

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE MS.DIVA SINGH, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.929/Chd/2017

(Under Section (5)(vi) of the Act)

Raghu Nath Rai Memorial
Educational & Charitable Trust,
H.No.2350, Sector 71, Mohali.

Vs.

The CIT(Exemption),
Chandigarh.

PAN: AAATR6500J
(Appellant)

(Respondent)

Appellant by : Shri B.K. Nohria & Vijay Jindal, CAs
Respondent by : Shri Ashis Abrol, CITDR

Date of hearing : 31.01.2018

Date of Pronouncement : 01.05.2018

ORDER

PER ANNAPURNA GUPTA, A.M.:

This appeal has been preferred by the assessee against the order of Ld. Commissioner of Income Tax(Exemptions), Chandigarh (hereinafter referred to as ('Ld.CIT(E)') dated 28.3.2017 rejecting the assessee's application for approval u/s 80G of the Income Tax Act, 1961 (in short 'the Act').

2. Briefly stated, an application in Form No.10G has been filed by the assessee society on 26.9.2016 for approval u/s 80G of the Act, to seek donations eligible for deduction under the said section. The assessee society was registered under the Societies Registration Act XXI on 29.9.2003 and was also registered u/s 12AA of the Act vide CIT-II, Chandigarh's order dated 19.5.2004 and had also been granted approval u/s 10(23C(vi) of the Act vide order dated 21.8.2007.

3. During the course of hearing before the Ld.CIT(E) in the present proceedings, due opportunity of hearing was granted to the assessee, calling for information by issuing show cause letter to it. Due reply was filed by the assessee in response to the said letter, after considering which the Ld.CIT(E) rejected the application holding that the assessee had at its disposal investible surpluses and the rationale for seeking donations was not brought out in the present case and further that the activities and claim of the assessee society of imparting education was not corroborated by its emphasis on assets creation and other investments till date. The relevant findings of the Ld.CIT(E) at paras 4 to 7 of its order are as under:

“4. The applicant society has submitted its financial statements for last four years. The Gross receipt, Net surplus, FDRs as per balance sheet and additions made under the head "building" are as under:-

F.Y.	Gross Receipt	Net Surplus (%)	FDR	Addition Building
2012-13	Rs.30,09,27,726/-	Rs 9,12,69,146/- 30.3%	Rs.2,99,77,427/-	Rs. 4,16,88,261/-
2013-14	Rs.33,85,46,586/-	Rs.11,11,68,723/- 32.8%	Rs.2,66,77,629/-	Rs.11,28,73,309/-
2014-15	Rs.33,44,94,935/-	Rs.12,04,18,733/- (36%)	Rs.2,06,23,518/-	Rs.15,37,91,480/-
2015-16	Rs.33,14,77,197/-	Rs.7,13,89,359/- 21.5%	Rs.1,87,53,971/-	Rs. 3,91,76,566/-

The applicant vide its reply dated 15.03.2017 submitted that the FDRs of Rs. 1,87,53,971/- reflected in the balance sheet for F.Y. 2015-16 are made as a security for the different Universities. It has also been observed that the net current asset at the end of financial year 2012-13, 2013-14, 2014-15 & 2015-16 are Rs. 2,91,41,935/-, Rs. 4,82,40,914/-, 6,93,09,522/- and Rs. 8,84,90,760 /- respectively. This shows that apart from a constant growth in the fixed asset of the applicant society, also there is an increase in the net current asset (As reflected in the table below) by 65.5%, 43.7% and 27.7% through the financial years 2012-13 to F.Y. 2015-16. The figures in the table and the reply of the applicant are a clear indicator that the applicant society's main focus is on acquiring assets and not the propagation of education as claimed. It has accumulated huge assets in the form of fixed assets and FDRs. On the basis of copy of financial statements the following figures correctly reflect the exact financial position of the applicant society:

F.Y.	Fixed Asset (Gross Block)	Net Current asset
2012-13	Rs. 1,10,40,06,902/-	Rs. 2,91,41,935/-

2013-14	Rs. 1,30,83,12,390/-	Rs. 4,82,40,914/-
2014-15	Rs. 1,51,29,86,569/-	Rs. 6,93,09,522/-
2015-16	Rs. 1,67,35,78,224/-	Rs. 8,84,90,760/-

The above clearly shows that the society has had, in the past, large investible surpluses that have primarily been invested to acquire fixed assets. The society is having huge cash balances which could otherwise be utilized for so claimed expansion of education. There is no rationale for seeking donations using them to acquire assets when the society has been receiving a huge sum in the form of various types of fees.

