

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.2071/Bang/2019
Assessment year : 2019-20

Shiroor Welfare Trust, National Highway 66, Green Valley National School, Shirur – 576 228. Byndoor Tq. Udupi Dist. PAN: AAETS 4222L	Vs.	The Commissioner of Income Tax (Exemptions), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri R.E. Balasubramanyam, CA
Respondent by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.11.2020
Date of Pronouncement	:	23.11.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the assessee is directed against the order dated 26.7.2019 of the Commissioner of Income Tax (Exemptions), Bengaluru [“CIT(E) for short] rejecting the application for grant of recognition u/s. 80G of the Income-tax Act, 1961 [the Act].

2. The assessee is a charitable trust established vide deed dated 30/03/2001 to establish, run and manage educational institutions, to promote study of all languages, cultures and heritages, to propagate and promote literary and cultural activities and to strive towards the overall development of the society. The assessee trust obtained registration under

section 12AA of the Income Tax Act on 02/04/2001 and 80G recognition on 29/11/2005. Since the 80G recognition expired on 31/03/2007, the assessee trust applied for registration u/s 80G of the Act on 11/01/2019. The Id. CIT(E) issued notice requiring submission of documents to substantiate the application for registration u/s 80G. In response, the assessee trust submitted necessary details and documents to substantiate the charitable activities carried out by the trust. The CIT(E), however, after considering the details filed, rejected the application of the assessee on the ground that it has not made out a case for seeking such recognition and he was unable to satisfy himself with the genuineness of the objects and activities of the trust. Aggrieved by the same, the Assessee has come up in appeal before the Tribunal.

3. The Id. counsel for the assessee submitted that recognition u/s. 80G(5) has to be granted subject to certain conditions being fulfilled as laid down in the said sub-section. Rule 11AA of the Income-tax Rules, 1962 [the Rules] provides that if the conditions mentioned in section 80G(5) are not satisfied, then recognition can be denied. It was pointed out by the Id. counsel for the assessee that in the impugned order, the Id. CIT(E) has not brought any material on record to show as to, which of the conditions of the provisions of section 80G(5) have been transgressed by the assessee. The only observation in the impugned order was that the trust was generating surplus and majority of receipts are by way of fees collection. The Id. Counsel submitted that this is not a ground mentioned in section 80G(5) of the Act for which recognition can be denied to the assessee.

4. The Id. counsel for the assessee also brought to our notice that the assessee enjoys the benefit of registration u/s. 12AA of the Act and as such satisfies the condition that it should exist for charitable purposes. It was therefore submitted by him that the impugned order of CIT(E) should

be set aside and the assessee should be granted recognition u/s. 80G(5) OF THE Act.

5. The Id. DR, on the other hand, supported the order of CIT(E) and submitted that in any event, the matter should be remanded to CIT(E) to pass a speaking order specifying the grounds on which recognition u/s. 80G is being refused.

6. We have carefully considered the rival submissions and are of the view that the impugned order of Id. CIT(E) is a non-speaking order. As rightly contended by the Id. counsel for the assessee, the generation of surplus and the fact that majority of receipts are by way of fees collection cannot be a ground to refuse recognition u/s. 80G of the Act. The assessee is admittedly existing for a charitable purpose of providing education. As rightly contended by the Id. DR, the impugned order is a non-speaking order and therefore it would be in the fitness of things to set aside the order of CIT(E) and remand back to him the issue of grant of recognition u/s. 80G of the Act to the assessee for fresh consideration. The CIT(E) will afford opportunity of being heard to the assessee before deciding the issue.

7. For statistical purposes, the appeal of the assessee is treated as allowed.

Pronounced in the open court on this 23rd day of November, 2020.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 23rd November, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.