

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

I.T.A. No. 1870/HYD/2018

Ram Niwas Sharma Charitable
Trust,
SECUNDERABAD
[PAN: AACTR7289Q]

Commissioner of Income Tax
Vs (Exemptions)
HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri Lakshmi Niwas Sharma, AR
For Revenue : Shri Y.V.S.T. Sai, CIT-DR

Date of Hearing : 06-02-2019
Date of Pronouncement : 15-03-2019

ORDER

PER S. RIFAUR RAHMAN, A.M. :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Exemptions)-Hyderabad, dated 29-06-2018.

2. Brief facts of the case are that the assessee is a Charitable Trust, was granted Registration u/s. 12AA of the Income Tax Act [Act] w.e.f. 10-02-2016 by the Commissioner of Income tax, Hyderabad. However, the application for approval u/s. 80G of the Act was rejected for want of significant activities conducted by the assessee trust.

3. The assessee again filed an application in Form No. 10G on 07-12-2017, seeking approval u/s. 80G of the Act, for grant of exemption u/s. 80G. The CIT(E), accordingly, issues notice to the assessee on 01/05/2018 requiring the assessee to produce the original trust deed for verification and to furnish detailed reply on specific points. Accordingly, the AR of the assessee furnished the information as called for.

4. The CIT(E) observed that as per section 80G(5) read with Rule 11AA, the Commissioner has to satisfy himself about the genuineness of the activities. He further observed that the assessee has not produced the bills and vouchers to verify the genuineness of the activities and since the assessee failed to produce the same, it is not possible to verify the genuineness of the activities of the assessee, which is pre-condition for granting registration u/s 80G.

4.1 The CIT(E) further observed that as per section 80G(5)((iv), it is mandatory for the assessee to maintain regular accounts of its receipts and expenditure. Since the assessee failed to produce the bills/vouchers/receipts, it is not possible to verify whether the assessee has complied section 80G(5)(iv) or not.

4.2 In view of the above observations, the application in form no. 10G filed by the assessee for 80G approval was rejected by the CIT(E).

5. Aggrieved by the order of CIT(E), the assessee is in appeal before us raising the following grounds of appeal:

"1. The Learned CIT(E) erred in facts and law while passing the order u/s 80G(5)(vi).

2. *The Learned CIT(E) erred in rejecting the application for approval u/s. 80G on the basis that "assessee has not produced the bills and vouchers" ignoring that all vouchers with invoices and bills were produced for verification before Income Tax Officer along-with our letter dated 30.05.2018 addressed to CIT (E), handed over to AO while verification.*

3. *The Learned CIT (E) erred in stating that the assessee has not produced any bills & vouchers and the genuineness of the activities cannot be verified ignoring that detailed note on activities was given during the course of hearing along-with the receipts and payments accounts, income and expenditure accounts, balance sheets and copies of bills and vouchers were also given.*

4. *The Learned CIT(E) erred in stating in para 10 of order that "separate proceeding have been initiated for cancellation of 12A registration".*

5. *For these and any other grounds which may be raised on or before hearing of the appeal".*

6. Before us, the Id. AR of the assessee filed written submission wherein, inter-alia, it was stated that the CIT(E) has not given proper reasoning for rejecting the application for approval u/s 80G and has merely stated that 'assessee has failed to produce bills/vouchers/receipts ignoring that the account bills, vouchers were verified by the ITO during the course of review of application and same were also submitted to CIT(E) along with submission dated 30/05/2018. Assessee relied on the following cases:

1. Raja Bahadur Venkat Rama Reddy Society Vs. DIT(E), ITA No. 1005/hyd/2014, order dated 27/09/2017.
2. Sai Love Vs. CIT (E), ITA No. 566/Hyd/2016, order dated 24/08/2016.
3. P.R. Chellaram Charitable Trust Vs. DIT (E), ITA No. 596/Hyd/2013
4. CIT Vs. M/s Uddan Ek Meetha Sapna Society, ITA No. 63 of 2018, order dated 08/10/2008. (P&H High Court)
5. CIT Vs. Babbar Charitable Trust, [2018] 11 ITR-OL 595 (All.)

7. On the other hand, Ld. DR supported the order of Ld.CIT(E).

8. Considered the rival submissions and material on record. There is no dispute that assessee was granted registration u/s 12A after due verification. Now assessee seeking registration u/s 80G of the Act, for which, Id. CIT(E) rejected by observing that there are no activities in the trust, as held in the case of Raja Bahadur Venkat Rama Reddy Society (supra) wherein the coordinate bench held as under:

“7. Having regard to the rival contentions and the material on record, we find that the assessee is running a school and has been granted registration u/s 12A of the Act. While granting registration u/s 12A of the Act, the DIT (E) was satisfied that the assessee's objectives are charitable in nature. The Hon'ble Gujarat High Court in the case of Hiralal Bhagwati vs. Commissioner Of Income-Tax, reported in 246 ITR 188 (Guj.), has held that the procedure prescribed for registration is] s 12A of the Act is not a mere/ empty formality as it requires that not only an application should be filed in the prescribed form stating about the details of the origin of the Trust but also the names and addresses of the Trust and/or Managers should be furnished and the DIT (E) has to examine the objects of creating the Trust as well as empirical study of the past of the applicant and has to examine that it is really a charitable trust or institution eligible for registration. It was held that once registration sx] s 12A of the Act has been granted, then the Department was not justified in refusing the approval u/ s 800(5) of the Act.

8. Further, in the case of N.M. Desai Charitable Trust vs. CIT (cited Supra), the Hon'ble Gujarat High Court has held that while considering the application for registration u/ s 80G of the Act, the authority granting approval cannot act as an assessing authority once conditions specified are satisfied and the inquiry should be confined to find out if the institution satisfied the prescribed conditions. As it is not disputed that the assessee has been granted registration u/ s 12A of the Act and such registration has not been withdrawn, we are of the opinion that the assessee should have been granted registration u/ s 80G of the Act. We therefore, direct the DIT (E) to grant approval to the

assessee is] s 80G, if the assessee continues to enjoy registration u/s 12A of the Act.”

Respectfully following the above decision, in our view, CIT(E) should grant approval u/s 80G to the assessee. Any violation as per law may be evaluated in the assessment proceedings and suitable action may be taken after due verification of the activities, but, not at this stage, particularly, when the department has already granted registration u/s 12A. Therefore, we direct the CIT(E) to grant approval u/s 80G. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 15th March, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated 15th March, 2019

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Copy to :

1. Ram Niwas Sharma Charitable Trust, C/o. Laxminiwas & Co., Chartered Accountants, D.No. 6-3-569, 4th Floor, Opp: RTA Office, Above BMW Showroom, Khairatabad, Hyderabad.

2. Commissioner of Income Tax (Exemptions), Hyderabad.

3. Jt.CIT(Ex)-Hyderabad.

4. D.R. ITAT, Hyderabad.

5. Guard File.