 80G(v). In the case before us, the CIT (E) has not brought out the condition which has not been fulfilled by the assessee.*

7. *We find that the Coordinate Bench of this Tribunal at Pune in the case of Ashoka Education Foundation vs. CIT in ITA No.549 & 1294/PN/2009 has considered the conditions to be fulfilled for issuance of registration u/s 80G and the circumstances under which the 80G can be denied and at para 21 & 22 of its order has held as under:*

“21. While granting the exemption or renewal of exemption under section 80G(5) of the Act, the role of CIT is limited to look into the nature of activities being carried on by the institution or fund and the violation if any, of the provisions of section 13 of the Act and its various subsections are to be looked into by the Assessing Officer while deciding the issue of grant of deduction under sections 11 and 12 of the Act. The CIT while issuing the extension of exemption under section 80G(5) of the Act has a limited role to play i.e. to see whether the activities of the assessee trust were

charitable in nature. As pointed out in the paras hereinabove, the assessee was engaged in promoting educational activities by way of running schools, colleges, etc. The activities carried on by the assessee were purely charitable in nature which entitled it to claim the exemption under section 80G(5) of the Act.

22. Even otherwise, while granting the exemption under section 80G(5) of the Act, the Hon'ble Gujarat High Court in Orpat Charitable Trust Vs. CIT (supra) while deciding the issue of renewal of certificate under section 80G(5) of the Act, held that even if the ground about contravention of section 11(5) of the Act was validly taken by the CIT, that would have bearing only at the point of the assessment and would not be a material consideration in so far as the granting approval under section 80G(5) of the Act was concerned”

3.2 In the case before us, there is no allegation that the activities carried out by the Assessee are in violation of the provision of Sec. 12A of the IT Act or the conditions u/s 80G(5) of the IT Act are not fulfilled. In view of the same we set aside the order of the CIT(E) and direct him to grant registration u/s 80G of the Act to the Assessee.

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

Pronounced in the open court on 06th April, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 06th April, 2018.

KRK

- 1) *Sri Vidya Saraswathi Prasada Vitharana Society C/o Sri K.K. Gupta, CA, 3464, Dundoo Vihar, R.P. Road, Secunderabad-03.*
- 2) *The CIT(Exemptions), Hyderabad.*
- 3) *The Addl. CIT(Exemptions), Hyderabad.*
- 4) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 5) *Guard File*