

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.3213/Bang/2018
(Assessment year: 2018-19)

M/s.Koteshwara Cultural and Sports
Foundation,
No.3/8, Next to Megha Opticals,
Puttenahalli Circle,
JP Nagar 6th Phase, ... Appellant
Bangalore-560078.
PAN:AADTK 4610 K

Vs.

Commissioner of Income-tax(Exemption)
Bengaluru. ... Respondent

Appellant by : Shri H.V.Gowthama, CA.
Respondent by : Shri Pradeep Kumar, CIT(DR)

Date of hearing: 17/06/2019
Date of pronouncement: 17/06/2019

O R D E R

Per PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Commissioner of Income-tax (Exemption) [CIT(E)], Bengaluru, passed u/s 80G(5)(vi) of the Income-tax Act,1961 ['the Act' for short].

2. The assessee has raised the following grounds of appeal:

Page 2 of 6

1. The learned Commissioner of Income tax(E) erred in rejecting the application made by the Appellant Trust for granting exemption u/s.80G(5)(vi) of Income Tax, 1961.

2. The learned Commissioner of Income tax (E) erred in stating that " the Appellant Trust has not carried on any noticeable Charitable activities. In absence of Charitable activities, it will be difficult to ascertain the intent, nature and genuineness of the Trust...."

3. The Appellant submits that some of the social and sport activities have been carried out by the Trust and relevant documents and photographs have been submitted b y the Trust and therefore the learned CIT(E) was wrong in stating that no noticeable activities have been carried out.

4. The Appellant further submits that the activities of the Trust is mainly cultural & Sports ctiviteis, which is a part of activities detailed u/s.2(15) of Income Tax Act and hence the Recognition u/s.80G (5)(vi) of Income Tax Act, 1961, should have been granted.

5. For the above and any other grounds that may be advanced at the time of hearing, the Appellant prays that, Appeal be allowed directing the learned Commissioner of Income Tax to grant Registration u/s. 80G(5)(vi) of Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed an application for recognition u/s 80G of the Act. The CIT(E) considering Form 10G found that the assessee has not carried on noticeable charitable activities. Therefore, the CIT(A) has rejected recognition u/s 80G of the Act. Being aggrieved, the assessee has filed the appeal before the Tribunal.

4. The learned AR submitted that the assessee has applied for registration u/s 12AA of the Act and recognition u/s 80G of the Act on 9/03/2018 and complied with the conditions. Further the learned AR submitted that registration u/s 12AA of the Act was granted to the assessee on 27/09/2018 whereas recognition u/s 80G was rejected. Therefore, the learned AR prayed that considering the information and the activities of the assessee, the recognition u/s 80G may be granted and prayed for allowing the appeal. Contra, learned DR relied on the order of the CIT(E).

5. We heard rival submissions and perused material on record. Prima facie, the CIT(E) has rejected the recognition u/s 80G by mentioning that charitable activities are not carried out by the assessee. We found that the CIT(E) has granted registration u/s 12AA of the Act to the assessee and the Id.R has furnished copy of registration u/s 12AA of the Act dated 27/09/2018. We found that when the registration u/s 12AA of the Act was granted by the CIT(E) after verifying and satisfying requisite conditions complied by the assessee which is not disputed by the revenue and therefore, the assessee is eligible for recognition u/s 80G of the Act. We support our view with the decision of the co-ordinate bench of Tribunal in ITA No.2560/Bang/2018 dated 22/03/2019 in the case of

M/s.Kuncham Mohan Raj & Manjula Charitable Trust where similar issue was considered and the observations of the Tribunal at page.....para.4.3.1 read as under:

“4.3.1 We have considered the rival contentions and perused the material on record; including the judicial pronouncements cited / relied upon. The undisputed facts, as emerge from a perusal of the record before us, is that the assessee — trust established vide Trust Deed dated 21.12.2016, simultaneously filed applications for grant of registration under section 12AA and grant of recognition under section 80G of the Act on 16.01.2018. Clarifications / details were called for thereon jointly vide CIT(E)'s letters dated 24.04.2018 and 27.06.2018 and the assessee's reply for both grant of registration under section 12AA and recognition under section 80G of the Act was filed vide letters dated 21.06.2018 and 13.07.2018. From the impugned order, we find that the main objection by the CIT(E) to grant of recognition under section 80G of the Act was that the assessee trust has not carried out any noticeable activity till formation of the Trust; and therefore, it was not a fit case for grant of recognition under section 80G of the Act. In our view, what is significant / noticeable activity is very subjective and cannot be the basis for rejection of the assessee's application. It is for the assessee to determine which of its activities in furtherance of its objects are to be taken up initially. Grant of approval / recognition under

Page 5 of 6

section 80G of the Act can act as a catalyst to encourage prospective donors to look at the intended activities / objects and possibly provide financial support through donations / contributions. Strangely, in the case on hand, on the very same day i.e., 25.07.2018 when he rejected the assessee's application for recognition under section 80G of the Act, the CIT(E) has granted the assessee-trust registration under section 12AA of the Act vide order dated 25.07.2018; ostensibly, after examination of the assessee's objects, etc., which the CIT has categorized as "Advancement of any other object of general public utility".

4.3.2 In this factual matrix of the case, as discussed above and following the decision of the Co-ordinate Bench in the case of Indic Science Research Trust (supra), we accordingly set aside the impugned order of the CIT(E) dated 25.07.2018 passed under section 80G(5)(iv) of the Act and restore the matter to the file of the CIT(E) to examine the matter afresh in the light of his order dated 25.07.2018 granting the assessee registration under section 12AA of the Act and our observations hereinabove. Needless to add, the CIT(E) is directed to afford the assessee reasonable opportunity of being heard in the matter and to file details / submissions required that shall be considered before deciding the issue.”

Page 6 of 6

Accordingly we, following the ratio of the decision restore this disputed issue to the file of the CIT(E) to adjudicate afresh granting of recognition u/s 80G of the Act in the light of grant of registration u/s 12AA and further the assessee should also be provided an adequate opportunity of hearing and shall cooperate in submitting information for early disposal of the application filed for recognition u/s 80G of the Act and allow the grounds of appeal for statistical purposes.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 17th June, 2019.

sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 17/06/2019
srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore