

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 1169 & 6472/Del/2018
Assessment Years: -----

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| BUDDHA CATU PARISA FOUNDATION VS. | CIT(EXEMPTIONS) |
| 25/31, EAST PATEL NAGAR, | NEW DELHI |
| WEST DELHI, DELHI - 110 008 | 26 TH FLOOR, E-2 BLOCK |
| (PAN: AAFP5064) | PRATYAKSH KAR |
| | BHAWAN, |
| | CIVIC CENTRE, J.L. |
| | NEHRU MARG, NEW |
| | DELHI - 110 002 |

(APPELLANT)

(RESPONDENT)

| | |
|---------------|---------------------------|
| Assessee by | : SH. BALJIT SINGH, CA |
| Department by | : SH. C.P. SINGH, SR. DR. |

ORDER

PER H.S. SIDHU, JM

These appeals have been filed by the Assessee against the order dated 22.12.2017 of the Ld. CIT(E) passed u/s. 80G(5)(vi) of the Act. The grounds raised in ITA No. 1169/Del/2018 read as under-

1. The Ld. CIT(E) has erred in granting registration as "Religious Trust" instead of "Charitable Trust."

2. In the facts of the matter the Ld. CIT(E) has erred in not granting exemption u/s. 80G of the Act.
3. The orders of the Ld. CIT(E) are bad in law and on the facts of the case.
4. That we would be allowed to alter, amend or add fresh grounds of appeal at the time of hearing.
5. The appellant prays that exemptions be granted to the company.

1.1 The grounds raised in ITA No. 6472/Del/2018 read as under:-

1. On the facts of the matter the Ld. CIT(E) has erred in granting registration u/s. 12AA as "Religious Trust" instead of "Charitable Trust".
2. The order of the Ld. CIT(E) is bad in law and on the facts of the case.
3. That we would be allowed to alter, amend or add fresh grounds of appeal at the time of hearing.
4. The appellant prays that the registration be granted to the Company as "Charitable Trust" instead as "Religious Trust".

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. Ld. Counsel of the assessee stated that the Ld. CIT(E) has passed the non-speaking orders u/s. 80G as well as u/s. 12AA of the Act and did not give well reasoned finding in both the cases. Hence, he requested that the issues in dispute may be set aside to the file of the Ld. CIT(E) to decide the same afresh and direct him to pass a speaking order, after hearing the assessee.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have heard both the parties and perused the records. It was the contention of the assessee's counsel that Ld. CIT(E) has passed the non-speaking orders. For the sake of clarity, we are reproducing the relevant finding of the Ld. CIT(E)'s order dated 22.12.2017 passed u/s. 80G(5)(vi) as well as order dated 26.09.2017 passed us. 12AA of the Act as under:-

"ORDER u/s 80G (5) (vii OF THE INCOME TAX ACT, 1961 read with rule- 11AA of the Income Tax - Rates. 1962,

1. The applicant filed application on 09.06.2017 in Form No 10G seeking approval for exemption u/S 80G of the Income Tax Act, 1961. The applicant was issued letter dated 09/06/2017 requesting it to submit certain documents in support of its claim of exemption u/s 80G,

2, On perusal of the documents filed by the assessee, it was found that the applicant has been given registration u/s 12A in religious category vide order NO.CIT(E)/2017-18/DEL- RR 26S41 26092017/ 8187 dated 26.09.2017.

3, As per section 80G(5D) Explanation 3- "Charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature.

4, Based on the above facts, as the registration was granted under religious category the application filed by the applicant for grant of approval for exemption u/s 80G is hereby rejected."

"Sub:-ORDER OF REGISTRATION U/S 12AA READ WITH SECTION 12A OF THE INCOME TAX ACT 1961

An application in Form No. 10A seeking Registration u/s 12AA was filed on 02/03/2017.

The Trust/ Society / Non profit company was constituted by deed of trust, memorandum of association / instrument dated 27/05/2016 indicating its object.

3 After considering the material available on record . the applicant trust / society / company is granted registration as Religious Trust / society / company and the provisions of Sections 11 and 12 shall apply in the case from AY—2017-18. The trust/society/NPO is registered at S. No DEL-BR26541-26092017 of the

register maintained in this office. The registration is granted subject to the following conditions :

Conditions:

- 1. Order u/s 12AA(1)(b) read with section 12A does not conform any right of exemption upon the applicant u/s 11,12 and 13 of the income Tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each Financial Year relevant to the Assessment Year and all the provision of law acted upon. This will be further subject to provisions of section 2(15) of the Income Tax Act1961.*
- 2. The Trust/Society/Non Profit Company shall maintain accounts regularly and shall get these audited in accordance with the provision of section 12A(1)(b) of the Income Tax Act, 1961. Separate accounts in respect of each activity as specified in memorandum shall be maintained, A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered / Designated Office of the Organization.*
- 3. Separate accounts in respect of profits and gains of business incidental to attainment of objects shall be maintained in compliance to section 11 (4A) of the Income Tax Act 1961*
- 4. The trust/institution shall furnish a return of income every year within the time limit prescribed under the act.*

5. *The trust/institution should quote the PAN in all its communications with the Department. .*
6. *The registration u/s, 12AA of the I.T. Act, 1961 does not automatically confer any right on the donors to claim deduction/s 80G.*
7. *This certificate cannot be used as a basis for claiming non - deduction of tax at source in respect of investments etc.. relating to the Trust/Institution.*
8. *All the Public Money so received including for Corpus or any contribution shaft be routed through a Bank Account and such Bank Account Number shall be communicated to this office.*
9. *No change in the terms of Deed of the Trust shall be effected without due procedure of law i.e. by order of the jurisdictional High Court and its intimation shall be given immediately to this office. The registering authority reserves the right to consider whether any such alteration in objects would be consistent with the definition of "charitable purpose" under the Act and in conformity with the requirement of continuity of registration,*
10. *No asset shall be transferred without the knowledge of the undersigned to anyone, including to any Trust/Society / Non profit Company etc.*
11. *The registered office or the principal place of activity of the applicant should not be transferred outside the national capital territory, Delhi except with the prior approval of the CIT(E), Delhi.*
12. *If later on it is found that the registration has been obtained fraudulently by misrepresentation or suppression of any fact, the Registration so granted is*

liable to be cancelled as per provisions u/s section 12AA(3) of the Act

13. The registration so granted is liable to be cancelled at any point of time, if the registering authority is satisfied that activities of the Trust/Institution are no genuine or are not being carried out in accordance with the objects of the Trust/Institution.”

5.1 After perusing the aforesaid findings of the Ld. CIT(E), we find that Ld. CIT(E), has not passed a speaking order and did not give well reasoned finding in his orders dated 22.12.2017 passed u/s. 80G(5)(vi) of the Act read with Rule 11AA of the I.T. Rule, 1962 and also in the order dated 26.9.2017 passed u/s. 12AA read with section 12A of the Act, which is not sustainable in the eyes of law. Therefore, in the interest of justice, we set aside the orders of the Ld. CIT(E) and remitted back the issues involved in both the appeals to the file of the Ld. CIT(E) to decide the issues in dispute in both the appeals afresh, in accordance with law, after giving adequate opportunity of being heard to the assessee and pass a speaking order. The assessee is directed through this counsel to appear before the Ld. CIT(E) on 25.03.2019 at 10 AM to substantiate his case in both the appeals and did not take any unnecessary adjournment. Since the order has been pronounced in the Open Court, there is no need to send the notice for the hearing before the Ld. CIT(E).

6. In the result, both the Appeals filed by the Assessee stand allowed for statistical purpose.

Order pronounced on 07/03/2019.

Sd/-

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated:07/03/2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

ASSISTANT REGISTRAR