IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER &
SHRI SANJAY ARORA, ACCOUNTANT MEMBER

I.T.A. No.23/JAB/2020
Assessment Year: N.A.

Sampoorna Samiti, H. No. 83, Tagore Nagar, Gwarighat, Jabalpur, (M.P.) - 482001 [PAN: AAIAS 4765K]	vs.	Commissioner of Income Tax (Exemptions), 2nd floor, Metro Walk Building, Opposite Bittan Market, Bhopal (M.P.) - 462016
(Appellant)		(Respondent)

Assessee by	Shri Himanshu Khemuka, Adv.
Revenue by	Shri Sarabjeet Singh, CIT-DR
Date of hearing	24/11/2020
Date of pronouncement	05/02/2021

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order refusing to grant approval under section 80-G(5)(vi) of the Income Tax Act, 1961 ('the Act' hereinafter) by the Commissioner of Income Tax (Exemptions), Bhopal ('CIT(E)') vide order dated 25/10/2019.

2. The appeal, filed on 21/9/2020, is delayed by 262 days. As explained in the condonation petition, filed along with an affidavit by the President of the appellant-society, on 23/9/2020, the delay occurred principally on account of the assessee approaching the Hon'ble High Court under its' writ jurisdiction, i.e., challenging the impugned order. The Hon'ble Court, vide its' order dated

13/3/2020 (copy on record), declined interference, observing that the assessee may seek alternate legal remedy. The same was received only on 13/8/2020, and the subsequent delay has occurred due to the present situation and the deponent being out-of-station. The delay is, under the circumstances, reasonably explained, and was in fact not seriously disputed by the Revenue. The same was, accordingly, condoned, and the hearing proceeded with, admitting the appeal.

The background facts

3.1 It would be relevant to recount in brief the facts of the case leading to the impugned order. The applicant is a Society established under Madhya Pradesh Society Registrakaran Adhiniyam, 1973, registered with the Registrar, Firms & Societies, on 28/9/2012 (PB pg. 10). Its' byelaws (PB pg. 11-18) enlist various charitable activities, and was duly registered u/s. 12AA of the Act on 30/01/2017 (PB pgs. 27-28). It is engaged in providing training *qua* various skills as an accredited training center for National Skill Development Corporation (NSDC); Sector Skill Council of India (SSC); Pradhan Mantri Kaushal Vikas Yojna (PMKVY), as well as other Skill Development Councils of India (SDCs), with all of which it is affiliated as a training partner. The instant proceedings arise consequent to the denial of approval u/s. 80G(5)(vi). This is the second round before the Tribunal. In the first round, the assessee's application u/s. 80G5(vi) dated 12/6/2017 (PB pgs. 29-31) in the prescribed form (Form 10G) to the Revenue on 15/6/2017 was disapproved by the ld. CIT(E) on 26/12/2017 (PB pgs. 77-81) for the following reasons :

a) the failure to prove the genuineness of the activities of the society inasmuch as it had diverted it's income/property for the benefit of the persons specified u/s. 13(3), attracting s. 13(1)(c), so that the assessee was not entitled to the benefit of ss. 11 and 12 on its' income;

b) it is not clear from the accounts of the assessee for financial years 2015-16 and 2016-17 as to whom and from whom the assessment fee had been paid or, as the case may be, received;

c) the training programs conducted by the assessee were sponsored by various Government Agencies, viz. NSDC/PMKVY/SSC, who were controlled and governed by the Government of India. It is therefore not understood as to why u/s. 80G exemption was required by the assessee who, accordingly, was not entitled to exemption 80G of the Act.

The matter was carried to the Tribunal which, vide its' order dated 02/4/2019 (PB pgs. 90-93), restored the matter back to the file of the ld. CIT(E) as he had vide his order made no observation with regard to the violation, if any, of any of the conditions specified under clauses (i) to (v) of sec. 80G(5), only with reference to which, as held in several cases (cited therein), could an approval u/s. 80G(5) be refused (para 4, page 5 of the order), so that the same ought to have been specified.

3.2 In the set-aside proceedings the details were once again called for, as well as queries raised, which were duly responded to by the assessee from time to time (PB pgs. 96-105). The application was however denied for the following reasons:

a) the society is running for the benefit of its' Members inasmuch as payments thereto had been made by it which were neither explained nor proved as to their genuineness, attracting s. 13(1)(c), violating s. 80G(5)(i) (para 5.1);

b) the assessee had not submitted proof of filing Form 10B, as required by r. 17B of the Income-tax Rules, 1962 for AY 2016-17 to AY 2019-20, in the absence of which its' income is liable for inclusion in the total income as per ss. 11 and 12, again violating section 80G(5)(i) (para 5.2); and

c) per Form 10G (PB pgs. 29-31) the assessee states (at para 11) of carrying on business, which is incidental to its' objects. However, vide letter dated 23/10/2019 (PB pgs.104-113), in reply to the letter dated 26/9/2019, it states at para 10 of not carrying on any business, but only charitable activities. Only one of the two opposing statements could be correct. If it is not carrying on business, as stated vide its reply dated 23/10/2019, Form 10G is defective, so that (presumably) no cognizance thereof (for an approval on its basis) could be taken. In fact, the carrying on of business would require it to maintain separate books of account for the said business, i.e., as per s. 80G(5)(i), which it had failed to produce (para 5.3).

4. We have heard the parties and perused the material on records.

The law

4.1 Section 80G(5), with reference to which an approval u/s. 80-G is to be either given or, as the case may be, denied, reads as under:

S. 80G. Deduction in respect of donations to certain funds, charitable institutions, etc.

(1) In computing the total income of an assessee, there shall be deducted in accordance with and subject to the provisions of this section, -

(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) …., an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty per cent of the balance of such aggregate; and

(ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a) any sums paid by the assessee in the previous year as donations to-

(i) …

(iv) any other fund or any institution to which this section applies; or

(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 fulfils 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 the 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 of 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 Principal Commissioner or Commissioner; and

(emphasis, ours)

The Objections – A discussion

4.2 We shall take up each of the objections w.r.t. the clear provisions of law. The objection stated at paras 3.2 (a) does not hold. The assessee has furnished detailed replies to each of the several queries raised, both in the first and the second round, toward which reference was made by Sh. Khemuka, the learned counsel for the assessee, during hearing. As explained time and again, the expenses are, due to liquidity constraints, paid for by the office bearers in the first instance, who are then reimbursed against duly authenticated expense vouchers, which have also been produced (PB pgs. 70-71). How could the corresponding sums, one wonders, be regarded as given to the concerned members/office bearers of the Society, i.e., for their benefit? They have, on the contrary, with a view that the functioning of the Society does not get dislocated or disturbed, contributed from their personal sources, ensuring its' smooth functioning. The relevant vouchers have been furnished (vide reply dated 08/12/2017), i.e., as against, as stated, on sample basis earlier. It is common knowledge that funds from Government agencies, due to the procedures involved, are generally realized only after a time lag causing strain on the working capital resources of the recipient entity. In the present case the entire receipt of the assessee is from government agencies. The balance-sheets as on 31/3/2016 (PB pgs. 42-45) and 31/3/2017 (PB pgs. 46-54) reflect an outstanding of Rs. 42.50 lacs and Rs. 10 lacs from

Government departments respectively on a gross receipt (for the corresponding years) at Rs. 54.55 lacs and Rs. 25.45 lacs respectively, exhibiting this. It would be a different matter, we may though add, where the competent authority had required the assessee to explain a particular expense, viz. travel expense (details of expenditure under which account head were in fact specifically called for and produced by the assessee vide its' letter dated 10/6/2019), with reference to the person who undertook the travel; purpose of travel, etc., and the assessee could not furnish the relevant voucher/s or could not satisfactorily explain the same, corroborating it with the relevant documents. Like-wise, for any other expenditure. The objection is without merit.