5. The analysis of both the objects & activities of the applicant exemplify that the applicant is running educational institutions by charging fee and have also accumulated funds. It continued to add assets and kept claiming depreciation down the years to accumulate large surpluses. The purpose of legislature to include this section in the Act is to promote and encourage people for making donations to the societies/ trust which otherwise lacks funds for performing charitable activities. On the contrary, the applicant trust has accumulated large funds in the form of FDR and Cash that they are not willing to utilize for expansion. There is no previous history of donations in the applicant's case either. The applicant hasn't shown any history of donations till now. The actions by applicant so far clearly lead to the conclusion that the applicant has sufficient funds which are required to propagate its object and also to finance future expansion which remains unelaborated. No specific reason for applying under this section has been given by the applicant.

6. Further the applicant has not elaborated on (a) the target group from whom the donation would be sought/received, (b) the exact contours of the expansion in education they wish to undertake and the quantum of finances that would be necessary, (c) how the expansion would prove beneficial to the general public at large, and (d) the list of people who have shown the inclination to donate to the society. The Apex Court in the most recent judgment holding capitation fee as illegal(2016) in the case of Civil Appeal No. 4060 of 2009 (and others) in the case of Modern Dental College and Research Centre and Ors. Versus State of Madhya Pradesh has held that educational institutes should not just focus on making profits but run on no-profit-no-loss basis. The five judge constitution Bench held that commercializing of educational sector is not permissible.

7. All of above clearly leads one to conclude that the entity has at its disposal investible surpluses and the rationale for seeking donations is not brought out in the case. Moreover, allowing donations to educational institutions would be contrarian to the thumbs down given to the practice of donations. No evidence has been provided by the applicant that could project safeguards that may have been built into the administrative and financial practices being followed by the society and the institutions being run under its aegis. Moreover, no purpose has been projected for donations although there is no history of any receipt of donations either. The activities and claim of the applicant society is not corroborated by its emphasis on assets creation and other investments till now. The application for approval u/s 80G is accordingly rejected.”

4. Aggrieved by the same, the assessee society has come up in appeal by raising following grounds:

- “1. That the learned CIT (Exemption) Chandigarh has not denied the compliance of any of the five basic condition stated in sub section (i) to (v) of Section 80G(5) of the Income Tax Act, 1961 read with Rule 11AA of the Income Tax Rules, 1962 for grant of registration u/s 80G of the Act.
2. That the learned CIT (Exemption) Chandigarh has wrongly denied the exemption on the basis that the appellant has not received any donation in the past which is not a condition for grant of registration u/s 80G of the Act.
3. That the learned CIT (Exemption) Chandigarh has wrongly denied the registration u/s 80G of the Act as the appellant has failed to elaborate on target group, exact contours of expansion in education, how expansion would prove beneficiaJ to general public at large and list of people who have inclination to donate to the appellant as per para 6 of the order which are not the requirements of the Section 80G(5) of the Act.
4. That the learned CIT(Exemption) Chandigarh has passed wrong order by assuming that the appellant is commercialising the education sector whereas his office has granting registration u/s 12AA of the Income Tax Act, 1961 vide order dated 19.05.2014. The said registration is valid till date. Hence the assumption of the learned CIT(Exemption) is wrong and the appellant deserves to be granted approval u/s 80G of the Act.
5. That the learned CIT (Exemption) Chandigarh has wrongly denied the registration u/s 80G of the Act by involving himself into the administrative matter of the appellant inspite of the fact that the learned CIT(Exemption) is not the member of the appellant society but an authority under Income tax to decide the application under Form 10G on merit.”

5. During the course of hearing before us the Ld. counsel for assessee pointed out the fact that the assessee society is registered as a charitable society by the Revenue itself u/s 12AA of the Act and has also been approved by the Revenue for claiming exemption u/s 10(23C)(vi) of the Act

as an institution/university existing solely for the purpose of imparting education. The Ld. counsel for assessee, therefore, contended that its charitable character by way of imparting education had been granted the stamp of approval by the Department itself. The Ld. counsel for assessee further pointed out that it had been earlier granted approval u/s 80G(5)(vi) of the Act for the period 1.4.2006 to 31.3.2009 relevant to assessment years 2007-08 to 2009-10 vide order of the CIT-II, Chandigarh dated 26.9.2006. Copy of the said order was placed before us. The Ld. counsel for assessee, therefore, contended that in the above backdrop there was no reason to deny the approval now specially without pointing the non fulfillment of any of the conditions prescribed u/s 80G(5) read with Rule 11AA of the Income Tax Rules, 1962 in this regard. At this juncture, our attention was drawn to the provisions of section 80G(5) and Rule 11AA, which read as under:

“80G. (1) *In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section.*

.....

.....

.....

