

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.625 & 866/Ind/2016
Assessment Year: NA**

Mayank Bidasria Memorial Charitable Trust 3,5,7 Bhagirathpura, Indore(M.P.) (Appellant)	बनाम/ Vs.	CIT-(E), Bhopal (Revenue)
P.A. No.AAATM9677R		

Appellant by	Shri C.P. Rawka, CA
Respondent by	Shri Lal Chand, CIT-DR
Date of Hearing:	06.11.2018
Date of Pronouncement:	14.11.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

These two appeals by the assessee are against two different orders dated 25.07.2016 & 26.05.2016 of the Commissioner of Income Tax(Exemption)-Bhopal. Both the appeals were taken up for hearing together and are being disposed of by way of consolidated order for the sake of convenience and brevity.

First, we take up assessee's appeal in ITA No.866/Ind/2016

wherein the assessee has raised following grounds of appeal:

“That the Learned Commissioner of Income Tax (Exemption) erred in rejecting the assessee’s registration under section 12AA.

Ld. Commissioner of Income Tax (Exemption) is not appreciating that the assessee is not limiting the work to limited social group and the work is based only on recommendations of close friends and relatives.

3. Ld. Commissioner of Income Tax (Exemption) erred cancellation of registration under section 12AA without appreciating the fact that registration u/s 12AA was granted by the Ld. Commissioner of Income Tax after making all enquiries and investigations.”

2. The only effective ground in the appeal is against withdrawing the registration granted u/s 12AA(1)(b)(1) of Income Tax Act, 1961 (hereinafter called as ‘the Act’). The facts giving rise to the present appeal are that application seeking registration u/s 80G of the Act came to be rejected by the Ld. CIT(E) vide order dated 26.05.2016. Subsequently, on the basis of the facts recorded in the order passed u/s 80G(5)(vi), the Ld. CIT(E) issued a notice calling upon the assessee as to why registration u/s 12AA(1)(b) of the Act should not be withdrawn i.e. vide show cause notice dated 31.05.2016. The case was fixed for hearing and the explanation given by the assessee was not found acceptable by the Ld. CIT(E) and therefore, he had withdrawn the registration granted u/s 12AA(1)(b) of the Act. Against this order of Ld. CIT€ the assessee is in present appeal.

3. The Ld. counsel for the assessee vehemently argued that the ld. CIT was not justified in withdrawing registration. He submitted that at the time of grant of registration a detailed inquiry was conducted and there was no occasion or reason to withdraw registration so

granted. Ld. counsel submitted that the Ld. CIT failed to appreciate the facts in right perspective. He has placed reliance on the judgment of the Hon'ble Gujarat High Court rendered in the case of N.N. Desai Charitable Trust vs. CIT 246 ITR 452. Ld. counsel also placed reliance on the decision of the Coordinate Bench of this Tribunal in the case of Tewari Charitable Trust vs. Director of Income Tax in ITANo.6192/Mum/2012. On the contrary Ld. Departmental Representative (DR) supported the orders of the authorities below.

4. In rejoinder ld. counsel for the assessee reiterated the submissions as made in the written synopsis. Ld. counsel submitted that the action of the assessee is even otherwise contrary to the spirit of the circular issued by the Central Board of Direct Taxes.

5. We have heard the rival contentions and perused material available on record. We find that registration was granted by the Ld. CIT on the basis of the nature of the objects of the assessee trust. However, subsequently, it was noticed by the Ld. CIT that the assessee trust has not carried out activity as per the objects of the Trust. It was further observed by the Ld. CIT that the benefit is given to handful of the persons who ex facie do not appear to be ready hence, the assessee trust acted contrary to its objects. It is also noticed that ld. CIT based his finding of withdrawing the registration as arrived while considering the application for registration of the assessee trust u/s 80G. It is noticed that during the proceedings the Ld. CIT(A) had also carried out on the spot

verification. There is no ambiguity under the law so far the proposition that where the assessee does not carry out its activity as per the objectives on the basis of which the registration was granted can be withdrawn at any point of time if Ld. CIT is so satisfied. In the present case Ld. CIT(E) has given on finding of facts on the basis on spot verification that beneficiary of the exemption are through known persons. During the course of hearing a query was also raised by the Tribunal to explain the method how the candidates to whom scholarship and other benefit are given are selected by the Trust. Ld. counsel for the assessee could not state the method of selection except stating that selection was through recommendations. In our considered view this cannot be sufficient to draw an inference of the assessee being charitable. Therefore, we do not see any infirmity in the finding of the Ld. CIT as the benefit is not given to the persons referred in clause (4) of the objects of the Trust. It is not the case where the assessee is giving scholarship based upon same merit. It is also not the case where the assessee is promoting and sponsoring the students belonging to poor and weaker sections of the society. In absence of material to substantiate the activity being charitable the grounds raised in the present appeal are dismissed.

Now we take assessee's appeal in ITANo.625/Ind/2016

The assessee has raised following grounds:

“That the Ld. CIT(E) erred in rejecting the assessee’s application under section 80G(5).

2. That ld. CIT(E) erred in relying upon the report of Inspector who failed to appreciate the help extended with limited resources.

3. That Ld. CIT(E) erred in making observations as regards to initiations of withdrawal of registration under section 12AA without appreciating the fact that registration u/s 12Aa was granted by the ld. CIT after making all enquiries and investigations.”

6. Ld. counsel for the assessee reiterated the submissions as made in the written synopsis. We find that the Ld. CIT has given a finding on fact in para No.3 of his order as under:

“3 In response to the above mentioned notice, Ms.Saroj Chordia,CA attended on 2.5.2016 at Indore and case discussed. It is seen that there are few cases of discretionary personalised charity undertaken by the Trust since 2-3 years. Some beneficiaries have approached the trust through intermediaries, on whose recommendations, donation has been paid by Trust. There are no compelling circumstances placed on record to warrant selection of limited beneficiaries and as to why they only were selected for charity and none-else. A charitable trust must engaged in charity for public at large. The representative also was handed over a copy of Inspector's report, who, based on his spot verification report, came to conclusion that the trust is not carrying out any charitable activities. The representative was asked to show cause as to why not approval U/S 80G be denied in view of facts as above . Therefore, the case was adjourned for 13.5.2016 at Bhopal Office. On 13.5.2016 Ms.Saroj Chordia attended and case was discussed with reference to letter dated 12.05.2016 place on record. It is stated that the trust has inadequate resources and therefore, no publicity was done as it is not practically -possible to extend help to each and everybody. Therefore policy decision was taken by the Trustee that help may be given only to person approaching the trust, It is seen that the trust is. not doing any charity for public at large. Even in the situation of shortage of funds, charity can be performed to public at large rather than spending all available resources on a handful of persons. This reflects intention of trust to work in a limited social group in a

discretionary manner on the basis only of 'recommendations' from close friends and relatives even though 12 years have passed after the registration (dated 06.01.2004) .of the trust as charitable trust and therefore the activity cannot be called charitable.”

7. This finding on facts by the ld. CIT is not rebutted by the assessee by placing any positive material on record. The assessee could not controvert of the observations of the Ld. CIT that the benefit is given to eligible persons. Thus, grounds raised in this appeal are rejected.

8. In the result, both the appeal of assessee in ITANo.866 /Ind/2016 & ITANo.625/Ind/2016 are dismissed.

Order was pronounced in the open court on 14 .11.2018.

Sd-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 14 / 11/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar, Indore