

IN THE INCOME TAX APPELLATE TRIBUNAL

‘A’ BENCH : BANGALORE

BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER

AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA 29/Bang/2020

M/s. Nandikur Education Trust, Adve Aranthade, Post Nandikur, Nandikur, Udupi. PAN NO : AADTN 1559 J	Vs.	Commissioner of Income Tax (Exemptions), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Danesh H Gardin, Advocate
Respondent by	:	Shri. Manjeet Singh, Addl. CIT – DR

Date of Hearing	:	19-02-2020
Date of Pronouncement	:	25-02-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 28/11/2019 passed by Ld. CIT (exemptions), Bangalore denying registration under section 80G (V) (vi) of the Act.

2. The assessee is an educational trust. The main objectives of the assessee was establishing and running educational institutions. It made an application for grant of approval u/s. 80 G of the Act on 22/05/2019. Ld. AR submitted that, registration u/s. 80 G was denied to assessee due to lack of activities during initial stages.

3. At the time of hearing, the Ld. AR brought to our notice that on identical reasoning given by Ld. CIT (E) for not granting

approval u/s. 80 G of the Act, this *Tribunal* in the case of *Bhima Foundation v. CIT, ITA No. 946/Bang/2018* by order dated 20.09.2019 and *SJF Philanthropic Organisation Corporate Affairs v. CIT (E), ITA No. 2283/Bang/2018* by order dated 15/12/2019, granted approval. In the aforesaid order, this *Tribunal* came to the conclusion that, assessee trust is newly set up and when approval u/s. 80 G is sought for and when period between formation of trust and examination of application of assessee for grant of approval u/s. 80 G of the Act was very short, it is not possible for such organisation to demonstrate actual carrying of its activities. This *Tribunal* placed reliance on decision of *Hon'ble Karnataka High Court* in case of *DIT (E) v. Meenakshi Amma Endowment Trust, 354 ITR 219 (Kar)* and came to the conclusion that for want of proof of activities of a trust, when trust was yet to commence its activities, an application for grant of registration u/s. 12A cannot be rejected. The *Tribunal* also placed reliance on decision of *ITAT Jaipur Bench* in the case of *Anand incubation Centre v. CIT(E), 86 taxmann.com 250 (Jaipur Trib)* wherein on identical facts, approval u/s. 80 G was directed to be granted. Following was relevant observations of the *Tribunal*:

“6. We have heard the rival contentions and perused the material available on record. It is noted that the appellant is a public charitable trust which has been newly constituted vide Trust Deed dated 16.03.2017 and it is therefore not a case of existing charitable trust which has been in existence for past many years. Further, as far as the objects of the appellant trust are concerned, given the fact that the appellant has been granted registration under section 12AA, the objects being “advancement of any other object of general public utility” in nature have been verified by the learned CIT(E) while granting the registration under section 12AA of the Act and are thus not in dispute. As far as the genuineness of the activities of the assessee trust is concerned, in our view, the said requirement has to be seen in the context of the establishment of the trust. Where the trust has been set up in the past and has been carrying out its activities at the time of

moving the application, then it is no doubt true that while granting the registration under section 80G, the learned CIT(E) is within his powers and jurisdiction to examine the genuineness of the activities and how such activities are connected with the achievements of the objects for which the assessee trust has been set up. However, in a scenario where the assessee trust has been newly set up, as in the instant case, and within a period of five months of its setting up, it has applied for approval under section 80G, practically, it would take some time to mobilize the resources and there may not be an occasion for the assessee trust to demonstrate the actual carrying on of its activities at the time of moving the application. Therefore, the question of genuineness of such activities and examination thereof by the learned CIT(E) is premature to our mind at the time of grant of approval. In our view, the object of grant of recognition under section 80G of the Act is to promote charitable activities and to mobilize resources which can be generated by the assessee trust from the potential donors as well as public at large. Therefore, denial of recognition under section 80G merely for the fact that the activities have not been carried out by the assessee trust and thus cannot be verified is not appropriate. Further, the Ld. CIT(E) has not spelt out nonfulfillment of any of the conditions specified under section 80G (5) of the Act, therefore, it is not a case where any of the conditions specified for grant of approval have not been fulfilled by the assessee trust. A similar view has been taken by the Coordinate Bench in the case of OLA Foundation vs CIT(E) (ITA No.215/Bang/2018 dated 26.10.2018) wherein it was held as under:

“10. We have carefully considered the rival submissions. It is not in dispute that the CIT(E) himself has granted registration to the assessee u/s 12A of the Act and therefore, the CIT(E) was satisfied that the objects of the trust were charitable and that its activities were genuine as this is a condition for grant of registration u/s.12A of the Act. As per the requirements of Rule 11AA (5) of the Rules, it is incumbent on the part of the CIT(E) to spell out the conditions mentioned in sec. 80G (5) which has not been fulfilled by the assessee. Therefore, it can be safely concluded that the only reason assigned by the CIT(E) for not granting approval u/s.80G of the Act is the absence of activities of the trust from the date of coming into existence of the Trust. The Hon'ble Karnataka High Court in the case of DIT(E) Vs. Meenakshi Amma Endowment Trust, 354 ITR 219 (Kar), wherein the Hon'ble Karnataka High Court in the context of grant of approval u/s 12A of the Act made an observation that where trust has approached the authority for registration u/s 12A within span of 8 month after its formation, objects of the trust have to be examined and the authorities cannot insist on proof of activities of the trust as trust was yet to commence its activities. ITAT, Bangalore Bench in the case of All People Charitable Trust Vs. CIT(E) in ITA Nos. 1216 and 1217/Bang/2015 order dated 30/12/2015 has applied the principles laid down in the case of Meenakshi Amma Endowment Trust (Supra) in the context of grant of registration u/s 80G of the Act. In the present case the trust was formed on 14/12/2016 and application for

grant of registration and approval u/s 12A and 80G respectively was made on 16/5/2017. Therefore, the CIT(E) was not justified in basing his conclusion for rejecting approval u/s.80G of the Act on the ground of absence of activities of the trust. ITAT, Jaipur in the case of Anand Incubation Centre Vs. CIT(E), Jaipur 86 taxmann.com 250 (Jaipur - Trib), on identical facts as the case of the assessee, the Tribunal held that rejection of grant of approval u/s 80G was not justified. Keeping in mind the aforesaid decisions and the facts of the present case, we are of the view that the CIT(E) ought to have granted the approval u/s.80G (5) of the Act. We accordingly direct that the approval u/s. 80 G of the Act be granted to the Assessee”.

4. Therefore, in light of above discussion and respectfully following decision of the Co-ordinate Bench of this *Tribunal*, which followed ratio laid down by *Hon’ble Karnataka High Court*, we hereby direct Ld. CIT (E) to grant registration to assessee trust under section 80 G of the Act.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 25th February, 2020.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 25th February, 2020.
/MK/

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal.
Bangalore.