(5) *This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2), only if it is established in India for a charitable purpose and if it fulfils the following conditions.*

- (i) *where the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or clause (23)] or clause (23AA)] or clause (23C)] of section 10:*

Provided that where an institution or fund derives any income, being profits and gains of business, the condition that such income would not be liable to inclusion in its total income under the provisions of section 11 shall not apply in relation to such income, if,-

(a) the institution or fund maintains separate books of account in respect of such business;

(b) the donations made to the institution or fund are not used by it, directly or indirectly, for the purposes of such business; and

(c) the institution or fund issues to a person making the donation a certificate to the effect that it maintains separate books of account in respect of such business and that the donations received by it will not be used, directly or indirectly, for the purposes of such business;]]

(ii) the instrument under which the institution or fund is constituted- does not, or the rules governing the institution or fund do not, contain any provision for the transfer of application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose;

(iii) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure;

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956 (1 of 1956), or is a university established by law, or is any other educational institution recognised by the Government or by a university established by law, or affiliated to any university established by law, or is an institution financed wholly or in part by the Government or a local authority;

(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.”

Rule 11AA . (1) *The application for approval of any institution or fund under clause (vi) of sub-section (5) of section 80G shall be in Form No. 10G and shall be made in triplicate.*

(2) *The application shall be accompanied by the following documents, namely :—*

- (i) *Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10(23C);*
- (ii) *Notes on activities of institution or fund since its inception or during the last three years, whichever is less ;*
- (iii) *Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.*

(3) *The Commissioner may call for such further documents or information from the institution or fund or cause such inquiries to be made as he may deem necessary in order to satisfy himself about the genuineness of the activities of such institution or fund.*

(4) *Where the Commissioner is satisfied that all the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are fulfilled by the institution or fund, he shall record such satisfaction in writing and grant approval to the institution or fund specifying the assessment year or years for which the approval is valid*

(5) *Where the Commissioner is satisfied that one or more of the conditions laid down in clauses (i) to (v) of sub-section (5) of section 80G are not fulfilled, he shall reject the application for approval, after recording the reasons for such rejection in writing :*

Provided *that no order of rejection of an application shall be passed without giving the institution or fund an opportunity of being heard*

(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 [end of the month in] 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.]”*

6. The Ld. counsel for assessee pointed out that the Ld.CIT(E) had denied the approval solely for the reason that it had at its disposal surpluses and, therefore, there was no reason for it to seek donations and further that the purpose for seeking donation was not brought out by the assessee.

The Ld. counsel for assessee pointed out that these were irrelevant considerations for the purpose of grant of approval u/s 80G(5)(vi) of the Act as is evident from the section and Rule itself, the only requirement as per which, for being eligible for approval, was that it should be engaged in charitable activities which are not for the benefit of particular community. The Ld. counsel for assessee, therefore, pleaded that the order of the Ld.CIT(E) be set aside.

7. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(E) pointedly referring to the data reproduced therein showing availability of sufficient funds invested in fixed assets and current assets which showed that the assessee had sufficient funds at its disposal and did not require funding by way of donation at all. Moreover, the Ld. DR stated that the assessee had also not shown reason for seeking donations. Relying heavily upon the order of the Ld.CIT(E) the Ld. DR stated that the assessee's application for grant of approval had been rightly rejected by the Ld.CIT(E).

8. We have carefully considered the contentions raised by both the parties, gone through the order of the Ld.CIT(E) and also the documents placed before us. The issue before us relates to grant of approval u/s 80G(5)(vi) of the Act.

9. We do not find the rejection of application for grant of approval u/s 80G in the present case by the Ld.CIT(E), solely for the reason that the assessee society has sufficient

disposable funds available with it and no reason was given for seeking funds by way of donation, as appropriate. The provisions of section 80G(5) of the Act as reproduced above are very clear, setting out conditions which are to be complied with for the purpose of being eligible for approval u/s 80G of the Act. The sufficiency of funds available with an institution seeking the approval is nowhere mentioned as a condition to be looked into before granting approval. In fact as rightly pointed out by the Ld.Counsel for the assessee the primary conditions to be fulfilled are that it should be established for charitable purpose, carrying out only charitable activity and should not be for the benefit of any caste or religion. The facts emerging from the order of the Ld.CIT(E) itself is that the assessee society is registered u/s 12AA of the Act as a charitable society entitled to claim exemption u/s 11 of the Act and has also been granted approval u/s 10(23C)(vi) of the Act making it eligible to claim exemption under the said section as a university/institution established wholly for the purpose of imparting education and not for the purpose of generating profits. The Ld.CIT(E) has not given any cognizance to the above facts and has in fact not examined the eligibility of the assessee to grant of approval vis a vis the conditions set out in section 80G(5) of the Act, at all. We, therefore, consider it fit to restore the issue back to the Ld.CIT(E) to reconsider the application for grant of approval strictly in the light of the conditions set out in section 80G(5) of the Act and thereafter pass an order in accordance with law. We

may add that the assessee be given due opportunity of hearing in this regard.

10. In the result, the appeal of the assessee is, therefore, allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 1st May, 2018

Rati

Copy to:

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

Assistant Registrar,
ITAT, Chandigarh