4.3 *Qua* the second objection (para 3.2(b)), Form 10B is the audit report of its' accounts for an entity registered u/s. 12AA, to be filed along with the return of income, which has, as stated, not been furnished for AYs. 2016-17 to 2019-20. The return for each of these years has been duly furnished (copies on record), with that for the latest year (AY 2019-20), copy of which is not on record, we find to have been specifically called for and adduced by the assessee as an enclosure to its' letter dated 23/10/2019 (PB pgs. 104-105). Non furnishing of the return by an assessee, registered u/s. 12AA, which registration has not been revoked, or Form 10B along with, would only be to it's detriment, i.e., self-defeating. In fact, the returns would only be reflected in the Revenues' records (which are centralized), so that where indeed not filed, or the return filed without the said form, a specific finding in its respect ought to have been issued by the ld. CIT(E), rather than stating that the assessee had failed to file the proof of their filing. In fact, we observe that sec. 11 exemption has not been allowed for AY 2015-16, assessment order for which year is on record (PB pgs. 116-120). However, strangely, the order, though records the assessee as registered u/s. 12AA(1)(b)(i), does not state any reason for non-allowance of exemption u/s. 11, even as the return was, as stated therein, accompanied by the Audit Report in Form 10B. There is no

reference to this in the impugned order. Sh. Khemuka also, on being questioned, could not furnish any satisfactory answer to the non-allowance of exemption u/s. 11. This, thus, does raise an issue inasmuch as the same, i.e., of the assessee's income being liable to be excluded from the total income u/ss. 11 & 12, impinges directly on the satisfaction of the condition of s. 80G(5)(i) for an approval u/s. 80G(5)(vi). *Needless to add, there is no assessment order on record allowing the assessee exemption u/s. 11 or benefit thereunder*. The only assessment order on record, i.e., for AY 2015-16, as afore-noted, does not, while not allowing the said exemption, state the reason/s therefor. In fact, surprisingly, the assessee itself has not claimed any exemption, and it's income stands assessed as returned. And which is in fact not understood as there is no estopple against law (*Pr. CIT v. Maruti Suzuki India Ltd*. [2019] 416 ITR 613 (SC)), so that a non-claim of exemption u/s. 11 should not by itself preclude the said exemption being allowed, i.e., where otherwise entitled to. That is, neither the reason for the non-claim of exemption u/s. 11 by the assessee, which yet inexplicably considers itself entitled to an approval u/s. 80G(5)(vi), nor for the non-allowance thereto of the said exemption by the Revenue, is forthcoming from either the assessment order or the impugned order, or even the assessee's replies to the various queries in the s. 80-G(5) proceedings before the competent authority. To be fair though, there was no query in this respect, nor consequentially any reply thereto by the assessee, in the said proceedings. We have already noted the inability of Sh. Khemuka to suitably address the query in this respect during hearing.

Be that as it may, the question that therefore arises is not if the assessee has filed Form 10B, which it apparently has, or not, but whether the assessee's income is liable to be exempt u/ss. 11 & 12 inasmuch as where not so, the condition of s. 80G(5)(i) would remain unmet, ousting the assessee's case for approval u/s. 80-G(5). Sure, non-filing of Form 10B (which bears the details in respect of the income applied for charitable purposes, or being accumulated or set apart for being so applied, which is the basic condition for exemption u/s. 11) violates a

procedural condition for the allowance of the exemption u/s. 11. The income, however, may otherwise be liable for non-inclusion in the total income, and which is what is relevant for the purpose of s. 80G (5)(i). When the Act stipulates the condition of income being exempt u/ss. 11 & 12, it refers essentially to the nature and quality of the income, i.e., income derived from a property held under trust, charitable in character, while the grant of exemption would be subject to its application for such purposes in terms of ss. 11 & 12. Sec. 80-G(5) approval is even otherwise, unless revoked, given in perpetuity, while the filing of Form 10B is a procedural requirement of the provision, which may or may not stand met for a particular year and, rather, may be satisfied even at the assessment stage. The procedural requirements are even otherwise liable to undergo changes with time, i.e., with further requirements being included or the existing ones omitted.

The issue as to whether the assessee's income is liable to be excluded u/ss. 11 & 12 – a condition of s. 80-G(5)(i), does arise for consideration in the facts and circumstances of the case, and the second objection is, to that extent, valid.

4.4 Coming to the third objection (para 3.2 (c)), though the same is not happily worded inasmuch as it bases itself on an ambulatory stand by the assessee per its' application (in Form 10G) and a reply in the instant proceedings, it does raise the issue as to whether the assessee is indeed in business or not.

As explained in *Areva T&D India Ltd. vs. CIT* [2020] 428 ITR 1 (Mad), the fundamental legal principle is that there is no estopple in taxation law. An alternate plea can be raised, and which may even be contradictory to the first plea (also see: *CIT v. V. MR. P. Firm, Muar* [1965] 56 ITR 67 (SC)). In the instant case the assessee has not taken an alternate plea, though given different statements, regarded as inconsistent by the competent authority, drawing an adverse inference on that basis. There is, we may though clarify, nothing inconsistent in the two statements. A charitable activity, it is well-settled, may involve carrying on of business, or may be incidental thereto, so that there is nothing amiss or

contradictory in the assessee stating of carrying on business as well as of undertaking charitable activity. This would also be apparent from a bare reading of, *inter alia*, sections 2(15); s. 11; s. 80-G, i.e., the three provisions that principally apply in the instant case, as indeed Form 10G itself.

Continuing further, even regarding the two statements as inconsistent, the ld. CIT(E) ought to have been put the same to the assessee, seeking a clarification, so that the applicant states its' position – finally and firmly, supporting the same with cogent reasons, materials, etc., which is to in any case guide the final finding/s by the ld. CIT(E) in the matter, conspicuous by its absence. The entire range of the assessee's activities since inception are in the notice of the Revenue, which has in fact assessed it u/s. 143(3) (for AY 2015-16) on the basis that the assessee is in the business of 'social work', so that it can surely take, as it ought to, a definite and clear stand in the matter, deciding on that basis. The adjudication by the competent authority, it may be appreciated, has to be by issuing finding of fact/s, based on the material on record, and in accordance with law. The observation (of the ld. CIT(E)) that no separate books of account have been produced violating s. 80G (5)(i), is again to no moment. This is as the assessee is, as apparent, maintaining only one set of accounts and undertaking only one set of activities, i.e., providing training courses as a training partner under the various skill development programs of the Government of India (GoI) under the aegis of its' authorized agencies who sponsor the same.

Be that as it may, the objection, clearly, is of the assessee being in business, disqualifying it for an approval u/s. 80G(5)(vi). This is as s. 80G(5)(i)(b) bars the deployment of the donations received by the assessee toward the same. This being, as afore-noted, the only activity pursued by the assessee, no useful purpose would be served by granting it approval u/s. 80G. The purpose, clearly, appears to be that the donations should not feed or fund such business. It is this that would constitute the reason for denying approval, and not the carrying on of business *per se*. How the donations are to be, or could be legally, used is a question basic to an approval

u/s. 80-G, with the assessee itself signifying that the same shall be for the activity being undertaken. Now, surely, the activity of rendering service of providing training to unskilled youth with a view to ensure their employment, and thereby to act as economic agents in the society, is without doubt advancement of an object of general public utility. What therefore remains to be seen is if it is also in the nature of trade, commerce or business, or any service in relation thereto, which is without doubt for a fee. That this fee is realized from these Agencies, rather than from the students it trains, would be of little consequence. Further, that the fee is not paid in full, i.e., on the enrolment of the students, but in a phased manner with the progression of the course and its aftermath, i.e., the passing of the examination by the students and their employment, is another matter, akin to the terms & conditions of a contractual relationship, toward which it in fact enters into MOUs with these sponsoring Agencies.

Objections - Analysis

4.5 We, next, examine the objection/s surviving, in light of the foregoing discussion. As we discern, the objection is two-fold, as under:

a) the assessee's income is liable for inclusion in the total income, violating s. 80-G(5)(i), making it ineligible for grant of approval u/s. 80-G(5)(vi).

b) the donations being proscribed u/s. 80-G(5)(i) for being used, directly or indirectly, for the purpose of such business, render the grant of approval u/s. 80G(5)(vi) to the assessee as of no consequence.

The two objections, as we shall presently see, coalesce into one. If the assessee's undertaking constitutes 'business', the *proviso* to sec. 80G(5)(i) would operate to exclude the condition of s. 80G(5)(i), so that income therefrom may not be liable to be exempt u/s. 11 and yet not violate s. 80G(5)(i). However, that would, at the same time, trigger the conditions set out in clauses (a), (b) and (c) of the *proviso* to s. 80G(5)(i), which bar the use of the donations for such business. The assessee undertaking no other activity, the grant of approval u/s. 80G(5)(vi) thereto would

therefore become meaningless or to no purpose. As such, the assessee would not be entitled to an approval u/s. 80G(5)(vi).

At this stage, we may take stock of the non-grant of exemption u/s. 11 to the assessee in assessment, which has not been contested by it. The charitable purpose of the advancement of an object of general public utility, where it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a fee or consideration, the aggregate receipt from such activity/s is, irrespective of the nature of use or application, or retention of the income therefrom, not to exceed 20% of the assessee's total receipt if it is to be regarded as a 'charitable purpose'. In the instant case, the entirety of the assessee's receipt is from this activity, which therefore ceases to be toward a charitable purpose u/s. 2(15) read with *proviso* thereto, i.e., under the Act. This, as far as we can see, explains both, the non-claim by, and the non-allowance to, the assessee of exemption u/s.11, which would also operate to oust an approval u/s. 80G(5)(vi). Now, if the assessee's activities cease to be a charitable purpose u/s. 2(15) r/w *proviso* thereto, how could it be regarded as a charitable institution, for it to be allowed an approval u/s. 80-G(5)(vi)? As a closer look at this question would reveal, it in fact posits the objections stated at para 4.5 (a) & (b) above, i.e., when juxtaposed with the facts and circumstances of the case as well as s. 2(15). The two objections afore-stated are, thus, not separate, as it may seem, but merge into one in the facts and circumstances of the case.

The Issue

4.6 The question, therefore, boils down to ascertaining if the assessee's undertaking is a 'business'. There has been no deliberation on this aspect of the matter at any stage of the proceedings. We, therefore, only consider it proper to restore the matter back to the file of the competent authority for the purpose. We are conscious, when we do so, that the assessee has itself not claimed, as it appears, exemption u/s. 11 for any year and, besides, not appealed against its'

assessment for AY 2015-16 not allowing the same and, thereby, allowing it to attain finality. At the same time, we have also noticed a complete absence of any finding in the assessment order for denial of exemption u/s. 11 to the assessee, nor any query, much less any finding in its respect in the impugned order. Sure, the onus on the assessee would be heavy inasmuch as it is only it that can, or is to, explain the basis on which it claims the satisfaction of the conditions for approval u/s. 80G(5)(vi) r/w s. 80-G(5)(i), i.e., considering that it has not claimed and has not been allowed exemption u/s. 11, with, perhaps, it being no longer liable to be regarded as a charitable institution u/s. 2(15) r/w *proviso* thereto (refer para 4.5).

Toward this, we may highlight some of the factual aspects observed which may have a bearing in the matter. Our observations, being based on the material on record, may though be regarded as only preliminary and, at best, instructive, and it is only the definite finding/s in the matter recorded by the competent authority after allowing the assessee a reasonable opportunity to state its' case, that would satisfy the mandate of law.

a). The training courses being undertaken are accredited courses, with the curriculum provided by the sponsoring Agencies. The same shows that the activity is being carried on in a planned and scientific manner, i.e., systematically, towards providing technical skills which have employment potential, satisfying thus the need of the labour market and, at the same time, of gainful employment and, thus, economic gain to the trainees. We emphasize this as 'business' is a term of wide import, so that any economic activity undertaken systematically for economic gain should qualify to be regarded as 'business', even as the words used by the Legislature are 'trade, commerce or business'. In fact, the Hon'ble Courts have held an activity, where undertaken on sound and recognized business principles, with reasonable continuity, to be business even where the profit motive is not established or proved. Case law in the matter is legion, viz. *ICAI v. DGIT(E)* [2012] 347 ITR 99 (Del).

b). There is no bar to the earning of profit in the assessees' Memorandum/Bye-laws. In fact, in the very nature of things and the manner in which the activity is being undertaken, it would preclude, or render as of no moment, such a stipulation; its' bottom line depending on a number of variables, resulting in a vast variation in its' operating results from year to year, as is indeed the case. There is another allied aspect. The assessee is, in lieu of its' services, being remunerated at Rs.

10,000/- per student, and not at a fixed sum for a particular program, even as its' costs for undertaking the same are largely fixed, viz. rent; cost of the training personnel; administrative cost, etc. The assessee would therefore endeavour to enroll as many students as possible, so that only courses with good demand, i.e., with a perceived or actual good employment and earning potential, are likely to be taken up by it as that only would attract students in sufficient numbers, and be, thus, profitable. This is particularly so as it has no permanent/regular staff/trainers on its' rolls, which are outsourced on need basis. In fact, the risk (in undertaking the activity) gets all the more accentuated as the fee is, as explained, payable in three installments; the latter two being subject to the conditions of the students passing the examination and securing employment respectively, so that the full fee of Rs. 10,000 gets received only for a fraction of the total students enrolled. That is, the very manner in which it is being remunerated would guide and determine the manner of the conduct of the courses by it as well as the choice of the courses. We emphasize this aspect also for the reason that the assessee's activity has been regarded as 'social work', which term, as understood in common parlance, would not distinguish between different courses based on their being remunerative, or not so, inasmuch as every skill-set is required by/in the society.

c). As a flip side of the appellant being remunerated in the manner it is and, further, perhaps with a view to provide a wide range of courses, it does not keep regular teaching staff (viz. trainers), who are outsourced on need basis, conserving costs. Further, ostensibly with a view to increase it's reach and volume, it has spent increasingly large sums on 'mobilization expenses' (with that for AY 2019-20 being at Rs. 8.69 lacs, or 46.85% of its' revenue). The purpose of this expenditure, which appears to be on marketing its' activity, would need to be ascertained. The balance-sheet as on 31.3.2019 contains 'salary payable' at Rs. 8.64 lacs (against salary bill of Rs. 17.41 lacs for the relevant year), indicating salary being paid to members/office bearers, as an outsider would not ordinarily agree to work on credit, which rather appears to be indefinite. Shri Khemuka would during hearing confirm the payment of salary to the Members/Office bearers w.e.f. the relevant financial year. Though this may or may not involve the applicability thereby of ss.13(1)(c) or 13(2)(c), so as to exclude ss. 11 and 12, it does indicate, at least apparently, as do the other incidents noted earlier, of it operating in a commercial manner, paying each of the factors of production their economic due. The applicability of s. 13 would thus also require being examined.

The related aspects

4.7 We also consider it incumbent on us to highlight other aspects of the matter:

a). The manner afore-stated, i.e., of the conduct of the courses (at para 4.6), incidentally, also provides for standardization, as well as for evaluation, besides

providing a regulatory framework with reference to which the activity is to be undertaken. Inasmuch as therefore imparting training includes provision of knowledge as well as training of the mind, and has elements of accreditation and evaluation, it could be argued that the charitable activity being pursued by the assessee qualifies as 'education', falling under the first limb of s.2(15) defining 'charitable purpose' under the Act, and not of 'advancement of an object of general public utility', i.e., the last limb thereof. On the other hand, as afore-noted, the assessee has no regular staff or trainers and, further, provides short-term certificate courses of the sponsoring agencies also, spanning 2-3 days each – which may be difficult to be regarded as providing education. The issue would therefore require some deliberation. The controversy may perhaps be of little consequence where the assessee's activity is regarded as constituting 'business'. This is as even where regarded as toward providing 'education', so that its' income is liable to be exempt u/s. 11, s. 80G(5)(i)(b) would bar the use of voluntary donations for its' business, the only activity being pursued by the assessee, so that the grant of approval u/s. 80G(5)(vi) would become meaningless. An assessee is in fact required to issue a certificate to the donor in this respect u/s. 80-G(5)(i)(c), which would though be valid only where the assessee is undertaking more than one charitable activity, at least one of which does not qualify to be 'business'.

b). We may also look at the description of the assessee's work as 'social work' in the assessment order (for AY 2015-16). To begin with, 'social work' would stand only to be classified as 'advancement of an object of general public utility', so that the said description may not be of any particular significance. Further, the said description, which would though hold irrespective of the income and social profile of the trainees, appears to be in a broad sense, taking into account the nature of all the activities listed in the assessee's Memorandum/Byelaws, while the sec. 80G(5) approval would be with reference to the activity/s being pursued (r. 11AA(3)), unless of course there is a clear, demonstrated intent, absent in the instant case, to

