



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.647/LKW/2018
Assessment Year: N.A.

M/s Academy of Mass Communicaton 21, Bilhera House, RK Tandon Road Near Kotwali, Kaiserbagh Lucknow	v.	CIT (Exemption) Lucknow
TAN/PAN:AAATA8405F		
(Appellant)		(Respondent)

Appellant by:	Shri Samrat Chanrda, FCA		
Respondent by:	Shri S. K. Madhuk, CIT (DR)		
Date of hearing:	16	09	2019
Date of pronouncement:	20	09	2019

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT (Exemption), Lucknow dated 13/7/2018, passed under section 80G(5)(vi) of the Act. The following grounds have been raised:

1. Because, on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Exemption) is not justified in dismissing the appeal of the assessee u/s 80G(5) of the Income Tax Act, as no due and proper opportunity of hearing was afforded before the passing of the impugned order.
2. Because, on the facts and in the circumstances of the case, the instant assessee being an entity duly registered u/s 12AA, there was no occasion for the Ld. CIT (Exemption) to treat the same activities as not being charitable in nature.

There is no change in the nature of activities, performed by the assessee and the genuineness of the activities has also not been doubted.

3. Because, on the facts and in the circumstances of the case, no power of review being vesting in the CIT (Exemption), there was no occasion for the CIT (Exemption) to conclude that the assessee was not engaged in the business of education.

4. Because, on the facts and in the circumstances of the case, the impugned order is unsustainable in law as the entire evidence and material concerning the activities of the assessee was duly filed by the assessee before the CIT(Exemption), which has been casually ignored by the same.

2. In the impugned order, the Id. CIT(E) has held as follows, while rejecting the assessee's application seeking grant of approval under section 80G(5)(vi) of the Income Tax Act:

'3. I have considered the material available on record. It is important to note that as per norms mandated by law mere submission of documents is not the sole criteria for approval u/s 80G(5) of the Income Tax Act, 1961. The approval u/s 80G(5) is not a mechanical process wherein the according of registration of u/s 12A/10(23C) of the Income Tax 1961 and filing of documents at one end would result in the issuance of approval u/s 80G(5) at the other. It is important that the application and the supporting documents duly pass the test as mandated by law for according the recognition u/s 80G(5). It appears from the material available on record that the applicant is under misapprehension that mere filing of documents, including those that are completely irrelevant to the present proceedings, somehow proves his claim. This is not what is laid down by the law and the relevant material

needs to be examined in the light of the provisions of the Act.

4. On perusal of the material available on record, it is found that the applicant has merely submitted the trust deed and no material has been provided that could throw some light upon the activities, if any, carried out by the applicant as claimed in the trust deed. There is literally no material available on record so as to form even the slightest satisfaction regarding the genuineness of the activities carried out, if any, by the applicant. The applicant needs to retrospect the fact that mere submission of the trust deed carrying high sounding lofty ideals does not make a trust or institution eligible for exemption which has been specifically targeted towards institutions carrying out genuine charitable activities and furthering the cause of charity. It is imperative on the part of the applicant society to provide corroborating evidences that form the satisfaction regarding the genuineness of the activities of the applicant which is mandated by law. In the absence of such satisfaction, the applicant loses its eligibility for consideration for according the said registration. In the instant case neither has the applicant provided any ratification by providing the books of accounts nor have any vouchers been provided for the various expenses with respect to various activities as claimed to have been carried out. Neither was the applicant able to corroborate its activities/expenses through production of books of accounts and vouchers nor was the applicant able to file any reply. The above facts clearly prove that the activities of the applicant are not genuine and not in accordance with the objects set forth in the memorandum of the society. This is a clear violation of the norms mandated by law for formation of satisfaction for according the said recognition. Mere declaration in the name of charity without actually performing activities that accomplish the goal of "charitable purpose" does not form the satisfaction that is mandated by

law for according recognition u/s 80G(5) of the Income Tax Act,1961. The above mentioned facts place serious doubts on the genuineness of the activities of the applicant and thus render the said applicant not worthy of being accorded the said recognition.

5. In the present proceedings the applicant has failed to corroborate his claim of charitable activities. The documents filed in the proceedings show that applicant has not worked towards the performance of the objects set out in the memorandum of the society. Thus the applicant has failed to accomplish the goals set by the law for according the said recognition. The documents filed in the proceedings show that the applicant has claimed to be involved in activities which apparently are for profit making on commercial lines and are far away from the definition of the term "charitable purpose". It is very clear that the applicant is doing a mere pretense of charity.

6. The Hon'ble ITAT Lucknow bench in order ITA No. 809/LKW/2014 dated 26.02.2015 has held that "We have considered the submissions of Learned D. R. of the Revenue, perused the material available on record and gone through the impugned orders of learned CIT-II, Kanpur. It is noted by the learned CIT in the order passed by him for rejecting the claim for registration u/s 12AA that the material required for formation of the satisfaction mandated by the Act is unavailable and therefore, it is held by learned CIT that the assessee has failed to fulfill the conditions for grant of registration u/s 12A of the Act. Similarly, in his order for rejecting the claim of the assessee for registration u/s 80G, he has given a finding that the assessee has failed to fulfill the conditions for approval u/s 80G of the Act. Hence, we do not find any justification to interfere in these orders of learned CIT".

7. In view of the above discussion, it is clear that the applicant is not engaged in any charitable purpose which is the prerequisite for approval u/s 80G of the Act. Under these circumstances and for these reasons, I hereby reject the application of the society u/s 80G(5) of the Income Tax Act 1961.'

3. The Id. counsel for the appellant Institution has contended that the Id. CIT (Exemption) has erred in law as well as on the facts and circumstances of the case in rejecting the application filed by the appellant seeking grant of approval under section 80G(5)(vi) of the Act; that the assessee being an entity duly registered u/s 12AA of the Act, there was no occasion for the Ld. CIT (Exemption) to treat the same activities as not being charitable in nature, as all such reasons were duly examined by the Id. CIT(Exemption) while granting registration under section 12A of the Act, vide Certificate dated 9/2/2017; that there is no change in the nature of activities performed by the assessee and the genuineness of the activities has also not been doubted; that on the facts and in the circumstances of the case, the CIT (Exemption) was not at all justified in observing that the assessee was engaged in the business of education; and that the impugned order is unsustainable in law, as the entire evidence and material concerning the activities of the assessee was duly filed by the assessee before the CIT(Exemption), which has been wrongly ignored by him.

4. On the other hand, Id. DR has placed strong reliance on the order under appeal.

5. Heard. At the outset, it is seen that registration u/s 12AA(1)(b)(i) of the Act was granted to the appellant Institution vide order dated

9/2/2017 (copy of order placed on record). It is not disputed that this registration has hitherto not been revoked or cancelled. The Id. CIT(E) has observed, inter alia, that approval u/s 80G(5) of the Act is not a mechanical process, wherein the according of registration u/s 12AA/10(23C) of the Act and filing of documents at one end would result in the issuance of approval u/s 80G(5) at the other. Consistent judicial opinion in this regard, is, however, otherwise, as we shall presently discuss. The issue is, as such, res integra.

6. In "Hiralal Bhagwati vs. CIT", 246 ITR 188 (Guj.), while holding that once registration u/s 12AA of the Act was granted, the order rejecting the application u/s 80G(5) of the Act was liable to be quashed, the Hon'ble High Court observed that the registration of a charitable trust u/s 12A of the Act is not an idle or empty formality; that this is apparent from the provisions of Section 12A; that it requires that not only an application should be filed in the prescribed form, setting out the details of the origin of the trust, but also the names and addresses of the trustees and/ or managers should be furnished; that the CIT has to examine the objects of creating the trust, as well as make an empirical study of the past activities of the applicant; and that the CIT has to examine that it is really a charitable trust or Institution eligible for registration. The Hon'ble High Court took into account the submissions that once registration u/s 12A of the Act is granted, grant of benefits under the act cannot be denied, that the ITO was not justified in refusing the benefits under the Act, which would otherwise accrue under the registration, and that if there was no registration, the Revenue would have been justified in submitting that the benefit cannot be granted, but where the application for registration is submitted and registration has been granted, the benefit cannot be denied.

7. In "N.N. Desai Charitable Trust vs. CIT", 246 ITR 452 (Guj), it has been held, inter alia, that while considering the certification of the

Institution for the purpose of Section 80G, the inquiry should be confined to finding out if the Institution satisfies the prescribed conditions as mentioned in Section 80G; that it is well settled that at the time of granting the application u/s 80G, what is to be examined is whether the trust is registered u/s 12A and the objects of the trust; that so far as the aspect of income is concerned, the same can be very well examined by the Assessing Officer at the time of framing assessment; and that the Authority examining the question whether a trust/Institution is eligible to be certified for the purposes of Section 80G, is not to act as an AO.

8. "N.N. Desai", (Supra) was followed by the Pune ITAT in "B.P.H.E. Society vs. ITO", in ITA No. 111/PN/2010, vide order dated 30.08.2011, holding that when the CIT is to examine an application seeking recognition u/s 80G, he is not required to act as an AO and decide upon the claim of the assessee in respect of his assessment of income; that the actual assessment of the assessee and its actual liability to tax are matters to be decided only in the assessment proceedings; and that since the assessee was (in that case, as herein also) registered u/s 12A of the Act and such registration continued, the assessee fulfilled the conditions prescribed u/s 80G(5)(i) of the Act.

9. "N.N. Desai" (Supra) has also been followed, in "Marathi Vidyan Parishad Nashik Vibhag vs. CIT, Nashik", by the Pune Tribunal, vide order dated 20.05.2016, in ITA No. 1465/PN/2014.

10. "N.N. Desai" (Supra) was also followed in "CIT vs. Pujya Jalarambpa & Matushri Virbaima Charitable Trust" by the Rajkot Tribunal in ITA No. 249/Rjt/2014, vide order dated 30.05.2014. This order of the Tribunal stands approved by the Hon'ble Gujarat High Court in "CIT vs. Pujya Shri Jalarambapa & Matushri Virbaima Charitable Trust" 55 taxmann.com 52 (Rjt).

11. No decision contrary to the above case laws has either been referred by the Id. CIT(E) in the impugned order, or cited before us.

12. Therefore, respectfully following the above decisions, we hold that the Id. CIT(E) was not justified in rejecting the appellant's application seeking grant of approval u/s 80G(5)(vi) of the Act, despite the undisputed fact that the applicant was granted registration u/s 12AA of the Act and that too, on examining the Institution's objects and the genuineness of its activities, and such registration continues uninterrupted hitherto, and inspite of the fact that it remains undisputed that the appellant duly fulfills all the conditions prescribed u/s 80G(5)(i) to (v) of the Act.

13. Accordingly, the order under appeal is reversed and it is directed that the appellant be granted approval u/s 80G of the Act forthwith.

14. Nothing further survives for adjudication, nor was any other point argued.

15. In the result, the appeal is allowed.

Order pronounced in the open Court on/09/2019.

[T. S. KAPOOR]
ACCOUNTANT MEMBER

[A. D. JAIN]
VICE PRESIDENT

DATED:...../09/2019
JJ:1609

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar