

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.6843/Del./2018

Maharaja Aggarsein Charitable Hospital Society, Opp. Police Station, Railway Road, Ganaur, Distt. Sonapat (Haryana). (PAN : AABTM4328G) (APPELLANT)	vs.	CIT (Exemptions), Chandigarh. (RESPONDENT)
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ASSESSEE BY : Shri K. Sampath, Advocate
Shri V. Raja Kumar, Advocate
REVENUE BY : Ms. Paramita M. Biswas, CIT DR

Date of Hearing : 04.06.2019
Date of Order : 13.06.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Maharaja Aggarsein Charitable Hospital Society (hereinafter referred to as the 'applicant society') by filing the present appeal sought to set aside the impugned order dated 30.08.2018 passed by the Commissioner of Income-tax (Exemptions), Chandigarh on the grounds inter alia that :-

“On the facts and in the circumstances of the case and in law the Ld. CIT (E) erred in rejecting the application seeking approval for exemption u/s80G of the Income-tax Act, 1961. The order being arbitrary, misconceived, erroneous and unjust must be quashed with directions to grant approval as sought.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Application moved by the applicant society in Form 10G for seeking approval under section 80G of the Income-tax Act, 1961 (for short 'the Act') has been rejected by the Id. CIT (E) on the grounds inter alia that the applicant has failed to provide cogent reasons for seeking donations to substantiate the need for donation and in the absence of which real purpose of applicant society is not established; that the applicant society has failed to avoid queries raised by the Department; that the applicant society indulged in cash transaction which shows that its activities are not wholly transparent; that applicant society's indulgence in cash transaction does not make the activities amenable to the proper verification; that the real purpose of applicant society for which the approval u/s 80G is being sought is merely to seek donation and to add it to its surpluses.

3. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the impugned order passed by the Id. CIT (E) by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, applicant society has been accorded registration u/s 12AA of the Act by CIT, Rohtak vide order dated 01.04.1997. It is also not in dispute that registration u/s 12AA of the Act is only a prerequisite to move an application u/s 80G of the Act but not a sufficient condition for approving exemption to the donation u/s 80G of the Act.

6. To proceed further, we would like to extract the provisions of section 80G(5)(i) to (vii) for ready perusal as under :-

“80G(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 fulfills the following conditions, namely :—

- (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 (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 or 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; and*
- (vii) *where any institution or fund had been approved under clause (vi) for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, for the purposes of this section and notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,—*
 - (a) *established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009; and*
 - (b) *approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009.”*

7. Bare perusal of the provisions contained u/s 80G, extracted above, goes to prove that before according approval u/s 80G of the Act, the Id. CIT (E) is required to satisfy himself that the applicant society has been established with real charitable purpose and in order to satisfy himself, he is empowered to summon numerous documents

viz. separate books of accounts, banks statements, regular accounts of receipts of funds and expenditure, etc.. To satisfy himself, the Id. CIT (E) has issued a detailed questionnaire to the assessee to provide the documents/clarifications detailed in para 3 of the impugned order. Ld. CIT (E) further called for the detail/clarification by issuing another questionnaire referred in para 4 of the impugned order.

8. From the income & expenditure account, Id. CIT (E) noticed that out of total expenditure of Rs.1.59 crores, applicant society has incurred Rs.90.40 lakhs on salary and professional charges in FY 2016-17 but failed to bring on record the detail of salary paid to Doctors and staff. So, the payment of salary and other expenditure are unverifiable. Applicant society has also not provided financial statement for FY 2017-18 despite requisition. Applicant society stated before the Id. CIT (E) that financial statements are under-compilation and has not yet been finalized as due date of filing of audited financials for such financial year for charitable trust is 30.09.2018.

9. Ld. CIT (E) specifically recorded in impugned order that applicant society failed to provide even provisional financial statement for FY 2017-18 in whose absence expenditure and receipt of the applicant society cannot be examined in order to corroborate the claim of the applicant society.

10. Ld. CIT (E) also noticed from the bank statement that the whole receipt has not been routed through the bank rather the receipt routed through bank was 64.8% and 70% in FY 2015-16 and 2016-17 which shows that the applicant society has been indulging into cash transactions which cannot be subjected to verification.

11. Ld. CIT (E) in para 8 of the impugned order also mentioned that, “the applicant society has not explained the target group from whom the donation would be sought/received, the exact contours of expansion they wish to undertake and the quantum of finances that would be necessary and that the list of people who have been shown the inclination to donate to the applicant society.”

12. Moreover, ld. CIT (E) noticed that the applicant society has accreted huge surpluses and accumulated in the form of FDRs which reached upto Rs.2.06 crores which shows that they are not willing to utilize the same for expansion. Applicant society has also not brought on record the facts if any amount of donation has been received by the applicant society in the past since its existence from the year 1996.

13. The contention of the ld. AR for the applicant society that all these facts are required to be taken care of at the time of scrutiny assessment and in the earlier years, clean assessment has been framed, is not tenable as no such document has been placed before

the Id. CIT (A) nor before the Tribunal in the form of paper book. Even the documents specifically called for by the Id. CIT (E) discussed in the preceding paras have not been supplied so as to satisfy Id. CIT (E) as to the mandatory requirements for according approval u/s 80G of the Act.

14. We are of the considered view that by now all these documents must be ready with the applicant society, so to meet with the ends of justice, applicant society who is claiming that it is into charitable activities since 1994 must be given an opportunity to produce all documents discussed in the preceding paras before Id. CIT (E). So, the case is remanded back to Id. CIT (E) to decide afresh after providing an opportunity of being heard to the applicant society. Consequently, the appeal filed by the applicant society is allowed for statistical purposes.

Order pronounced in open court on this 13th day of June, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of June, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(E), Chandigarh.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.