pursue another set of activities and, further, which is not liable to be regarded as 'business'. In fact, the list of activities pursued, as stated in the Annexure to Form 10G (PB pg. 32), is for provision of such courses for socially and economically backward segments of the society, of which there is though no evidence on record, nor even a claim made in the s. 80-G(5) proceedings. The same may impact the assessee's case, though would require, as a pre-requisite, the relevant facts being demonstrated. Also relevant in this regard is that the revenue to the assessee is, under the terms of the program/s undertaken, by the Government agencies sponsoring the same, and which (program/s) draws no distinction between the capacity of the trainee-students to pay. We, however, observe no contention toward, much less case, *qua* the same made out either in the first or the second round or even before us. How could, one may ask, in its absence, the competent authority examine the same, and we bring this forth only for that reason. The assessee's charter in fact does not restrict it's activities to the marginalized groups, with, further, the activities undertaken by it being in pursuance of its' Object clause 7, reading as under, which bears no such restriction:

7. शिक्षा का प्रचार-प्रसार करना और सरकार के शिक्षा संबंधी कार्यक्रम में सहयोग करना।

(translated into English, it means: 'to propagate education and cooperate in the education related programs of the Government')

Reference in this regard be made to the decision in *Delhi Stock Exchange Ass. Ltd. v. CIT* [1997] 225 ITR 235 (SC). Further, no break-up of the receipt (for different years), in terms of these activities (i.e., listed at PB pg. 32) vis-à-vis the total receipt for these years, is available, which may be of relevance in view of *proviso* to s. 2(15). 'Social work' would though, irrespective of the income and social profile of the trainees, stand to be classified as advancement of an object of general public utility.

c). We also note that the assessee has, besides conduct of training courses, other objects as well, which may or may not involve undertaking 'business', or of it being incidental to the fulfillment of those objects, viz. running educational centers

providing regular scholastic courses of study. The same, where funded by regular tuition fees – rated reasonably, from students, and/or donations, and not run on business principles, may not be liable to be regarded as 'business'. We advert to reasonableness in view of the absence of any bar in the assessee's charter for earning profits and gains. That, however, would be purely a matter of fact, to be considered in the light of the obtaining facts and circumstances. Considering those objects at this stage would be venturing into the realm of the unknown, besides considering the assessee's case on the basis of a hypothetical set of facts, i.e., would be presumptuous inasmuch as there is no firm basis for the grant of approval. As afore-noted, a clear, demonstrated intent to pursue such a course, including the manner in which it is to be, inasmuch as that would also have a bearing on it being regarded, or not so, as business, though would be a different matter as in that case it cannot be said to be hypothetical.

Conclusion

5. The matter, in view of the foregoing, is accordingly restored to the file of the competent authority for adjudication in accordance with law upon examining the relevant aspects, discussed hereinbefore, or any other that may be either deemed proper by, or otherwise brought to the notice of the said authority by the assessee. He shall do so per a speaking order, issuing definite findings of fact, after allowing the assessee a reasonable opportunity of being heard. Further, the matter having been delayed for long, he shall endeavor to do so within a period of three months from the date of the receipt of this order. Needless to add, the assessee shall fully cooperate in the proceedings, failing which the competent authority is at liberty to draw any adverse inference as admissible under law.

We further clarify that we may not be construed as having issued any final findings in the matter; our endeavor having been only to highlight the aspects deemed relevant, for a final and proper resolution of the matter, which has already witnessed two orders by the ld. CIT(E). The competent authority would, therefore,

in his adjudication not be bound thereby or by his earlier findings or even that in the assessment order, even as he shall give them all due regard. Also, lest we be considered as having travelled outside our ambit while deciding in the manner done, reference be made to the decision in *CIT v. Walchand & Co. (P.) Ltd*. [1967] 65 ITR 381 (SC) wherein, expounding on the jurisdiction as well as the duty of the Tribunal as the final fact finding body, it was explained by the Apex Court that it is to deal with and determine questions which arise out of the subject-matter of the appeal in the light of the evidence, and consistently with the justice of the case.

We decide accordingly.

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

Order pronounced in the open court on February 05, 2021

Sd/-	Sd/-
(N.R.S.Ganesan)	(Sanjay Arora)
Judicial Member	Accountant Member

Dated: 05/02/2021
*AMIT/-(P) // True Copy //